

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 21 JUNE 2019

REPORT BY JONATHAN GEALL – HEAD OF HOUSING AND HEALTH

APPLICATION FOR VARIATION OF THE PREMISES LICENCE FOR THE
WOOLPACK, MILLBRIDGE, HERTFORD, HERTS. SG14 1PZ

WARD(S) AFFECTED: -HERTFORD -BENGO

Purpose/Summary of Report

- An application to extend the licensable area at the above premises has been received. An objection to that variation has been received so the decision falls to a Sub-Committee of the Licensing Committee. The report is to inform that decision.

<u>RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE: That:</u>	
(A)	The application be decided

1.0 Background

1.1 Under the Licensing Act 2003 and the council's policy an application for a new or variation to a licence or certificate is granted by officers under delegated authority if no valid representations are received.

1.2 Where valid representations are received the Licensing Authority's discretion is engaged. A Licensing Sub-Committee has the delegated authority to determine applications for new and varied Licences and Certificates. This decision must be

made whilst having regard to the Licensing Objectives, the Licensing Authority's own Statement of Licensing Policy and to statutory guidance issued by the Secretary of State under section 182 of the Licensing Act.

1.3 The Licensing Objectives are:

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

1.4 In determining this application, the Sub-Committee must have regard to the representations and take such steps as it considers appropriate for the promotion of licensing objectives. The steps available to the Sub-Committee are:

- a) grant the application in full
- b) modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding them
- c) reject the whole or part of the application.

2.0 Report

2.1 The valid variation application submitted by the licence holders, McMullens & Sons Limited, was received by the licensing authority on 30th April 2019. The application was correctly advertised and consulted upon as required.

2.2 The application seeks to extend the licensable area, to include a games room and crazy golf and to remove conditions 5 and 6 under Annex 2 – Conditions consistent with the operating schedule of the current licence. These conditions are during musical entertainment the number of persons (excluding staff, attendants and performers) to be allowed at any one time in the licensed premises shall not exceed: 150 and Unaccompanied children after 18.00 hours will be asked to leave the premises.

- 2.3 The application does not seek to add any new licensable activities or extend the hours for the existing licensable activities.
- 2.4 Section 16 of the application form asks the applicant to describe any additional steps they intend to take to promote the four licensing objectives as a result of the variation. The applicant has stated that they believe the conditions on the existing licence are sufficient. A redacted copy of the application form is attached as **Essential Reference Paper 'B'** and a redacted copy of the current premises licence is attached as **Essential Reference Paper 'C'**.
- 2.5 During the 28 day statutory public consultation nine valid representations was received from or on behalf of residents of neighbouring properties. These representations are attached as **Essential Reference Paper 'D'**.
- 2.6 The representations raised a number of concerns about the variation. The main concerns being the impact of the variation on neighbouring properties, that the removal of condition 5 raises concern over the capacity of the premises and the removal of Condition 6 would allow children in the public house unaccompanied at any time. These concerns are raised as the interested parties believe that the application, if granted as requested, will have an impact on all four of the licensing objectives.
- 2.7 During the 28 day statutory public consultation the application was varied and conditions agreed with Herts Police. These conditions are attached as **Essential Reference Paper 'E'**

3.0 Policy and Guidance

3.1 It should be noted that the removal of Condition 5 is in line with the Regulatory reform (Fire Safety) Order 2005, this places a duty on the premises to undertake a fire risk assessment to ascertain capacity and removed a permitted capacity on the premise licence.

3.2 Section 6 of the Statement of Licensing Policy details the authority's aspiration to create family friendly Town Centres. The approach to this is detailed in paragraph 6.4 of the policy:

- 1. Where relevant representations have been received, we will consider granting applications which limit the hours of operation to those set out in this policy unless the exceptions detailed below can be demonstrated.*
- 2. Where relevant representations have been received and exceptions can be shown for applications for public houses and night clubs, we will consider whether to require waiter/table service for alcohol sales between 9pm and the final time for the sale of alcohol.*
- 3. Where relevant representations have been received against the sale of alcohol after 10 pm and exceptions can be shown, we will consider whether premises shall be required to demonstrate they have an effective dispersal management plan in place; to install a closed-circuit television system that meets the reasonable requirements of Hertfordshire Constabulary; installing an electronic identification entry system; and to have use of a Pubwatch radio.*

3.3 Paragraph 6.6 of the policy details matters that will be taken into account under this part of the policy where relevant representations have been received against an application. The questions to be considered are, does the application:

(1) contribute to the family-friendly development of the town centres; or

(2) effect a real reduction in the capacity for alcohol sales in that premises (for example by replacing a vertical drinking establishment with seated consumption and waiter/waitress service).

- 3.4 Where an applicant wishes an exception to the presumption in the Licensing Policy, as set out in the paragraphs above, to be considered it is their responsibility to evidence how the exception being sought will promote and not undermine the Licensing Objectives (as laid in paragraph 1.3 above).
- 3.5 Section 9.0 of the Statement of Licensing Policy contains information on how the Licensing Authority considers applications under the prevention of public nuisance licensing objective. Paragraph 9.2 states “In considering an application, the Licensing Authority will consider the adequacy of proposed measures to remove or effectively manage the potential for nuisance and antisocial behaviour.”
- 3.6 Paragraph 10.4 of the Statement of Licensing Policy contains information on how the Licensing Authority views applications if there are representations under the Protection of children from harm licensing objective, this states “The legislation recognises the right of licence holders (serving alcohol) to allow accompanied children into their premises at any time. The Licensing Authority will not normally seek to limit their access (above that specified in the Act) to any premises unless it is necessary for the prevention of physical, moral or psychological harm. Where relevant representations are received, and harm is likely, conditions may be imposed that restrict children from entering all or part of licensed premises:
- (1) at certain times of the day;
 - (2) when certain licensable activities are taking place;
 - (3) under certain ages, e.g. 16 or 18;
 - (4) unless accompanied by an adult.”

3.7 Section 145 of the Licensing Act 2003 relates to unaccompanied children (under 16) prohibited from certain premises. It should be noted that this section may not apply to this premises as this would relate to a premises exclusively or primarily used for the supply for consumption on the premises. This premise is not exclusively used under this criterion as the licence allows for off sales and the premises provide food.

3.8 Paragraph 9.37 and 9.38 of the revised Guidance issued under section 182 of the Licensing Act 2003 states:

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.

3.9 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;
- the Revised Guidance issued under section 182 of the Licensing Act 2003 ;
- its own statement of licensing policy.

3.10 Paragraphs 9.42-9.44 deal with how to determine actions that are appropriate for the promotion of the licensing objectives.

3.11 If Members are minded to impose conditions to mitigate concerns regarding the undermining of the licensing objectives then Chapter 10 of the guidance deals with conditions attached to premises licences. Paragraphs 10.8-10.10, 10.13-10.15 would be particularly relevant.

4.0 Officer observations

4.1 As stated in the Guidance the authority's decision should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

4.2 Members should consider if they believe the applicant has provided evidence that the proposed variation would promote and not undermine the licensing objectives. This evidence should be balanced against the evidence given by those making representations against the application that the licensing objectives would be undermined.

4.3 So as to ascertain whether these are adequate to promote the licensing objectives during the requested variation, Members should consider:

- the conditions that are already present on the licence and
- the new conditions agreed with the Police.

4.4 In order to come to a view on the adequacy of the conditions (existing and new); Members may question those in attendance from both sides.

4.5 Having considered the conditions (existing and new) and, if so desired, questioned the parties, Members need to determine a course of action.

4.6 If Members believe that the evidence shows that the variation will promote the licensing objectives then the application should be granted in full.

4.7 If however, Members believe that the representations provide evidence that either:

- the operation of the premises *already* undermines the licensing objectives and thus it would be reasonable to assume this would continue within the requested variation *or*
- although the current operation does not undermine the licensing objectives, the requested variation would

then it is within their remit to take the action they believe is appropriate and proportionate to address their concerns. Put in its simplest terms, Members should ask themselves, what are the minimum measures that can be put in place to address the concerns? Refusal of the application should be the last option considered.

4.8 Actions Members can take are as follows:

- grant the application if they feel the application would not undermine the licensing objectives; *or*
- grant the application as sought but at the same time impose additional conditions. Members are free to depart from the Licensing Policy but should clearly explain why this has been done when giving detailed reasons for their decision; *or*
- if Members believe that there is evidence that shows that there are *no* steps that can be taken to ensure that the variation sought would promote the licensing objectives then the application should be refused.

4.9 When the Licensing Sub-Committee gives its decision to those in attendance it should be made clear to all parties how much weight has been attached to each submission and why and what evidence Members have relied upon when reaching their decision.

5.0 Implications/Consultations

5.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

East Herts Statement of Licensing Policy 2016 –

<https://www.eastherts.gov.uk/article/35475/Licensing-Act-2003--Licensing-Policy>

Night Time Economy (NTE) Position Statement -

<https://www.eastherts.gov.uk/article/35475/Licensing-Act-2003--Licensing-Policy>

Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705327/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf

Contact Officer: Jonathan Geall – Head of Housing and Health
Contact Tel No 01992 531594
jonathan.geall@eastherts.gov.uk

Report Author: Brad Wheeler – Senior Licensing & Enforcement Officer
brad.wheeler@eastherts.gov.uk