

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 23 APRIL 2020

Report by: Jonathan Geall, Head of Housing and Health

Report title: Application for a Variation of a Premises Licence for Lomo Restaurant, 25a St Andrews Street, Hertford, SG14 1HZ
(20/0220/PLV)

Ward(s) affected: Hertford Bengoeo

Summary

- An application for a variation of a premises licence has been made and representations have been received from interested parties. Where representations have been received against an application there must be a Licensing Sub-Committee to decide that application. The report is to inform that decision.

RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

(a) The application for variation of a premises licence be decided.

1.0 Proposal(s)

1.1 Members of the Licensing Sub-Committee should determine the application for a variation of a premises licence following consideration of the information contained in this report and appendices combined with submissions made at the Licensing Sub-Committee hearing.

2.0 Background

2.1 Where a valid representation is received against a variation of

a premises licence application there must be a Licensing Sub-Committee hearing to decide that application even where agreement is reached. A Licensing Sub-Committee has the delegated authority to determine applications for variation of 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 2003.

2.2 The Licensing Objectives are:

- Prevention of Crime and Disorder;
- Public Safety;
- Prevention of public nuisance; and
- Protection of children from harm.

3.0 Reason(s)

3.1 The application for a variation to a premises licence was submitted by Mr Daniel Drummy on 20th February 2020. The application has been correctly advertised at the premises and consulted upon as required by legislation and regulations.

3.2 The application seeks approval for the times for existing licensable activities to be increased and to extend the licensed area to the 1st floor and to the outside area.

3.3 The application further seeks approval to add both late night refreshment from 23:00 on a Monday through to Saturday and the supply of alcohol off the premises until 23:00 on a Monday through to Saturday.

3.4 The requested hours for licensable activities are set out in the table below:

Requested Activity	Requested Day	Requested Time	Proposed Change to licenced times
Late Night Refreshment	Sunday – Thursday	23:00 – 00:00	+ 1 hour
	Friday - Saturday	23:00 – 01:00	+ 2 hours
Supply of Alcohol (consumption ON / OFF the premises)	Monday	09:00 – 23:30	+ 1 hour
	Tuesday – Thursday	09:00 – 23:00	+ ½ hour
	Friday – Saturday	09:00 – 00:30	+ 2 hours
	Sunday	09:00 – 23:00	+ 2 hours
Hours premises are open to the public	Monday – Thursday	09:00 – 00:00	+ 1 ½ hours
	Friday – Saturday	09:00 – 01:00	+ 2 ½ hours
	Sunday	09:00 – 23:00	+ 2 hours

- 3.5 A redacted copy of the application form for a variation of a premises licence is attached as **Appendix 'A'**.
- 3.6 When looking at the application for the extension of Late Night Refreshment the applicant has not disclosed if this is to be indoors, outdoors or both. Looking at the steps proposed by the applicant it is believed that the variation is for use solely indoors as the applicant is proposing that the outside is not to be used after 23:00, but Members may wish to clarify this matter with the applicant.
- 3.7 It should be noted that the application also states Recorded music indoors on the application but also states that this is background only which is not a licensable activity. Members may wish to clarify this matter with the applicant.
- 3.8 The plans which were supplied with the application are attached as **Appendix 'B'**.
- 3.9 A copy of the current premises licence is attached as

Appendix 'C'.

- 3.10 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 application. The applicant has stated that:
- 1) The Premises Licence Holder or DPS will ensure groups of people will not be allowed to gather/loiter outside the premises
 - 2) Challenge 25 will be in operation and all staff will be trained on the four licensing objectives with a six month refresher training
 - 3) A dispersal policy is to be in operation
 - 4) A written record of all refused sales shall be kept on the premises
 - 5) An incident book shall be maintained to record any activity related to drugs, criminal or anti-social behaviour recording the following: time & date & nature of the incident / people Involved / actions taken
 - 6) Two Security Industry Authority (SIA) registered door staff on a Friday and Saturday night from 19:00 until 01:00
 - 7) Full working CCTV
 - 8) We will actively attend Pub Watch meetings
 - 9) No open vessels in the smoking area
 - 10) Limit numbers of customers in the smoking area to no more than 15
 - 11) No children under the age of 18 years to be on the premises, unless accompanied by an adult who is 21 or over
 - 12) Children under the age of 18 will not be permitted in to the premises after the hours of 18:00 unless attending a pre-booked function
- 3.11 During the 28 day consultation, the applicant amended his application to include either extra conditions or to amend the application if granted. These conditions were made in

consultation with the Responsible Authorities.

These conditions are attached as follows:

- 1) A digital closed circuit television (CCTV) system to be installed internally ensuring the following:
 - a. All entry and exit points must be covered to enable frontal identification of every person entering the premises in any light condition
 - b. The CCTV system shall continually record whilst the premises are open for licensable activities and during times when customers remain on the premises
 - c. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon the request of Police or authorised officer throughout the preceding 31 day period
 - d. A staff member from the premises who is knowledgeable with the operation of the CCTV system shall be on the premises on Friday and Saturday nights and nights leading into a Bank Holiday, when premises are open to the public. At all other times, a member of staff will be on duty within each 24 hour period. This staff member must be able to show and supply if requested a Police or authorised officer recent data or footage with the absolute minimum of delay when requested.
- 2) A written drugs and search policy, approved by a Police Licensing Officer, to be in place and a copy available at the premises. The policy must cover, as a minimum, the measures taken to minimise the possibility of drug use or supply within the premises. The policy must be followed at all times.

- 3) A written dispersal policy, approved by a Police Licensing Officer, will be in place and a copy available at the premises. As a minimum, the policy must cover actions to be taken to reduce the impact on the local community when customers are leaving the premises. The policy must be operated and adhered to by the staff at the premises.
- 4) A written record of all refused sales shall be kept on the premises. It must include details of the member of staff who refused service, time and date it occurred and the reason for refusal. The record shall be made available to Police and/or local authority immediately upon request and shall be kept for a least one year from the date of last entry.
- 5) An incident book shall be maintained to record any activity related to drugs or of a violent, criminal or serious anti-social nature and be available for inspection at all times (when the premises are open) by an authorised officer of relevant responsible authority, it should record the following details:
 - a. Time and date and nature of the incident
 - b. People involved
 - c. Action taken
 - d. Details of the person responsible for the management of the premises at the time of the incident.
- 6) The Premises Licence Holder or Designated Premises Supervisor to ensure that all management and staff are fully trained and briefed on the four licensing objectives, Challenge 25, the conditions on this licence, policies referred to in this licence. Also, any other Police

initiatives, such as Child Sexual Exploitation CSE. Every 6 (six) months these staff are to be given refresher training and this is to be documented in such a way that it can be given to an authorised officer on request. Staff should also sign documentation confirming the training has taken place and the date.

- 7) The age verification policy operated at the premises shall be "Challenge 25". This means that whilst alcohol may be sold to persons aged 18 years or over, any person who appears under 25 years of age shall be required to provide proof of age using an acceptable form of ID. Notices advertising that the premises operate a "Challenge 25" scheme shall be displayed in a clear and prominent position at the premises entrance(s)/and inside at the premises bar serving area. The only forms of ID that may be accepted shall be:
 - a. Proof of age card bearing the PASS hologram logo
 - b. Passport; or
 - c. UK photo driving licence.
- 8) When the premises are being used for a private, pre-booked function, there will be from 21:00 hours until 30 minutes after the end of the opening hours listed on the licence, two (2) SIA registered door supervisors.
- 9) Where SIA registered door supervisors are used at the premises:
 - a. A record must be kept of their SIA registration numbers and the dates and times when they are on duty
 - b. They must wear high visibility arm bands or jackets when engaged outside the entrance to the premises.

10) On Friday and Saturday nights and nights leading into a Bank Holiday, from 21:00 hours a suitable system to control entry to the premises will be used to count the number of persons entering and leaving the premises to ensure that the maximum specified occupancy is not exceeded at any one time. The number of persons present within the premises will be supplied to any Police Officer who requests the information.

11) No entry or re-entry of customers shall be permitted to the premises after 22:00 hours on Sunday. After 23:00 hours, Monday - Thursday and 00:00 hours on Friday - Saturday. This Condition excludes:

- a. Customers re-entering, having visited the smoking area outside
- b. Customers where there are medical or safeguarding concerns or where customers are re-entering specifically to wait for onward travel.

This is to be managed and enforced by SIA's and the Premises Manager.

12) In addition to the dispersal policy, the Premises Licence holder will ensure that a soft closure procedure is followed at the end of the evening, 30 minutes before the time the premises are due to close. This must include lowering any music, informing people of the approaching closing time, not selling excessive amounts of drinks to people within this time period, encourage sensible drinking and ensuring people have time to finish the drinks they have prior to closure.

13) Staff to actively seek to prevent customers from exiting the premise onto St Andrew's Street / car park area with drink glasses or glass bottles whether they contain alcohol or not or any other vessel that contains alcohol.

- 14) The Premises Licence Holder or Designated Premises Supervisor to ensure groups of people will not be allowed to gather / loiter outside the premises.
- 15) No children aged under 18 years to be on the premises, unless accompanied by an adult who is 21 years or older.
- 16) No children aged under 18 years to be on the premises after 19:00 hours, unless attending a pre-booked function.
- 17) When attending a pre-booked function, no children under 16 years of age to be on the premises, after 21:00 hours.
- 18) The Licence Holder shall actively participate in the Pubwatch Scheme, including attending the meetings, participating in radio link, and supporting the Pubwatch banning systems including keeping records and sharing information with the police.
- 19) The Licence Holder shall erect and maintain in a prominent position at every exit and within the smoking area a clear and conspicuous notice requesting patrons to avoid causing noise, nuisance or disturbance to local residents.
- 20) The following conditions apply to the use of the outside area at the side of the premises (shaded green on the attached plan):
 - a. No use of this area after 23:00 hours, except for the designated smoking area, as below.
- 21) The following conditions apply to the use of the designated smoking area at the side of the premises (shaded orange on the attached plan) :

- a. No open vessels to be permitted in this area
 - b. There are to be no more than 10 (ten) people using this area at any one time.
- 22) All events held at the premises must be risk assessed in order to identify areas of concern and establish actions to reduce risk and on occasions following consultation with the Police.
- 23) At all times the premises will operate under and in accordance with the licence; the primary purpose of the premises is to be food.
- 24) Between 21:00 hours and 07:00 hours, there shall be no disposal of bottles, or other refuse, or deliveries or collecting, relating to licensable activities at the premises.

3.12 During the 28 day statutory public consultation fourteen valid representations were received from residents acting as an interested party. These representations are attached as **Appendix 'D'**.

3.13 The representations from the interested parties raise a number of concerns about the application. The interested parties believe that the application, if granted as requested, will undermine all four of the licensing objectives.

3.14 The representations list matters that have previously or are currently causing issues for residents by the operation of the premises under the existing licence, namely: noise caused by music from the premises, noise from customers in the garden area and outside the premises and antisocial behaviour including people shouting and fighting at the premises. The representations state that this is affecting the residents and their children negatively.

- 3.15 Members of the Sub-Committee must decide how much weight they attach to these comments.
- 3.16 A plan of the area in which the premises are located is attached as **Appendix 'E'**. This can be used to illustrate the location of the premises in relation to residents and other Town Centre Businesses.

Policy and Guidance

- 3.17 Section 4 of the East Herts Statement of Licensing Policy (“the Policy”) details definitions of premises and locations and operation of premises, differentiating between Town Centre locations and other areas. Under this section of the Policy the operation of premises best fits the definition of a Restaurant:

The sale of food and drink for consumption on the premises with full waiter service and/or full food menu throughout the trading period, and which typically has only incidental background music. Alcohol sales do not predominant over activities. It may occasionally include the provision of other licensable activities such as recorded or amplified music and limited facilities for the provision of dancing

- 3.18 The premises fall within what is considered in section 6 of the Policy to be Hertford Town Centre. The table at 4.3 of the Policy details this authority’s approach to licensing premises when it has received relevant representations to an application. Notwithstanding that each application is considered on its own merits the following hours would normally be granted to this style of premises in this location when valid and relevant representations have been received:

Will generally be allowed licensable activities to 2 am only (other than for special occasions)

- 3.19 Section 6 of the 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:

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.

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 9 pm and the final time for the sale of alcohol.

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.

3.20 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. 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).*

3.21 Where an applicant wishes an exception to this Policy to be considered it is their responsibility to evidence the basis for the authority to do so.

- 3.22 Section 7.0 of the Policy contains information on how the Licensing Authority considers applications under the prevention of crime and disorder licensing objective. Paragraph 7.2 states *"The Licensing Authority will expect the applicant to demonstrate how they will prevent disorderly conduct, prevent sale of alcohol to a person who is drunk, and prevent the obtaining of alcohol for a person who is drunk on the licensed premises, and how the licence holder will exercise these duties so as to prevent or reduce the risk of anti-social behaviour by customers occurring elsewhere after they have left the premises."*
- 3.23 Section 8.0 of the Policy contains information on how the Licensing Authority considers applications under the Public Safety licensing objective. Paragraph 8.2 states *"Conditions to promote public safety will be those that are appropriate, in particular circumstances of any individual premises or club premises, and will not duplicate other requirements of the law. Equally, the attachment of conditions to the premises licence or certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work Act 1974, Associated Regulations and especially the requirements under the management of Health and Safety at Work Regulations 1999 and Regulatory Reform (Fire Safety) Order 2004, to undertake risk assessments. Employers should assess the risks, including risks from fire and take measures necessary to avoid and control these risks. Licence conditions enforcing those requirements will therefore not be attached."*
- 3.24 Section 9.0 of the 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.”

3.25 Section 10.0 of the Policy contains information on how the Licensing Authority considers applications under the prevention of protection of children from harm objective. Paragraph 10.4 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.”*

3.26 Paragraph 9.37 and 9.38 of the revised Guidance (April 2018) 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.

3.27 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;
- this Guidance;
- its own Statement of Licensing Policy.

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

3.29 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.

Officer observations

3.30 When viewing the evidence presented by the interested parties there are a number of factors or questions that need to be considered when deciding how much weight should be attached to each individual submission.

3.31 Some of the evidence refers to incidents when the premises were called "Rigsby's" and were under different ownership. This application should be looked at from when the current licence holder took over the premises on 4th November 2019. However this historical evidence could be considered to show that, without appropriate measures, the building may be considered to not be suitable for particular types of regulated entertainment like live bands, for example.

3.32 Some of the evidence references a planning enforcement

notice which involved an appeal with the Planning Inspectorate. It should be noted that planning and licensing are different regulatory regimes, although similar in many ways. An applicant can apply for a licence with different hours / restrictions to their planning consent and this can be granted if the Licensing Sub-Committee feel that this would not undermine the licensing objectives. The applicant would then need to apply for the appropriate planning consent or would face possible enforcement action from Planning.

- 3.33 Some of the representations object to music being played outside. It should be noted that the current licence allows this until 23:00, this variation application has not requested that this is extended so the hours cannot be restricted beyond those that are already granted.
- 3.34 If the new application is granted there will be no regulated entertainment (live or recorded music) allowed beyond 23:00. The premises would only be allowed background music and any other regulated entertainment would need an additional permission such as a Temporary Event Notice (TEN).
- 3.35 There were no representations received from any of the Responsible Authorities, including Environmental Health and Planning.
- 3.36 When looking at the proposed steps / conditions specifically proposed by the applicant the following observations are made by the author of this report:
- On Friday and Saturday nights and nights leading into a Bank Holiday, from 21:00 hours a suitable system to control entry to the premises will be used to count the number of persons entering and leaving the premises to ensure that the maximum specified occupancy is not exceeded at any one time. The number of persons present within the premises will be supplied to any Police

Officer who requests the information.

Members of the Sub-Committee may wish to ask the applicant what is the maximum capacity of the premises.

- The Premise Licence Holder (PLH) or Designated Premises Supervisor (DPS) to ensure groups of people will not be allowed to gather / loiter outside the premises.

The PLH and DPS is the same person in this case, as such what if that person is sick or on holiday, as such officers would recommend that this condition be amended to state:

The Premises Licence Holder or Designated Premises Supervisor and / or Duty Manager is on the premises during opening hours to ensure groups of people will not be allowed to gather / loiter outside the premises.

- 22) All events held at the premises must be risk assessed in order to identify areas of concern and establish actions to reduce risk and on occasions following consultation with the Police.

It is believed that the applicant means to risk assess the need for extra door staff at certain events. As such it is recommended that the condition is replaced with:

Additional door supervisors shall be employed at the premises on occasions as deemed necessary by the Designated Premises Supervisor and/or premises management following a risk assessment and on occasions following consultation with the Police

- 23) At all times the premises will operate under and in accordance with the licence; the primary purpose of the premises is to be food.

The first part of this is irrelevant as a condition as they must always operate in accordance with any licence issued, this would be the law so would not need to be stated. Members may, however, wish to ask the applicant how they are going to ensure that the primary purpose of the premises is to be food?

- 3.37 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.
- 3.38 Members should consider if they believe the applicant has provided evidence that the proposed application 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.
- 3.39 So as to ascertain whether the proposed steps 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 conditions that are present on the application, and
 - the new conditions proposed by the applicant following consultation of the Responsible Authorities.
- 3.40 In order to come to a view on the adequacy of the conditions, Members may question those in attendance from both sides.
- 3.41 Having considered the conditions and, if so desired, questioned the parties, Members need to determine a course of action.
- 3.42 If Members believe that the evidence shows that the application would promote the licensing objectives then the application should be granted in full.

3.43 If however, Members believe that the representations provide evidence that the application would undermine the licensing objectives 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.

4.0 Options

4.1 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:

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

5.0 Risks

5.1 A decision on the application must be made and any decision made can be appealed at the Magistrate's Court. Therefore the Licensing Sub-Committee should ensure that when giving their decision on the application that they give clear reasons on how and why they have made their decision.

6.0 Implications/Consultations

6.1 As with any application for a new premises licence / variation of premise licence or review of a premise licence there is a 28 day public consultation.

Community Safety

The report details the four licensing objectives, these objectives are detailed in paragraph 2.3 of this report, therefore Community Safety will be considered when determining the application.

Data Protection

Where the appendices have shown personal data this has been redacted.

Equalities

Consideration will be made to the Equality Act 2010 and the Public Sector Equality Duty.

Environmental Sustainability

No direct implications.

Financial

There will be a cost to the Licensing Sub-Committee hearing, this will be covered within existing budgets.

There may also be a cost if the decision of the Licensing Sub-Committee is appealed to the Magistrates Court.

Health and Safety

No direct implications.

Human Resources

No direct implications.

Human Rights

As with all applications and council functions, the Human Rights Act 1998 has been considered in this report and will be considered during the Licensing Sub-Committee hearing.

Legal

All statutory requirements have been considered in preparing this report.

Specific Wards

Yes – Hertford Bengo.

7.0 Background papers, appendices and other relevant material

- 7.1 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
- 7.2 East Herts Statement of Licensing Policy 2016 –
https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Statement_of_Licensing_Policy.pdf
- 7.3 Night Time Economy (NTE) Position Statement –
https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Night_Time_Economy_NTE_Position_Statement.pdf
- 7.4 Appendix 'A' – Application for a variation of a Premise Licence.
- 7.5 Appendix 'B' – Plans to accompany application and additional conditions proposed by the applicant
- 7.6 Appendix 'C' – Current Premise Licence.
- 7.7 Appendix 'D' – Representations against the application.
- 7.8 Appendix 'E' – Map showing location of the premises.

Contact Member

Councillor Peter Boylan – Executive Member for Neighbourhoods
peter.boylan@eastherts.gov.uk

Contact Officer

Jonathan Geall – Head of Housing and Health, Tel: 01992 531594
jonathan.geall@eastherts.gov.uk

Report Author

Brad Wheeler – Senior Licensing and Enforcement Officer
brad.wheeler@eastherts.gov.uk