



## LICENSING AND GAMBLING SUB COMMITTEE – 21ST OCTOBER 2022

**SUBJECT:** VARIATION OF A PREMISES LICENCE APPLICATION

**REPORT BY:** KATHRYN HOPKINS - SENIOR LICENSING OFFICER

### 1. Application Details –

<u>Applicant</u>	<u>Premises</u>	<u>Application Type</u>
Nakendram Piratheepan	Rhymney Garage Victoria Road, Rhymney NP22 5NU	Variation of a premises licence

#### 1.1 Application to Vary a Premises Licence

On 30/08/2022, an application for the variation of an existing premises licence under the Licensing Act 2003 was made in respect of the above-mentioned premise. The proposed application for consideration is set out in 1.3 of this report.

#### Brief History

The premise licence was approved following a Licensing & Gambling Sub Committee on 13<sup>th</sup> August 2021. The applicant initially applied for a 24-hour licence to sell alcohol, but this was revised by the applicant during the consultation period to reflect 05.00 to 02.00. However, at the hearing, Members determined to approve the sale of alcohol between 07.30hrs to 23.00hrs.

#### 1.2 Current Trading Times and Licensable Activity

##### **Supply of Alcohol (Off Sales only)**

Monday to Sunday, inclusive 07.30 - 23.00

The current Premise Licence (PRM038) is reproduced as **Appendix 1**.

### **1.3 Proposed variation to Trading Times and Licensable Activity**

The application for the variation of a Premises Licence seeks to permit the following Licensable Activities: -

- **Supply of Alcohol (Off Sales only)**

Monday to Sunday inclusive, 06.00 – 01.00

Essentially, this is an extra 1½ hours in the morning and an extra 2 hours at night.

### **1.4 Site Plan/Photographs**

The plan of the licensed area is reproduced as **Appendix 2**. *Please note the plan that forms part of the current licence is currently subject to a minor variation to address changes to layout.*

A location plan is reproduced as **Appendix 3**.

Images of the premise are reproduced for Members information as **Appendix 4**

### **1.5 Other Licensed Premises in the Vicinity/Trading Times**

A list of licensed premises in proximity to Rhymney Garage authorised to sell alcohol is reproduced as **Appendix 5**.

### **1.6 Operating Schedule**

The applicant has not volunteered any measures as part of the Operating Schedule, to promote the Licensing Objectives.

### **1.7 RELEVANT CONSIDERATIONS**

Caerphilly County Borough Council Licensing Policy **Appendix 6**

National Guidance **Appendix 7**

### **1.8 RELEVANT REPRESENTATIONS RECEIVED DURING APPLICATION PROCESS**

Representations may be made for or against an application during the consultation period. To be 'relevant' and, therefore, able to be taken into account in determining the application, they must be about the likely effect of the grant of the premises licence on the promotion of the licensing objectives. Where representations are made by persons who are not a responsible authority, they must not be frivolous or vexatious.

Relevant representations have been received in respect of this application and so it must be determined by a Licensing Hearing Panel in accordance with the Council's Constitution and Licensing Act 2003.

### **1.8.1 Responsible Authorities:**

#### **Police**

Document	Date Received	Appendix Reference
<b>Objection</b>	<b>14/09/2022</b>	<b>Appendix 8</b>
<b>Supplementary comments</b>	<b>10/10/2022</b>	<b>Appendix 8a</b>

#### **Environmental Health (Noise)**

Document	Date Received	Appendix Reference
<b>Objection</b>	<b>20/09/2022</b>	<b>Appendix 9</b>

#### **Licensing Authority (In role as Responsible Authority)**

Document	Date Received	Appendix Reference
<b>Objection</b>	<b>26/09/2022 (revised 27/09/2022)</b>	<b>Appendix 10</b>

#### **Trading Standards**

Document	Date Received	Appendix Reference
<b>Objection</b>	<b>26/09/2022</b>	<b>Appendix 11</b>

The following responsible authorities, Environmental Health (Health & Safety) and Children's Services have indicated that they have no representations in respect of the application. There were no resident representations received opposing the application.

## **1.9 SUMMARY OF REPRESENTATIONS**

### **Heddlu Gwent Police**

Heddlu Gwent Police have raised an objection to the application and revised hours proposed by the applicant in view of existing alcohol and anti-social behaviour issues within the Rhymney area.

Gwent Police detailed that they objected to the original application in 2021 for the granting of the proposed licensed trading times of 24 hours and at that point stated that they would advocate for the hours to be 07.30 – 23.00 hours Monday to Sunday which was agreed by the Licensing & Gambling Sub Committee. Gwent Police detailed that their position has not changed and do not support any additional hours added to the licence.

The Police detailed that the premise is a petrol station with a forecourt and a small building which is used as a convenience store. The premise is situated on the main street of Rhymney and is close to residential properties, a library and a public car park. Within the nearby vicinity there are several other off licences and Public Houses. The Police identify that off sales provision typically ends between 22:30/23:00 hours each day.

The Police explained in 2021, the fundamental role of the local Inspector was to oversee Crime and Disorder in the area ensuring that all plans and patrols were in place to keep incidents to a minimum, facilitating long term plans with partners to assist in this process and ensuring a minimal detrimental impact on the quality of life for residents who live in the area.

The applicant was advised that Gwent Police were working with partners to assist in the issues that contribute to the high number of calls in Rhymney and that funding through the

Home Office Safer Streets initiative was received to further strengthen efforts in driving down crime.

The Police indicate that there is a clear link between alcohol and Anti-Social Behaviour and the area is suffering high levels of Anti-Social behaviour and Crime. Gwent Police believe that any additional hours afforded to the licence would have a detrimental effect on the area and an increase in calls to the Police.

Since the granting of the licence, comment was made that there had been calls made to the Police from Rhymney Garage which included a Knife Point Robbery and Theft, where the member of staff had refused to provide a statement. Since the licence had been granted it was reported that there had been a total of 43 police calls to Victoria Road, Rhymney which reaffirms Gwent Police's position. The calls include incidents of Anti-Social Behaviour, Criminal Damage, Robbery, Theft, Burglary and Violence.

Supplementary comments received from the Police clarified that there had been a total of 60 calls/incidents as opposed to 43 referred to above on Victoria Road, Rhymney until 14<sup>th</sup> September 2022.

The Police suggest that the applicant has shown a lack of regard towards the local area and the ongoing work by Police and Partner agencies by not taking into consideration the information that was disclosed to him last year. They referenced the applicant has not offered up any further conditions or contacted any of the Responsible Authorities prior to submitting this application.

The Police commented that their position had not changed and believe the current licence is adequate, and any additional hours to the supply of alcohol would have a negative impact on the local area, damage ongoing partnership work and undermine the licensing objectives.

### **Licensing Authority (In its role as a Responsible Authority)**

The Licensing Authority recorded an objection to extend the current hours for the sale of alcohol for consumption off the premises. Comment was expressed that the applicant has only benefited from a premises licence at this site since August 2021.

Reference was made to the representations submitted by Heddlu Gwent Police, which suggested that the area is still subject to high levels of Anti-Social Behaviour and Crime, where several agencies continue to work within the area to address these issues.

Concern was expressed that in the past few months, two incidents had occurred where alcohol had been stolen. In one of the incidents a staff member had failed to support the Police in their enquiries. Comment was expressed that these incidents demonstrated the crime and disorder licensing objective is not being promoted.

Reference is made to the applicant failing to contact the appropriate Responsible Authorities to discuss his proposals which would appear to show a lack of regard towards the local area.

It was noted by the officer that the applicant had not offered any additional steps within the application to promote the licensing objectives as referenced in the Council's statement of licensing policy in relation to the day-to-day operation of the business, its location, type of premises, licensable activities to be provided and needs of the local community.

Concern was expressed regarding a recent compliance visit to the premises undertaken by licensing officers, where it appeared that some of the current conditions of licence were not being adhered to. This included the absence of a Challenge 25 sign at the entrance to the premises, staff training records were unavailable for inspection, and the member of staff unable to operate the CCTV equipment. Reference was made that the applicant had failed to address changes to the premises layout in the variation application.

In view of the above, the Licensing Authority maintained their objection to this application and support the representations submitted by Heddlu Gwent Police.

### **Environmental Health (Noise Pollution)**

Environmental Health Pollution officer detailed awareness of the anti-social behaviour issues in the Rhymney area and whilst they had not received complaints directly associated with the premises, were conscious of the fact that the area is primarily residential in nature. Concern was expressed that if the variation application was approved there could be residents disturbed by people visiting the premises during the late night/early hours and the potential increase in anti-social behaviour should the hours be extended. The Environmental Health Officer detailed their objection in relation to the prevention of public nuisance licensing objective.

### **Trading Standards**

The Trading Standards officer expressed concerns in relation to the application to extend alcohol hours. The officer acknowledged the ongoing issues in the area given the recent Trading standards exercise, which revealed children under 18 were accessing alcohol and the concern regarding a recent breach in respect of challenge 25 signage and supported the Police objection.

### **1.10 APPLICANT RESPONSE**

At the time of preparing this report, the applicant has not responded to the objection from Heddlu Gwent Police, Licensing Authority, Environmental Health (Noise Pollution) or Trading Standards.

Whilst the applicant has not replied to the Responsible Authorities, the applicant's agent has submitted a petition consisting of 29 names and addresses of individuals in support of the application to sell alcohol between 06.00 to 01.00. A copy of the same is reproduced at **Appendix 12**.

However, the applicant has responded in relation to a recent compliance visit conducted on 23<sup>rd</sup> September 2022 and has submitted a minor variation application to amend plan/layout.

### **1.11 LICENSING ASSESSMENT**

THE LICENSING ASSESSMENT IS A PROVISIONAL SUMMARY, BASED ON REPRESENTATIONS RECEIVED PRIOR TO THE HEARING. THE HEAD OF PUBLIC PROTECTION, COMMUNITY AND LEISURE SERVICES RESERVES THE RIGHT TO AMEND OR VARY THE PROVISIONS CONTAINED IN THE SUMMARY AND RECOMMENDATION, SUBJECT TO ANY CHANGE IN THE MATERIAL FACTS THAT

BECOME KNOWN AT THE HEARING. THE SUB-COMMITTEE IS OBLIGED TO DETERMINE THIS APPLICATION WITH A VIEW TO PROMOTING THE LICENSING OBJECTIVES WHICH ARE:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance;
- The protection of children from harm

In making its decision, the Sub Committee is obliged to have regard to:-

- Licensing Act 2003
- Statutory Guidance issued under S182 of the Licensing Act
- The Council's own licensing policy, and
- All representations made and evidence presented

NOTE: THE SUB-COMMITTEE MAY NOT MODIFY THE CONDITIONS OR REJECT THE WHOLE OR PART OF THE APPLICATION MERELY BECAUSE IT CONSIDERS IT DESIRABLE TO DO SO. ANY SUCH ACTIONS MUST BE NECESSARY IN ORDER TO PROMOTE THE LICENSING OBJECTIVES.

Statutory Power - Licensing Act 2003. This is a Council function which is delegated to this committee to decide.

In addition to the above, in accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority 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 all parties, at the hearing.

Furthermore, the Sub Committee may accept hearsay evidence and it will be a matter for the members to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard but has heard or read about.

## **1.12 OBSERVATIONS**

This variation application seeks to increase the permitted sale of alcohol provision making alcohol available from 06.00 to 01.00 Monday to Sunday, whereas the current permitted hours allow the sale of alcohol between 07.30hrs to 23.00hrs. Essentially, this is an extra 1½ hours in the morning and an extra 2 hours at night.

Following the 28-day consultation on the variation application, Gwent Police objected to the application in relation to the increased hours, identifying that the area is affected by alcohol and anti-social behaviour issues and made reference to the amount of Police calls received to the area in relation to crime and disorder. The Police are acknowledged as the lead source of advice in relation to the prevention of crime and disorder licensing objective.

Paragraph 9.12 of the Section 182 Home Office National Guidance states -  
*Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's*

*main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*

Paragraph 2.1 of the Section 182 Home Office National Guidance advocates that '*Licensing authorities should look to the police as the main source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP)*'.

Gwent Police detail that any additional hours would have a detrimental impact on the area and increased calls to the Police. Since the licence had been granted, the Police had received 60 calls in relation to ASB, Criminal damage, Robbery, Theft, Burglary and Violence on Victoria Road where the premises is located.

The Police detail that the applicant has shown a lack of regard to the local area and highlights the failure to take into consideration information provided at the previous hearing in August 2021. The Police believe the existing hours to be adequate, and any additional hours would have a negative impact on the area, damage ongoing partnership work and undermine the licensing objectives.

Objections were also raised from Environmental Health (Noise Pollution), Licensing Authority and Trading Standards.

The Licensing Authority supported the objection made by Gwent Police and was concerned to note since the licence has been granted, two incidents had occurred where alcohol had been stolen. Furthermore, that an employee at the business had failed to support a Police investigation in relation to the above. The responsible authority expressed concern that these incidents demonstrated the crime and disorder licensing objective was not being promoted.

In addition, the applicant has failed to contact the appropriate Responsible Authorities to discuss his proposals prior to submitting his application. Paragraph 10.3 of the councils licensing policy states '*Applicants are recommended to seek advice from the Licensing Authority's licensing officers and the police, as well as taking into account, as appropriate, local planning and transport policies, tourism, cultural and crime prevention strategies, when preparing their plans and operating schedules*'.

The Police and Licensing Authority (in its role as a responsible authority) allude to the application to increase alcohol hours appearing to show a lack of regard towards the local area. Paragraph 5.7 of the Councils policy states '*Applicants and existing licensees should be mindful of local areas where there may be a concentration of problematic drinkers or where it is known that groups of people congregated and have caused anti-social behaviour. Applicants should very carefully consider the appropriateness of selling alcohol during early morning or late evening hours*'.

Both Police and Licensing Authority (in its role as a responsible Authority) detailed that the applicant has not offered any additional steps within the application to promote the licensing objectives. Paragraph 26.2 of the council's statement of licensing policy states '*In completing an operating schedule, applicants are expected to have regard to this statement of licensing*

*policy and to demonstrate suitable knowledge of their local area when describing the steps that they propose to take in order to promote the Licensing Objectives.'*

Paragraph 8.42 of the Section 182 Home Office National Guidance echoes the above requirements by licensees and states - '*Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives, that they understand:*

- *the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
- *any risk posed to the local area by the applicants' proposed licensable activities; and*
- *any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.'*

Paragraph 5.4 of the council's statement of licensing policy offers advice in relation to permitted hours for the sale of alcohol and consideration of the local environment and states '*The Licensing Authority notes that the Government's Section 182 Guidance states that "Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours". However, because of the problems experienced in some local communities in the county borough arising from the availability of alcohol for sale at local shops for consumption off the premises this Licensing Authority has decided that it will not adopt this general position but instead will expect applicants and licence-holders to trade alcohol at hours which are appropriate to their particular local environment. Therefore applicants should very carefully consider the hours they seek when devising their operating schedule and it is recommended to discuss such application with the appropriate Responsible Authorities.'*

Paragraph 5.5 of the council's statement of licensing policy highlights the effect on applications where alcohol hours have not been properly considered and states '*In the event that applications are submitted which have not demonstrated that appropriate alcohol trading hours have been properly considered, it is likely that representations will be made by the relevant responsible authorities and the public. This will delay the determination of the application and result in it being referred to a Licensing Sub-Committee for determination.'*

Paragraph 7.4 of the council's statement of licensing policy states '*The intent of the Licensing Act 2003 is to regulate the supply of alcohol. Licensing is therefore the key mechanism by which the availability of alcohol can be regulated, through regulating the times and days of the week alcohol can be sold, premises which can supply alcohol and the conditions of sale.'*

A review of alcohol licensed premises in the Rhymney area undertaken (Appendix 5) has demonstrated that the applicant's permitted sale of alcohol permissions are in line with the majority of other licensed premises in the area. Whilst the authority has not introduced fixed closing times and zoning within its area, the Police through their representations advocate against increased alcohol provision given the local concerns regarding Crime & Disorder and Anti-Social behaviour. These concerns they indicate that they made in relation to the initial application for a premises licence in August 2021.

It is noted that the Licensing Authority in its role as a Responsible Authority has identified the failure of the applicant to engage with Responsible Authorities to seek pre-application advice where any local issues could be addressed with the applicant.

The Licensing Authority expressed concern that the applicant had failed to tailor their application, proposed hours and queries the quality of the operating schedule given the prevailing issues within the local area. Paragraph 5.7 of the council's statement of licensing policy provides advice to Members and details '*Applicants and existing licensees should be mindful of local areas where there may be a concentration of problematic drinkers or where it is known that groups of people congregated and have caused anti-social behaviour. Applicants should very carefully consider the appropriateness of selling alcohol during early morning or late evening hours.*'

Paragraph 10.15 of the Section 182 Home Office National Guidance provides advice to Members '*Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.*' In this instance, Gwent Police and other Responsible Authorities have articulated their concerns in respect of the hours proposed by the applicant given current issues being experienced in Rhymney area.

Paragraph 10.4 of the council's statement of licensing policy advocates that applicants demonstrate knowledge of customers/locations, the failure to do so may lead to representations and states '*The Licensee/applicant should also use their own experience and knowledge of their customers and locations when drafting their operating schedule, which subsequently becomes the basis of conditions on the licence. Failure to do this may lead to a representation from the Authority, a responsible authority or other person. Applicants may wish to consider the following and are advised to refer to the Authority's 'Model Pool of Conditions' when considering an application.*

- *Is there CCTV, and, if so what are the areas covered, does it have the ability to see clear full face recording of patrons entering, does it record the patron search area at the entrance. What is the retention period of recordings, how easy is it to access, produce copies or download images if requested by Police and Licensing.*
- *Are Security Industry Authority (SIA) door staff employed and what checks are made to the validity of the SIA licence? What records are kept of SIA checks, search policy, entrance policy, restriction of patrons using outside areas, such as smoking areas, employment times of SIA and their training?*
- *Is there ID scanning on entry to the premises? Will there be 'No ID No Entry' policy in place?*
- *Is there a clear drug and weapon policy? Is there a regular documented training of this policy carried out with staff when drugs/weapons are seized or stored. Are areas or surfaces designed to prevent the likelihood of drug use at the premises?*
- *Has the use of plastic or toughened glass for serving of alcohol been considered, will glass bottles be handed over the bar? Are there restrictions of drinks being taken outside?*
- *Is there a proof of age scheme, do the premises have a challenge 25 policy? Are staff trained regularly on this policy and is it documented?*

Paragraph 1.17 of the Section 182 Home Office National Guidance states –  
*Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly*

*burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.*

The Responsible Authorities have considered the merits of the application to vary the permitted hours at Rhymney Garage and have concluded that the licensing objectives would be undermined by granting increased hours.

The Licensing Authority (in its role as a responsible authority) expressed concern that a recent compliance check of the premise identified non-compliance with a number of conditions of licence. This included absence of challenge 25 signage, staff training records unavailable for inspection, member of staff unable to operate CCTV equipment and the layout of the premises not reflecting the premises plan.

Paragraph 19.7 of the councils licensing policy states '*It is an expectation that the premises licence holder and designated premises supervisor will be aware of their permitted licensable activity types, permitted hours and conditions of licence. Failure to demonstrate or have a lack of regard could result in a lack of confidence in management by a Responsible Authority*'.

The outcome of the recent compliance visit was commented upon by Trading Standards who expressed concern about the absence of the challenge 25 signage given existing underage issues in the area. Following the identification of the above non-compliance officers have received a minor variation application and notification for the licence holder that the breaches have been rectified. Officers will re-visit the premise to verify the position.

The applicant has submitted details of individuals in support of the increased hours proposed in the application via a petition. Members will consider what weight they will afford to the petition and will consider whether all parties understood the implication of what they were signing. It should be noted that the individuals detailed appear to reside between 0.2 to 7.9 miles from the premises. Members will note that there were no resident objections received to the increased hours sought.

Members of the Sub Licensing Committee will be required to determine the application in relation to the promotion of the four licensing objectives i.e. prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

### **1.13 RECOMMENDATION**

Given the concerns raised by the Responsible Authorities in relation to the failure to seek advice prior to submitting the application, a failure to demonstrate a regard to the local area and local prevailing conditions i.e existing crime & anti-social behaviour prevalent in the Rhymney area, which has not changed since August 2021. These concerns raised by the Police, the lead responsible authority for the prevention of Crime & Disorder.

Furthermore, the failure to identify any measures which would form part of the operating schedule for the additional hours sought. The outcome of a recent compliance visit and failure to support a Police investigation appear to demonstrate a lack of regard for the Licensing Objectives generally.

The current permissions for the sale of alcohol mirror that held by other licensed premises in the area.

The Responsible Authorities appear to have considered the individual merits of the application based on their local knowledge, however, it appears the applicant has failed to adequately consider the same.

Having had regard to the objections received from Gwent Police, Licensing Authority, and Environmental Health, supported by the comments of Trading Standards, it is recommended that the **application to vary the premises licence be refused**.

Background Papers:

[Link to Statutory Guidance issued under S182 of the Licensing Act](#)

[Link to Caerphilly CBC Statement of Licensing Policy \(2021\)](#)

Date of this report: 13<sup>th</sup> October 2022

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