

East Herts Council Report Template

Licensing Sub-Committee

Date of Meeting: 9 May 2022

Report by: Jonathan Geall, Head of Housing and Health

Report Title: Application for a Premises Licence for Lidl at 295-297 Stansted Road, Bishop's Stortford, Herts CM23 2BT (22/0294/PL)

Ward(s) affected: Bishop's Stortford Meads

Summary

- An application for a new premises licence has been received in respect of Lidl at 295-297 Stansted Road, Bishop's Stortford. Representations against the application have been made by Interested Parties. Where representations are received against an application and not withdrawn there must be a Licensing Sub-Committee to decide that application.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 a new premises licence be decided.

1.0 Proposal(s)

- 1.1 Members' of the Licensing Sub-Committee should determine the application received in respect of Lidl at 295-297 Stansted Road, Bishop's Stortford to grant a premise 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 council'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 new premises licence was submitted by Lidl Great Britain Limited on 14th March 2022. The application has been correctly advertised and consulted upon as required by legislation and regulations.

3.2 The application requests the supply of alcohol for consumption off the premises at the new proposed store.

Day	Licensable Activity	Hours applied for
Mon -Sun	Supply of alcohol for consumption off the premises and opening hours	07:00 – 23:00

3.3 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'**.

3.4 Section 18 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. These steps are:

- 1) Staff will be trained regarding appropriate precautions to prevent the sale of alcohol to persons under the age of 18, the signs and symptoms of drunk persons and the refusal of sale due to intoxication. Staff will also be trained to recognise the signs of proxy purchases.
- 2) Records will be kept of such training for the Members' of staff who have received that training.
- 3) All staff will receive refresher training every six months as a minimum and records are to be kept of this refresher training.
- 4) Confirmation of training can be made available to the Licensing Authority or Police within 7 days of a request.
- 5) Any person found to be in breach of the Company alcohol policy is subject to disciplinary proceedings.
- 6) The operators of the premises will maintain a good relationship with the local police and other relevant authorities.

- 7) A comprehensive digital CCTV system to be installed internally giving storage of images for a period of not less than 28 days. Images can be provided on to removable media to authorised bodies with 48 hours' notice.
- 8) Fire safety equipment is provided at the premises, and staff are trained on the use of this equipment.
- 9) Alcohol will not be sold in an open container and the consumption of alcohol on the premises will not be permitted.
- 10) There will be a Challenge 25 policy operating at the premises. Challenge 25 means that the holder of the premises licence shall ensure that every individual, who visually appears to be under 25 years of age and is seeking to purchase or be supplied with alcohol at the premises or from the premises, shall produce identification proving that individual to be 18 years of age or older. Acceptable identification for the purposes of age verification will include a driving licence, passport or photographic identification bearing the "PASS" logo and the person's date of birth. If the person seeking alcohol is unable to produce acceptable means of identification, no sale or supply of alcohol will be made to or for that person.
- 11) In the event that an employee suspects that a person attempting to purchase alcohol is under the age of 25, is a street drinker or is attempting a proxy purchase they will immediately call the duty manager. The duty manager will make appropriate enquiries and will determine whether the sale should be permitted.
- 12) 'Challenge 25' posters shall be displayed in prominent positions at the premises.
- 13) An automated till prompt will be set up so that the

operator has to positively confirm that Challenge 25 has been complied with when the first item of alcohol has been scanned.

- 3.5 During the 28 day statutory public consultation period seven valid representations were received from local residents acting as Interested Parties. These representations are attached as **Appendix 'B'**.
- 3.6 The representations from residents raise concerns of noise, safety from traffic and anti-social behavior. The representations engage the public safety, prevention of public nuisance and prevention of crime and disorder licensing objectives.
- 3.7 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 Lidl would be in the category of 'Off-Licence'.
- 3.9 The proposed premises are a field and as such they are not in a Town Centre location so would be classed as being in 'Other areas'.
- 3.10 The table at 6.9 of the Policy details this authorities 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 an 'Off-Licence' in this type of location when valid and relevant representations have been

received:

Will generally be granted alcohol sales no later than 23:00.

- 3.11 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.

3.12 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*

3.13 Section 8.20 of the Policy contains information on how the council considers applications under the prevention of public nuisance 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.

3.14 Paragraph 9.37 and 9.38 of the 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.

- 3.15 In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the Licensing Sub-Committee 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;
 - the council's own Statement of Licensing Policy.
- 3.16 Paragraphs 9.42-9.44 of the Guidance deal with how to determine actions that are appropriate for the promotion of the licensing objectives.
- 3.17 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

- 3.18 When looking at the representations received any comment regarding the need for the premises or that the store will be open longer than other stores are not relevant matters under the Licensing Act 2003.
- 3.19 It should be noted that planning and licensing are different regulatory regimes. An applicant can apply for a licence with different hours / restrictions to their planning consent or without 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. This is echoed in

paragraph 14.64 of the Guidance.

- 3.20 Planning were consulted on this application and whilst they raised no objection they did make it clear that the current planning application had not yet been determined. If different hours and restrictions are granted by Licensing and Planning then the licence holder would be required to comply with whichever permission was the more restrictive.
- 3.21 If members believe that the application would not undermine any of the licensing objectives then the application should be granted as requested.
- 3.22 As stated in the Guidance the council'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.
- 3.23 Members should consider if they are content 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 objective would be undermined.
- 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 In considering additional conditions members should decide whether these steps would in fact address their concerns if the decision was made to grant the hours requested.
- 3.26 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.

3.27 Aside from adding conditions it is open to members to limit the hours of operation under the licence but clear reasons for this step would need to be given. However if simply limiting the hours beyond those requested does not mitigate members' concerns regarding the promotion of the licensing objectives then the option to also impose appropriate and proportionate conditions is available.

3.28 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.

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 members have 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 their decision on the application they give clear reasons on how and why they have made their 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 As with any application for a new premise 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, 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 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 Magistrates Court and the authority chooses to defend that appeal.

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

In determining this application, Members should be mindful of Sunday trading laws when considering the opening hours of the premises. All other 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
- 7.2 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](#)

- 7.3 [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>
- 7.4 **Appendix 'A'** – Application for a New Premise Licence.
- 7.5 **Appendix 'B'** – Representations against the application.
- 7.6 **Appendix 'C'** – Map showing location of the premises.

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