

NORWICH CITY COUNCIL

Report for Resolution

Report To Licensing Sub-Committee

26 January 2011

Report of Head of Citywide Services

Subject Licensing Act 2003:
Application for the Grant of a Premises Licence -
McDonalds Restaurant 162 Barrett Road
Norwich NR1 2RT

Purpose

Members are asked, in accordance with the delegation of licensing functions contained in the Norwich City Council Statement of Licensing Policy (Licensing Act 2003), to consider the application to grant a Premises Licence in respect of McDonalds Restaurant 162 Barrett Road Norwich NR1 2RT following the receipt of Interested Party objections.

Recommendation

That Members determine the application to grant a Premises Licence in respect of McDonalds Restaurant 162 Barrett Road Norwich NR1 2RT in accordance with the:

- Licensing Act 2003;
- Guidance issued under Section 182 of the Licensing Act 2003; and
- Norwich City Council Statement of Licensing Policy.

Financial Consequences

The financial consequences for this report are nil.

Corporate Objective/Service Plan Priority

The report helps to achieve the service plan priority of protecting the interests of the public through the administration of the licensing function.

Contact Officers
Ian Streeter

Phone No 212439

Background Documents

The Licensing Act 2003
Guidance issued under Section 182 of the Licensing Act 2003
Norwich City Council Statement of Licensing Policy

1.0 The Application

- 1.1 The applicant is Kevin Foley Ltd of 162 Barrett Road Norwich NR1 2RT.
- 1.2 The application premises are a fast food restaurant with a drive through facility. The application seeks to allow the provision of late night refreshment from the drive through facility only. The applicant has confirmed in their operating schedule that no pedestrians will be served at the drive through windows.
- 1.3 The details of the Operating Schedule are as follows:
- 1.3.1 The Licensable Activities are:
- Late Night Refreshment
- 1.3.2 The proposed standard days and hours for the licensable activities are:
- Late Night Refreshment 23:00 – 05:00 Sunday – Monday
- 1.3.3 The opening hours requested are:
- 23:00 – 05:00 Sunday - Monday
- 1.4 The steps proposed by the applicant to support the Licensing Objectives are attached to the report as Appendix A.

2. Relevant Representations

- 2.1 The responses from the Responsible Authorities are as follows:
- Police – No representations.
- Environmental Services – No representations.
- Fire Officer – No representations.
- Planning Officer – No representations.
- Area Child Protection Committee – No representations.
- Trading Standards – No representations.
- 2.2 Three objections to the application have been received from Interested Parties and one objection from a ward councillor, all with concerns relating mainly to the licensing objective of Public Nuisance. Copies of the representations are attached to the report as Appendix B.
- 2.3 A site map of the area identifying the application premises and Interested Party addresses will be available at the meeting.

3.0 Norwich City Council Statement of Licensing Policy

- 3.1 Attached at Appendix C are the elements of the City Council's local Licensing Policy which are considered to have a bearing upon the application:

4.0 National Guidance (issued under section 182 of the Licensing Act 2003)

- 4.1 Attached at Appendix D are the elements of the National Guidance issued by the Secretary of State that are considered to have a bearing upon the application. Also included are the relevant extracts relating to representations from local councillors.

5.0 Summary

- 5.1 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.

- 5.2 In making its decision, the Sub-Committee is also obliged to have regard to guidance issued under Section 182 of the Licensing Act 2003 (National Guidance) and the Council's own local licensing policy. The Sub-Committee must also have regard to all of the representations made and the evidence it hears.

- 5.3 The Sub-Committee must take such of the following steps as it considers necessary for the promotion of the licensing objectives:

- Grant the application as asked;
- Modify the conditions of the licence by altering or omitting or adding to them;
- Reject the whole or part of the application

- 5.4 The Sub-Committee is asked to note that it may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

- 5.5 The representations received from the Interested Parties appear to relate to issues that fall under the licensing objective of the prevention of public nuisance. The Sub-Committee is directed to paragraph 24 of the local licensing policy at Appendix C which contain examples of factors that impact on the licensing objective of the prevention of public nuisance that the applicant could consider when addressing these issues. These paragraphs also contains examples of control measures that may be taken into account in

operating schedules having regard to the type of premises and/or the licensable activities.

- 5.6 Insofar as the issue of licensing hours is concerned, the Sub-Committee is directed to paragraph 13.41 of the national guidance, which states that licensing hours should not inhibit the development of evening and night-time local economies, and that providing consumers with a greater choice and flexibility is an important consideration. However, this should always be carefully balanced against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet. The Sub-Committee is also directed to paragraph 30.5 of the local licensing policy, authorising the restriction of licensing hours, where the licensing authority believes, on the basis of representations, that to not do so would exacerbate public nuisance.

The Committee must decide whether there is a strong enough case for the restriction of licensing hours, based on the representations made, to promote the licensing objectives.

- 5.7 The Sub-Committee is also reminded of the contents of appendices 2, 3 and 4 of the local licensing policy (not re-produced in this report) that contain pools of model conditions relating to the prevention of crime and disorder, public safety and the prevention of public nuisance.

P Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)

We follow all McDonald's procedures and guidelines with regards to operations. The company has a vast experience in opening 24 hours in a variety of places. Regular checks are made throughout the night to highlight any specific problem areas prior to them becoming an issue. Fully trained managers will work these shifts as well as full trained staff. There will also be frequent unannounced checks carried out by both the franchisee and McDonald company employees.

b) The prevention of crime and disorder

12 Camera Digital CCTV System is in operation 24 hours as well as an improved external lighting plan.
Staff are always on site and have emergency assistance alarms linked to our security provider.
All managers have conflict management training.
We have a very good relationship with local PCSO's so will endeavour to continue this and allow site to be used as a base if needed

c) Public safety

No pedestrians will be served at the Drive Through windows.
Only vehicular traffic permitted to use the site.
Laging system used if customer has to wait to prevent either customer or staff having to walk outside building.
All managers hold first Aid certificates
Well lit traffic and pedestrian areas
Full CCTV and security cover.

d) The prevention of public nuisance

All traffic using McDonalds during extended hours are generally passing through. Any stationary parked vehicles will be captured on CCTV and in case of noise, will be asked to leave by managers. Regular litter management will be addressed in and around the business. We have a good internal storage of waste so none left outside premises. Sufficient external litterbins available for customers. No break out noise from premises

e) The protection of children from harm

Due to the time off day for this application, we do not anticipate any unaccompanied or vulnerable children to visit the site especially as only vehicular traffic allowed on site.

* PLEASE SEE ENCLOSED MCDONALDS GUIDE FOR MORE DETAILS OF OPERATION AND MANAGEMENT TRAINING.

**Norwich City Council Licensing Authority
Licensing Act 2003**

**Statement of support or objection to
an application for a premises licence**

Your name/organisation name/name of body you represent (see note 1)	LIVE
Postal address	160 BARRETT RD
Email address	
Contact telephone number	

Name of the premises you wish to support or object to	MC DONALDS
Address of the premises you wish to support or object to.	162 BARRETT RD

Your support or objection must relate to one of the four Licensing Objectives (see note 2)

Licensing Objective	Please set out your support or objections below. Please use separate sheets if necessary
To prevent crime and disorder	
Public safety	
To prevent public nuisance	TO PREVENT PUBLIC NUISANCE
To protect children from harm	

RECEIVED
23 DEC 2010
LICENSING OFFICE

Please suggest any conditions which would alleviate your concerns.	NOISE FROM CAR RADIOS
--	-----------------------

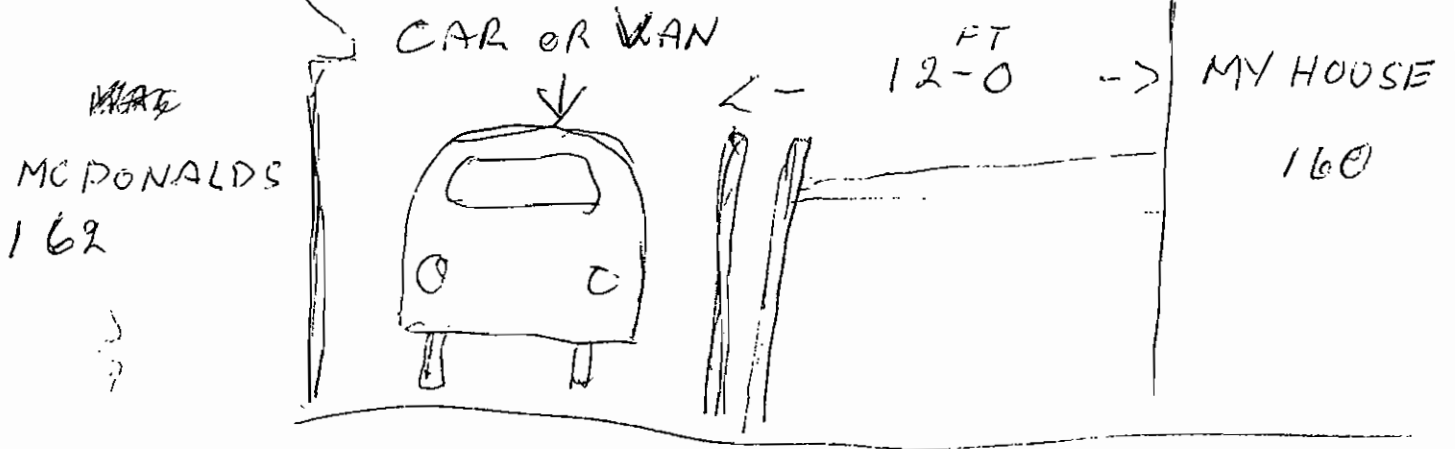
Signed: -

Date: 20 - 12 - 2010

Please see notes on reverse

Or	ment
010	

Organisational Development
23 DEC 2010
Post Room



Norwich City Council Licensing Authority
Licensing Act 2003

Statement of support or objection to
an application for a premises licence

RECEIVED
23 DEC 2010
24
LICENSING

Your name/organisation name/name of body you represent (see note 1)	Richard Welsh
Postal address	152 Barrett Rd
Email address	
Contact telephone number	

Name of the premises you wish to support or object to	McDonalds Barrett Rd
Address of the premises you wish to support or object to.	Barrett Rd

Your support or objection must relate to one of the four Licensing Objectives (see note 2)

Licensing Objective	Please set out your support or objections below. Please use separate sheets if necessary
To prevent crime and disorder	
Public safety	
To prevent public nuisance	The noise generated by cars & occupants in the middle of the night in a residential area
To protect children from harm	

Please suggest any conditions which would alleviate your concerns.	
--	--

Signed:

Date: 19. Dec 2010

Please see notes on reverse



21/12/2010

Dear licensing department

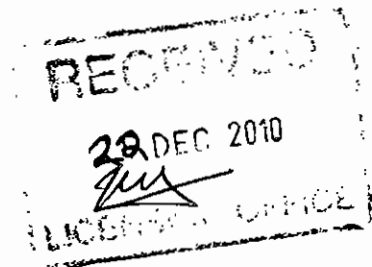
We live in 5 abbot road, Norwich NR1 2RZ and we do object to the extension of the opening hours for McDonalds at the corner of Hall Road and Barrett Road.

We believe that there is a strong possibility of increased littering and noise around the entire area. We often see a lot of litter belonging to McDonalds, caused by customers disrespectfully throwing rubbish into the street, especially at Weekends.

We also believe that the increased availability of junk food would decrease the health level of the population around the already fairly deprived area of Lakenham, increasing the obesity level, especially amongst teenagers.

NICO PILI

HAZEL DAVISON.



from Councillor David FAIRBAIRN

Lakenham ward

Dear Sir

Application for all night opening by McDonald's, Tuckswood Roundabout 10/02208/PREM

I understand that McDonalds have applied for an extension to their licence, so that they can serve food from their drive through until 5am. I would like to be informed about the details of this application, but from what I have been told I object most strongly to this being granted, and would want to say so if it comes before the planning (or licencing committee). Local residents have always complained to me about the noise and disturbance, happening mostly during the hours of darkness, from people heading for and walking away from McDonalds. This is only going to add to existing problems of noise and nuisance, often fuelled by drink, of course.

I also object to the fact that McDonalds have put in the application in the run up to Christmas, when most people have their minds on other things.

Yours

David Fairbairn

Liberal Democrats

Lakenham

APPENDIX C

Local Policy considerations

1.0 Introduction

1.4 The 2003 Act requires the Council to carry out its various licensing functions so as to promote the four licensing objectives. These are:

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

1.5 The 2003 Act also requires that the Council publishes a 'Statement of Licensing Policy' that sets out the policies the Council will generally apply to promote the Licensing Objectives when making decisions on applications made under the Act.

2.0 Consultation and Links to other Policies and Strategies

2.7 So far as possible, the Council will avoid duplication with other regulatory regimes, and will not to use its powers under the Licensing Act 2003 to achieve outcomes that can be achieved by other legislation and other enforcement agencies. As an example, the council will not seek to impose fire safety conditions that may duplicate any requirements or prohibitions that could be imposed under the Regulatory Reform (Fire Safety) Order 2005.

3.0 Applications for Licences

3.2 Applicants must address the four licensing objectives in their operational plan. The operating plan must have regard to the nature of the area where the premises are situated, the type of premises, the licensable activities to be provided, operational procedures and the needs of the local community. The operating schedule must demonstrate how the premises will be "good neighbours" both to residents and to other venues and businesses.

3.3 Applicants must provide evidence that suitable and sufficient measures, as detailed in their operating schedule, will be implemented and maintained, relevant to the individual style, location and characteristics of their premises and activities. They must also indicate if additional measures will be taken on an occasional or specific basis, such as when a special event or promotion is planned, which is, for example, likely to attract larger audiences.

4.0 Representations

- 4.1 “Responsible Authorities” (see Appendix 7) will be asked to consider all applications and to make representations to the Council, if they relate to the promotion of the four licensing objectives and particularly in respect of applications which, might be regarded as contentious. Representations must be evidentially based and the organisation should attend any hearing when the application is being considered. Representations can be made in opposition to, or in support of, an application.
- 4.2 The Council will consider all representations from any “Interested Party” (see Appendix 7), or their representative, which should preferably be evidentially based and supported by attendance at any hearing at which the application is being considered.
- 4.3 A representation, will only be accepted by the Council if it is ‘relevant’, ie it must relate to the likely effect of granting the licence on the promotion of at least one of the four licensing objectives. Representations, that are regarded as being frivolous or vexatious, will not be considered, and in the case of a review of a licence, any representation which is regarded as repetitious, will also not be considered. A decision as to whether a representation is frivolous, vexatious or repetitive will be made by an officer of the Council.

5.0 Conditions attaching to Licences

- 5.1 Where relevant representations are made, the Council will make objective judgments as to whether conditions may need to be attached to the premises licence to secure achievement of the licensing objectives. Any conditions arising as a result of representations will primarily focus on the direct impact of the activities taking place at licensed premises, on those attending the premises, and members of the public living, working or engaged in normal activity in the area concerned, and will cover matters that are within the control of individual licensees.
- 5.2 All applications will be considered on an individual basis and any condition attached to such a licence, will be tailored to each individual premises, in order to avoid the imposition of disproportionate or burdensome conditions on those premises. Therefore, mandatory conditions, will only be imposed where they are necessary for the promotion of the licensing objectives.

8.0 The Impact of Licensed Premises

- 8.1 When considering whether any licensed activity should be permitted, and a relevant representation has been received, the likelihood of it causing unacceptable adverse impact will be assessed by taking into account relevant matters including:
- the type of use, the number of customers likely to attend the premises and the type of customers at the time of the application;
 - the proposed hours of operation;

- the level of public transport accessibility for customers either arriving or leaving the premises and the likely means of public or private transport that will be used by the customers;
- the means of access to the premises including the location of customer entrances and exits;
- the provision of toilet facilities;
- the frequency of the licensable activity.

With any adverse impact it may be possible to take steps to mitigate or prevent the impact and if such measures are reliable an activity may be licensed.

13.0 Management of Licensed Premises

- 13.1 Within the operating schedule for premises from which alcohol will be sold, with the exception of qualifying community premises, a premises supervisor must be designated (designated premises supervisor) and such person must be in possession of a current personal licence. The licensing authority will normally expect the designated premises supervisor [DPS] to have been given the day to day responsibility for running the premises by the premises licence holder and, as such, would normally be present on the licensed premises on a regular basis. In addition to the DPS holding a personal licence, the licensing authority would strongly encourage the DPS to undergo additional training and to have experience commensurate with the nature and style of entertainment provided and the capacity of the premises.
- 13.2 The act does not require a DPS or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the DPS and the premises licence holder remain responsible for the premises at all times and have a duty to comply with the terms of the licensing act and any conditions, including the matters set out in the premises' operating schedule, in order to promote the licensing objectives. To that end, the licensing authority will be mindful of the guidance issued by the secretary of state, which recommends that a personal licence holder/DPS gives specific written authorisations to those individuals they are authorising to retail alcohol. Although written authorisation is not a requirement of the act and the designated premises supervisor/personal licence holder remain ultimately responsible for ensuring compliance with the act and licensing conditions, this action could assist in demonstrating due diligence should any issues arise with regard to enforcement.

The licensing authority will therefore expect that where the personal licence holder/DPS does not have the premises under their immediate day to day control, written authorisations will be issued to staff acting on their behalf, such authorisations being made available for inspection by a responsible Officer of the licensing authority or the police upon request.

LICENSING OBJECTIVES

24.0 Objective - prevention of public nuisance

24.1 Licensed premises can potentially have a significantly adverse impact on communities through public nuisances that arise from their operation. The amenity of residents and occupiers of other businesses should be maintained and protected from the potential consequence of the operation of licensed premises, whilst recognising the valuable cultural, social and business importance that such premises provide.

24.2 Public nuisance will be interpreted in its widest sense, and will take it to include such issues as noise, light, odour, litter and antisocial behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.

24.3 Applicants should be aware that stricter conditions, including controls on licensing hours for all or some licensable activities will be applied, where licensed premises are in residential areas or where their activities may impact on residents or other business premises, and where relevant representations have been received. Conversely, premises for which it can be demonstrated have effective measures to prevent public nuisance, may be suitable for longer opening hours.

24.4 The council will normally permit the hours during which alcohol is sold to match the normal trading hours during which other sales take place, unless there are exceptional reasons such as disturbance or disorder attributable to the location and/or the premises, and relevant representations have been made.

24.5 The council believe that the impact a licensed premises can have on a neighbourhood is significantly influenced by the times when those licensed premises are open, and the times when licensable activities are taking place. Consequently, the council has adopted a policy on hours of trading, (section E) and in so doing, has given full consideration to the secretary of state's guidance on hours of trading.

24.6 Applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to prevent public nuisance, relevant to the individual style and characteristics of their premises and events. For example, the increasing business requirement for licence holders to provide live or recorded music in premises where this has not previously been the case is especially pertinent, and should be fully assessed on the application.

24.7 When addressing the issue of prevention of public nuisance, the applicant must demonstrate that those factors that impact on the likelihood of public nuisance have been considered. These may include:

- the location of premises and proximity to residential and other noise sensitive premises, such as hospitals, hospices, care homes and places of worship
- the hours of opening, particularly between 11pm and 7am

- the nature of activities to be provided, including whether those activities are of a temporary or permanent nature and whether they are to be held inside or outside premises
- the design and layout of premises and in particular the presence of noise limiting features
- the occupancy capacity of the premises
- the availability of public transport
- wind down period between the end of the licensable activities and closure of the premises
- last admission time
- preventing litter and refuse becoming an eyesore
- consideration of local residents that they are not upset by loud or persistent noise or by excessive light
- preventing cars attending an event or premises from causing a noise nuisance and congestion, and from taking up local people's parking spaces
- avoid early morning or late night refuse collections
- avoiding emptying bins into skips, especially if they contain glass, either late at night or early in the morning
- customers eating, drinking or smoking in open air areas (for example beer gardens/forecourts and other open areas adjacent to the premises).

24.8 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:

- Effective and responsible management of premises.
- Appropriate instruction, training and supervision of those employed or engaged to prevent incidents of public nuisance, eg to ensure customers leave quietly.
- Fit prominent signs requesting that customers respect local residents and leave quietly.
- Control of operating hours for all or parts (eg garden areas) of premises, including such matters as deliveries ie not too early in the morning.
- Adoption of best practice guidance (eg Good Practice Guide on the Control of Noise from Pubs and Clubs, produced by Institute of Acoustics, Licensed Property: Noise, published by BBPA).
- Installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices.
- Management of people, including staff, and traffic (and resulting queues) arriving and leaving premises.
- Liaison with public transport providers.
- Siting of external lighting, including security lighting.
- Management arrangements for collection and disposal of waste, empty bottles etc.
- Effective ventilation systems to prevent the emission of unwanted odours.
- Take away packaging to include the name and address of the premises on it.
- Capacity levels for fast food outlets.
- Introduce a chill out area with coffee and mellow music where customers can settle before leaving.

- Introduce a closed door policy, with attendance prohibited for new customers 2 to 3 hours before licensable activities finish.

To address issues arising from customers smoking, eating and drinking in outdoor areas and on the highway outside the premises could include signage asking customers to keep noise to a minimum when using outdoor areas; restrictions on the numbers of customers permitted in certain outside areas and/or at certain times; and use of door-staff and employees to monitor possible public nuisance issues.

SECTION E - Hours of Trading

30.5 The policy options which will be applied to applications for premises licences where the sale or supply of alcohol for consumption on the premises is proposed, are as follows:

- **The Council will consider restricting the hours if it believes, on the basis of representations made, that not doing so would lead to or exacerbate problems of crime, disorder or public nuisance.**
- Where no relevant representations are received from either a responsible body or an interested party, the application will be granted in accordance with the terms of the operating schedule.
- Where relevant representations are received from either a responsible body or an interested party, and those representations relate to the hours of trading then subject to (a) above, the Council will consider restricting the hours in relation to any of the licensable activities for which a licence is being sought, provided it is considered necessary to do so in order to promote one or more of the licensing objectives which may not be achieved without such restrictions. The Council may impose different restrictions on hours for different licensable activities and for different days of the week.

APPENDIX D

National Guidance (issued under section 182 of the Licensing Act 2003)

Where representations are made

9.4 “It is for the licensing authority to decide in the first instance whether or not representations are relevant. This may involve determining whether they have been made by an interested party and whether or not, for example, an individual making a representation resides or is involved in business “in the vicinity” of the premises concerned...”

9.5 “...licensing authorities should consider whether the individuals residence or business is likely to be directly affected by disorder and disturbance occurring or potentially occurring on those premises or immediately outside the premises.”

Fundamental principles

13.16 “...licensing is about regulating licensable activities on licensed premises...and the conditions attached to various authorisations will be focused on matters which are within the control of individual licensees and others with relevant authorisations, i.e. the premises and its vicinity.”

13.17 “...whether or not incidents can be regarded as being “in the vicinity” of licensed premises is a question of fact and will depend on the particular circumstances of the case.”

Licensing law and the control of anti-social behaviour

13.18 “...licensing law is not the primary mechanism for the general control of nuisance and anti-social behaviour by individuals once they are away from the licensed premises.”

Standardised conditions

13.20 “Statements of policy should make it clear that a key concept underscoring the 2003 Act is for conditions to be tailored to the specific premises concerned. This effectively rules out standardised conditions...However, it is acceptable for licensing authorities to draw attention in their statements of policy to pools of conditions which applicants and others may draw on as appropriate.”

Licensing hours

13.40 “...in some circumstances, flexible licensing hours for the sale of alcohol can help to ensure that the concentrations of customers leaving premises simultaneously are avoided. This can help to reduce the friction at late night

fast food outlets, taxi ranks and other sources of transport which lead to disorder and disturbance.”

- 13.41 “...the Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time economies...”

Consideration for residents

- 13.41 “...Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.”