

**Agenda Item No:**

**Licence Reference** WK/200909705

**Report To:** LICENSING SUB COMMITTEE

**Date:** 7TH DECEMBER 2009

**Report Title:** **Licensing Act 2003 - Application for a premises licence - Best One Convenience Store, 10 Cradlebridge Drive, Willesborough, Ashford, Kent TN24 0RN**

**Report Author:** Licensing Manager



**Summary:**

The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type: Application for a premises licence

Applicant: **Mr Sivarajah**

Premises: **Best One Convenience Store, 10 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RN**

Members are asked to determine whether to grant the application.

**Key Decision:** NO

**Affected Wards:** North Willesborough (Ashford)

**Recommendations:** **The Committee is asked to determine the application and decide whether to grant the premises licence.**

**Policy Overview:** The decision is to be made with regard to the Licensing Act 2003, Secretary of State's Guidance issued under Section 182 of the Act and the Council's Statement of Licensing Policy. Where the decision departs from the Policy or Guidance the departure must be directed solely at the attainment of the licensing objectives, and such departure must be supported by clear and cogent reasons.

**Financial Implications:** The costs associated with processing the application are taken from licensing fee income.

**Other Material Implications:** **HUMAN RIGHTS:** In considering this application the Sub Committee will balance the competing Human Rights of the various parties including the right to respect for private and family life, the protection of property and the right to a fair hearing.

**LEGAL:** Under the Licensing Act 2003 the Council has a duty to exercise licensing control of relevant premises.

**Exemption  
Clauses:**

Not applicable

**Background  
Papers:**

None

**Contacts:**

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**Report Title:            Licensing Act 2003 - Application for a premises licence for Best One Convenience Store, 10 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RN**

**Purpose of the Report**

1. The report advises Members of a licence application under the provisions of the Licensing Act 2003.

Application type:    Application for a premises licence.

Applicant:            **Mr Sivarajah**

Premises:            **Best One Convenience Store, 10 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RN**

**Issue to be Decided**

2. Members are asked to determine whether to grant the application.

**Background**

***The Licensing Objectives***

3. The licensing authority must carry out its functions under the Licensing Act 2003 with a view to promoting the licensing objectives namely, the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm (LA 2003, s4 (1)).

***Application details***

3. The application is made for a new premises licence.
4. See Appendix A for the Application for a new Premises Licence, along with plans (a map showing the location of the premises is provided at Appendix G). The application has been made in the proper manner.
5. Representations have been received hence the determination coming before Members.

***Additional steps***

6. The applicant states within section P of the application form the additional steps they intend to take in order to promote the four licensing objectives if the proposed licence is granted.
7. The conditions put forward by the Licensing Manager as taken from section P of the application form are as given within Appendix F. Note it is the responsibility of the Licensing Authority to prepare conditions that are “consistent” with the operating schedule (s.18).

8. It is stressed that while a licensing authority has no discretion to add or modify a condition where there is no relevant representation, it may not issue a licence with conditions that are illegal.

### ***Representations from Responsible Authorities***

9. No representations were received from the responsible authorities.

### ***Representations from Interested Parties***

10. 32 parties have made representations. A summary of these representations is provided in Appendix B. Copies of the letters are contained in Appendix C.
11. All of the representations are parties living in the area.
12. The representations have a number of common themes in terms of the licensing objectives and they can be summarised as follows:
  - The prevention of public nuisance and the prevention of crime and disorder, in the forms of anti social behaviour and noise and litter pollution are the objectives raised with reference to the behaviour of potential customers.
  - Some of the representations have suggested that there is no “need” for a premises selling alcohol in the area due to the close proximity to other premises. Members will be aware of the Secretary of State’s Guidance on this matter; “There can be confusion about the difference between “need” and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy. “Need” is a matter for planning committees and for the market.”
13. Under section 35(5) of the Licensing Act 2003, representations are relevant if they are about the likely effect of the grant of the licence on the promotion of the licensing objectives and (subsection 6) are made by an interested party living or working in the vicinity or a responsible authority within the prescribed period, are not withdrawn or, in the opinion of the licensing authority, frivolous or vexatious.
14. Members will note that there are nine letters from 12 individuals, representing 8 residential properties.
15. A petition was received from Mr P Ikeson and is provided in Appendix D. As there were a number of issues unresolved by the petition, a letter was sent out to all those named on 26<sup>th</sup> October requesting clarification on a number of points. A copy of this letter is provided in Appendix E and the responses are included in the letters from interested parties making representations which is provided in Appendix C.
16. Members must be satisfied that the representations are relevant and should note the absence of responses from a number of the people who have signed the petition.

17. The prescribed period for the receipt of such representations in this case is, by Regulation 22(b) of the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 "during a period of 28 consecutive days starting on the day after the day on which the application to which it relates was given to the authority by the applicant". In this case the application was given to the authority on 15th October 2009 and the last date for receipt of relevant representations was therefore 13th November 2009.

### ***Relevant premises history***

18. The premises is a convenience store located in a cul-de-sac in a residential area. The premises does not currently sell alcohol and has applied for a premises licence to permit the selling of alcohol from 07.00 until 23.00 seven days a week.
19. The unit is currently empty and there has been a succession of retail units in this location, including World of Video until 2006 and more recently Ripple Spas.
20. The application concerns only the sale of alcohol for consumption off the premises.
21. The applicant has volunteered a number of conditions for the premises licence that are replicated in Appendix F.

### **Options**

#### ***General***

22. Members attention is drawn to the following matters:
  - All applications are to be considered on their merits as well as against the relevant policy and statutory framework.
  - Due regard should be given to the provisions of the Human Rights Act 1998, Race Relations Act 1976 as amended by the Race Relations (Amendment) Act 2000 and Section 17 of the Crime and Disorder Act 1998 and, so far as possible, reflect local crime prevention strategies.
  - The operating schedule forms part of the completed application form for a premises licence. The operating schedule should include information, which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.
  - The licensing authority may not impose any conditions unless its discretion has been engaged following the making of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions due to the representations raised. It may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. However, in order to minimise problems and the necessity for hearings, it would be sensible for applicants to consult with responsible authorities when schedules are

being prepared. This would allow for proper liaison before representations prove necessary.

- Where problems have occurred, the application for the new licence or certificate will afford an opportunity for responsible authorities and interested parties to raise the issue through representations and for conditions addressing any nuisance previously caused to be attached following a hearing where necessary. The views of local residents will be important in establishing the extent of any history of problems.
- The conditions put forward within this report are suggested on the basis of:
  - information contained within the application form;
  - interested parties representations and
  - on those measures currently in existence.
- The 2003 Act requires licensing authorities following receipt of relevant representations to make judgements about what constitutes public nuisance and what is necessary, in terms of conditions attached to specific premises licences to prevent it. It is therefore important that in considering the promotion of this licensing objective, licensing authorities focus on impacts of the licensable activities at the specific premises on persons living and working (including doing business) in the vicinity that are disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.
- Public nuisance is not narrowly defined in the 2003 Act and retains its broad common law meaning for the Act's purposes. The prevention of public nuisance could therefore include low-level nuisance perhaps affecting a few people living locally as well as major disturbance affecting the whole community. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of interested parties (as defined in the 2003 Act) in the vicinity of licensed premises.
- Where applications have given rise to representations, any necessary and appropriate conditions should normally focus on the most sensitive periods. For example, music noise from premises usually occurs from mid-evening until either late evening or early morning when residents in adjacent properties may be attempting to go to sleep or are sleeping. In certain circumstances, conditions relating to noise may also prove necessary to address any disturbance anticipated as customers enter and leave the premises and therefore, in the immediate vicinity of the premises.
- In the context of preventing public nuisance, it is essential that conditions are focused on measures within the direct control of the licence holder. Conditions relating to public nuisance caused by the anti-social behaviour of customers once they are beyond the control of the licence holder, or premises management cannot be justified and will not serve to promote the licensing objectives in relation to the licensing activities carried on at the premises. Beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who

engages in anti-social behaviour is accountable in his own right. However, it would be perfectly reasonable for a licensing authority to impose a condition it considered necessary following relevant representations from an interested party that requires the licence holder to place signs at the exits from the building encouraging patrons to be quiet until they leave the area and to respect the rights of people living near-by to a peaceful night. After a licence has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate.

- The Guidance states “the conditions that are necessary for the promotion of the licensing objectives should emerge initially from a prospective licensee’s risk assessment which should be undertaken by applicants or clubs before making their application for a premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule that it is proposed to take to promote the licensing objectives.”
- It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions, which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

### ***Decision options***

23. In addition to those matters outlined in the applications operating schedule if members are minded to grant the application they may wish to consider the following conditions:

#### ***All Four Licensing Objectives***

- a) The Licence Holder shall ensure that the premises has in place an internal CCTV system. The system will be maintained in working order and footage must be retained for a period of time to the satisfaction of the Police.

#### ***Prevention of Public Nuisance***

- a) Prominent, clear notices shall be displayed at all exits requesting customers to respect the needs of local residents and leave the premises and the area quietly.
- b) The Licence Holder shall ensure that adequate waste receptacles are available for use by customer immediately outside the premises.
- c) The Licence Holder shall ensure that staff monitor the immediate vicinity of the premises and ensure that any litter is collected and disposed of appropriately.
- d) The licensee or a nominated representative shall receive and respond to complaints.

## **Legal options open to members**

24. Members may grant the licence with no modifications to the conditions to the licence, modify the conditions of the licence or reject the whole or part of the application.

## **Consultation**

25. All relevant parties have followed the consultation procedures required under the Licensing Act 2003.

## **Implications Assessment**

26. The decision should be made with regard to the Secretary of State's Guidance and the Council's Statement of Licensing Policy under the Licensing Act 2003. Where the decision departs from either the Guidance or the policy clear and cogent reasons must be given. Members should be aware that if such a departure is made the risk of appeal / challenge is increased.

## **Human Rights**

27. While all Convention Rights must be considered, those which are of particular relevance to the application are:
- Article 8 - Right to respect for private and family life
  - Article 1 of the First Protocol - Protection of Property
  - Article 10 – Freedom of Expression

The full text of each Article is given in the attached Appendix H.

## **Handling**

28. The timings for handling the application are set out in the Licensing Act 2003 and related regulations.

## **Conclusion**

29. Members must ensure that the application is considered on its merits, as well as against the relevant guidance, policy and statutory framework.

Contact:	Licensing Manager
Email:	James.hann@ashford.gov.uk



**APPENDIX C**  
**SUMMARY OF REPRESENTATIONS FROM INTERESTED PARTIES**

Name & Address	Representation Details
Mr & Mrs Davies Davis, 7 Harvey Road, Willesborough, Ashford, Kent, TN24 0AD	Object Prevention of crime and disorder Prevention of public nuisance
Mr & Mrs Barton 21 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object Prevention of crime and disorder Prevention of public nuisance
Mr & Mrs Ikeson 19 Foxglove Road, Willesborough, TN24 0RA	Object
Mr Loveman 17 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object
Winder 5 Foxglove, Willesborough, Ashford, Kent, TN24 0RA	Object
Mr & Mrs Henry 9 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object
Mrs Pearson 3 Foxglove Road, Willesborough, Ashford, Kent	Object
Mr & Mrs Balcombe 42 Cradlebridge Drive, Willesborough, Ashford, Kent	Object
Mr & Mrs Coles 13 Foxglove Green, Ashford, Kent	Object
Mr & Mrs Stevens 9 Harvey Road, Willesborough, Ashford, Kent, TN24 0RB	Object
Mr Walker 14 Harvey Road, Willesborough, Ashford, Kent, TN24 0AD	Object Crime & Disorder, Public Safety, Protection of Children from Harm
Miss Kirby 18 Harvey Road, Willesborough, Ashford, Kent, TN24 0AD	Object
Young 15 Harvey Road, Willesborough, Ashford, Kent, TN24 0AD	Object
Stainer 15 Foxglove Road, Willsborough, Ashford, Kent, TN24 0RA	Object
Mayhew 15 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object
Ms Mark-Evans 7 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object

Mr Rybner 7 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object
Miss Osbone 2 Sandilands, Willesborough, Ashford, Kent, TN24 0RD	Object
Mr & Mrs Plant 114 Cradlebridge Drive, Ashford, Kent	Object
Mr & Mrs Marshal 87 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RF	Object
Mr Jones 116 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RF	Object
Mr & Mrs Sharp 85 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RF	Object
Mr & Mrs Lowe 81 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RF	Object
Mrs Hole 24 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RH	Object
Mr & Mrs Bettles 1 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object Prevention of Public Nuisance Public Safety
Mr Brown 38 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RH	Object
Mr & Mrs Fincher 120 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RL	Object
Mr Mitchener Licensing Solutions, 253 Botley Road, Burrige, Southampton, Hampshire, SO31 1BJ	Applicant's representative
Unknown 9 Holmlea Close, Willesborough, Ashford, Kent, TN24 0RB	Object
Unknown 4 Holmlea Close, Willesborough, Ashford, Kent, TN24 0RB	Object
Unknown 6 Holmlea Close, Willesborough, Ashford, Kent, TN24 0RB	Object
Unknown 10 Foxglove Road, Willesborough, Ashford, Kent, TN24 0RA	Object
Unknown 112 Cradlebridge Drive, Willesborough, Ashford, Kent, TN24 0RL	Object

**APPENDIX F**  
**CONDITIONS CONSISTENT WITH THE APPLICANTS OPERATING SCEHDULE**

**General - All four Licensing Objectives**

- 1) The Licence Holder will through the operation of the recognised 'proof of age' scheme, Challenge 21, ensure that any one who appears to be under 21 and is attempting to buy alcohol on the premises will be asked to provide accepted photographic proof of age. This will be limited to a photo driving licence, passport or ID card bearing a PASS logo.
- 2) The Licence Holder will ensure that a record of all refusals for the sale of alcohol is maintained
- 3) The Licence Holder will ensure appropriate and prominent signage throughout the store confirming the minimum legal age for the purchase of alcohol.
- 4) The Licence Holder will ensure that all staff are fully trained in alcohol sales with regular refresher training.
- 5) The Licence Holder will ensure that spirits are kept behind the counter.
- 6) The Licence Holder shall ensure that the premises is protected by a security system including intruder alarm and sensors as appropriate.

**The Prevention of Crime & Disorder**

No further steps identified

**Public safety**

- 1) The Licence Holder will ensure that all staff are adequately trained in fire safety procedures and the use of fire safety and fire fighting equipment.

**Prevention of Public Nuisance**

No further steps identified

**The Protection of Children from Harm**

No further steps identified

## **APPENDIX H - HUMAN RIGHTS**

### Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

### Article 1 of the First Protocol

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws, as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

### Article 10

3. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
4. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.