

FOR CHAIR AND MEMBERS  
OF THE LICENSING ACT 2003 SUB COMMITTEE  
17 FEBRUARY 2023

**APPLICATION FOR PREMISES LICENCE**

**Applicant:** BROTHERHOOD VENTURES Ref No: LAPREM00502/22  
LTD

**Premises:** 42 DUKE STREET  
DARLINGTON  
DL3 7AJ

**Requested Licensable Activities** SALE OF ALCOHOL FOR CONSUMPTION OFF THE PREMISES;  
PROVISION OF LATE NIGHT REFRESHMENT (LNR) INDOORS

**Requested Hours:** 00:00 to 24:00 EVERY DAY (ALCOHOL)  
23:00 to 05:00 EVERYDAY (LNR)

**Premises opening hours** 00:00 to 24:00 EVERY DAY

**Notification to Responsible Authorities: 13 December 2022**

Police  
Environmental Health  
Public Health  
Licensing Authority  
Fire  
Trading Standards  
Health and Safety  
Planning  
Safeguarding  
Home Office Immigration

**Information on Council's Website: 13 December 2022**

**Advertisement in Northern Echo: 16 December 2022**

**LEGISLATION:**

The Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting the four Licensing Objectives:

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

The Licensing Authority must also have regard to its Licensing Policy and any guidance issued by the Secretary of State. The Licensing Authority may depart from its own Policy or the Secretary of State's Guidance if it has good cause but must be able to give full reasons for such a departure.

## DESCRIPTION OF PREMISES

The Applicant Company has described the premises as:

*“The premises to which this application relates is a late night takeaway and already has a premises licence for late night refreshment until 04.00. The takeaway enables customers to visit and collect food in person or arrange for a delivery.*

*The applicant is Brotherhood Ventures who have been in the retail business since 2014, they own a number of convenience stores and highly experienced retail operators. The applicant is expanding the business and providing a click and collect service for all convenience products where customers will be able to order by phone or online for delivery or collection in person.*

*The premises is not changing and will remain as a hot food takeaway. The convenience product, (including alcohol) will not be displayed or on show to customers, and the premises is only being used as a storage facility where the product will be collected for delivery, or by a customer to collect and take away.*

*All staff responsible for the delivery of alcohol will be trained in every element to ensure there is no risk to the licencing objectives.*

*In terms of addressing the licencing objectives and in order to mitigate any risk from the sales of alcohol and its impact on the licencing objectives a number of robust conditions, which reflect the expected policies and procedures to be operated within the business, have been included as part of this application.”*

## THE APPLICATION

On the 12 December 2022 an application was made by the applicants company, Brotherhood Venture Ltd via their agents, Licensing Matters, in accordance with Section 17 of the Licensing Act 2003 for the premises to supply alcohol for consumption off the premises and the provision of late night refreshment to take place indoors (**Appendix 1**). All Responsible Authorities received a copy of the application and it was properly advertised both in the press and on the premises.

## THE REPRESENTATIONS

On the 6 January 2023, the Licensing Department received representations from the police in relation to this application. These representations were based on the prevention of crime and disorder and prevention of public nuisance objectives being undermined.

In summary, the police state that Duke Street is within a mixed area of residential and business premises and within the footfall of the night time economy. There are currently 13 licensed premises in Duke Street, 12 of which are licensed until 02.00am. The location of this premises is in a predominantly residential area and the hours applied for hot food would essentially mean it would be open 24 hours per day. The applicant has applied to supply alcohol until 3.00am from the shop and it is argued that all of this would likely impact on public nuisance and crime and disorder.

Evidence from the only other premises with a 24 hour alcohol licence in Northgate has shown an increase in anti-social behaviour and violent crime at that location by people who have already been out, wishing to prolong their alcohol consumption.

Should the licence be granted, the public could access the premises 24 hours per day to consume hot food. If that were to be the case they would need to apply for both on and off sales.

There is a current licence in place for these premises (commonly referred to as a shadow licence), making enforcement difficult if they choose not to adhere to conditions of the licence.

The representations have been reproduced in full at **Appendix 2**

The current list of licensed premises and their hours in Duke Street is at **Appendix 3**

## **SHADOW LICENCE**

VJ Ventures Ltd currently hold a premises licence for 42 Duke Street, Darlington, DL3 7AJ for late night refreshment; open until 03.00 each day and for residential deliveries until 04.00. A copy of this licence is at **Appendix 4**. The position of the Licensing Act 2003 allows for the existence of more than one licence in respect of the same premises.

The term “shadow licence” describes the situation where a premises licence is granted to one party in respect of a premises where another party already holds a separate licence. Although they are not explicitly referred to in the Licensing Act 2003, a shadow licence will typically be granted on the same terms as the existing licence being operated.

In circumstances where a tenant’s actions could have a negative impact on the licence e.g. they might become insolvent or bankrupt and the licence could lapse, a shadow licence will allow the business to continue without having to go through the whole process of applying for a new licence.

## **THE APPLICANT’S RESPONSE**

The representation from police was sent to the Licensing Matters acting on behalf of Brotherhood Ventures and a response was received from Gill Sherratt. In summary Ms Sherratt made it clear that this business will be a hot food takeaway and retailer of convenience products (not a store). The company is owned by Mr Vikas Phouhat who already has a licence and creating a new company will reflect the progression of the business.

The nature of the business will not change. Currently the food take away is open for people coming to the premises to collect in person between 11:00 and 03:00, and for the delivery of the food until 04:00. Under the terms of this compromise, that will remain the same as it is now but with one additional hour for the delivery of hot food to 05:00.

The interpretation of LNR and it needing to be for both on and off sale is not correct. The application for LNR is for the SALE of the goods (indoors) and has no connection to where the food is consumed. Consumption never has and never will be consumed on this premises, it is a takeaway and delivery service only.

The sale of convenience products (including alcohol) is a diversification for this business due to demand from local people who prefer products to be delivered to them in person at home. This is now widespread practise and the national presence of companies such as Ubereats and Just Eat means that all products are freely accessible to be delivered 24/7. Orders can be made from the large supermarkets on these websites and delivered at any time, why therefore should a smaller retailer not also provide this service?

In light of police concerns Mr Phoughtat was prepared to agree that customers do not attend the premises for any reason after 03:00, the same time he is licensed for at present. Therefore, no additional hours for people attending the premises are being requested.

In relation to deliveries, in the interest of compromise and to demonstrate the service he provides will have no negative impact, a compromise is offered as follows:

Deliveries of alcohol will take place between 06:00 to 04:00 Monday to Sunday (deliveries of all other products to be 24 hours).

Ms Sherratt appreciated that a shadow licence could create enforcement difficulties and suggested a condition as below:

**In the event that more than one premises licence exists for the premises, this premises licence (number) will not be used for the conduct of licensable activities without prior written notification to the licensing authority. That notification will include the time and date from which the premises licence will be in effect.**

**Should the licence holder want to end the use of this premises licence in favour of another premises licence, they will notify the licensing authority immediately in advance that a changeover is to be made & provide the time and date of that changeover.**

The response has been reproduced in full at **Appendix 5**

#### **ADDITIONAL INFORMATION**

There has been some discussion over the applicant indicating indoors on the application form for provision of LNR when he intended to do takeaways, and if this would require a re-application. The general feeling is that both indoors and outdoors should have been indicated on the form, however there was a description of the activities requested within the narrative of the application form so it is unlikely the public would have been mis-led. This is still subject of discussion with both parties, who are working together with their legal teams to resolve this issue.

On 23 January 2023 Police provided additional information to Ms Sherratt highlighting Darlington Borough Councils Licensing Policy encouraging a closing time of 11.00pm in residential areas and clarifying the operating models of other premises who have 24 hour licences. Reference was also made to changes to the road system in Duke Street in recent years, now taking vehicles through a residential area via a one way system.

Police agreed to the sale of alcohol until 11.00pm and the provision of LNR until 3.00am with the closure of the premises at 3.00am. This information is reproduced in full at **Appendix 6**

Relevant information from Darlington Borough Councils Licensing Policy is at **Appendix 7**

Relevant information from Section 182 Guidance to the Licensing Act 2003 is at **Appendix 8**

At the time of writing this report Ms Sherratt was taking instruction from her client.

## MEMBERS' OPTIONS

Members may consider the following options:

1. **Grant** the application subject to the mandatory conditions and any additional conditions agreed between the police and applicant
2. Place any **additional conditions** on the licence that Members consider are necessary to address any concerns relating to, the prevention of crime and disorder, the prevention of public nuisance, public safety and protection of children from harm.
3. **Reject** all or part of the application

Members are reminded that any aggrieved party (ie Applicant Company or Other Person) may appeal any decision of the Licensing Sub Committee to the Magistrates' Courts.

**Dave Winstanley**  
**Director of Group Services**

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**For admin use only:**  
**Sub Committee Decision:**

**GRANT ALL/PART OF APPLICATION/REJECT ALL/PART OF APPLICATION/ PLACE CONDITIONS**

**Reasons:**

