

# **East Herts Council Report**

## **Licensing Sub-Committee**

**Date of Meeting:** 17 August 2021

**Report by:** Jonathan Geall, Head of Housing and Health

**Report Title:** Application for a New Premises Licence For Beer Shop,  
26A Northgate End, Bishop's Stortford, Hertfordshire, CM23 2EU  
21/0490/PL

**Ward(s) affected:** – Bishop's Stortford – Meads

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### **Summary**

- An application for a new premises licence has been made and representations against the application have been received from Interested Parties. When representations have been received against an application and have not been withdrawn, it is for a Licensing Sub-Committee to decide that application. This report is to inform that decision.

### **RECOMMENDATION FOR LICENSING SUB-COMMITTEE:**

**(a) The application for a new premises licence be determined.**

#### **1.0 Proposal(s)**

- 1.1 Members of the Licensing Sub-Committee should determine the application for a new premises licence through 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 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.
- 2.2 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.
- 2.3 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 new premises licence was submitted and completed by Beer Shop Ltd on 26<sup>th</sup> June 2021. The application has been advertised and consulted upon as required by legislation and regulations

3.2 The application requests the following licensable activities:

<b>Licensable Activity</b>	<b>Day</b>	<b>Hours applied for</b>
Supply of Alcohol ( for consumption both on and off the premises)	Monday - Sunday	10:00 – 22:00
	New Year's Eve	10:00 – 01:00
Opening Times	Monday - Sunday	08:30 – 22:00
	New Year's Eve	08:30 – 01:00

3.3 A redacted copy of the application form and supporting documents are attached as **Appendix 'A'**.

3.4 Section 18 of the application form asks the applicant to describe any steps they intend to take to promote the four licensing objectives as a result of the application. The steps stated are:

- 1. Excessive quick drinking e.g. "shots" will not be permitted and staff must encourage beverages to be enjoyed slowly. Small measures of 1/3 pint sizes shall be used to provide tastings.*
- 2. A schedule of training for staff and an age 25 identification policy will be implemented.*
- 3. Noise levels to be kept to a minimum and customers asked to leave quietly.*
- 4. Children to be accompanied by an adult at all times.*
- 5. A CCTV system will be installed.*

6. *An Incident log book maintained on site electronically.*
7. *We will not allow excessive noise or disruptive behaviour.*
8. *Music will only be permitted at ambient background volume.*
9. *We will operate a strict age verification policy. We will log all age refusals on site electronically.*
10. *Persons under the age of 18 must be accompanied by an adult.*
11. *We will report any suspected occurrence of harm to children to the police.*

3.5 During the 28 day statutory public consultation period the applicant in consultation with Environmental Health modified their application to include the following conditions as part of their operating schedule:

1. *The movement of bins and rubbish outside the premises will be kept to a minimum after 21:00hrs. Bottle dumping to external areas shall not be permitted between the hours of 21:00-08:00. Staff must be instructed to minimise noise associated with the use of bins. Refuse collections will not be permitted outside the hours of 08:00-21:00.*
2. *Deliveries of goods necessary for the operation of the business will be carried out at such a time or in such a manner as to avoid causing disturbances to nearby residents. Deliveries shall not be permitted outside the hours of 08:00-21:00.*
3. *The provision of background music shall be permitted at any time the premises is open to the public, by definition this music or other audio played has a function to create an atmosphere, rather than to be listened to and is incidental to speech, conversation and the other main activities performed at the premises.*

4. *Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and to use the area quietly.*
- 3.6 During the 28 day statutory public consultation period objections were received from two residents acting as an interested party against the application. These representations are attached as **Appendix 'B'**.
- 3.7 The main concerns from the residents are the potential of nuisance and antisocial behaviour that may be caused by customers of the premises, therefore engaging the prevention of public nuisance and prevention of crime and disorder licensing objectives.
- 3.8 A plan of the area in which the premises is located is attached as **Appendix 'C'**. This can be used to illustrate the location of the premises in relation to residents and other businesses.

## **Policy and Guidance**

- 3.8 Section 6 of the East Herts Statement of Licensing Policy (herein 'the Policy') details definitions of premises and location and operation of premises (differentiating between Town Centre locations and other areas). Under this section of the Policy the operation under which the application best fits would be defined as 'public houses, wine bars café-bar or other drinking establishments'.
- 3.9 The proposed premises is not in an area classed as Town Centre under Section 7 of the Policy.
- 3.10 The table at 6.9 of the Policy details this authority's approach to hours for licensed 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 a 'public houses, wine bars and other drinking establishments':

*Will generally be granted alcohol sales for consumption on the premises no later than 23:00 hours and no later than 22:30 on Sunday.*

3.14 Section 8.6 of the Policy contains information on how the Licensing Authority considers applications under the prevention of crime and disorder licensing objective. Paragraph 8.8 states *"The Authority will expect applicants to take appropriate and proportionate measures to promote the crime and disorder objective. Examples of the sources of crime and disorder which the Authority would require applicants to take into consideration may include, but are not limited to:*

- *Underage drinking*
- *Drunkenness on the premises*
- *Public drunkenness*
- *Drugs*
- *Violent behaviour*
- *Overcrowding/occupancy capacity*
- *Anti-social behaviour"*

3.15 When determining licence applications and reviews the Licensing Authority will give consideration to:

- *whether the premises make or will make a significant contribution to levels of crime and disorder in the local area, and*
- *whether the operating schedule demonstrates that an adequate risk assessment of the likelihood of crime and disorder occurring as the result of the issue of an authorisation has been carried out by the applicant.*
- *the ability and competency of the person in charge of the premises to monitor the premises at all times it is open;*

- *the training given to staff in how to defuse or manage conflict amongst patrons and crime prevention measures appropriate to those premises;*
- *the physical security features installed in the premises. This may include matters such as the position of cash registers, and the security of cash boxes in gaming machines on the premises; where alcohol is stored in 'off-licences'; the standard of CCTV that is installed; adequate lighting; metal detection and search facilities; the use of toughened drinking glasses in pubs and clubs; the removal of glasses or glass bottles used or discarded outside of the applicants premises;*
- *risk assessment of drinks promotions which may contribute to the impact on crime and disorder (e.g. 'happy hours'), and plans for minimising risks;*
- *measures to prevent the consumption or supply of illegal drugs, including any search procedures and entry policies. On licensed hotel or B&B premises, this should extend to keeping proper registrations of guests, with proofs of identification, and records of car registration numbers. Where applicable, applicants are encouraged to show that they can comply with the Home Office guidance Safer Clubbing in relation to the control of illegal drugs on their premises, and they should agree a protocol with the police on the handling of illegal drugs found on their premises.;*
- *where premises are subject to age-restrictions, the procedures in place to conduct age verification checks;*
- *the use or not of an ID scanning type system;*
- *the likelihood of any violence, public disorder or policing problem if the licence is granted;*
- *whether design of the premises has been considered having regard to reducing conflict and minimising opportunities for crime;*
- *the measures taken to control admission to, and dispersal from, the premises, including the use of registered door supervisors;*
- *any other such measures as may be appropriate, such as participation in a local pub watch scheme or other body designed to ensure effective liaison with the local community,*

- *'music wind-down policies',*
- *restrictions on 'happy hours', and other examples of industry best practice;*
- *the arrangements for delegating and accounting for responsibility for the supply of alcohol on community premises operated without a DPS.*

3.16 Section 8.20 of the Policy relates to the prevention of public nuisance. Specifically section 8.23 of the policy states:

*The Authority would expect applicants to have demonstrated in their operating schedule that public nuisance concerns have been identified, with suitable control measures implemented and maintained. Factors that may be considered include, but are not limited to:*

- *The location of the premises and proximity to residential and other noise sensitive premises*
- *The hours of opening, including times when licensable activities may not be taking place, last admission time and 'wind down period'*
- *Nature of activities provided*
- *Supervision of customers including managing dispersal*
- *Odour and light nuisance*
- *Litter and waste disposal*
- *the location of delivery and collection areas and delivery/collection times*
- *Noise management plan (where appropriate)*

3.17 Paragraph 9.37 and 9.38 of the government's revised Guidance issued under section 182 of the Licensing Act 2003 (herein 'the Guidance') 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.*

*In determining the application with a view to promoting the licensing objectives 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.*

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

3.19 If the Sub Committee 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**

3.20 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.

3.21 If the Sub-Committee believes that the application would not undermine any of the licensing objectives then the application should be granted as requested.

- 3.22 The Sub-Committee members should consider if they believe the applicant has provided evidence that the licence if granted would promote and not undermine the licensing objectives. This evidence should be balanced against the evidence given by those making representations that the licensing objectives would be undermined.
- 3.23 If the Sub-Committee believes that there is evidence that the granting of the licence would not promote the licensing objectives then it is within their remit to take the action they believe is appropriate and proportionate to address their concerns. Members can attach conditions or take any steps they believe appropriate to promote the licensing objectives including: limiting the days, limiting the hours or even refusing the application in its entirety.
- 3.24 Put in its simplest terms, 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.
- 3.25 If additional conditions are considered, the Sub-Committee should decide whether these steps would in fact address their concerns if the decision was made to grant the hours requested.
- 3.26 The Sub-Committee may wish to seek the opinion of the applicant on any proposed conditions to clarify which are agreeable so that the hearing can focus on those which are disputed.
- 3.27 For conditions to be enforceable they need to be clear, unambiguous and free from subjective terms. If a condition cannot be enforced then it should not be placed on any granted

licence.

3.28 Should the Sub-Committee grant the licence it is proposed that the applicants steps to promote the licensing objectives be converted into conditions to read:

- 1) *No "shots" shall be permitted to be sold from the premises.*
- 2) *Small measures of 1/3 pint sizes shall be used to provide tastings of beer, cider or perry*
- 3) *A schedule of training for staff and an age 25 identification policy must be implemented incorporating "Challenge 25".*
- 4) *A CCTV system shall be installed and maintained. Any recording shall be made available to the Police or an officer of the Licensing Authority on request in line with Data protection.*
- 5) *An incident log book / refusals log shall be maintained on site electronically and made available to the Police or an officer of the Licensing Authority on request.*
- 6) *There shall be no excessive noise that is audible by any noise sensitive premises.*
- 7) *Any person under the age of 18 must be accompanied by an adult.*

## **4.0 Options**

4.1 The actions open to the Licensing Sub-Committee are:

- grant the application if they feel the application would promote and not undermine the licensing objectives; or
- grant the application as sought but at the same time impose additional conditions or amend the times for the supply of alcohol; or
- if members believe that there is evidence that shows that there are no steps that can be taken to ensure that the application sought would promote the licensing objectives then the application should be refused.

4.2 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 the Sub-Committee has relied upon when reaching their decision.

## **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 its decision on the application it gives clear reasons on how and why it has made its decision. In doing so, the council's ability to defend its decision is strengthened and the risk of its decision being over-turned on appeal is lessened, although, of course, this risk can never be entirely removed.

## **6.0 Implications/Consultations**

6.1 There has been a statutory 28 day public consultation.

### **Community Safety**

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

### **Data Protection**

Where the appendices originally contained personal data this has been redacted.

### **Equalities**

Consideration has made to the Equality Act 2010 and the Public Sector Equality Duty in this report and will be considered during the Licensing Sub-Committee hearing.

### **Environmental Sustainability**

No

## **Financial**

There will be a cost to the authority in holding the Licensing Sub-Committee hearing, this will be covered by the existing budget. There would be a cost if the decision of the Licensing Sub-Committee is appealed to the Magistrate's Court and the authority chooses to defend that appeal, although if the appeal was subsequently dismissed by the court, the council could recover (at least some of) its costs.

## **Health and Safety**

No

## **Human Resources**

No

## **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 – Bishop's Stortford - Meads

## **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](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 2021-2026  
[https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Statement\\_of\\_Licensing\\_Policy.pdf](https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Statement_of_Licensing_Policy.pdf)
- 7.3 Appendix 'A' – Application for a New Premise Licence, including plans of the premises.
- 7.4 Appendix 'B' – Representations against the application.
- 7.5 Appendix 'C' – Map showing location of the premises.

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