

East Herts Council

Licensing Decision Making relating to the Night Time Economy

POSITION STATEMENT

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1. Introduction

- 1.1 East Herts Council is the licensing authority responsible for considering, granting and enforcing permissions covering the sale of alcohol, entertainment and the provision of late night refreshment. Establishments concerned with these activities are herein termed 'licensed premises'. This term covers both premises already operating with a licence and those applying for a licence for the first time.
- 1.2. As required by statute, the council has adopted a Statement of Licensing Policy (herein referred to as the 'Licensing Policy') with regard to which it will determine licence applications. This position statement should be considered an addendum to the Licensing Policy and should be read in conjunction with it. This position statement provides more detail on how stakeholders, including the public, can raise issues and concerns about new applications or applications to vary a licence or seek a review of an existing licence.
- 1.3 In recent years there has been an increase in proposals related to the night time economy (NTE), that is, the economic activity taking place in the evening, such as eating and drinking, entertainment and nightlife, broadly between the hours of 9pm and 5am, often seven days a week. At the same time, there appears to have been a change in the type and style of offer they provide for customers, sometimes with existing premises seeking to extend their hours of operation later into the night, for example, shifting the closing time from 2.00am to 3.00am. On occasion, applications, whether for new premises or extensions to existing operating hours, have caused concern among the local residential population regarding their quality of life.
- 1.4 The council has many jurisdictions; in addition to being the licensing authority, the council is also the planning authority and environmental health authority and may have a

relationship with the applicant as a landlord. As a consequence, the council will interact with applicants and applications in a number of ways. Of particular relevance here, as a regulatory authority, the council will always need to strive to balance the benefits of a prosperous local night time economy with minimising any detrimental impacts on the quality of life and amenity of residents in a way that continues to make East Herts an attractive place to live and visit.

Licensing objectives

- 1.5 Licensing Act 2003 requires each licensing authority to carry out its duties, including determining licensed premises applications, with a view to promoting the licensing objectives specified in the Act. These are:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance
 - the protection of children from harm.
- 1.6 Reference throughout this Position Statement to the licensing objectives should be read as meaning the promotion of these objectives.

2. Who has a stake in licensing matters?

2.1 The council, as the licensing authority, has a duty to ensure that various parties are aware of an application for a new premises licence or a variation to an existing one. The table below lists these parties and how they are made aware of an application.

Table 1: Parties which the council has a duty to make aware of applications	
Party	Made aware by
<p>Responsible authorities:</p> <ul style="list-style-type: none"> • Licensing Authority – East Herts Council • Hertfordshire Police • Environmental Health – East Herts Council • Planning Service – East Herts Council • Fire Authority – Hertfordshire Fire & Rescue Service • Hertfordshire Safeguarding Children Board • Trading Standards – Hertfordshire County Council • Home Office – Alcohol Licensing Team • Public Health – Hertfordshire County Council • Health and Safety Executive <i>(only need to be consulted if they are the enforcing authority for Health and Safety at the premises)</i> 	<ul style="list-style-type: none"> • Applicant will submit copies of application documents directly to them at the same time as the documents are sent to the licensing authority • In the case of applications made online through the licensing portal, the council’s licensing team will send the application documents electronically to the responsible authorities immediately upon receipt
<p>Residents and businesses, notably those living/working in the vicinity of the premises</p>	<ul style="list-style-type: none"> • Written notices will be put up by the applicant (in a statutorily prescribed format), attached to or near the premises concerned and displayed for not less than 28 days • A public notice (in a statutorily prescribed format) submitted by the applicant will be published in a locally circulated newspaper • Information about pending applications will be displayed on the council’s website

2.3 The council wishes to take a broad and inclusive view of who constitutes stakeholders in the development of and proper operation of a successful night time economy in East Herts and the licensing decisions related to this. So, in addition to the parties listed above, the council sees the following as having a stake in night time economy related matters:

- residents across the town centre concerned
- residents in East Herts area generally
- local businesses in the town centre concerned
- local businesses in East Herts area generally
- local chambers of commerce
- local transport undertakings – (bus and coach operators; taxis and local rail companies)
- Hertfordshire County Council as highway authority
- patrons and prospective patrons of late night venues in East Herts
- owners, managers and staff of late night venues in East Herts
- the local health services
- elected and non-elected community representatives
- the local media
- other enforcing authorities
 - the Security Industry Authority as regulators for door supervisors
 - HM Revenue and Customs.

2.3 Each of the stakeholders in the table and the list above has influence over the night time economy in different ways. They can affect the direction the NTE takes as consumers, patrons, investors, suppliers and landlords. The licensing process is only one of the ways.

2.4 To ensure as wide a range of stakeholders as possible can participate in discussions about the NTE, the council will publicise applications for new or varied licences on its website and make it clear to whom representations can be made.

- 2.6 All stakeholders have an ability to engage with the licensing process by making representations during the application consultation period for new licences and variations to existing licences.
- 2.7 Stakeholders will also be able to express their views by applying for a review of a particular premises licence where they have evidence that the licensing objectives are not being addressed.

3. Stakeholder engagement and representations

The basis of decision making

- 3.1 The process for making decisions on licensed premises applications is governed by the Licensing Act 2003 and associated regulations. Unlike other ways in which the local authority determines applications, for example planning applications, there is a presumption in licensing law that if:
- the licensing authority receives a valid application *and*
 - the application is properly advertised *and*
 - there is no objection raised by any responsible authority within the 28 day statutory consultation period *and*
 - there is no objection raised by any other person within the 28 day statutory consultation period *then*
 - on the 29th day after the valid application is received, the licence is ***automatically*** granted as applied for, that is, without any variation or condition.
- 3.2 It is within this context that the council will do its utmost to facilitate those wishing to make representations to do so in the most effective way and within the 28 days consultation period.

How responsible authorities can make their views known

Licensed premises applications

- 3.3 The council strongly encourages the responsible authorities listed in Table 1 above to engage in the consultation process

regarding applications and raise any points as representations to the licensing authority. This may include submitting an objection.

- 3.4 Evidence-based representations provide the council, when acting as the licensing authority deciding on applications, with the best means of assessing the merits, or otherwise, of applications under consideration.
- 3.5 While the type of representation and level of evidence will vary on a case-by-case basis, best practice would suggest representations should include wherever possible:
- whether the representation is for or against the application
 - reference to concerns over the undermining or potential undermining of the Licensing Objectives (as determined by legislation and listed in the council's Licensing Policy)
 - evidence to support the above.
- 3.6 The council encourages all responsible authorities to engage with applicants at the pre-application stage and give advice to assist applicants to amend their proposals to accommodate the issues raised and thus avoid the responsible authority making an objection. Whether the responsible authority engages or not, and whether or not the applicant works with the responsible authority, does not fetter the responsible authority's discretion over whether or not to object to an application. If an objection has been received, the council will wish to see efforts or continued efforts on the part of both the applicant and the responsible authority to accommodate the concerns raised.

Temporary Event Notice applications

- 3.7 The police and the council's Environmental Health team are the only responsible authorities the law requires to be notified of and have the right to object to Temporary Event Notices (TENs). They have an ability to assist the licencing authority by making

appropriate objections during the consultation period following submission of a TEN.

- 3.6 The format and content of representations are not defined in legislation or guidance. It would assist the licensing authority in their decision making if responsible authorities could include in their representations as much of the following information as possible in support of their position:
- a commentary on past events at the venue / event
 - any evidence of breaches of relevant statutory requirements
 - a summary of complaints, if any, from the public concerning the premises.

How members of the public can make their views known

- 3.7 In order to make informed decisions, the council is keen to hear from those with a view on a particular application.
- 3.8 As noted in Table 1 above, the legislation and guidance dictates that members of the public have a specific time period during which to raise issues. Of note, the Licensing Act 2003 established a very prescriptive procedure for the way in which applications are made and determined. Of note:
- the requirements concerning advertising of applications are set out in the Licensing Act 2003 (Premises Licences and Club Premises Certificates Regulations) 2005
 - Regulation 25 provides that the applicant shall advertise the application for a period of no less than 28 consecutive days starting on the day after the day on which the application was given to the relevant licensing authority by displaying a notice that complies with prescribed requirements
 - the applicant must also publish a notice at least once in a local newsletter or similar document circulating in the vicinity of the premises

- these regulations dictate the notice period during which members of the public can raise issues or concerns
- the Regulations oblige the council, as the licensing authority, to also advertise the application on its website for a period of no less than 28 consecutive days starting on the day after the day on which the application was given. The content of the advertisement is prescribed.

3.9 The council has considered the scope for raising awareness of applications in additional ways. Given that licensing matters are governed by statute and regulation, this is not quite as straightforward as it may seem. Of note, Westminster City Council has sought in the past to facilitate greater awareness by contacting properties in the vicinity of premises subject to a licence application by means of individual correspondence. The council was then challenged in the High Court by some residents who lived in the locality but outside of the 'perimeter' the council had drawn for consultation purposes and so had not been contacted directly by the council. The judgement was that the council did not need to send letters to residents but if they chose to do so then they should send letters to *all residents affected*. R. (on the application of Albert Court Residents Association) v Westminster City Council [2010] EWHC 393 (QB).

3.10 Having considered this case, it appears that any view on who constitutes *all* the residents affected will always be open to debate and thus such an approach is likely to place the council in a very difficult position. Therefore, it is the council's view that relying on the means of communication set by the relevant regulations, and detailed above, is a better way to proceed than attempting to directly contact those the council may deem at any one time to be affected.

3.11 That said, the council will do its utmost to ensure anyone wishing to make a representation is aware of the 28 day

window for responding and the central importance of this given that, unfortunately, the council cannot vary this time period.

3.12 Within the relevant legislation, regulations and case law discussed above, the council will strive to facilitate resident engagement, including emphasising the 28 day consultation window. The council will:

- encourage applicants to hold informal discussions with local residents and businesses, the responsible authorities and others prior to submitting formal licence applications
- ensure applicants meet their statutory obligations to publicise their applications; advertising in a local newspaper and posting a notice at or near the premises – when such notices are removed or become defaced the council will require them to be replaced and if appropriate the consultation time period to be restarted
- advertise applications on the council's website
- alert ward members and parish/town councils of applications in their areas to enable them to discuss matters with residents should they wish

3.13 When deciding on applications, it would be particularly helpful if members of the public making representations could provide the following:

- whether the representation is for or against the application
- reference to concerns over the undermining or potential undermining of the Licensing Objectives (as determined by legislation and listed in the council's Licensing Policy)
- evidence to support the above.

How comments made by members of the public feed into the decision making process

3.14 So long as comments from members of the public are received by the council within the 28 day consultation period, they will

be fed into the decision-making process. Thus, comments from members of the public have a significant role to play in the decision making process. The council will share comments with other responsible authorities where the comments relate to that authority's remit. This will:

- provide information which the responsible authority can draw on when considering what representations, if any, it wishes to make
- assist the responsible authority in determining what conditions, if any, it would wish to see attached to a grant approval
- enable the responsible authority to assess whether it needs to carry out any further investigations itself.

3.15 The council will also share comments with the applicant as required by law. This will:

- assist the applicant to better understand how the proposal could impact on local people
- enable the applicant to make amendments to, or withdraw, the application to mitigate or allay concerns raised
- provide the applicant with the opportunity to better explain what is proposed and/or address any misunderstandings; this in itself may mitigate or allay concerns

3.16 To be a valid representation then the person making the representation must be clearly identifiable and give their address. The representation must be 'relevant', and must not be 'vexatious' or 'frivolous'.

3.17 A representation is 'relevant' if it is argued that the granting of the licence would be likely to have an impact on at least one of the licensing objectives. So, for example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would *not* be

relevant as prevention of a detrimental impact on other commercial premises is not one of the four licensing objectives.

- 3.18 A representation may be considered 'vexatious' if it appears intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses.
- 3.19 'Frivolous' representations are essentially those lacking seriousness. Frivolous representations could concern issues which are, at most, minor and/or for which no remedial steps would be warranted or proportionate.
- 3.20 Any person who is aggrieved by a rejection of their representations as either vexatious or frivolous may lodge a complaint through the council's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.
- 3.21 If the issues raised by members of the public cannot be mitigated by the applicant through informal discussion, nor allayed to the satisfaction of the responsible authorities, then the council will, within 28 days of the close of the consultation, hold a public hearing of the Licensing Committee, or a sub-committee, to consider and determine the application.
- 3.22 Determining applications is dealt with in Section 4 below.

Expressing views through the planning process

- 3.22 Another key route by which stakeholders can express their views is through the planning process, either when neighbourhood plans are being developed or when particular planning applications are considered. The mechanisms and procedures governing how interested parties can input to planning decisions is covered in the council's planning policies – see <https://www.eastherts.gov.uk/planning>

4. Determining applications

- 4.1 Where at all possible, the council will assist in enabling the applicant and those making representations to find common ground thus mitigating or removing the concerns raised. As stated above, however, the timescale for this is extremely tight. Section 3 above has detailed the way in which responsible authorities, the public and others can make representations and how these can affect the proposed application.
- 4.2 If the issues raised by members of the public cannot be mitigated by the applicant through informal discussion, nor allayed to the satisfaction of the responsible authorities, then the council will, within 28 days of the close of the consultation, hold a public hearing of the Licensing Committee, or a sub-committee, to consider and determine the contested application. This also applies to contested applications for variations to a licence or a review of a licence.
- 4.3 At the hearing all responsible authorities and other persons who have made valid representations will be entitled to attend and make their representations in person. Those who have made representation do not have to attend and all valid representations whether made in person or in writing will be considered.
- 4.4 The council's Licensing Committee, or a sub-committee of this Committee, will consider the oral and written evidence before them. In determining the weight to place on the evidence before them, the members of the Committee will consider how the application supports or otherwise the four licensing objectives specified in the Licensing Act 2003:
- the prevention of crime and disorder
 - public safety
 - the prevention of public nuisance and
 - the protection of children from harm.

4.5 These four objectives underpin the council's Licensing Policy. The Policy goes on to state that the legislation supports a number of other key aims and purposes and that these too are vitally important and thus are key to decision making. These additional aims and purposes consist of:

- protecting the public and local residents from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises
- giving the police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems
- recognising the important role which pubs and other licensed premises play in our local communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises
- providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area
- encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may affect them.

4.6 The Licensing Committee, or sub-committee, is required under the legislation to make a decision on the application at that hearing; there is no power to defer a decision.

Interplay between planning decision making and licensing decision making

4.7 While the development control and planning consent processes are separate jurisdictions to licensing decision making there are links between them. The council as a planning authority is a

responsible authority under the Licensing Act 2003. Intelligence sharing and representations are routinely made between officers involved in processing applications under the two decision making regimes. The decision making processes and enforcement criteria under each regime, however, are different so that action taken in response to particular circumstances involving a given venue may not be the same under both regimes.

5. Enforcement action

5.1 Enforcement covers a wide range of actions from giving advice through to prosecution and closure of premises. The council recognises that it is good practice for enforcement activity to be intelligence-led and proportionate.

5.2 In common with other local authorities, the council as the licensing authority does not routinely monitor all licensed premises for compliance with specific licensing conditions. This would be unnecessary as most premises conduct their business in a responsible way, keeping to the conditions of their licence.

5.3 Thus, the council's enforcement action needs to be targeted. Decisions about which premises to investigate will be:

- reactive – based on a specific complaints or resulting from intelligence from partners that strongly suggests a breach of the licence has occurred/is on-going and/or
- proactive – this may take the form of one-off or periodic follow-ups based on previous complaints.

Raising concerns about licensed premises

5.4 Given the council's desire to be as responsive as possible to concerns, it is likely that most enforcement action will be reactive. It is therefore paramount that individuals, organisations and other authorities report incidents and concerns about specific licensed premises when they arise so

that timely investigation and intelligence gathering can take place.

- 5.5 Wherever possible, the council would expect such concerns to be raised with the Premises Licence Holder or Designated Premises Supervisor in the first instance. Often, the business may not have realised that its operation is causing nuisance or problems and raising the issue is sufficient to ensure a prompt and adequate remedy.

The licensing authority's approach to enforcement

- 5.6 If raising concerns with particular premises does not remedy the situation, the council may become involved. In such circumstances, the council may:
- arrange meetings between various parties, including members of the public if appropriate, to jointly explore how best to remedy the situation
 - direct the Premises Licence Holder or Designated Premises Supervisor, business owner or occupier as appropriate to take action. This could take the form of issuing advice and guidance or may be more directive, for example, though not limited to, requiring specific remedies for noise nuisance or imposing variations to the conditions of the licence via a review
 - visit the premises in an attempt to witness the problem directly.
- 5.7 Sometimes, issues may arise within an area or on a particular street where it is not clear which establishment(s) is causing the issues. It can be the case that an issue arises from the interaction of venues and patrons purely because of the geographical proximity, for example, a pub or club, late night food take-away and/or taxi ranks all located in close proximity may encourage concentrations of noise and/or other nuisance.

- 5.8 In the short-to-medium term, in such circumstances council officers will seek to identify which establishment(s) is/are causing the issues and then make appropriate interventions as discussed above.
- 5.9 In the longer term, the council, in its wider capacity than simply being the licensing authority, recognises it has a role to play with partners in identifying, addressing, mitigating and if at all designing-out the types of nuisance that can arise from the night time economy.

Partners' roles in enforcement activities

- 5.10 Enforcement activity may be undertaken by one or more of the responsible authorities separately based on the extent to which the issue in question relates to their particular jurisdiction.
- 5.11 The statutory guidance issued to licensing authorities by the Home Office under section 182 of the Licensing Act 2003 (last amended in 2017) states *"It is also reasonable for licensing authorities to expect that other responsible authorities should intervene where the basis for the intervention falls within the remit of that other responsible authority. For example, the police should make representations where the representations are based on concerns about crime and disorder. Likewise, it is reasonable to expect the local authority exercising environmental health functions to make representations where there are concerns about noise nuisance. Each responsible authority has equal standing under the 2003 Act and may act independently without waiting for representations from any other responsible authority"*.
- 5.12 On that basis the lead authorities would be:
- **Crime and disorder** – Hertfordshire Constabulary
 - **Noise and other nuisance** – East Herts Council as Environmental Health authority

- **Public safety issues** – East Herts Council as Environmental Health authority; Hertfordshire County Council as Fire Authority
- **Prevention of children from harm** - Hertfordshire Constabulary; Hertfordshire County Council as Social Services and Education Authority.

5.13 Where the issues are wider, enforcement may be taken by the responsible authorities working together in partnership. The council is committed to partnership working. This could involve, for example:

- sharing intelligence, joint monitoring visits and intervention meetings with licence holders
- bringing forward a review of the licence for an individual licensed premises
- seeking changes to the East Herts Council's Statement of Licensing Policy on the basis of the evidence for, and articulation of, particular amendments.

The licensing authority's ability to act as a responsible authority

5.14 East Herts Council recognises that the Licensing Act 2003 includes licensing authorities within the list of responsible authorities. In certain circumstances it may be appropriate for the council to take action as a responsible authority in the absence of action by other responsible authorities, although it is important to note the statutory guidance accompanying the Act clearly states:

*“Licensing authorities are **not** expected to act as responsible authorities on behalf of other parties (for example, local residents, local councillors or community groups) although there are occasions where the authority may decide to do so. Such parties can make relevant representations to the licensing authority in their own right, and it is reasonable for the licensing authority to*

expect them to make representations themselves where they are reasonably able to do so. However, if these parties have failed to take action and the licensing authority is aware of relevant grounds to make a representation, it may choose to act in its capacity as responsible authority. [Emphasis added]

- 5.15 It is the council's view that it would not be appropriate for the council, in its role as licensing authority, to seek to usurp the ability of other responsible authorities, residents or other stakeholders to raise and articulate their own concerns. The Licensing Act 2003 has both explicitly and implicitly empowered a broad range of organisations and individuals to raise concerns about applications, make representations on, including objections to, applications and/or seek a review of an existing licence.
- 5.16 The council acting as the licensing authority does not wish to become, nor be seen as, the primary body which makes representations as officers exercising the licensing authority's functions would not be able to draw on the expertise held by others, such as the police, fire service and the like, or the direct experience of residents, and so the evidence for action would almost inevitably be diminished and the likelihood of securing effective interventions lessened.
- 5.16 Given the above, the council, acting as the licensing authority, will determine on a case-by-case basis whether the wider interests of the community and/or partner agencies would be best served by taking on the role of a responsible authority.
- 5.17 Regardless of the origin of the need for any enforcement sanction, the council will act in accordance with the council's published enforcement policy
<https://www.eastherts.gov.uk/article/35499/Environmental-Health---Enforcement>
and will only act in cases which are in the public interest and where there is sufficient evidence to do so.

6. The night time economy

- 6.1 All the council policies and procedures regarding the licensing of premises recognise that there are significant benefits to the district of a well-run late evening and night time economy.
- 6.2 The provision of local entertainment facilities for the local population enables residents to have a good night out without having to travel to London or other towns and cities. It brings in additional income to local businesses providing sustainable employment and ensures town centres remain at the heart of the community and do not become ghost towns after dark. Facilities which enable individuals to meet in a safe, vibrant and accessible area enhance community cohesion and social inclusion especially when amenities are attractive to a wider age group.
- 6.3 The council recognises that for the night time economy to work well from the perspective of a broad range of stakeholders, it is important to have a variety of different venues and a diverse cultural offer that can attract people of different ages and backgrounds to the district's centres in the evening and night time. An imbalance or preponderance of one type of establishment will not achieve this. A mixture of cafes and restaurants, traditional pubs, 'vertical drinking' establishments (aimed at a younger audience and often associated with music or sports screens) and a late night club offer is usually needed. The local theatres, cinemas and music venues are also important as are sports facilities. The greatest benefits will be achieved where customers patronise a range of different venues for food, drink and entertainment during their night out.

Encouraging and facilitating best practice

- 6.4 The council is committed to facilitating a vibrant, varied and safe night time economy for residents and visitors alike. The

council already funds, supports and/or promotes best practice to achieve this, including:

- provision and use of CCTV in town centres and around individual premises
- the use of industry-accredited door supervisors
- Live ID technology to check the ID of late night establishment patrons and bar entry to those using fake ID or with a history of anti-social behaviour
- noise impact assessments and the proper use of sound limiting devices
- appropriate signage requesting patrons to respect local neighbours
- appropriate siting and robust management of smoking shelters and related facilities
- robust management of venues' last entry times
- active live communication between venues and also the police, for example via radio links, to issues alerts about developing issues
- taxi marshalling schemes and robust taxi licensing practices
- good liaison with local transport companies

6.5 In time, the council wishes to work with local stakeholders to achieve Purple Flag status for the district's town centres. This is an accreditation process similar to the Green Flag award for parks and the Blue Flag for beaches. It is operated by the Association of Town and City Centre Management. The accreditation process takes towns and cities through a comprehensive set of standards, management processes and good practice examples all designed to ensure standards of excellence are met in managing the night time economy.

7. References

Home Office statutory Guidance

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627825/revised_182_guidance_05_04_17.pdf

East Herts Statement of Licensing Policy 2016

<https://www.eastherts.gov.uk/article/35119/Licensing-Policy>

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