

BABERGH DISTRICT COUNCIL

From: Assistant Manager for Food Safety & Licensing	Report Number: B/LASub/21/2
To: Licensing Sub-Committee	Date of meeting: 16 December 2021

HEARING TO DETERMINE AN APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003

1. Purpose of Report

- 1.1 To report information to the Sub-Committee to enable the determination of an application made to vary premises licence BPL0229 - on issue in respect of Aldi, Girling Street, Sudbury, Suffolk CO10 1LZ.

2. Recommendations

- 2.1 The Sub-Committee must, having regard to the representations made, take such of the steps below (if any) as it considers appropriate for the promotion of the licensing objectives:

- to modify the conditions of the licence;
- to reject the whole or part of the application;

and for this purpose, the conditions of the licence are modified if any of them are altered or omitted or any new condition is added.

The Sub-Committee is able to determine the variation application.

3. Financial Implications

- 3.1 There is a statutory right of appeal to the magistrates' court for any party aggrieved by the decision taken by the Licensing Authority.

4. Risk Management

- 4.1 None, other than those that inherently apply to the Licensing Authority when carrying out its licensing functions. The four licensing objectives are prevention of crime and disorder, public safety, prevention of public nuisance and protection of children from harm.

5. Consultations

- 5.1 The application made has been subject to the statutory consultation period as prescribed by regulation. The notices advertising the application have been on display at the premises and published (Suffolk Free Press: 4 November 2021 edition).

6. Equality Analysis

6.1 There are no equality impacts arising directly from the matters contained within this report.

7. Shared Service / Partnership Implications

7.1 Not applicable.

8. Key Information

8.1 The hearing is to determine an application made to VARY an existing premises licence (number BPL0229) made under section 34 of the Licensing Act 2003. For ease of reference a summary of the existing premises licence permissions is attached as **Appendix A**.

8.2 The application has been submitted by the premises licence holder:

Aldi Stores Ltd

For licensed premises:

Aldi, Girling Street, Sudbury, Suffolk CO10 1LZ

The Designated Premises Supervisor (DPS) is:

Jason Smith (personal licence holder BPA0672 with Babergh DC)

8.3 The variation application was submitted on 27 October 2021.

8.4 The premises licence holders are seeking to diversify and update their current premises licence entitlements. The main element of the variation seeks to alter the existing premises licence by extending authorised hours for the sale of alcohol and opening hours to commence from 06:00hrs and end at 00:00hrs Monday to Sunday. The full application attached as **Appendix B** specifies the full proposals of the variation.

8.5 Aldi, Sudbury has benefitted from a premises licence issued by Babergh District Council since 7 November 2005 (granted via Licensing Act 2003 Sub-Committee hearing) and prior to that from a Magistrates liquor licence under the 1964 Licensing Act.

8.6 A hearing is necessary to determine the application following receipt of relevant representations which have not been withdrawn. The Licensing Authority must carry out its functions under the Act with a view to promoting the licensing objectives, which are:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm

8.7 In carrying out its licensing functions, the Licensing Authority must have regard to its Statement of Licensing Policy published under section 5 of the Act, and any guidance issued by the Secretary of State under section 182 of the Act. The

adopted Statement of Licensing Policy does not contain any Cumulative Impact Policy for any specific area of the district, as there is no evidential basis for it. However, the Licensing Authority is empowered to create a special policy should circumstances require it. The Licensing Authority's approach to this is specified in section 5 of the local Statement of Licensing Policy.

- 8.8 Where revisions are made to the legislation or guidance issued by the Secretary of State, there may be a period of time when the local Statement of Licensing Policy is inconsistent with these revisions. In these circumstances, the Licensing Authority will have regard, and give appropriate weight, to the relevant changes, guidance and its own Statement of Licensing Policy.
- 8.9 The Sub-Committee will also be aware of Human Rights Act 1998 considerations - specifically Article 6 and Articles 8 and 1 of Protocol 1 when determining applications for the variation of an existing licence.
- 8.10 Section 1.9 of the Council's Statement of Licensing Policy guides that the licensing process can only seek to control those measures within the control of the licensee or certificate holder (and their staff/agents). Licensing law is not a mechanism for the general control of anti-social behaviour by individuals once they are away from such premises and beyond the direct control of the licence holder, nor is it a cure-all for community problems. If a licence holder has taken all appropriate steps to promote the licensing objectives whilst carrying on authorised licensable activities, and there is no causal link established between problem issues in the locality and a specific premises then it is unlikely that licensing processes are the mechanism to address them.
- 8.11 Paragraph 14.19 of Secretary of State Guidance issued under section 182 of the Licensing Act 2003 states that "there can be confusion about the difference between the "need" for premises 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 and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.
- 8.12 The Licensing Authority's general approach to considering licensing hours is contained within section 6 of the local Statement of Licensing Policy, and section 7 guides on relevant representations.

9. Representations

- 9.1 Representations have not been received from any Responsible Authority under the 2003 Act.
- 9.2 There has been 2 representations received made by 'other persons'. These are attached as **Appendix C** to this report.

10. Appendices

Title	Location
A. Summary of premises licence BPL0229	Attached
B. Variation application (section 34)	Attached
C. Representations received from 'other persons'	Attached

11. Background Documents

- Licensing Act 2003
- Guidance issued by Secretary of State under Section 182 of the Licensing Act 2003 (April 2018)
- Statement of Licensing Policy (2021-2026)

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