

# TEWKESBURY BOROUGH COUNCIL

<b>Report to:</b>	Licensing Sub-Committee (Licensing Act 2003 and Gambling Act 2005)
<b>Date of Meeting:</b>	14 October 2021
<b>Subject:</b>	Application for Variation of a Premises Licence 21/00618/LIQVAR - Aldi Stores, Gloucester Road, Tewkesbury, GL20 5SY
<b>Report of:</b>	Interim Licensing Team Leader
<b>Corporate Lead:</b>	Head of Community Services
<b>Lead Member:</b>	Lead Member for Clean and Green Environment
<b>Number of Appendices:</b>	Four

## **Executive Summary:**

Aldi Stores, Gloucester Road currently holds a premises licence (18/01182/LIQDPS). On 3 August 2021, Aldi Stores Limited applied for a variation of its licence to amend the hours for the sale of alcohol and opening hours to 06:00 to 00:00 every day of the week.

No representations were received from responsible authorities. 12 representations were received from other people and, as such, the matter is being referred to the Licensing Sub-Committee for determination.

## **Recommendation:**

**To DETERMINE the application by:**

- **granting the application as applied for;**
- **granting the application but with modification to times or conditions, appropriate to promote the licensing objectives; or**
- **rejecting all or part of the application.**

## **Reasons for Recommendation:**

The Sub-Committee is under an obligation to promote the four licensing objectives when determining applications for premises licences under the Licensing Act 2003. The licensing objectives are:

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

**Resource Implications:**

If any party to the hearing were successful in appealing any decision taken by the Sub-Committee at a Magistrates Court, the Licensing Authority may be liable to having costs awarded against it.

**Legal Implications:**

As outlined in the report.

**Risk Management Implications:**

None

**Performance Management Follow-up:**

If the application is granted a premises licence – incorporating any conditions that have been determined to be appropriate for the promotion of the licensing objectives – will be issued. If the application is refused, the applicant and all interested parties will be notified of the decision in writing.

In either case, the applicant and all interested parties will be provided with details of their right to appeal against the decision.

**Environmental Implications:**

None

**1.0 INTRODUCTION/BACKGROUND**

**1.1** Aldi Stores, Gloucester Road currently holds a premises licence (18/01182/LIQDPS).

**1.2** A copy of the current premises licence is attached as **Appendix 1** of this report. The current premises licence authorises the following licensing activities:

Sale by Retail of Alcohol Every Day 08:00 - 23:00

The opening hours of the premises

Every Day 08:00 - 23:00

**1.3** On 31 August 2021, Aldi Stores Limited applied for a variation of its licence to amend the hours for the sale of alcohol and opening hours to 06:00 to 00:00 every day of the week.

**1.4** A copy of the application is attached at **Appendix 2**.

**1.5** The applicant did not propose any amendments or additions to the current premises licence conditions.

**2.0 RESPONSIBLE AUTHORITIES**

**2.1** This application was subject to the statutory 28 days consultation with responsible authorities and other persons.

**2.2** In addition to Tewkesbury Borough Council as the Licensing Authority, a full copy of the application was sent to the following responsible authorities identified in the Act as statutory consultees. Their responses to the consultation, if any, are also shown:

- Environmental Health Authority – No comment made.
- Chief Officer of Police – No comment made.
- Fire and Rescue Authority – No comment made.
- Health and Safety Enforcing Authority – No comment made.
- Planning Authority – No comment made.
- Body with responsibility for child protection – No comment made.
- Public Health Authority – No comment made.
- Trading Standards – No comment made.
- Home Office Immigration Enforcement – No comment made.

### **3.0 OTHER PERSONS**

**3.1** In addition to responsible authorities, the Act permits any other person to make a representation if it is relevant to the application and relates to the licensing objectives.

**3.2** 12 representations were made from other people in relation to the application. These are reproduced at **Appendix 3**.

### **4.0 GUIDANCE AND POLICY**

#### **Statutory guidance**

**4.1** The Licensing Act 2003 states that, in carrying out its functions, a Licensing Authority must 'have regard to' guidance issued by the Secretary of State under section 182 of the Act. The guidance is therefore binding on all licensing authorities to that extent; however, it is recognised that each case must be decided on its own merits and the guidance should not fetter the discretion of the Licensing Authority to make decisions in individual cases. Any decision that the Licensing Authority makes should be supported by full reasons.

**4.2** The following extracts from the guidance are relevant to this application.

#### **Licence conditions – general principles**

**4.2.1** Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;
- should not be standardised and may be unlawful when it cannot be

demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;

- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

### **Each application on its own merits**

**4.2.2** 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.

**4.2.3** As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

**4.2.4** In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

### **Public nuisance**

**4.2.5** The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that, in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

- 4.2.6** Public nuisance is given a statutory meaning in many pieces of legislation. It is, however, not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include, in appropriate circumstances, the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.
- 4.2.7** Conditions relating to noise nuisance will usually concern steps appropriate to control the levels of noise emanating from premises. This might be achieved by a simple measure such as ensuring that doors and windows are kept closed after a particular time, or persons are not permitted in garden areas of the premises after a certain time. More sophisticated measures like the installation of acoustic curtains or rubber speaker mounts to mitigate sound escape from the premises may be appropriate; however, conditions in relation to live or recorded music may not be enforceable in circumstances where the entertainment activity itself is not licensable).
- 4.2.8** Any conditions appropriate to promote the prevention of public nuisance should be tailored to the type, nature and characteristics of the specific premises and its licensable activities. Licensing authorities should avoid inappropriate or disproportionate measures that could deter events that are valuable to the community, such as live music. Noise limiters, for example, are expensive to purchase and install and are likely to be a considerable burden for smaller venues.
- 4.2.9** As with all conditions, those relating to noise nuisance may not be appropriate in certain circumstances where provisions in other legislation adequately protect those living in the area of the premises, but the approach of licensing authorities and responsible authorities should be one of prevention and, when their powers are engaged, licensing authorities should be aware of the fact that other legislation may not adequately cover concerns raised in relevant representations and additional conditions may be appropriate.

#### **Licensing policy – general principles**

- 4.2.10** Every application received by the Licensing Authority will be considered on its own individual merits.
- 4.2.11** If an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the Licensing Authority must grant the application, subject only to conditions that are consistent with the operating schedule and any relevant mandatory conditions.
- 4.2.12** The Licensing Authority will aim to carry out its licensing functions in a way that promotes tourism, increases leisure and culture provision and encourages economic development within the borough; however the Licensing Authority will also always try and balance the needs of the wider community, local community and commercial premises, against the needs of those whose quality of life may be adversely affected by the carrying on of licensable activities, particularly within residential areas.
- 4.2.13** In particular the Licensing Authority will attempt to control any potential negative impacts from the carrying on of licensable activities, such as increased crime and disorder, anti-social behaviour, noise, nuisance, risks to public safety and harm to children.
- 4.2.14** The Licensing Authority's aim is to facilitate well run and managed premises with licence holders displaying sensitivity to the impact of the premises on local residents.

- 4.2.15** The Licensing Authority acknowledges that licensing law is not the primary mechanism for the general control of anti-social behaviour by individuals once they are beyond the direct control of the individual, club or business holding the authorisation concerned. As a matter of policy, however, the Licensing Authority expects every holder of an authorisation to be responsible for minimising the impact of their activities and anti-social behaviour by their patrons within the immediate surroundings of their premises.

### **Representations**

- 4.2.16** When an application is made for the grant, variation or review of a premises licence or club premises certificate, representations about the application can be made by responsible authorities or other persons.
- 4.2.17** Representations must be made to the Licensing Authority within the statutory period of 28 days beginning on the day after the relevant application is received by the Licensing Authority. Representations must be made in writing.
- 4.2.18** Representations can be made either be in support of an application or to express objections to an application being granted; however, the Licensing Authority can only accept “relevant representations.” A representation is “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.
- 4.2.19** For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation.
- 4.2.20** Whilst the Licensing Authority expects representations to be evidence based, there is no requirement for a responsible authority or other person to produce a recorded history of problems at a premises to support their representations, and it is recognised that in fact this would not be possible for new applications.

### **Representations from other persons**

- 4.2.21** Relevant representations about applications can also be made by any other person, regardless of their geographical position in relation to the relevant premises; however the Licensing Authority will usually give greater weight to representations that are made by people who can demonstrate that they would be directly affected by the carrying on of licensable activities at the premises concerned.

### **Conditions on licences and certificates**

- 4.2.22** Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The Licensing Authority will ensure any conditions that are imposed on a premises licence or club premises certificate are appropriate for the promotion of the licensing objectives;
- are precise and enforceable;
  - are unambiguous and clear in what they intend to achieve;
  - do not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
  - are tailored to the individual type, location and characteristics of the premises and events concerned;
  - are not to be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;

- do not replicate offences set out in the 2003 Act or other legislation;
- are proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
- do not seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- are written in a prescriptive format.

**4.2.23** Although the Licensing Authority may use standardised forms of wording in conditions to cover commonly arising situations and circumstances, “blanket conditions” will not be applied to licences and specific conditions may be drawn up and applied to meet local need and circumstances.

## **5.0 DECISION**

### **5.1 Representations**

**5.1.1** 12 representations were received during the consultation process. Members should take into account the following comments in relation to the representations:

### **5.2 Determination**

**5.2.1** In determining the application, the Sub-Committee must have regard to the statutory guidance issued by the Secretary of State, the Council’s adopted policy statement, the representations made and the evidence it hears. In particular, the Sub-Committee must seek to promote the four licensing objectives, which are:

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

**5.2.2** The Sub-Committee, having regard to the all of the above, must take such steps as it considers appropriate for the promotion of the licensing objectives which can include:

- granting the application as applied for;
- granting the application but with modification to times or conditions, appropriate to promote the licensing objectives; or
- rejecting all or part of the application.

### **5.3 Each application on its own merits**

**5.3.1** Members are reminded that each application must be considered on its own merits and in accordance with the Licensing Authority’s Statement of Licensing Policy. Furthermore, conditions attached to licences 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.

## **5.4 Licensing and planning**

**5.4.1** Paragraph 14.64-65 of the Statutory Guidance, that the Sub-Committee must have regard to, states in relation to the relationship with planning and licensing:

*“The planning and licensing regimes involve consideration of different (albeit related) matters. Licensing committees are not bound by decisions made by a planning committee, and vice versa.*

*“There are circumstances when, as a condition of planning permission, a terminal hour has been set for the use of premises for commercial purposes. Where these hours are different to the licensing hours, the applicant must observe the earlier closing time. Premises operating in breach of their planning permission would be liable to prosecution under planning law. Proper integration should be assured by licensing committees, where appropriate, providing regular reports to the planning committee.”*

**5.4.2** The Planning Authority advised the following:

*The application seeks to extend the alcohol licence and opening hours 06:00 – 00:00.*

*This would be in breach of the existing planning permission (ref: 12/00771/FUL - see attached). Condition 1 of the permission restricts the opening hours of the retail store as follows:*

*The retail trading use of the building hereby permitted shall not take place outside the hours of: 08.00 - 21.00 (Monday to Saturday) and 10.00 - 17.00 (Sundays and Bank Holidays).*

*Reason: To ensure that the noise emitted is not a source of nuisance to occupants of nearby residential properties at unreasonable hours in accordance with Policy EVT3 of the Tewkesbury Borough Local Plan to 2011 - March 2006.*

*Similarly, Condition 2 of the same permission restricts loading or unloading of service or delivery vehicles within a similar timeframe:*

*No loading or unloading of service or delivery vehicles associated with the use hereby permitted shall take place on or adjacent to the site outside the hours of 07.00 - 21.00 (Monday - Saturday) and 10.00 - 17.00 (Sundays and Bank Holidays) and no service vehicles shall arrive on the site outside these hours.*

*Reason: To ensure that the noise emitted is not a source of nuisance to occupants of nearby residential properties at unreasonable hours in accordance with Policy EVT3 of the Tewkesbury Borough Local Plan to 2011 - March 2006.*

*Any application to change the opening hours as proposed would require planning permission in the form of a planning application to amend Condition 1.*

## **6.0 OTHER OPTIONS CONSIDERED**

**6.1** None. The Act requires that all applications for a premises licence or the variation of a premises licence must be determined by the Licensing Authority's Licensing Sub-Committee where relevant representations are received.

## **7.0 CONSULTATION**

**7.1** A 28 day consultation was carried out in accordance with regulations.

## **8.0 RELEVANT COUNCIL POLICIES/STRATEGIES**

**8.1** Tewkesbury Borough Council's Licensing Act 2003 Policy Statement (**Appendix 4**).

- 9.0 RELEVANT GOVERNMENT POLICIES**
- 9.1** Statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003. <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- 10.0 RESOURCE IMPLICATIONS (Human/Property)**
- 10.1** None
- 11.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)**
- 11.1** None
- 12.0 IMPACT UPON (Value for Money/Equalities/E-Government/Human Rights/Health And Safety)**
- 12.1** None
- 13.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS**
- 13.1** None

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**Background Papers:** Licensing Act 2003  
Tewkesbury Borough Council's Licensing Act 2003 Policy Statement  
Statutory guidance issued by the Home Office under section 182 of the Licensing Act 2003

**Contact Officer:** Interim Licensing Team Leader  
[Louis.Krog@tewkesbury.gov.uk](mailto:Louis.Krog@tewkesbury.gov.uk)

**Appendices:** Appendix 1 – Current premises licence  
Appendix 2 – Variation application form  
Appendix 3 – Representations  
Appendix 4 - Tewkesbury Borough Council's Licensing Act 2003 Policy Statement