

East Herts Council Report Template

Licensing Sub-Committee

Date of Meeting: 5 May 2022

Report by: Jonathan Geall, Head of Housing and Health

Report Title: Application for a Variation of a Premises Licence for Jungle Bar, 117 Fore Street, Hertford, Hertfordshire, SG14 1AX
22/0207/PLV

Ward(s) affected: Hertford Castle

Summary

- An application for a variation to a premises licence held in respect of the Jungle Bar, Hertford 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 When representations have been received against an application, and have not been withdrawn, it is for a Licensing Sub-Committee to decide that application.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.

RECOMMENDATIONS 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 variation to the premises licence held in respect of the Jungle Bar, Hertford 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 council'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 variation to a premises licence was submitted and completed by Dark Dragon Limited on 28th February 2022.

3.2 On 12th March 2022 the applicant amended the original application and removed live music and late night refreshment from the variation application. The amended application requests the following licensable activities:

Licensable Activity	Day	Hours currently licenced for:	Hours applied for:	Difference
Recorded Music	Monday and Tuesday	09:00 – 00:00	09:00 – 01:30	+1½hr
	Wednesday	09:00 – 01:00	09:00 – 02:30	+1½hr
	Thursday – Saturday	09:00 – 02:00	09:00 – 03:00	+1hr
	Sunday	09:00 – 01:00	09:00 – 02:30	+1½hr

- 3.3 The amended application has been advertised at the premises and consulted upon as required by legislation and regulations.
- 3.4 A redacted copy of the application form and supporting documents are attached as **Appendix 'A'**. It should be noted that this the original application which includes live music and late night refreshment which were later removed from the application.
- 3.5 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; however the applicant has not offered any additional conditions other than those contained within the current licence.
- 3.6 During the 28 day statutory public consultation the applicant varied their application in consultation with the police to

replace conditions 10, 25 and 30 (the original wording is available in **Appendix 'C'**) with the following:

The premise must have a written dispersal policy to cover the period when the premise is closing each evening (closing is considered to be between the hours of; 30 minutes prior to the terminal hour and until the premise is empty and customers have dispersed from the vicinity outside the premise). The policy must include the following and must be adhered to.

- a) In the 30 minutes prior to the terminal hour for alcohol sales, excessive amounts of alcoholic drinks will not be sold to customers*
- b) Music volume will be lowered 30 minutes before the terminal time for recorded music and must be of a background level only, 15 minutes before the terminal time for recorded music*
- c) Lighting levels to be increased during the 30 minutes prior to the terminal time for recorded music*
- d) Customers must not be encouraged by staff or SIA to leave the premise on mass*
- e) At least one SIA must be positioned at or near the exit door to stop customers from leaving with any glasses, bottles or other drinking vessels.*
- f) Customers leaving must be verbally encouraged to leave quietly by SIA or other staff members*
- g) SIA must actively encourage customers to disperse from the vicinity outside the premise*
- h) SIA must wear high visibility jackets during dispersal*
- i) Premise staff and SIA must seek to identify vulnerable customers and take steps to address any concerns*

And to Amend Condition 4 to:

On Mondays and Tuesdays when the premise is open to customers, at least one SIA registered door supervisor shall be on duty from 2230 hours until the premise is empty and customers have dispersed from the vicinity outside the premise.

On Fridays, Saturdays and nights leading into a Bank Holiday when the premise is open to customers, there must be at least two SIA registered door supervisors on duty from 2100 hours and a further one SIA registered door supervisor on duty from 2330 hours until the premise is empty and customers have dispersed from the vicinity outside the premise.

On all other evenings that the premise is open there must be at least one SIA registered door supervisor on duty from 2100 hours and a further one SIA registered door supervisor on duty from 2330 hours until the premise is empty and customers have dispersed from the vicinity outside the premise.

- 3.7 During the 28 day statutory public consultation period six objections were received other from interested parties against the application. Three objections were received from the local ward members, two from local residents and one from Hertford Town Council. These representations are attached as **Appendix 'B'**.
- 3.8 The members' objections are based on the prevention of public nuisance, prevention of crime and disorder and public safety licensing objectives, this is due to concerns from noise both from music and people noise along with customer behaviour outside the premises.
- 3.9 Hertford Town Council's objection is based on the prevention of public nuisance objective due to the proximity of neighbouring residents.
- 3.10 The residents' objections are based on the prevention of public nuisance objective due to the proximity of neighbouring residents. One resident has stated that they can hear music from the premises within their property.
- 3.11 The current premises licence and conditions are attached.

A plan of the area in which the premises is located is attached

as **Appendix 'D'**. This can be used to illustrate the location of the premises in relation to residents and other businesses. as **Appendix 'C'**.

Policy and Guidance

3.12 The premises are also located in a Sensitive Licensing Area as defined under Section 7.9 (2) of the council's Statement of Licensing Policy, *Where additional representations have been made by other parties, our strict starting point in these areas will be to consider whether conditions will be appropriate to address those concerns or whether a refusal is justified on the basis that the licensing objectives would be undermined. The East Herts Pool of Model Conditions should be considered.*

3.14 Section 8.6 of the Policy contains information on how the council considers applications under the prevention of crime and disorder licensing objective. Paragraphs 8.8 and 8.9 state:

"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*

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 and 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.*

3.15 Section 8.14 of the Policy contains information on how the council considers applications under the public safety licensing objective.

Paragraphs 8.15 and 8.16 state:

When considering this objective, the Licensing Authority will concern itself with the physical safety and wellbeing of the people who use licensed premises, and those who may be affected by the use of licensed premises (e.g. non-customers who happen to be in the immediate vicinity of a premise). This will include measures that seek to prevent accidents, injuries and short- or long-term illnesses to staff, customers or other persons. 8.16 The Licensing Authority will have regard to the measures to be taken by applicants to ensure that the physical safety of any person visiting or working in licensed premises is not compromised. This should be demonstrated in an applicant's operating schedule. Factors that may be considered include, but are not limited to:

- *The total occupancy capacity (staff, customers, others) of the premises*
- *Physical environment of the premises*

- *Customer profile*

3.16 Section 8.20 of the Policy contains information on how the council considers applications under the public safety licensing objective.

Paragraphs 8.21 to 8.29 state:

The Licensing Authority will interpret the term 'public nuisance' widely as advised in the Secretary of State's guidance. When considering this objective the Authority will take into account issues relating to noise, vibration, light, litter, offensive odours and anti-social behaviour arising from or in connection with the provision of licensable activities. Public nuisance can be at a low level only affecting a few people locally, as well as a major disturbance affecting the wider community.⁹

This objective does not mean the complete prevention of all of the above issues, but rather the prevention of such unreasonable levels of these as would constitute a nuisance to the public or a section thereof. A degree of noise, for example, is an inevitable consequence of the provision of most forms of regulated entertainment. The Licensing Authority will therefore seek to exercise its powers in a way which promotes the licensing objective, to discourage and eliminate the carrying on of licensable activities in a way that causes unreasonable inconvenience, upset or distress to others.

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)*

Steps that can be taken to minimise public nuisance include those to:

- *prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices. This may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices;*
- *prevent disturbance by customers and staff arriving at or leaving the premises;*
- *prevent queuing (either by pedestrian or vehicular traffic);*
- *help ensure patrons and staff leave the premises quietly;*
- *minimise the effect of parking by patrons on local residents;*
- *minimise noise from the use of smoking shelters, gardens and other open-air areas.*

This lists above are not exhaustive and the Licensing Authority remains aware of its obligation to consider each case on its merits.

The Authority notes that, as with other licensing objectives, there are other regulatory regimes exist which may be used to control nuisance. The Environmental Protection Act 1990 in particular allows Environmental Health officers to require the abatement of a statutory nuisance, and would be considered the primary control for such issues. However, the Licensing Authority notes that this regime is largely reactive, whereas licensing may be used to establish proactive controls, preventing a nuisance from reaching

a statutory level in the first instance.

Nuisance may arise directly as a result of licensable activities (for example, noise from music), or indirectly (noise from customers at the premises). Applicants and licence-holders are strongly encouraged to consider all possible sources of nuisance when compiling operating schedules, and to implement appropriate measures for the promotion of this objective. For many types of nuisance, this process will begin in the initial design stages prior to the construction or redevelopment of premises. The Council's Environmental Health officers may be consulted for informal advice, prior to the making of a licence application, on proposed measures likely to reduce or prevent the likelihood of public nuisance arising from the operation of licensed premises.

The Licensing Authority will have regard to best practice guidance when considering this licensing objective, including but not limited to:

- *Guidelines on Community Noise (World Health Organisation)*
- *Effective Management of Noise from Licensed Premises (British Beer and Pub Association)*
- *Code of Practice on Environmental Noise Control at Concerts (Noise Council)*

Where premises which are the subject of licensing applications involving amplified musical entertainment beyond 11pm are in close proximity to residential properties, the Licensing Authority will require a comprehensive operating schedule listing measures that the applicant intends to implement to ensure the promotion of this licensing objective.

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 along with the East Herts Pool of conditions.

Officer observations

3.20 As stated in the Guidance, the Licensing Sub-Committee'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 Having regard to paragraph 3.6 and the amendments to the conditions made between the applicant and police specifically the use of SIA on a Monday and Tuesday being only after 22.30, this has not been requested by the applicant on this application neither has this been fully consulted upon as such this does not form part of this application and a further minor variation should be sought for this request.
- 3.22 Some parts of the police's conditions are unfortunately subjective and unenforceable, specifically parts a, d and f with words such as encouraged and excessive amounts. With regards to condition i, members may wish to ask the applicant how they intend to achieve this.
- 3.23 As for the amendment to introduce a half hour soft close rather than a one hour soft close whilst not formally requested it is implied that this is removed by the hours requested. However, members may wish to confirm this.

When looking at the East Herts Pool of Model Conditions, the Sub-Committee members may wish to consider adding the condition that "Music amplification systems shall not be located in the entrance lobby or outside the premises building. Music amplification systems must not be directed outwards towards any street or installed externally to the Premises". Many other of the model conditions or a variation of are already on the current licence.

- 3.24 If Members are minded to add these, or any other conditions, then the applicant should be given the opportunity to comment on any issues that this may create or any factors that would make the conditions impractical or inappropriate.
- 3.25 If the Sub-Committee believes that the application would not undermine any of the licensing objectives then the application

should be granted as requested.

- 3.26 The Sub-Committee members should consider if they are content that 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.
- 3.27 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.
- 3.28 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.
- 3.29 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.
- 3.30 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.
- 3.31 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.

3.32 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;
- grant the application as sought but at the same time modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding to them.
- 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 reject the whole or part of the application that would lead to the application undermining the licensing objectives.

3.33 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.

4.0 Risks

4.1 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.

5.0 Implications/Consultations

5.1 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 – Hertford - Castle

6.0 Background papers, appendices and other relevant material

- 6.1 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
- 6.2 East Herts Statement of Licensing Policy 2021-2026
<https://cdn-eastherts.onwebcurl.com/s3fs-public/2022-03/Statement%20of%20Licensing%20Policy%202021-26%20Mar%202022.pdf>
- 6.3 [East Herts Pool of Model Conditions 2021](https://eastherts.fra1.digitaloceanspaces.com/s3fs-public/2021-08/Pool%20of%20Model%20Conditions%202021%20%28accessible%29.pdf)
<https://eastherts.fra1.digitaloceanspaces.com/s3fs-public/2021-08/Pool%20of%20Model%20Conditions%202021%20%28accessible%29.pdf>
- 6.4 **Appendix 'A'** – Application for a Variation of Premise Licence, including plans of the premises.
- 6.5 **Appendix 'B'** – Representations against the application.
- 6.6 **Appendix 'C'** – Current Premise Licence.
- 6.7 **Appendix 'D'** - Map showing location of the premises.

Contact Member Councillor Jan Goodeve – Executive Member for Planning and Growth
jan.goodeve@eastherts.gov.uk

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

Report Author Brad Wheeler – Senior Licensing and Enforcement Officer
Contact No: 01992 531520
brad.wheeler@eastherts.gov.uk