

Agenda



Licensing Sub-Committee

Date: Tuesday, 4 September 2018

Time: 4.30 pm

Venue: Committee Room 1 - Civic Centre

To: Councillors D Davies (Chair), H Thomas (Deputy Chair), G Berry, J Cleverly, M Cornelious, T Holyoake, A Morris, M Rahman, W Routley, C Ferris and J Hughes

| Item | Wards Affected |
|------|--|
| 1 | <u>Apologies for Absence</u> |
| a | <u>Agenda - Cym</u> (Pages 3 - 4) |
| 2 | <u>Declarations of Interest</u> |
| 3 | <u>Licensing Sub-Committee Code of Practice</u> (Pages 5 - 18) |
| 4 | <u>Application for Variation of a Premises Licence in respect of Yummies Kebabs, 85 Upper Dock Street, Newport ,NP20 1DG</u> (Pages 19 - 58) Stow Hill |

Time of hearing: 4.30pm

The agenda sets out the intended date and time of the hearing. The hearing May be adjourned or cancelled should circumstances change.

Please also note Section 5 of Code of Practice for Licensing Hearings overleaf.

Requirements for Applicants and Interested Parties etc.

Upon receipt of the notice of the meeting, the Applicant and the interested Parties must inform the Council in writing addressed to Mrs A Jenkins, Governance Team Leader, Newport City Council, Civic Centre, Newport, South Wales, NP20 4UR:

- Whether they intend to attend or be represented at the hearing
- Whether they consider a hearing to be unnecessary
- Requests for any other people to attend the hearing eg witnesses (including their names and a brief description of the evidence that they can give and its relevance to the application)

Contact: Anne Jenkins, Governance Team Leader

Tel; 01633 656656

E-mail: anne.jenkins@newport.gov.uk

Date of Issue: 20 August 2018

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Rhybudd ynghylch Gwrandawriad Is-bwyllgor Trwyddedu

Dyddiad: 20 Awst 2018

Amser: 4.30pm

Lleoliad: Ystafell Bwyllgora 1 - Y Ganolfan Ddinesig

At: Y Cyngorwyr D Davies (Cadeirydd), M Cornelious and J Hughes

Eitem

Y wardiau yr
effeithir arnynt

1 Ymddiheuriadau am absenoldeb

2 Datganiadau o fuddiant

3 Cod Ymarfer yr Is-bwyllgor Trwyddedu

4 Adolygiad llawn yn dilyn cais adolygu cryno

Stow Hill

**An application under Section 34 Licensing Act 2003 for the grant of variation of a Premises Licence in respect of:
Yummies Kebabs, 85 Upper Dock Street, Newport, NP20 1DG**

Amser y gwrandawriad: 4.30pm

Mae'r agenda yn nodi dyddiad ac amser arfaethedig y gwrandawriad. Gall y gwrandawriad gael ei ohirio neu'i ganslo os bydd amgylchiadau'n newid.

Yn ogystal, dylech ystyried Adran 5 y Cod Ymarfer ar gyfer Gwrandawriadau Trwyddedu.

Gofynion ar gyfer Ymgeiswyr a Phartïon â Diddordeb ac ati

Ar ôl cael y rhybudd ynghylch y cyfarfod, rhaid i'r ymgeisydd a'r partïon â diddordeb hysbysu'r Cyngor yn ysgrifenedig gan ddefnyddio'r manylion cyswllt canlynol: Mrs A Jenkins, Arweinydd Tîm Llywodraethu, Cyngor Dinas Casnewydd, Y Ganolfan Ddinesig, Casnewydd, NP20 4UR

- A ydynt yn bwriadu bod yn bresennol neu gael eu cynrychioli yn y gwrandawriad
- A ydynt o'r farn nad oes angen gwrandawriad
- A hoffent wneud cais i unrhyw bobl eraill fynychu'r gwrandawriad, e.e. tystion (gan gynnwys eu henwau a disgrifiad byr o'r dystiolaeth y gallant ei rhoi a'i pherthnasedd i'r cais).

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Conduct and Procedure of Licensing Sub-committee

1 Membership and appointment of Chair

- 1.1 The Licensing Sub-committee comprises all members of the committee, other than those who have an interest or who is the ward member for the ward in which premises under consideration is located. The quorum is three. The Chair will be elected on the day by a simple majority vote.
- 1.2 For example, if they live in the vicinity of the licensed premises, or have a friendship or a close personal association with either the applicant or any objector this would disqualify the Member from considering the matter.
- 1.3 Members of the Licensing Sub-Committees should inform the Senior Democratic Services Officer immediately if they consider that they are disqualified from considering any application, if members of the Licensing Sub-Committee become aware of any personal interest in any application before them they should declare the interest at the beginning of the meeting and withdraw immediately.

2 Ward Councillors

- 2.1 Ward Councillors are no longer expressly permitted to make representation in their capacity as Ward Councillors although they are entitled to make representations as individuals falling within the category of “any other person”, if they are likely to be affected by an application (for example if they live in close proximity to the licensed premises). Councillors however must comply at all times with the Members Code of Conduct (“the Code”). Ward Councillors should avoid discussing the application with any of the Licensing Sub-Committee beforehand to avoid any suspicion of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.
- 2.2 If a Ward Councillor has a personal interest in an application (for example, because he/she lives in close proximity to the premises), then this is also likely to be a “prejudicial” interest under the Code. Provided that the Member declares the interest and withdraws from the hearing after making representations, then he/she is entitled under paragraph 14(2) of the Code to appear at the hearing in the same way as any other member of the public having made a relevant representation within the meaning of the Act (“any other person”). This also applies whether or not the Councillor is a Member of the Licensing Committee. Because of this “personal and prejudicial” interest the Ward Councillor cannot have any other involvement with officers or members regarding the application.
- 2.3 Ward Councillors who are not members of Licensing Committee may also act as the appointed representatives for any other person at the hearing, if requested to do so, but they should avoid discussing the application with any of the Licensing Sub-Committee beforehand. If a Ward Member is representing any other person, that other person must have objected by their own accord before a Ward Member can be requested to act as their representative at the hearing.
- 2.4 Ward Councillors who are members of Licensing Committee should not appear as the appointed representatives for any other person at the hearing because of the requirements of natural justice and the need to avoid giving any impression of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.

3 Lobbying

- 3.1 Other Members must not lobby any Member of the Licensing Sub-committee, directly or indirectly, about any application before them.
- 3.2 Members of the public or any of the parties must not lobby any members of the Licensing Sub-Committee about any application before them. If any of the members of the Licensing Sub-Committee are approached by any person about a licensing matter, they should explain that they cannot discuss the matter and refer the person to the Licensing Officer. Any written representations received by individual members of the Licensing Sub-Committee must be passed to the Licensing Officer and reported at the hearing.

4 Chair of the Licensing Sub-Committee

The Chair of the Licensing Sub-Committee is to be elected by Members on the day by simple majority vote.

5 Quorum

- 5.1 Although the Act allows for the hearing to continue with two members present, the Council's Constitution and the Statement of Licensing Policy provides that three Councillors shall constitute a quorum for any meeting and it is good administrative practice for three members to be present.

If the meeting becomes inquorate at any time, the matter will need to be adjourned or referred to full Licensing Committee.

- 5.3 Membership may change during the course of a Sub-Committee meeting only if an individual member is disqualified from considering some but not all of the applications on the agenda. All members considering an application however must be present throughout the individual hearing. If, for any reason, a member needs to withdraw during the hearing, the proceedings should be temporarily adjourned until the member returns. The meeting will only commence if quorate. If a member arrives late and after the hearing commences, he or she will be disqualified from hearing the specific case under consideration but can hear other cases set out in the agenda.

6 Statutory Guidance

- 6.1 The Licensing Act 2003 (Hearings) Regulations 2005 SI 44/2005 and the The Licensing Act 2003 (Hearings) (Amendment) Regulations 2004 SI 78/2005 ("the Regulations") made under Section 183 of the Act set out the statutory framework for the Licensing Sub-Committee hearings.
- 6.2 These Regulations make provision for hearings required to be held by the Council as Licensing Authority, under the Licensing Act 2003. In particular, the Regulations provide for the timing of the hearings and the notification requirements regarding the time and date of the hearings and information to be given to the parties. In addition, provision is made for a party to provide information to the Licensing Committee about attendance at a hearing, representations, the seeking of permission for another person to attend to assist and whether a party believes that a hearing is necessary.
- 6.3 The Regulations provide for a range of procedural issues to govern the way in which preparations are made for a hearing, the procedures to be followed, the rights of parties at the hearing, the keeping of records and the manner of giving notices. The Regulations also make provision for the timing of the Licensing Committee's determination following a hearing.

6.4 Insofar as the Regulations do not make specific provision for procedures for and at hearings, the Licensing Authority can determine its own procedures.

7 Notice of Hearings

7.1 The provisions of the Local Government Act 1972 requiring at least three clear working days' notice of Council and Committee meetings do not apply to hearings conducted under the Licensing Act 2003.

7.2 Instead Regulation 6 of the Regulations prescribes the period of notice to be given for a Licensing Committee hearing, depending upon the type of application being considered.

7.2.1 At least two clear working days' notice must be given if the hearing is to consider

- the cancellation of an interim authority notice following a police objection
- counter notice following a police objection to a temporary event notice

7.2.2 at least five clear working days' notice must be given if the hearing is to consider

- review of premises licence following a closure order
- determination of application for conversion of existing licence
- determination of application for conversion of existing club certificate
- determination of application by holder of justices' licence for the grant of a personal licence

7.2.3 In all other cases, at least 10 clear working day's notice of the hearing must be given.

8 Timescale for arranging hearings

8.1 Regulations 4 and 5 and Schedule 1 set out the time periods within which the Council is required to arrange hearings. Where a hearing cannot be concluded in one day and has to be held on more than one day, the Regulations require that the hearing must be arranged to take place on consecutive working days.

8.2 The time frame for arranging hearings again depends on the nature of the application and varies from 20 working days from the last date when representation may be made or notice may be received from the Police to five working days in the case of cancellation of an interim authority notice following a police objection.

9 Form of Notice

9.1 Regulation 34 requires that notice of the hearing shall be in writing although it is a matter for the Council to determine how the notice should be given. The Regulations specifically provide that notice can be given electronically (eg by email or fax transmission) provided that the recipient agrees to this method of notice beforehand and a hard copy of the notice is also despatched at the same time. The notice is then deemed to have been properly served at the time of the electronic transmission. Any notice served by second class post would generally be deemed to have been served within two working days.

9.2 It is recommended that all notices and information should be sent to the parties by second class post. In the case of emergency applications that have to be dealt with at short notice or where the parties specifically request, copies will also be sent by email or fax, where these details are known.

10 Information to be provided

10.1 Regulation 7 provides that the following information must be sent out with the notice of hearing

- The rights of attendance, assistance and representation
- The consequences if a party does not attend or is not represented at the hearing (which will usually be that the hearing will proceed in the party's absence)
- The procedure to be followed at the hearing
- Any particular points on which the Licensing Committee considers that it wants clarification from any party at the hearing

10.2 Regulation 7(2) also provides that, in relation to the hearings listed in column 1 of Schedule 3 of the Regulations, certain specified documents must be sent with the notice of hearing to the persons identified. For most types of application, this means that copies of the relevant representations or notices given must be sent to the applicants or licence holders.

10.3 The Regulations require that the notice of the hearing and supporting information must be sent to the appropriate parties ie the applicant and any persons making relevant representations. There is no requirement for public notice to be given of the hearing or for the supporting information to be made available to the press and public or any other members of the Council. The Council however has a discretion as to whether or not to publicise the hearing more widely.

10.4 Having regard to the principles of open government, the Constitutional requirements that decisions are taken in a transparent and accountable manner and the requirements of Regulation 14(1) that hearings are generally conducted in public, it is recommended that the Licensing Sub-committees follow the same publicity arrangements as with other Committee meetings.

11 Requirements for Applicants and any other persons

11.1 Upon receipt of the notice of the meeting, the Applicant and any other person must inform the Council in writing

- Whether they intend to attend or be represented at the hearing
- Whether they consider a hearing to be unnecessary
- Requests for any other people to attend the hearing eg witnesses (including their names and a brief description of the evidence that they can give and its relevance to the application)

11.2 In the case of emergency applications, such as the cancellation of an interim authority notice following representations by the police or a counter notice following a police objection to a temporary events notice, this information must be provided not later than one working day before the hearing. In the case of the review of premises licences following closure orders, an application for conversion of existing licences or club certificates and the grant of personal licences, the information must be provided at least two working days before the hearing. In all other cases the information must be provided at least five working days before the hearing.

11.3 It is recommended that a separate letter be sent to the Applicant and any other person at the same time as the agenda for the meeting, reminding them of the need for this information and asking them for a response as soon as possible before the meeting. If the Licensing Sub-committee is informed in good time before the meeting that the parties do not wish to attend, then it may be possible to reschedule other business or applications for that meeting.

- 11.4 Regulation 9 allows the Council to dispense with the need for a hearing if the Applicant and all any other persons agree. If all the parties respond to the request for information stating that they consider a hearing to be unnecessary, the hearing can be vacated and notice given to the parties accordingly. A determination must then be made within 10 working days of the notice.
- 11.5 Regulation 10 provides that any party may withdraw their representations by giving written notice at least 24 hours before the hearing or orally at the hearing itself. There are no powers to avoid wasted costs in favour of either party in the event of an abortive hearing due to late withdrawal of representations. The parties should be encouraged to give as much notice as possible if they intend to withdraw their representations to avoid the unnecessary time and expense of arranging a hearing.
- 11.6 Where all objections are withdrawn and/or all the parties agree that a hearing may be dispensed with, the applications may be determined by officers under delegated powers.

12 Extensions of Time and adjournments (Regulations 11-13)

The Licensing Sub-Committee have a general discretion to extend the time limits contained in the Regulations or adjourn hearings if this is considered to be necessary in the public interest. Proper notice would have to be given of any extension of time or adjournment. Time cannot be extended or hearings adjourned if this would result in a failure to comply with the timescales set out in the Act.

13 The Hearing

13.1 Exclusions

Regulation 14 provides that all hearings must be held in public. The Licensing Sub-Committee may however exclude the press and public (including the parties and their representatives) from all or part of the hearing if they consider that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

13.2 The Access to Information provisions of Schedule 12A of the Local Government Act 1972 do not apply to hearings before the Licensing Sub-Committee. The test for exclusion of the press and public is not whether there is "exempt information" (as defined in Schedule 12A) which is likely to be disclosed, but whether it is in the "public interest" that the hearing (or part of the hearing) should be in private.

13.3 It is recommended that, as a general rule, all representations from the parties should be heard in public unless there are exceptional circumstances. The overriding public interest dictates that hearings should be conducted in a fair, open and transparent manner and justice should be seen to be done. The Council's constitution is also based on democratic open government, accountability and public access to meetings. The parties should be given the opportunity at the beginning of the hearing to make an application for a private hearing, but they would have to establish a clear reason why this should override the public interest in an open hearing. The fact that personal information or information relating to financial, business or commercial interests would be disclosed would not, in itself, justify exclusion. An application for exclusion of the press and public could be made, for example, where sensitive information relating to individual children could be disclosed in relation to a policy issue involving the protection of children from harm, or where there are criminal justice implications involving representations made by the police. The final decision as to whether the press and public should be excluded for all or part of the hearing on public policy grounds is a matter for the Licensing Sub-Committee.

13.4 It is however recommended that, as a general rule, the press, public and the relevant parties are all excluded from the meeting while the Licensing-Sub-committee deliberate and come to

their decision on the grounds that this private debate is considered to be in the “public interest”. Everyone should then be asked to withdraw from the room, except for the Licensing Officer, the Democratic Services Officer and the Head of Law and Standards or his nominated representative. These three officers shall be entitled to remain, but only for the purpose of offering advice as to procedure or any particular point of law and to record decisions. They must not participate in the decision-making by the Licensing Sub-Committee. Where it is more convenient, the Licensing Sub-Committee may withdraw to a private room rather than require everyone else to withdraw from the meeting room.

- 13.5 If there are any further points of clarification required, then all of the parties and the public should be allowed back into the meeting while these points of clarification are addressed.
- 13.6 Regulation 25 permits the Licensing Sub-Committee to exclude any person from the hearing if they are behaving in a disruptive manner, either permanently or temporarily (permitting them to return only if they comply with such conditions as may be specified). If one of the parties is excluded on these grounds and not permitted to return, they are entitled to submit to the Licensing Sub-Committee in writing any information which they would have been entitled to give orally had they not been excluded from the meeting.
- 13.7 Representations
Any person or responsible authority may make written representations about an application for a premises licence or certificate within a specified period, which is generally 28 working days of the receipt of the application. Representations or requests for review will only be relevant if they relate to the four licensing objectives. The applicant will be provided with copies of all relevant representations received at the same time as the notice of hearing. The written representations will also be referred to as background papers to the Report of the Licensing Officer, which will be circulated to Members of the Licensing Sub-Committee and made available to the press and public as soon as possible and, in any event, at least two clear working days before the hearing.
- 13.8 Advice should therefore be given that, if any person responds to any notice or advertisement, their letter of objection or support will be made available to the public, including personal data (such as names and addresses) in accordance with the Data Protection Act 1988. If any person objects to their name and address, or any other personal information, being made public, then their representations will need to be redacted or anonymised before being circulated (but this may affect the weight that the Licensing Sub-Committee attaches to their representations).
- 13.9 Where relevant representations have been made and an application is to be determined at a hearing, the applicant and those parties who have made representations have a right to attend the hearing (subject to rights of exclusion) and may be assisted or represented at the hearing by any person (whether or not that person is legally qualified) (Regulation 15).
- 13.10 Regulation 16 provides that a party shall be entitled at the hearing to
- Give further information in response to a point upon which the Licensing authority has given notice that it wants clarification
 - Question any other party, if permission is given by the Licensing Sub-Committee
 - Address the Licensing Sub-Committee
- 13.11 Regulation 17 provides that Members of the Licensing Sub-Committee may question any party or other person appearing at the hearing.
- 13.12 In considering any application, representations or notice made by a party, the Licensing Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or notice, either before the hearing or, with the consent of the parties, at the hearing. The Licensing Sub-Committee has discretion as to whether to admit this documentary evidence but should, generally allow this to be presented

if it is relevant and material to the application, the representations or notice submitted and the licensing objectives. This however should not be seen as an opportunity to introduce new representations outside the statutory timescale. The parties should be advised to provide any additional documentary evidence as soon as possible before the hearing and, wherever possible, this should be circulated in advance to the Members of the Licensing Sub-Committee and the other parties. The Sub-Committee will then decide at the hearing whether or not this additional documentary evidence should be admitted and considered. If admitted, the additional information will then be made available to the press and public at the meeting. If the additional documentary evidence has not been produced before the hearing, it can only be admitted with the consent of all the parties. If any other party objects to the evidence being produced at the hearing, the Licensing Sub-Committee has no discretion to admit it or take it into account.

14 Failure of parties to attend the hearing

If a party has informed the Council that he/she does not intend to attend or be represented at the hearing, then the hearing may proceed in their absence. If a party, who has not given prior notice of his/her intention not to attend the hearing, is absent from the hearing the Licensing Sub-Committee may either adjourn the hearing or hold the hearing in the party's absence. Where the hearing proceeds in the absence of a party, the Licensing Sub-Committee must still consider the written representations or notice submitted by that party and follow the same principles of decision-making.

15 Procedure at the hearing

- 15.1 Subject to the provisions of the Regulations, the Licensing Sub-Committee has the discretion to regulate their own proceedings and procedure to be followed at the hearing. The proceedings should be kept as informal as possible although a logical and ordered approach should be maintained in order to ensure a fair and impartial hearing. A suggested form of procedure is attached however the Chair should make it clear that the Licensing Sub-Committee are not totally inflexible and would be prepared to vary the order of proceedings if this would facilitate the proper consideration of an application or notice.
- 15.2 Regulation 7(c) provides that parties should be informed of the procedure to be adopted at the hearing when they are sent notice of the arrangements for the meeting. It is therefore suggested that a copy of the written procedure is sent to the parties with the notice of the hearing.
- 15.3 Regulation 22 requires the Licensing Sub-Committee to explain the procedure to the parties at the beginning of the hearing and consider any request under Regulation 8(2) for permission for another person to appear at the hearing (such permission not to be unreasonably withheld). Prior notice should have been given if parties wish to call witnesses or other persons to address the hearing. Provided that their evidence or representations are relevant and material, permission should generally be allowed.
- 15.4 Regulation 23 provides that the hearing should take the form of a "discussion led by the authority" and cross-examination should not be permitted unless the licensing committee considers that this is required to enable them to consider the matter properly. Whilst parties and their representatives should not be allowed to make the hearing too adversarial, it is suggested that both parties should be allowed an equal opportunity to put questions to the other party and their representatives/witnesses (under Regulation 16). A period of five minutes each should be allowed for questions, with the Chair having discretion to disallow any questions which are considered by the Licensing Sub-Committee to be irrelevant, hostile or repetitive. Wherever possible, large groups of objectors should be encouraged to appoint a single spokesperson to present their case, to save time and avoid unnecessary duplication.

15.5 Regulation 24 provides that the Licensing Sub-Committee must allow the parties an equal maximum period of time in which to exercise their rights to put questions and address the hearing. It is suggested that, as a general rule, a maximum time of 20 minutes should be allowed for both parties, with 10 minutes for addressing the Sub-Committee, five minutes for questioning and five minutes for summing up at the end. The Licensing Sub-Committee can however extend time for both parties if this is necessary for the proper consideration of the matter.

16 Site Visits

The Sub-Committee may, at its discretion, undertake a site visit of any premises that are the subject of any application. The visit may take place either before the hearing, by arrangement with the parties, or the Sub-Committee may adjourn the hearing at any time to visit the premises. If a site visit is undertaken, it should be a fact-finding exercise only and no representations should be heard from any party. Any questions should be addressed to licensing officer(s), wherever possible, but if it is necessary to ask a question of any party, this should be done in the presence of all the other parties.

17 Determination of applications

17.1 Normally, the licensing Sub-Committee must make its determination at the conclusion of the hearing. In other cases the Sub-committee shall make its determination within five working days. Where a hearing has been dispensed with, the decision must be made within 10 working days of the notice to dispense with the hearing.

17.2 The Council's Statement of Licensing policy provides that every decision of the Licensing Sub-Committee shall be accompanied with reasons for that decision. A summary of the decision shall be posted on the Council's website as soon as possible after the decision has been made, where it will form part of the statutory licensing register.

17.3 Paragraph 24 provides that comprehensive reasons should be given and, on making findings of fact in its reasons, the Licensing Sub-Committee should ensure that they address the standard of proof and the burden of proof that they have adopted. The Licensing Sub-Committee should also address the extent to which the decision has been made with regard to its Statement of Licensing Policy and the Statutory Guidance issued under Section 182 of the Act.

17.4 Regulation 28 requires the Council to notify the parties in writing of the determination of the Licensing Sub-Committee and their rights of appeal. The Council is also required to send notification of the determination to the Chief Officer of Police, where the police have not been a party to the hearing. This notification must be sent within the period specified in the Act or, if no period is prescribed, forthwith on making the determination.

18 Right of appeal

Any aggrieved party will have the right of appeal to the Magistrates' Court within 21 days of being notified of the decision.

19 Record of proceedings

Regulation 30 provides that the Council must keep a record of the hearing in a permanent and intelligible form for a period of six years from the date of the determination or, where any appeal is brought against the determination of the Licensing Sub-Committee, from the disposal of any appeal. A verbatim note or transcript of the proceedings is not required, but the Minute recording the decision must be sufficiently detailed so as to provide an accurate record of both the proceedings and the decision taken, together with the reasons given and any conditions imposed.

20 Irregularities

Regulations 31-33 provide that any irregularities or clerical errors shall not invalidate any decision or render a determination void and enables the Council to correct any error or cure any irregularity as soon as possible.

Organisation of Cases for the Hearing

- 1 The hearings will normally take place at the Civic Centre, Newport at times to be agreed with the Sub-Committee.
- 2 The agenda for the meetings of the Licensing-Sub-committee shall be agreed by the Licensing Officer and the Senior Democratic Services officer after any necessary consultation with the relevant Chair of the Licensing Sub-Committee. The officers shall determine how many applications can be heard at each meeting and the order in which the applications should be considered, taking into account the number of parties who will be attending.
- 3 Hearings should be scheduled in accordance with the timescales prescribed by the Regulations. In general a hearing must be held within 20 working days after the time has expired for making representations.
- 4 Once the draft agenda has been agreed, the Senior Democratic Services Officer should send out notice of the agenda to the Members, press and public in the usual way. Members should immediately inform the Senior Democratic Services Officer if they consider they are disqualified from hearing or they have an interest in any specific case.
- 5 At the same time, the Licensing Officer shall send notice of the hearing to the parties, together with
 - A copy of the procedure to be followed at the hearing
 - Confirmation of the parties' rights to be assisted or represented at the hearing (whether or not that person is legally qualified)
 - Confirmation that the parties will be allowed to address the Licensing Sub-Committee and put questions to the other parties for a maximum of 20 minutes
 - Confirmation that, if a party does not attend the hearing, the hearing would generally proceed in his/her absence
 - A note of any particular point on which the Licensing Sub-committee requires further clarification.
 - Copies of all relevant representations received
- 6 The parties should also be requested to notify the Council as soon as possible (and in any event within the timescale prescribed by the Regulations) whether they intend to appear and/or be represented at the hearing or whether they consider a hearing to be unnecessary.
- 7 If they intend to proceed with a hearing, they should be requested to give advance notice of any application to adduce any further documentary evidence (which should preferably be provided as soon as possible before the hearing) or request for any other person to appear at the hearing. The request must contain details of the name of the witness and a brief description of that person's evidence.
- 8 The notice of hearing and supporting documents should be sent by second class post and, except in the case of emergency applications or where the Regulations specify a shorter period, at least 10 clear working day's notice should be given. The Licensing Officer may also send electronic copies by email or fax by agreement with the applicants or other party.

- 9 The Chair of the Licensing Sub-committee may meet with the Democratic Services Officer, the Solicitor to the Licensing Sub-Committee and the Licensing Officer(s) presenting the report in advance of the hearing to identify any issues where further clarification should be requested from the parties. These issues will be notified to the parties by the Licensing Officer to enable them to address these issues in their submissions at the hearing. During this preliminary meeting and any pre-agenda meeting, no decisions shall be made and no discussions shall be held regarding the substantive merits of the application or representations.
- 10 The hearings shall be attended by a Solicitor, a Democratic Services Officer and the Licensing Officer. The officers shall attend for the sole purpose of giving advice on law and procedure and are not parties to the decision.
- 11 The role of the Solicitor is to provide legal advice in relation to the applications and submissions.
- 12 The role of the Democratic Services Officer is to record the proceedings and the decisions of the Sub-Committee and ensure efficient administration.
- 13 The Licensing Officer shall prepare a written Report for consideration by the Licensing Sub-Committee, which should include
 - A brief summary of the application
 - A brief summary of the representations
 - The relevant licensing objectives
 - Relevant aspects of the Council's Statement of Licensing Policy and statutory Guidance
 - Other background information (such as copies of letters)
- 14 The Licensing Officer's Report should be sent out as soon as possible and, in any event, no later than 10 clear working days before the hearing, together with copies of relevant documentary evidence submitted by the parties. Wherever possible, the Licensing Officer's Report should be sent out at the same time as the notice of hearing and supporting documents, but this will not be reasonably practicable where there are a significant number of applications to be determined. If additional documentary evidence is provided later by the parties, it should be copied and sent to the other parties before the hearing, if reasonably practicable.
- 15 After hearing all the representations and prior to retiring to make its decision, the Licensing Sub-Committee may, if it wishes, seek the guidance of the Licensing Officer and/or Solicitor on possible conditions that could be attached to any licence.
- 16 The Democratic Services Officer shall keep a record of the decisions taken and the Licensing Officer shall send written confirmation of the decision to the relevant parties, together with the reasons, any conditions and their rights of appeal.

Principles of Decision-Making

- 1 This note is intended to provide members of the Licensing Sub-committee with a guide to the principles of decision-making. The licensing hearings are of a quasi-judicial nature and the procedures are, therefore, markedly different to the usual arrangements for Committee meetings.
- 2 It should be noted that the proceedings are governed by adjudication procedures and the rules of natural justice will, therefore, apply. All the parties should be given a full and fair hearing, which should be conducted in an open, transparent and accountable manner.
- 3 Members must, at all times, comply with the Council's Member Code of Conduct.

- 4 All licensing applications must be considered on the basis of whether they promote the four licensing objectives set out in the Act and incorporated in the Statement of Licensing Policy, namely
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm

- 5 In reaching their decisions under the Act, the Licensing Sub-Committee must have regard to all relevant considerations including (but not limited to)
 - The relevant statutory provisions
 - Relevant Statutory Guidance issued under Section 182 of the Act
 - The Council's Statement of Licensing Policy
 - The licensing objectives
 - The material facts based on the relevant evidence presented and representations received
 - The individual merits of each case
 - The public interest

- 6 The Licensing Sub-Committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives. Members must also disregard any party political considerations or decisions taken in political group meetings.

- 7 Members of the Licensing Sub-Committee must act fairly, objectively and impartially throughout. They must not show any bias or predetermination and must keep an open mind on all applications until they have heard all the relevant representations and evidence. Members must not prejudge any application, express any view on the merits of any application, organise any support or opposition to any application, in advance of the hearing. Any Member with a "closed mind" on any application would be disqualified from sitting on the Licensing Sub-Committee which considers that application.

In the event of any licensing applications submitted by or on behalf of the Council or an officer of the Council, the same rules and procedures shall apply. No account shall be taken of the fact that the application is submitted by the Council or an officer and no favour or consideration shall be shown in relation to the application. Any member involved in the decision to apply for the licence shall be disqualified from sitting on the Licensing Sub-Committee which considers the application.

Procedure to be Followed at The Hearing

- 1 Preliminaries and Opening remarks
 At the commencement of the meeting, the Chair for the meeting shall be elected by simple majority of members present.

 The Chair of the Sub-Committee opens the meeting and welcomes those attending.

 The Chair introduces the members and the officers present.

- 2 Apologies/declarations of interest
 The Chair deals with any apologies for absence and declarations of interest. Any substitution of members will be dealt with at this stage.

3 Introductions

The Chair invites the applicant, any other person and their representatives to introduce themselves and indicate who will be speaking.

The Chair explains the procedures to be followed and the time allocated to each party and asks if there are any questions. (The order of proceedings may be varied at the discretion of the Sub-Committee where the parties have any particular preference or where this is necessary for proper consideration). The proceedings will generally be conducted in public unless it is in the public interest to hear cases in private. Any applications to exclude the press and public should be dealt with at this stage.

4 Applications

The Chair will inform the parties whether their applications to have certain people attend the hearing under Regulation 8(2) (eg witnesses) have been granted or refused.

The Chair will summarise the papers before the Licensing Sub-Committee and will confirm that everyone has copies. Chair will ascertain whether any representations have been or are now to be withdrawn. Licensing Sub-Committee will consider any requests for additional documentary evidence or other information to be introduced by either party. (Note that advance notification must be given, otherwise the additional information or evidence can only be adduced at the hearing with the consent of all the parties and the agreement of the Sub-Committee).

Chair is to identify any specific points about which the Licensing Sub-Committee have requested clarification.

5 Report from Licensing Officer

The Licensing Officer presents the Report outlining

- The nature of the application
- Any relevant background information
- Relevant issues in relation to the promotion of the four licensing objectives
- Relevant representations received
- Any relevant policy issues, including the Statement of Licensing Policy and any statutory Guidance

The Licensing Officer presenting the report will not make any recommendation regarding the determination of the application, but will simply outline the relevant considerations which the Licensing Sub-Committee will need to take into account when arriving at their decision. (It should be noted if the Licensing Authority wishes to make representation regarding application as a relevant authority under the Licensing Act 2003 a further Licensing Officer will be required to attend the committee and Act as a relevant authority).

The Members will be able to ask questions of the Licensing Officer(s) presenting the report to clarify any issues arising out of the Report.

7 The Applicant's case

- (a) The Applicant/representative to address the Sub-Committee and to call any witnesses where permission has been granted (maximum period of 10 minutes). Parties may give their evidence by making a statement or by being questioned by their representative.
- (b) The objectors/representatives shall be allowed to put questions to the applicant/representative and any witnesses (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the applicant/representative and any witnesses

8 The Objector(s) case

- (a) The Objectors/representatives to address the Sub-Committee and to call any witnesses, where permission has been granted (maximum period of 10 minutes). (The responsible authorities eg Police, Fire Authority, followed by any other person in the order in which they submitted their written representations. Where a large group have objected, they should be encouraged to appoint a single spokesperson in order to save time and avoid repetition).
- (b) The applicant/representative shall be allowed to put questions to the objectors/representatives and any witnesses, (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the objectors/representatives and any witnesses.

9 Closing Statements

- (a) Objectors or their representative(s) to sum up (maximum of five minutes). (In the order in which they addressed the Sub-Committee, if more than one).
- (b) Applicant or representative to sum up (maximum of five minutes). (At this stage the applicant/representative should indicate whether, in the light of the representations made, they wish to amend their application or offer any conditions to overcome the objections and/or promote the licensing objectives).

10 Decision

If there are no further matters to be resolved, the Chair will ask all the parties if they are satisfied that they have had a fair hearing and will then close the proceedings.

The Sub-committee to consider whether it is in the public interest that they deliberate in private or whether this part of the hearing should continue to take place in public.

Pass resolution to exclude the press and public (including the parties and their representatives) pursuant to Regulation 14(2) during this part of the hearing, while the Sub-Committee discusses its decision. Everyone should then be asked withdraw from the room, except the Licensing Officer(s) presenting the report, the Democratic Services Officer and the Head of Law and Standards or his nominated representative(s). These officers shall be entitled to remain but only for the purpose of offering advice as to procedure or any particular point of law. The Sub-Committee may withdraw into a private room to do this

The Members of the Sub-Committee will deliberate and come to their decision. The reasons for the decision, the material findings of fact and any conditions will be agreed and recorded in writing by the Chair. In the event of any disagreement, any matter under consideration shall be determined by a simple majority of votes cast.

The hearing will then resume in public. The Chair will announce the decision and give the reasons for that decision, any material findings of fact, any licence conditions that are to be imposed and the licensing objectives that they relate to (unless, where permitted by the regulations, the decision is to be communicated at a later time).

11 Repeat process for each hearing

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Report

Licensing Sub Committee Report

Part 1

Date: 4 September 2018

Subject An application under Section 34 Licensing Act 2003 for the grant of variation of a Premises Licence in respect of:

Yummies Kebabs, 85 Upper Dock Street, Newport ,NP20 1DG

Purpose The consideration and decision in respect of an application under Section 29 Licensing Act 2003.

Author William Lewis (Licensing Manager)

Ward Stow Hill

Summary An application for a variation of the Premises Licence issued in respect of Yummies Kebabs was served on the Licensing Authority on 11th July 2017. These applications are required to be advertised in accordance with the Licensing Act 2003. This application has attracted representation from responsible authorities and requires determination by Newport City Council Licensing Sub-Committee.

Proposal To make a decision on the application as detailed within this report.

Action by Head of Law and Regulation

Timetable Statutory Consultation Period

Signed

Application

1. On 11th July 2018 an online application (copy at Appendix 1) was received by the Licensing Authority from Sergio Nocerino the holder of an existing Premises Licence in respect of 'Yummies Kebabs' 185 Upper Dock Street, Newport seeking the grant under Section 34 Licensing Act 2003 of a full variation of the Premises Licence.
2. The application seeks the inclusion of the licensable activity of the sale of alcohol (for consumption **off the premises**) between the hours of 15:45hrs until 01:45hrs Sunday to Thursday and 15:45hrs until 02:45hrs Friday and Saturday.
3. This premises has been licensed under Section 17 of the Licensing Act 2003 since 24th November 2005 permitting the licensable activity of the sale of Late Night Refreshment only. The Premises Licence was transferred to Mr Nocerino on 26th July 2013.
4. The Premises Licence (copy at appendix 2) authorises the sale of Late Night Refreshment between:

23:00 Monday to 02:00 Tuesday
23:00 Tuesday to 02:00 Wednesday
23:00 Wednesday to 03:00 Thursday
23:00 Thursday to 03:00 Friday
23:00 Friday to 03:00 Saturday
23:00 Saturday to 03:00 Sunday
23:00 Sunday to 03:00 Monday

Representations:

5. The consultation process in respect of this application began on 12th July 2018 and ended on 08th August 2018 during which representations from the responsible authorities of Heddlu Gwent Police, Newport City Council Licensing Authority and Aneurin Bevan University Health Board were received.

- **Responsible Authority of Newport City Councils Licensing Authority.**

A representation (copy at Appendix 3) in respect of the application was served by Mr Steve Pontin the responsible authority of Newport City Council Licensing Services on 30th July 2018. This representation was duly served on Mr Nocerino who responded by email and by telephone that he was not prepared to accept the following condition:

All alcohol orders must be paid for online or over the telephone in advance of delivery. No cash on delivery.

His response was communicated to Mr Pontin and while there was mediation no agreement could be reached, thus necessitating this hearing of the Licensing Su-Committee.

- **Responsible Authority of Aneurin Bevan University Health Board**

A representation was served (Appendix 4) by Executive director Dr Sarah Aitken on 06th August 2018 supporting the objection by Newport City Council Licensing Authority and the proposed conditions which should be attached to the Premises Licence if the application is to be granted. The representation also identifies that the licensing objective of Protection of Children from Harm is seriously compromised related to home delivery of alcohol without robust conditions attached to the licence. Evidence of this is produced at Appendix 4A.

- **Responsible Authority of Heddlu Gwent Police**

A representation served by Heddlu Gwent Police on the 30th July 2018 seeking attachment of a condition "that no alcohol shall be displayed for sale in the premises was accepted by Mr Nocerino and the Police representation was withdrawn". A copy of this representation

6. Premises Location





Legal Considerations.

Determination of application under section 34 LA2003

- (1) This section applies where the relevant licensing authority—
 - (a) receives an application, made in accordance with section 34, to vary a premises licence, and
 - (b) is satisfied that the applicant has complied with any requirement imposed on him by virtue of subsection (5) of that section.
- (2) Subject to subsection (3) and section 36(6), the authority must grant the application.
- (3) Where relevant representations are made, the authority must—
 - (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
 - (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.
- (4) The steps are—
 - (a) to modify the conditions of the licence;
 - (b) to reject the whole or part of the application; and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.
- (5) In this section “relevant representations” means representations which—
 - (a) are about the likely effect of the grant of the application on the promotion of the licensing objectives, and
 - (b) meet the requirements of subsection (6).
- (6) The requirements are—
 - (a) that the representations are made by a responsible authority or other person within the period prescribed under section 17(5)(c) by virtue of section 34(5),
 - (b) that they have not been withdrawn, and
 - (c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
- (7) Subsections (2) and (3) are subject to sections 9 to 21 (which require certain conditions to be

included in premises licences).

1. **Guidance and Licensing Policy**

Newport City Councils Statement of Licensing Policy includes specific reference to the inclusion of a Cumulative Impact Policy in an area of the city centre where the premises subject of this application is located.

“Cumulative Impact” is defined in the statutory guidance as, the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area.

The cumulative impact of the number, type and density of premises in particular areas, such as the city centre, may lead to those areas becoming saturated with premises of a certain type making them a focal point for large groups of people leading to severe or chronic problems of public nuisance and anti-social behaviour. In such circumstances, the licensing authority may consider the adoption of a cumulative impact policy of refusing new premises authorisations within a defined area or areas, provided it is satisfied that it is appropriate and necessary having considered the evidence to support such a decision.

The effect of adopting a cumulative impact policy is to create a rebuttable presumption if relevant representations are received, that applications for new premises authorisations or club premises certificates or material variations will normally be refused, unless the applicant can demonstrate that the operation of the premises involved will not add to the cumulative impact already being experienced.

Applicants will need to address the cumulative impact policy issues in their Operating Schedules in order to rebut such a presumption. Although it must be noted that this presumption does not relieve responsible authorities or interested parties of the need to make a relevant representation before the local authority may lawfully consider giving effect to its cumulative impact policy.

The Licensing Authority recognises that many different types of premises sell alcohol, serve food and provide entertainment. It recognises that some applications in cumulative impact areas will be unlikely to add significantly to the problems arising from saturation or indeed may diversify that area. Accordingly, where it can lawfully make decisions on applications in a cumulative impact area, it will have full regard to the effect different premises may have on that area. The Licensing Authority must grant any application in a cumulative impact policy area subject only to conditions that are consistent with the operating schedule submitted by the applicant if it receives no relevant representation.

The absence of a special saturation/cumulative impact policy does not prevent any responsible authority or interested party making evidence-based relevant representations on a new application, on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

The adoption of such policies should not be understood to be an absolute bar to new authorisations being issued or granting significant variations to existing licenses. Applicants are entitled to seek any of the permissions available to them in the Act and the Licensing Authority does not, in any cumulative impact policy, intend to prevent applicants from exercising their statutory rights. Each application will be considered on its own merits, within the constraints of the legislation and having due regard to the relevant guidance and policy.

However, applicant statements such as, for example: - the premises will not add people to the area; - longer hours will create slower dispersal; - history of good management; - premises are well run; - the application is small in nature - alcohol is not sold; - clientele “are a cut above the usual”; will not be considered sufficiently exceptional to rebut the presumption. The issue is crime and disorder/public nuisance in the area as a whole, rather than that associated with individual premises.

Applications will be considered favourably if they are judged to encourage a greater variety of types of entertainment than currently exists in the area. In particular, the Licensing Authority welcomes applications which can be viewed as more family friendly and which offer a wider range of entertainment than that which is currently available because it is considered that these will undermine the licensing objectives.

Existing licensees who wish to materially alter and/or extend the premises to which the authorisation relates, are required to seek a new authorisation. This is because the Act prohibits the use of a variation application to substantially alter the premises to which the authorisation relates. Where the only change is to the physical extent or material layout of the premises themselves (i.e. in the absence of additional features such as change in style of operation, capacity etc.), it is highly unlikely this would trigger the Cumulative Impact Policy. However, this policy cannot restrict the right of any Responsible Authority or interested person to make relevant representations in that regard and if such are forthcoming, they will be given due consideration. Where other changes are envisaged then the Cumulative Impact Policy presumption may arise. Applicants in such circumstances are entitled to seek a provisional statement and are encouraged to engage with the Licensing Authority. The Licensing Authority will periodically review any cumulative impact policies to assess whether they are needed any longer or need expanding.

2. **Issues for discussion**

- The proposed addition of the licensable activities of the sale of alcohol sought by the application.
- The content of the operating schedule in promoting the four licensing objectives.
- The representations made in respect of the application.
- Newport City Council's Statement of Licensing Policy.
- Any conditions that are required by the Panel to be attached to the Premises Licence in order to promote the four Licensing Objectives, in light of the information contained in the applicant's operating schedule and representations received.

Appendix 1

Copy of application under Section 34 Licensing Act 2003 for grant of Full Variation of a Premises Licence



Newport
Application to vary a premises licence
Licensing Act 2003

For help contact
environment.licensing@newport.gov.uk
Telephone: 01633 656656

* required information

Section 1 of 18

You can save the form at any time and resume it later. You do not need to be logged in when you resume.

System reference This is the unique reference for this application generated by the system.

Your reference You can put what you want here to help you track applications if you make lots of them. It is passed to the authority.

Are you an agent acting on behalf of the applicant?
 Yes No Put "no" if you are applying on your own behalf or on behalf of a business you own or work for.

Applicant Details

* First name

* Family name

* E-mail

Main telephone number Include country code.

Other telephone number

Indicate here if you would prefer not to be contacted by telephone

Are you:

- Applying as a business or organisation, including as a sole trader
 Applying as an individual

A sole trader is a business owned by one person without any special legal structure. Applying as an individual means you are applying so you can be employed, or for some other personal reason, such as following a hobby.

Applicant Business

Is your business registered in the UK with Companies House? Yes No

Note: completing the Applicant Business section is optional in this form.

Is your business registered outside the UK? Yes No

Business name If your business is registered, use its registered name.

VAT number Put "none" if you are not registered for VAT.

Legal status

Continued from previous page...

Your position in the business

Home country

The country where the headquarters of your business is located.

Business Address

If you have one, this should be your official address - that is an address required of you by law for receiving communications.

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Section 2 of 18

APPLICATION DETAILS

This application cannot be used to vary the licence so as to extend the period for which the licence has effect or to vary substantially the premises to which it relates. If you wish to make that type of change to the premises licence, you should make a new premises licence application under section 17 of the Licensing Act 2003.

I/we, as named in section 1, being the premises licence holder, apply to vary a premises licence under section 34 of the Licensing Act 2003 for the premises described in section 2 below.

* Premises Licence Number

Are you able to provide a postal address, OS map reference or description of the premises?

Address OS map reference Description

Postal Address Of Premises

Building number or name

Street

District

City or town

County or administrative area

Postcode

Country

Premises Contact Details

Telephone number

Continued from previous page...

Non-domestic rateable
value of premises (£)

Section 3 of 18

VARIATION

Do you want the proposed
variation to have effect as
soon as possible?

Yes No

Do you want the proposed variation to have effect in relation to the
introduction of the late night levy?

Yes No

You do not have to pay a fee if the only
purpose of the variation for which you are
applying is to avoid becoming liable to the
late night levy.

If your proposed variation
would mean that 5,000 or
more people are expected to
attend the premises at any
one time, state the number
expected to attend

Describe Briefly The Nature Of The Proposed Variation

Describe the premises. For example the type of premises, its general situation and layout and any other information which could be relevant to the licensing objectives. Where your application includes off-supplies of alcohol and you intend to provide a place for consumption of these off-supplies, you must include a description of where the place will be and its proximity to the premises.

Section 4 of 18

PROVISION OF PLAYS

[See guidance on regulated entertainment](#)

Will the schedule to provide plays be subject to change if this application to
vary is successful?

Yes No

Section 5 of 18

PROVISION OF FILMS

[See guidance on regulated entertainment](#)

Will the schedule to provide films be subject to change if this application to
vary is successful?

Yes No

Section 6 of 18

PROVISION OF INDOOR SPORTING EVENTS

Continued from previous page...

[See guidance on regulated entertainment](#)

Will the schedule to provide indoor sporting events be subject to change if this application to vary is successful?

Yes No

Section 7 of 18

PROVISION OF BOXING OR WRESTLING ENTERTAINMENTS

[See guidance on regulated entertainment](#)

Will the schedule to provide boxing or wrestling entertainments be subject to change if this application to vary is successful?

Yes No

Section 8 of 18

PROVISION OF LIVE MUSIC

[See guidance on regulated entertainment](#)

Will the schedule to provide live music be subject to change if this application to vary is successful?

Yes No

Section 9 of 18

PROVISION OF RECORDED MUSIC

[See guidance on regulated entertainment](#)

Will the schedule to provide recorded music be subject to change if this application to vary is successful?

Yes No

Section 10 of 18

PROVISION OF PERFORMANCES OF DANCE

[See guidance on regulated entertainment](#)

Will the schedule to provide performances of dance be subject to change if this application to vary is successful?

Yes No

Section 11 of 18

PROVISION OF ANYTHING OF A SIMILAR DESCRIPTION TO LIVE MUSIC, RECORDED MUSIC OR PERFORMANCES OF DANCE

[See guidance on regulated entertainment](#)

Will the schedule to provide anything similar to live music, recorded music or performances of dance be subject to change if this application to vary is successful?

Yes No

Section 12 of 18

PROVISION OF LATE NIGHT REFRESHMENT

Continued from previous page...

Will the schedule to provide late night refreshment be subject to change if this application to vary is successful?

Yes No

Section 13 of 18

SUPPLY OF ALCOHOL

Will the schedule to supply alcohol be subject to change if this application to vary is successful?

Yes No

Standard Days And Timings

MONDAY

Start

End

Provide timings in 24 hour clock (e.g., 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.

Start

End

TUESDAY

Start

End

Start

End

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

Continued from previous page...

Will the sale of alcohol be for consumption?

- On the premises Off the premises Both

If the sale of alcohol is for consumption on the premises select on, if the sale of alcohol is for consumption away from the premises select off. If the sale of alcohol is for consumption on the premises and away from the premises select both.

State any seasonal variations.

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Alcohol will only be supplied on delivery orders no alcohol will be sold on premises

Non-standard timings. Where the premises will be used for the supply of alcohol at different times from those listed above, list below.

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

Section 14 of 18

ADULT ENTERTAINMENT

Highlight any adult entertainment or services, activities, or other entertainment or matters ancillary to the use of the premises that may give rise to concern in respect of children.

Provide information about anything intended to occur at the premises or ancillary to the use of the premises which may give rise to concern in respect of children, regardless of whether you intend children to have access to the premises, for example (but not exclusively) nudity or semi-nudity, films for restricted age groups etc gambling machines etc.

Section 15 of 18

HOURS PREMISES ARE OPEN TO THE PUBLIC

Standard Days And Timings

MONDAY

Start

End

Provide timings in 24 hour clock (e.g., 16:00) and only give details for the days of the week when you intend the premises to be used for the activity.

Start

End

TUESDAY

Start

End

Start

End

Continued from previous page...

WEDNESDAY

Start

End

Start

End

THURSDAY

Start

End

Start

End

FRIDAY

Start

End

Start

End

SATURDAY

Start

End

Start

End

SUNDAY

Start

End

Start

End

State any seasonal variations.

For example (but not exclusively) where the activity will occur on additional days during the summer months.

Non standard timings. Where you intend to use the premises to be open to the members and guests at different times from those listed above, list below.

For example (but not exclusively), where you wish the activity to go on longer on a particular day e.g. Christmas Eve.

Identify those conditions currently imposed on the licence which you believe could be removed as a consequence of the proposed variation you are seeking.

I have enclosed the premises licence

Continued from previous page...

I have enclosed the relevant part of the premises licence

Reasons why I have failed to enclose the premises licence or relevant part of premises licence.

Section 16 of 18

LICENSING OBJECTIVES

Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e)

List here steps you will take to promote all four licensing objectives together.

full name will be taken of the person who orders the meal so we can check the persons ID when we get to the property no super strength drinks will be sold (over 7.5%) lagers or ciders there will be no advertisement in store for alcohol only on our printed delivery leaflets with the THINK21 poster printed on there and Online orders will be warning our customers that ID will be asked if needed all the alcohol will be delivered in black/blue non see through bags so its not to be seen by the public when leaving the shop so we avoid trouble and disturbance no alcohol will be delivered to car parks or any other public places and a list of banned names will also be made for future references

b) The prevention of crime and disorder

if a customer is too drunk alcohol will not be supplied to customer and all drivers will be warned all the time about this concern and all staff will be fully trained

c) Public safety

no sales of alcohol will be done inside the premises its only telephone and Online orders ONLY and alcohol is only to be served with food

d) The prevention of public nuisance

a personal license holder will always authorize the sale of the purchase and sales of alcohol will not be permitted from the delivery vehicle under and circumstances all the drivers will also be able to check ID if its fake or not with a blue light or a marker checker

e) The protection of children from harm

if the person that that ordered the alcohol looks under 21 ID will be asked with no tolerance if ID is refused to be shown the alcohol will not be given to customer

Section 17 of 18

NOTES ON REGULATED ENTERTAINMENT

Continued from previous page...

In terms of specific **regulated entertainments** please note that:

- Plays: no licence is required for performances between 08:00 and 23.00 on any day, provided that the audience does not exceed 500.
- Films: no licence is required for 'not-for-profit' film exhibition held in community premises between 08.00 and 23.00 on any day provided that the audience does not exceed 500 and the organiser (a) gets consent to the screening from a person who is responsible for the premises; and (b) ensures that each such screening abides by age classification ratings.
- Indoor sporting events: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000.
- Boxing or Wrestling Entertainment: no licence is required for a contest, exhibition or display of Greco-Roman wrestling, or freestyle wrestling between 08.00 and 23.00 on any day, provided that the audience does not exceed 1000. Combined fighting sports – defined as a contest, exhibition or display which combines boxing or wrestling with one or more martial arts – are licensable as a boxing or wrestling entertainment rather than an indoor sporting event.
- Live music: no licence permission is required for:
 - o a performance of unamplified live music between 08.00 and 23.00 on any day, on any premises.
 - o a performance of amplified live music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - o a performance of amplified live music between 08.00 and 23.00 on any day, in a workplace that is not licensed to sell alcohol on those premises, provided that the audience does not exceed 500.
 - o a performance of amplified live music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - o a performance of amplified live music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school or (iii) the health care provider for the hospital.
- Recorded Music: no licence permission is required for:
 - o any playing of recorded music between 08.00 and 23.00 on any day on premises authorised to sell alcohol for consumption on those premises, provided that the audience does not exceed 500.
 - o any playing of recorded music between 08.00 and 23.00 on any day, in a church hall, village hall, community hall, or other similar community premises, that is not licensed by a premises licence to sell alcohol, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance from a person who is responsible for the premises.
 - o any playing of recorded music between 08.00 and 23.00 on any day, at the non-residential premises of (i) a local authority, or (ii) a school, or (iii) a hospital, provided that (a) the audience does not exceed 500, and (b) the organiser gets consent for the performance on the relevant premises from: (i) the local authority concerned, or (ii) the school proprietor or (iii) the health care provider for the hospital.

Continued from previous page...

- Dance: no licence is required for performances between 08.00 and 23.00 on any day, provided that the audience does not exceed 500. However, a performance which amounts to adult entertainment remains licensable.
- Cross activity exemptions: no licence is required between 08.00 and 23.00 on any day, with no limit on audience size for:
 - o any entertainment taking place on the premises of the local authority where the entertainment is provided by or on behalf of the local authority;
 - o any entertainment taking place on the hospital premises of the health care provider where the entertainment is provided by or on behalf of the health care provider;
 - o any entertainment taking place on the premises of the school where the entertainment is provided by or on behalf of the school proprietor; and
 - o any entertainment (excluding films and a boxing or wrestling entertainment) taking place at a travelling circus, provided that (a) it takes place within a moveable structure that accommodates the audience, and (b) that the travelling circus has not been located on the same site for more than 28 consecutive days.

Section 18 of 18

PAYMENT DETAILS

This fee must be paid to the authority. If you complete the application online, you must pay it by debit or credit card.

The fee to vary a Premises Licence is determined by the non domestic rateable value of the premises.

To find out a premises non domestic rateable value go to the Valuation Office Agency site at http://www.voa.gov.uk/business_rates/index.htm

Band A (No RV to £4300) the fee is £100.00

Band B (£4301 to £33000) the fee is £190.00

Band C (£33001 to £87000) the fee is £315.00

Band D (£87001 to £125000) the fee is £450.00*

Band E (£125001 and over) the fee is £635.00*

*If the premises rateable value is in Bands D or E and the premises is primarily used for the consumption of alcohol on the premises then you are required to pay a higher fee as follows:

Band D (£87001 to £125000) the fee is £900.00

Band E (£125001 and over) the fee is £1,905.00

If you own a large premises, the application is subject to an additional fee based upon the maximum number of persons in attendance at any one time as follows:

| | |
|-------------------------|------------|
| Capacity 5000-9999 | £1,000.00 |
| Capacity 10000 -14999 | £2,000.00 |
| Capacity 15000-19999 | £4,000.00 |
| Capacity 20000-29999 | £8,000.00 |
| Capacity 30000-39999 | £16,000.00 |
| Capacity 40000-49999 | £24,000.00 |
| Capacity 50000-59999 | £32,000.00 |
| Capacity 60000-69999 | £40,000.00 |
| Capacity 70000-79999 | £48,000.00 |
| Capacity 80000-89999 | £56,000.00 |
| Capacity 90000 and over | £64,000.00 |

* Fee amount (£)

100.00

DECLARATION

* I/we understand it is an offence, liable on conviction to a fine up to level 5 on the standard scale, under section 158 of the licensing act 2003, to make a false statement in or in connection with this application.

Continued from previous page...



Ticking this box indicates you have read and understood the above declaration

This section should be completed by the applicant, unless you answered "Yes" to the question "Are you an agent acting on behalf of the applicant?"

| | |
|-------------|---|
| * Full name | <input type="text" value="Sergio Nocerino"/> |
| * Capacity | <input type="text" value="N/A"/> |
| * Date | <input type="text" value="10"/> / <input type="text" value="07"/> / <input type="text" value="2018"/> dd mm yyyy |

Once you're finished you need to do the following:

1. Save this form to your computer by clicking file/save as...
2. Go back to <https://www.gov.uk/apply-for-a-licence/premises-licence/newport/change-1> to upload this file and continue with your application.

Don't forget to make sure you have all your supporting documentation to hand.

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

OFFICE USE ONLY

| | |
|----------------------------|---------------------------------------|
| Applicant reference number | <input type="text" value="Nocerino"/> |
| Fee paid | <input type="text"/> |
| Payment provider reference | <input type="text"/> |
| ELMS Payment Reference | <input type="text"/> |
| Payment status | <input type="text"/> |
| Payment authorisation code | <input type="text"/> |
| Payment authorisation date | <input type="text"/> |
| Date and time submitted | <input type="text"/> |
| Approval deadline | <input type="text"/> |
| Error message | <input type="text"/> |
| Is Digitally signed | <input type="checkbox"/> |

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#) [7](#) [8](#) [9](#) [10](#) [11](#) [12](#) [13](#) [14](#) [15](#) [16](#) [17](#) [18](#) [Next >](#)

Appendix 2 – Copy of the Premises Licence

Schedule 12

Part A

(THIS PART OF THE LICENCE
MUST BE KEPT AT THE
PREMISES AT ALL TIMES AND
PRODUCED UPON REQUEST OF
AN AUTHORISED OFFICER)

Premises Licence City of Newport



| | |
|--------------------------------|----------------|
| Premises Licence Number | 15/00589/LAPVM |
|--------------------------------|----------------|

Part 1 – Premises Details

| | |
|---|--------------|
| Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code | |
| Yummies Kebabs Ground Floor 185 Upper Dock Street Newport South Wales NP20 1DG | |
| Telephone number | 01633 222308 |

| |
|--|
| Where the licence is time limited the dates |
| Not Applicable |

| |
|--|
| Licensable activities authorised by the licence |
| Late Night Refreshment |

| |
|---|
| Times the licence authorises the carrying out of licensable activities |
| Late Night Refreshment Monday and Tuesday 23:00 - 02:00 Wednesday to Sunday inclusive 23:00 - 03:00 |

| |
|--|
| The opening hours of the premises |
| Monday and Tuesday 15:30 - 02:00 Wednesday to Sunday inclusive 15:30 - 03:00 |
| Where non standard timings are authorised, the opening times shall be as those authorised for licensable activities with an additional 30 minutes on the terminal hour. |

| |
|--|
| Where the licence authorises supplies of alcohol whether these are on and / or off supplies |
|--|

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Mr Sergio Nocerino
185 Upper Dock Street
Newport
South Wales
NP20 1DG

Business Phone Number 01633 222308

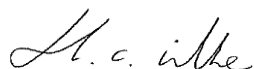
Registered number of holder, for example company number, charity number (where applicable)

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

This Premises Licence is issued by Newport City Council as Licensing Authority under Part 3 of the Licensing Act 2003 and regulations made thereunder.

Dated this 09th April 2015



Helen Wilkie
Public Protection Manager

Mandatory conditions

1M03 Where at specified times one or more individuals may be at the premises to carry out a security activity, each individual must be licensed by the Security Industry Authority.
For the purposes of this section:

- i) “security activity” means an activity to which paragraph 2(1)(a) of that Schedule applies; and
- ii) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

Conditions consistent with the Operating Schedule

3SO03 Staff shall collect all rubbish within a 100 m radius of the premises.

3SO02 A rubbish bin shall be located both inside and outside of the premises for use by customers.

2SO01 A CCTV system shall be installed within the premises which is capable of recording the internal area of the premises. The system shall be operational at all times during which the premises is trading. All recordings shall be retained for a minimum of 28 days and shall be made available to an Authorised Officer on request

2SO02 No staff shall solicit custom by means of personal solicitation outside of the premises.

Conditions attached after a hearing by the licensing authority

NIL.

Plans

Please see attached plans (05/01580/LAPRER)

Appendix 3

Licensing Authority-Responsible Authority representation

Ask for / Gofynnwch am Steve Pontin
Our Ref / Ein Cyf 18/02106/LAPV
Your Ref / Eich Cyf
Tel / Ffôn **01633 656656**
Direct Dial / Rhif Union 01633 851333
DX 99463 Newport (Gwent) 3
E-Mail / E-Bost Steve.pontin@newport.gov.uk

Law and Regulation
Y Gyfraith a Rheoleiddio



Principal Licensing Officer
Licensing Authority
Newport City Council
Floor 4, Information Station
Queensway
Newport
NP20 4AX

Licensing Service/
Gwasanaeth Trwyddedu
PO Box 883/Bwlch Post 883
Civic Centre/Canolfan Ddinesig
Newport/Casnewydd
South Wales/De Cymru
NP20 4UR

Monday, 20 August 2018

Dear Sirs,

SECTION 69 LICENSING ACT 2003: NOTICE OF OBJECTION

TO AN APPLICATION UNDER SECTION 34 LICENSING ACT 2003 FOR A VARIATION OF THE PREMISES LICENCE IN RESPECT OF 'Yummies Kebabs, Ground Floor 185 Upper Dock Street, Newport, NP20 1DG, served upon the Licensing Authority on 11th July 2018.

Newport City Council's Licensing Authority acting in their capacity as a 'Responsible Authority' by virtue of section 182 (4) Licensing Act 2003 (amended guidance) wish to object to a variation of the Premises Licence as detailed above on the grounds that the application does not provide clear, measurable and enforceable provisions for promotion of the four 'licensing objectives' of:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance
- Public Protection
- Protection of Children from Harm

The Licensing Authority is seeking to attach the following conditions on the premises licence for Yummies Kebabs premises so as to ensure that the above detailed licensing objectives are fully promoted as currently the conditions offered are not clear, measurable and enforceable:

- No alcohol will be supplied for sale from within the premises. Sales will only be through online and telephone orders and will only be as an accompaniment to a delivery of a food.
- No alcohol will be displayed or advertised on the premises.
- All alcohol orders must be paid for online or over the telephone in advance of delivery. No cash on delivery.
- A Challenge 25 policy shall be operated at all times. Full name of person ordering the alcohol will be required when placing the order, either online or over the telephone. The delivery driver will then require proof of age ID from the named person upon delivery. No alcohol will be exchanged

without proof of ID. The ID must also match the person's details who have paid for the food order. The ID expected is a Passport, Driving Licence or National Proof of Age Standards Scheme (PASS)

- The Challenge 25 scheme will be advertised through the online ordering system and on delivery leaflets and explained when making a phone order issued by the premises.
- Delivery drivers will be trained to refuse to supply alcohol to customers who appear too drunk, proxy sales, underage sales.
- A comprehensive training package must be provided for delivery staff to ensure compliance with the 4 Licensing Objectives. All Delivery staffed must be trained before delivering alcohol or hold a Personal Licence, the training must take place quarterly and staff must sign documents that they have been fully trained, these documents must be produced at request of any Responsible Authority. The training package will be required to be approved by the Licensing Authority before sale of alcohol commences, any changes to the package must be notified to the Licensing Authority.
- Alcohol supply will be restricted to lager and cider and no single drink will be over 7.5% abv. Alcohol cannot be included for "free" or as part of a "meal deal" and must not be sold under the price of the item indicated on the menu.
- Alcohol will only be supplied to a residential or business address and not to car parks, public spaces or phone delivery collections at the premises.
- Sales taking place between 23:00hrs and 03:00hrs, delivery staff are required to wear Body Cams and record any refusals or incidents.
- An incident book will be kept and record any incidents.
- A list of banned properties shall be maintained and kept fully up to date.
- Alcohol must not be stored in a delivery vehicle.

Should the applicant volunteer that the above conditions be included within the premises' operating schedule in place of those offered as part of this application, the Licensing Authority acting in their role as a 'responsible authority' would withdraw their representation.

Yours sincerely

Steve Pontin
Licensing Officer

Appendix 4

Representation of Aneurin University Health Board



2nd August 2018

Dear Newport Licensing Authority

RE: Representation relating to an application for a variation of a premises licence under section 34 of the Licensing Act 2003 relating to "Yummies Kebabs, Ground Floor 185 Upper Dock Street, Newport, NP20 1DG"

Aneurin Bevan University Health Board, ('the Health Board') acting in its capacity as a Responsible Authority under the provisions of the Licensing Act 2003, is making a representation in support of Newport City Council who have objected to a variation of Premises Licence as detailed above. The Health Board supports the Newport City Council Notice of Objection and endorses the grounds detailed in the letter ref 18/02106/LAPV dated 01-08-2018.

In addition, the Health Board is submitting this representation under the 'Protection of Children from Harm' licensing objective for the following reason:

Underage drinking remains a key concern in Wales. Whilst it is illegal to sell alcohol to persons under 18 years old, in reality, children and young people can and do get hold of alcohol, either via 'proxy sales' or directly themselves.

Evidence¹ shows that a significant minority of children and young people in Wales acquire alcohol via supermarket websites and home delivery services, and test purchasing suggests that age verification policies are not being adequately adhered to.

Given that evidence, the Health Board supports the conditions laid down in the Newport City Council's letter referenced above, should the applicant volunteer that these conditions be included within the premises' operating

¹ On Your doorstep –Underage access to alcohol via home delivery services; Alcohol Concern June 2013

schedule in place of those offered as part of this application, the Health Board acting in its role as a 'responsible authority' would withdraw its representation.

Yours faithfully

A handwritten signature in black ink, appearing to be 'SA', written over a horizontal line.

Dr Sarah Aitken, MBBS FFPH
Executive Director of Public Health

Appendix 4A

A document published by Alcohol Concern/Alcohol Concern Cymru entitled 'On your doorstep'



Alcohol Concern
Making Sense of Alcohol

Alcohol Concern

Alcohol Concern is the national charity on alcohol misuse campaigning for effective alcohol policy and improved services for people whose lives are affected by alcohol-related problems.

Our work in Wales

Alcohol Concern opened its office in Cardiff in August 2009. Alcohol Concern Cymru is focusing on policy and public health in Wales, acting as a champion for alcohol harm reduction.

This project was written by Mark Leyshon and funded by Alcohol Concern.

The survey work was undertaken by RMG: Research and Marketing Group in January and February 2013.

Published by

Alcohol Concern,
Suite B5, West Wing, New City Cloisters,
196 Old Street, London, EC1V 9FR
Tel: 020 7566 9800
Email: contact@alcoholconcern.org.uk,
Website: www.alcoholconcern.org.uk

Published by

Alcohol Concern Cymru,
8 Museum Place,
Cardiff, CF10 3BG
Tel. 029 2022 6746
Email: acwales@alcoholconcern.org.uk
Website: www.alcoholconcern.org.uk/cymru

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Cover photograph provided by iStockphoto.com

Alcohol Concern is a registered charity no. 291705 and a company limited by guarantee registered in London no. 1908221.

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Executive summary



Underage drinking remains a key concern in Wales. Whilst it is illegal to sell alcohol to persons under 18 years old, in reality, children and young people can and do get hold of alcohol, either via 'proxy sales' or directly themselves.

Online supermarket grocery services, and late-night and 24 hour alcohol home delivery services, have to date received little attention as a potential source of alcohol for minors. In January and February 2013, an online survey was undertaken, on behalf of Alcohol Concern Cymru, of nearly 1,000 people in Wales aged 14 and 17 years old, to ascertain their usage of such services.

Of the 636 respondents who stated that they had previously bought or attempted to buy alcohol for themselves or someone else, 15 per cent stated they have successfully bought alcohol online, and over two thirds of these said they find it "easy" to do so. Similarly, 13 per cent said they have successfully bought alcohol by telephone from a home delivery service, and again over two thirds of these said it was "easy" to do so. Both online and telephone alcohol delivery services were chosen by many because they regarded them as easy ways to bypass age verification checks, and as a quick and convenient way of acquiring alcohol.

In March 2013, South Wales Police undertook a test purchases operation in Cardiff, using 15 year olds, to find out whether they were able to buy alcohol from major supermarket grocery websites. It was found that alcohol could be purchased online with relative ease, by simply agreeing to terms and conditions that indicated they were 18 years old or over, and being in possession of a debit card and email address. In 44 per cent of the test cases, alcohol was handed to the test purchasers in person with no proof of age requested.

The findings indicate that a significant minority of children and young people in Wales acquire alcohol via supermarket websites and home delivery services, and test purchasing suggests that age verification policies are not being adequately adhered to.

Alcohol Concern therefore makes the following recommendations:

Recommendation 1

Supermarkets and other off-trade retailers that provide an alcohol home delivery service should review their existing age verification procedures at both the point of sale and delivery stages, to ascertain whether they are fit for purpose. Particular attention should be paid to making it clearer to customers that receipt of orders that contain alcohol must be by an adult. Retailers should ensure that delivery staff have been given appropriate training in procedures relating to requesting and identifying proof of age, and implement these procedures as standard.

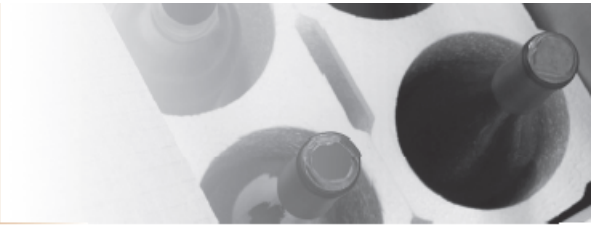
Recommendation 2

Further research should be undertaken in determining the proportion of children and young people who buy alcohol online and/or by telephone. More widespread test purchasing by police and trading standards is recommended.

Recommendation 3

The UK Government should review the efficacy of current licensing law relating to the home delivery of alcohol, in terms of whether it adequately protects children and young people from alcohol-related harm.

Introduction

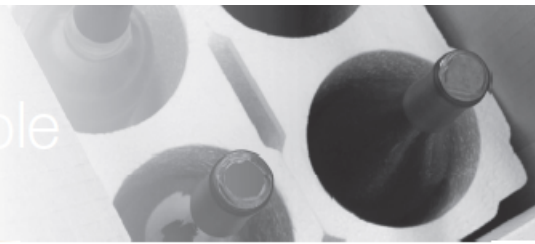


The negative health implications of excessive alcohol consumption remain one of the biggest problems facing Wales. Thirty thousand hospital bed days are related to the consequence of alcohol consumption,¹ and the estimated health service cost of alcohol-related chronic disease and acute incidents is between £70 and £85 million each year.²

Particular concern is focused on the dangers of alcohol misuse amongst the young, and it has long-been recognised that controlling children and young people's access to alcoholic products should be at the forefront of interventions. In recent years, this has comprised policing under-age sales, with increased levels of fines for retailers caught selling alcohol to under-18 year olds.

Despite such interventions, evidence shows that young people are able to access alcohol in a variety of ways. However, one means that has received little attention to date is via alcohol home delivery services. This report considers the potential for services offered by bespoke alcohol delivery companies and supermarkets online to become an alternative or additional avenue for minors to source their alcohol. It includes the findings from an Alcohol Concern Cymru commissioned survey of 14-17 year olds in Wales and test purchases undertaken by South Wales Police.

Alcohol and young people



In recent years there have been significant changes in both the way young people in the UK drink and how much they drink. Overall, the proportion of young people who abstain from alcohol is increasing; however, among those who do drink, there seems to have been an increase in alcohol consumption.³

In Wales, underage drinking remains a key concern. Statistics show that:

- 40 per cent of 15 year olds drink alcohol on a weekly basis⁴
- 20 per cent of 15 year olds report having been drunk for the first time at age 13 or younger⁵
- Since 1990 the amount of alcohol consumed by 11 to 15 year olds has doubled⁶
- In 2011-12 there were 830 referrals for treatment of alcohol misuse amongst patients aged 19 and younger⁷

Potential adverse consequences of alcohol consumption by minors include hospital admission, poor school performance, regretted sex and offending,⁸ as well as a higher risk of future alcohol-related problems.⁹ In 2010, the Chief Medical Officer for Wales recommended that children under 15 years of age should avoid alcohol completely, due to evidence that it can harm the developing brain, bones and hormones, whilst also warning that heavy alcohol use amongst older teens can be hazardous to health.¹⁰ Consequently, there is now a general acceptance that children and young people's access to alcohol needs to be robustly regulated.

How do young people access alcohol?

The law in the UK states that it is illegal for anyone under 18 to buy, or attempt to buy, alcohol in a pub, off-licence, supermarket or other outlet or for anyone to buy alcohol for someone under 18 to consume in a pub or public place. (The only exception is where young people aged 16 or 17 can drink beer, wine or cider with a table meal if it is bought by an adult and they are accompanied by an adult.)¹¹ Likewise, a person commits an offence if he sells alcohol to a child under 18.¹²

In reality, children and young people under 18 in Wales can, and do, get hold of alcohol. Indeed, a survey of young people's use of alcohol home delivery services in Wales, on behalf of Alcohol Concern Cymru in 2013, found half of the respondents stating they find it "easy" to purchase alcohol (see more below). Other research has shown that this age group most commonly access alcohol through 'proxy sales', that is, via their parents (with or without permission) and, especially in the case of older teens, from their friends or asking another adult to buy it for them.¹³

However, significant numbers of under-18s directly purchase their own alcohol. A recent study of nearly ten thousand 15-16 year olds across North West England, for example, found over a quarter (28%) of drinkers reporting that they had purchased the alcohol themselves, 44% of whom stating they had done so without their age ever being checked by alcohol sellers.¹⁴

Age-checking



Historically, the policing of under-age alcohol sales by regulatory authorities has been uncoordinated, but the last decade has seen an increase in age-checking practices and awareness-raising aimed at ensuring that retail staff are adhering to the necessary regulations and processes.¹⁵ Research from Serve Legal and Plymouth University suggests that under-age checks now take place around three out of every four times a young person attempts to buy alcohol.¹⁶

In 2009-10 in Wales, Trading Standards organised 1,121 attempts by young volunteers to purchase alcohol, in person from off-trade retail premises, 147 (13%) of which resulted in a sale. Proof of age was found to have been requested in 89% of the attempts to purchase alcohol. Petrol filling stations were found to be the retailers most likely to sell alcohol; next were 'other traders' (which included post offices, discount retailers, a video rental store and fast food outlets), followed by newsagents and convenience stores.¹⁷

In the on-trade (pubs and clubs), 216 attempts made by young volunteers, 91 of which resulted in a sale (42%). Proof of age was requested in only 55% of all attempts to purchase alcohol.¹⁸

Various schemes and initiatives have been developed and adopted that represent good practice in alcohol retailing. Perhaps the most relevant to tackling under-age sales is 'Challenge 21', which was developed by The Retail of Alcohol Standards Group in 2006 to provide staff serving alcohol with a wide margin of protection to ensure that alcohol is not sold to anyone under 18, by making it a policy that all customers who look as though they are under 21 years old are asked for proof of their age when attempting to purchase alcohol. 'Challenge 25', launched in 2009, pushes this margin of protection even wider and has been adopted by large sections of the off-trade, including the big supermarket chains, although much of the on-trade continues to adopt the Challenge 21 policy. (Interestingly, recent changes to Scottish licensing law have seen a blanket Challenge 25 policy adopted throughout Scotland.)

Alcohol home delivery services



"Today the availability of alcohol is beyond comparison to previous generations. From corner store to supermarket, pub, off-licence and petrol station, wherever you are in this country alcohol is within the reach of all... it is against this background that home delivery services have proliferated."

Allan Brown, former lead on drug prevention and education for Cheshire Constabulary (2009)¹⁹

As consumers increasingly embrace the internet as a means to acquire goods, many of the major supermarkets now provide a home delivery service for groceries (and other goods) via their online websites. Indeed, the IDG Retail Analysis estimated in 2011 that, by 2015, the value of the internet grocery market will have doubled, with online sales set to reach £9.9 billion, and younger adults in particular expected to increase their use of these supermarket's home delivery services.²²

In recent years, there has been a noticeable shift in where consumers choose to consume alcohol. Research undertaken by Alcohol Concern in Wales in 2010 found that 50 per cent of drinkers said they now only drink alcohol at home, and an additional 21 per cent said they drink equally at home and in the pub.²⁰ This rise in the popularity of home drinking is likely a result of a combination of factors, most notably a fear of alcohol-related disorder and violence associated with town and city centres after dark and an increase in the availability and affordability of alcohol in the off-trade, with growing numbers of supermarkets offering heavily discounted alcohol. 46 per cent of drinkers in Wales have said they drink at home because it has become cheaper.²¹

Perhaps unsurprisingly, as more of us choose to drink at home, the marketplace has adapted to meet this demand. In particular, the presence of late-night and 24-hour alcohol home delivery services, whereby alcohol can be ordered either online or via telephone (in the latter case, often at marked up prices compared to the supermarkets), in larger towns and cities, is now commonplace across much of the UK, either as bespoke businesses or additional services offered by takeaway restaurants. In March 2013, for example, South Wales Police found at least four businesses in Cardiff to be operating an alcohol home delivery service, two of which were set up solely for the purpose of selling alcohol (see more below). A brief internet search shows this situation is likely replicated in large urban areas across the country.

Alcohol Concern Cymru's study



As shown above, some progress has been made in making it more difficult for underage young people to purchase alcohol for their consumption via public houses and in-store at supermarkets and off-licence venues. Alcohol Concern was interested to discover whether, perhaps as a consequence of this progress, minors are turning to alcohol home delivery services as an alternative means through which they acquire alcohol.

In January and February 2013, a short, anonymous online survey was completed by 976 people in Wales between the ages of 14 and 17 years old. The survey was advertised on various social media platforms, including Facebook and Twitter. It was also publicised with various schools, colleges and youth organisations across the country.²³ A limitation of the survey is that it was conducted via the internet and therefore excluded young people without internet access.

636 (65 per cent) of respondents stated that they had bought or attempted to buy alcohol for themselves or someone else. 26 per cent of these respondents were aged 14-15 years old and 74 per cent were aged 16-17 years old. The results below relate to these 636 respondents:

1. Alcohol purchases in general

- 50 per cent of respondents stated that they find it generally find it "easy" to purchase alcohol, including 24 per cent stating they find it "very easy". Only 15 per cent regarded it as "difficult".

2. Buying alcohol online

- 15 per cent of the respondents stated they have successfully bought alcohol online, whilst a further seven per cent have tried to buy alcohol online but were unsuccessful. A greater proportion of respondents from the 14-15 years old age group had successfully purchased alcohol online (21 per cent) than respondents from the 16-17 years old age group (13 per cent).

- Of those who have successfully bought alcohol online, 66 per cent said they had last done so within the past week and 22 per cent within the past month.
- Over two thirds (68 per cent) of respondents said that they find it "easy" to purchase alcohol online, including 43 per cent who regard it as "very easy".
- Those respondents who were successful in ordering alcohol online were asked their main reasons for purchasing alcohol in this way. The most common reasons cited were because it is easy to bypass ID checks (66 per cent) and it is quick (52 per cent).

3. Buying alcohol by telephone

- 13 per cent of respondents stated they have successfully bought alcohol by telephone from a local home delivery service, whilst five per cent have tried but were unsuccessful. A greater proportion of respondents from the 14-15 years old age group had successfully purchased alcohol by telephone (16 per cent) than respondents from the 16-17 years old age group (12 per cent).
- Of those who have successfully bought alcohol by telephone, 48 per cent stated they had done so within the past week and 13 per cent within the past month.
- Over two thirds (68 per cent) of respondents said that they find it "easy" to purchase alcohol via telephone, including nearly half (49 per cent) who find it "very easy".
- Those respondents who were successful in ordering alcohol by telephone were asked their main reasons for purchasing alcohol in this way. The most common reasons cited were because it is quick (63 per cent) and convenient (52 per cent).

Test purchases



In tandem with our online survey of young people, on 23 and 30 March 2013, test purchases on alcohol home deliveries from some of the major supermarket retailers, were undertaken by South Wales Police in Cardiff, using test purchasers aged 15 years old.

In all cases, the test purchases were instructed that they could lie about their age during the online or phone transaction. In cases where alcohol was subsequently delivered, if the test purchasers were asked by the deliverer for identification to verify age, the test purchasers would state they had none, and if asked their age, they would correctly state that were 15 years old.

A total of nine test purchasers were made from five supermarkets, with four supermarkets being tested more than once.

At the point of sale i.e. the online transaction, the following issues were noted:

- Purchasers were asked to agree to terms and conditions of sale, which included being of a legal age to purchase alcohol, although in all but one case, these were displayed on a separate webpage. In one case, purchasers were specifically asked to tick a box to confirm that they were 18 or older. In all cases, the system relied entirely on the honesty of the purchaser about their age.
- Purchases could be made with any debit or credit card, and the card details did not need to relate to the e-mail address given during registration or the delivery address. Where confirmation was requested as to whether the delivery address matched the billing address, this could be confirmed by the purchaser even when the two addresses given were in fact different.

| Major supermarket's home delivery policies: | |
|---|---|
| Asda | If there is no one at the delivery address who is 18 years of age or over, we'll leave notification of our visit and will return the goods to our store. We'll then contact you to arrange re-delivery at a convenient time. Customers who are lucky enough not to look 25 or over will be asked by our driver to provide proof of age to show that they are 18 or over. Orders can only be delivered to persons over 18 years of age to ensure that we comply with laws regarding the sale of age-restricted goods e.g. alcohol. ²⁴ |
| The Co-operative | Due to licensing restrictions our home delivery service is only available to persons over the age of 18. Proof of identity may be requested on delivery. ²⁵ |
| Sainsburys | You or someone aged 18 or over on your behalf must be available to receive, inspect and sign for your grocery order. We will not be able to leave goods unattended under any circumstances. ²⁶ |
| Tesco | All goods must be signed for on delivery by an adult aged 18 years or over. Tesco follows a "Think 21" policy, so if the person receiving the goods looks under 21, proof of age will be requested. If proof is not available and there is no-one of that age at the address when delivery is being made, the goods may be retained by the driver. ²⁷ |
| Waitrose | Deliveries can only be left with someone over the age of 18. ²⁸ |
| Ocado | You must be 18 years old or over and must have completed the registration process in order to participate in our service. If you have ordered alcohol from us and cannot be at home at your selected delivery time, it is your responsibility to ensure that a suitable person is there to receive the order. ²⁹ |



At the point of receipt, it was found:

- In four of the nine cases (44%), alcohol was handed to the underage test purchasers by delivery drivers with no proof of age requested.
- One supermarket failed on both dates test purchases were conducted.

Aside from the supermarkets, South Wales Police obtained details of 11 other businesses offering home delivery of alcohol in Cardiff. Of these, a number had either ceased trading, no longer had a license to sell alcohol, or were not contactable, for example the phone number provided was no longer in use. A total of four businesses were found to be operating a home delivery service and contactable:

- Two were takeaway restaurants selling primarily food, and not selling alcohol unless food was also bought. Both declined to deliver unless proof of age could be shown at the point of delivery.
- The remaining two were purely alcohol delivery services. One opened too late in the evening for it to be appropriate to use a 15 year test purchaser; the other declined to make a delivery unless proof of age could be shown.

South Wales Police also noted that the 11 businesses initially identified may also be a small proportion of the alcohol delivery services operating in the Cardiff area. Any licensee holding an off-trade licence, that is, a license to sell alcohol for consumption off their premises, could in theory offer to deliver alcohol. Licensees are requested to advise the licensing authority (in this case the City and County of Cardiff) if they are operating such a service, but are not obliged to under law.

The relevant law relating to home delivery of alcohol in England and Wales

Licensing Act 2003: Section 151

(1)(a) A person who works on relevant premises in any capacity, whether paid or unpaid, commits an offence if he knowingly delivers to an individual aged under 18 alcohol sold on the premises

BUT

(4) The above does not apply where – (a) the alcohol is delivered at a place where the buyer or, as the case may be, person supplied lives or works.

To illustrate, where a child answers the door and signs for the delivery of his parent's order at home, no offence has been committed under Section 151.

Discussion and recommendations



“Most underage drinkers realise that it’s now not that easy to walk into a shop to buy alcohol. This factor, added to more relaxed attitudes toward alcohol consumption by parents and relatives, added to the growth of the internet, is creating a perfect storm in the battle against underage drinking.”

Dr. Adrian Barton, Plymouth University (2012)³⁰

The results from our survey of young people aged between 14 and 17 years old indicate that home delivery services provide a source of alcohol for underage drinkers in Wales. They also tally with findings from two international research studies which have previously raised concerns about children and young people’s ability to acquire alcohol from home delivery services via telephone, and more recently, the internet.^{31 32}

Our findings also suggest that it is younger age groups, that is, children well below the legal drinking age, who source at least some of their alcohol by these means. Alcohol home delivery services are a unique form of alcohol availability in that the sale of alcohol is achieved with relative anonymity and privacy, away from traditional commercial outlets.³³ Respondents to our survey expressed their perception that these services offer less robust age verification practices, and provide a quick and easy way to acquire alcohol, especially for younger teenagers who would likely have greater difficulty in buying alcohol in person from in-store at a supermarket or a public house.

Failures highlighted by South Wales Police’s test purchasing exercises provide further evidence that young people are able to acquire alcohol in this way. These failings, whereby 15 year old test purchasers were able to buy alcohol for themselves, relate to online orders made at supermarket websites and subsequently delivered to their chosen address. Unlike the supermarkets, the other businesses in Cardiff identified as offering home delivery of alcohol met the required standards for age verification and therefore did not result in completed transactions. However, due

to practicalities, test purchasing was unable to be conducted with late-night only alcohol delivery services and it is clear that more extensive research is required to establish a fuller picture on whether age verification failings are an issue across the board or relate solely to supermarket delivery services.

Alcohol Concern Cymru has previously highlighted concerns about the robustness of age verification processes online relating to the promotion of alcohol, in particular how merely entering a fictitious date of birth or ticking a confirmation of age box enables underage users to access content on alcohol brand websites intended for adults only.³⁴ The test purchasing exercise found similar mechanisms on the supermarket delivery websites; purchases could seemingly be made by under-18s merely by ticking a box to demonstrate their agreement to general conditions of sale, which included a section on the legal drinking age, and being in possession of a debit card. South Wales Police concluded that, in all cases, the online component of the system relied entirely on the honesty of the purchaser about their age.

As alcohol industry representatives have been keen to express in the past, these online age verification processes are the best available standards,³⁵ and these issues go much wider as to how children and young people can be better prevented from accessing adult products in general. This suggests that, in order to provide relative certainty that alcohol is being supplied to an adult, robust age verification processes must be implemented at the delivery stage of the transaction. However, in 44 per cent of test cases, alcohol was handed to underage test purchasers by supermarket delivery drivers with no proof of age requested.

Interestingly, and as highlighted in this report, delivering alcohol to a child or young person at home does not appear to constitute a breach in licensing law, providing it has been ordered by an adult. On the other hand, there is a question of whether such activity goes against the spirit of the licensing legislation; one of the four objectives of the Licensing Act 2003 concerns protecting

children from harm, which is thought to encompass protecting under-18s from moral, psychological and physical harm.³⁶

The Mandatory Licensing Conditions, in force since 2010, provide that companies that sell alcohol remotely should operate an age verification policy.³⁷ As also shown above, all of the major supermarkets with an online grocery service, explicitly note on their websites that goods can only be delivered to an adult aged 18 or over. Presumably a key reason that this is in place is to ensure that any adult-only products that are part of the order from the supermarket, including alcohol, are only delivered to such persons. It would appear from the test purchases exercise, therefore, that supermarkets are failing to adhere to their own policies and consequently enabling children and young people to be in receipt of alcohol that they might then consume themselves.

In practice, what this means is that a child or young person with access to, or ownership of, a debit card and an email address, and who agrees with the terms and conditions of sale on the relevant website, can order quantities of alcohol from a supermarket and be in receipt of it the next day. A perfectly conceivable scenario would be where an under-18 orders alcohol from a supermarket online for a party planned for the following night. A significant minority of teenagers have told us that they have chosen to buy alcohol in this way within the past week because, in doing so, they are more likely to be able to avoid age checks.

Another, and perhaps more complex scenario, is where an adult has ordered alcohol from a supermarket online, perhaps as part of a larger grocery shop, and then has arranged for their teenage son or daughter to receive the goods the next day on their behalf. Legally, it would appear that supermarket delivery drivers are perfectly entitled to hand over goods which include alcohol to a minor in such a case. Morally, however, there is a question of whether this is appropriate behaviour given that such a child or young person would be unable to purchase the alcohol themselves.

This returns us to the argument that alcohol is not an ordinary commodity like other household goods, but instead a potentially addictive and harmful substance, particularly for the young, and should be treated and sold as such.

Alcohol Concern makes the following recommendations:

Recommendation 1

Supermarkets and other off-trade retailers that provide an alcohol home delivery service should review their existing age verification procedures at both the point of sale and delivery stages, to ascertain whether they are fit for purpose. Particular attention should be paid to making it clearer to customers that receipt of orders that contain alcohol must be by an adult. Retailers should ensure that delivery staff have been given appropriate training in procedures relating to requesting and identifying proof of age, and implement these procedures as standard.

Recommendation 2

Further research should be undertaken in determining the proportion of children and young people who buy alcohol online and/or by telephone. More widespread test purchasing by police and trading standards is recommended.


Recommendation 3

The UK Government should review the efficacy of current licensing law relating to the home delivery of alcohol, in terms of whether it adequately protects children and young people from alcohol-related harm.

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