

## **East Herts Council Report**

### **Licensing Sub-Committee**

**Date of Meeting:** 28<sup>th</sup> November 2023

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

**Report title:** Application for a new premises licence for Ermines Café and Stores, 39 Ermine Street, Thundridge, Hertfordshire (23/1450/PL)

**Ward(s) affected:** Ware Rural

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### **Summary**

- An application for a new premises licence has been received from Ermines Café and Stores Ltd. 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 Where representations are received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide that application. This report is to inform that decision.

### **RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE**

**(A) The application to vary a premises licence be decided.**

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

1.1 Members of the Licensing Sub-Committee should determine the application for a new premises licence made by Ermines Café and Stores Ltd 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 Statement of Licensing Policy (herein 'the 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 by Ermines Café and Stores Ltd was submitted on 6th October 2023.

3.2 The licensable activities and hours requested in the variation application are shown in the table below.

<b>Licensable Activity</b>	<b>Day</b>	<b>Hours applied for</b>
Supply of alcohol (for consumption ON and OFF the premises)	Monday – Sunday	09:00 – 20:00
	During 12 events per year	09:00 – 00:00
Live and Recorded Music (Indoors only)	During 12 events per year	23:00 – 00:00
Premises open to the public	Monday – Sunday	09:00 – 20:30
	During 12 events per year	09:00 – 00:00

- 3.3 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'** and the plan to be attached to the premises licence is **Appendix 'B'**.
- 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.
- 3.5 During the 28-day statutory public consultation period 17 representations were received; Fourteen objecting to the application (13 local resident and a Ward Councillor), two in support of the application (one local resident and one from customers of the premises) and one neither objecting to nor supporting the application (from the Parish Council). All the representations are attached as **Appendix 'C'**.
- 3.6 Between them, the representations suggest that the following Licensing Objectives would be undermined if the application is granted as requested:
- Prevention of Public Nuisance;
  - Prevention of Crime and Disorder; or
  - Public safety.

- 3.7 A plan of the area in which the premises are located is attached at **Appendix 'D'**. This can be used to illustrate the location of the premises in relation to residents and other businesses.

## **Policy and Guidance**

- 3.8 Section 5 of the East Herts ['Statement of Licensing Policy'](#) (herein 'the Policy') relates to Pre-application advice and engagement. Paragraphs 5.7 and 5.8 state:

*5.7 Engagement is an important element of the licensing process. Applicants are expected to have considered the location and community it is proposing to operate in. An understanding of the concerns to be addressed can be obtained by early engagement with a variety of bodies and individuals including:*

- *Responsible authorities*
- *Ward Councilors*
- *Town councils*
- *Parish councils*
- *Residents Associations*
- *Businesses and residents in the vicinity of the proposed premises.*

*5.8 Experience shows that early engagement allows concerns to be addressed in the most timely and cost effective way for all parties. Where concerns cannot be addressed before an application is made resulting in representations the expectation is that the dialogue between the parties continues to try and find common ground.*

- 3.9 Section 6 of 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 alcohol sales by Ermines Café and Stores would be classed as an both 'Café' and 'Off-licence'.

3.10 The proposed premises are not within a Town Centre as defined in section 7.0 of the Policy so are designated as 'Other Area'.

3.11 The table at 6.9 of the Policy details the council's approach to hours for licensed premises when it has received relevant representations to an application.

- In relation to a 'Café' located in an 'Other Area', it states:

*Will generally be granted alcohol sales no later than **20:00**.*

- In relation to an 'Off Licences' located in an 'Other Area', it states:

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

3.12 Paragraph 6.10 of the Policy states:

*The hours detailed above will not be automatically applied where representations are received, and a Licensing Sub-Committee decides the application. Each application will be considered on its own merits and the most appropriate way to mitigate concerns will be taken.*

3.13 Section 8 of the Policy deals with the Licensing Objectives:

*8.1 The Licensing Authority must carry out its functions with a view to promoting the four Licensing Objectives, each of which has equal importance:*

- *the Prevention of Crime and Disorder,*

- *Public Safety,*
- *the Prevention of Public Nuisance, and*
- *the Protection of Children from Harm.*

*8.2 It is recognised that the licensing function is only one means of securing the delivery of the above Objectives and should not therefore be seen as a means for solving all local problems. The Licensing Authority will therefore continue to work in partnership with all stakeholders and partners towards the promotion of the Licensing Objectives.*

*8.3 The Licensing Authority expects applicants to address the licensing objectives within their operating schedules, having regard to the nature of the premises, the licensable activities to be provided, operational procedures, and the nature of the location and the needs of local communities. The operating schedule should contain sufficient information to enable the Licensing Authority, responsible authorities and other persons who may be affected by the operation of the licensed premises to assess whether the steps which will be taken to promote the licensing objectives are sufficient to mitigate any potential adverse impact.*

3.14 Paragraphs 8.6 to 8.13 of the Policy contain information on how the council considers applications in respect of the Licensing Objective 'Prevention of crime and disorder', paragraphs 8.14 to 8.09 deal with the Licensing Objective of 'Public safety' and paragraphs 8.20 to 8.30 deal with the Licensing Objective of 'Prevention of public nuisance'. These are the Licensing Objectives identified within the representations against this application.

3.15 Section 15, paragraphs 15.1 and 15.2 deal with the '*Operating Schedule*'. These paragraphs reflect the information in the Section 182 Guidance issued by the Secretary of state.

3.16 The Home Office-issued (herein 'the Guidance') states at paragraphs 9.37 and 9.38 that:

*9.37 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.*

*9.38 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;*
- *its own statement of licensing policy.*

3.17 Paragraphs 9.42-9.44 of the Guidance deal with how to determine actions that are appropriate for the promotion of the Licensing Objectives.

3.18 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. The Guidance should be considered along with the East Herts ['Pool of Model](#)

[Conditions](#)<sup>1</sup>.

## **Officer observations**

- 3.19 Whilst the hours and activities applied for are inside those suggested for a cafe, except that for the 12 event days, within East Herts 'Statement of Licensing Policy' this is the starting point for this type of premises and does not fetter the Sub-Committee's ability to decide on shorter or longer hours, or even on refusal, if they believe this is more appropriate in the circumstances of the individual application. The Policy is a starting point from which decisions can be made; should the Policy be departed from then members should clearly give their reasons for doing this.
- 3.20 Of the 14 representations objecting to the application, twelve are from local residents, one is from an individual who visits Ermine Street to care for a resident and one is from a Ward Councillor.
- 3.21 The main areas for concern raised within representations objecting to the application are:
- noise nuisance from patrons, live and recorded music
  - issues related to the sale and consumption of alcohol
  - parking.
- 3.22 Looking at the issue of noise nuisance first four of the representations detail that there are already issues that have arisen linked to the premises and the use of the outside area, as well as from patrons of the premises. There is concern that the granting of a licence to allow live and recorded music until midnight twelve times a year will make this worse. The issue of

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<sup>1</sup> Conditions with a letter 'C' or marked 'All' are relevant to 'Cafes' and those marked 'F' or marked 'All' are relevant to 'Off-licences' and some or all may be applied where appropriate having considered the merits of the individual application.



noise from patrons once they have consumed alcohol is also raised.

3.23 Some of the interested parties not only live in the same street as the premises but have properties on the boundary of the premises. Members may wish to ask these interested parties to describe the issues they currently experience so that they can better assess the likely impact of granting the application. The applicant could be invited to explain if they are aware of the issues and to offer any measures in mitigation.

3.24 The biggest area for concern in relation to noise nuisance from music noise appears to be in relation to the proposal to have 12 events per year until midnight. These activities are only requested for indoors and the applicant has offered some conditions they believe would uphold the Licensing Objectives if the application is granted, these are:

- the premises is located in a rural village area and will close early evening apart from 12 optional planned evening events per year until 00:00 hours. Themed events will be in keeping with village life, such as cheese and wine nights.
- signage will be displayed to remind customers of the need to respect neighbours and leave quietly
- windows and doors closed during evening events to prevent noise traveling/disturbance
- garden/seating area will be closed at 20.00 hours except for smokers during late closes, smokers will be permitted outside in the seating area to smoke but no drinks will be permitted outside to avoid unnecessary time spent out there.

- no open vessels to be taken outside during evening events after 22:00 hours.

- 3.25 The first bullet point is more of an informative rather than a clear, enforceable condition. Members may wish to ask the applicant if they would like to offer a condition detailing the types of events which they are proposing to hold; if this was conditioned on the licence an application would be required to add other types of event. Clarity would benefit the interested parties and might mitigate their concerns as, say, a wine and cheese event is very different to 'an individual singer or DJ' as detailed on page 10 of the application.
- 3.26 The second bullet point is a standard condition found on many premises licences but members may wish to seek clarity on the wording of the sign and its size and location. This detail could be added to the condition if it was considered necessary and appropriate.
- 3.27 The third bullet point, relating to live and recorded music would only apply after 23:00, as the national deregulation allows music without an authorisation being needed between 08:00-23:00. Before that time doors and windows could remain open making noise nuisance more likely. Members may ask if measures are in place to prevent doors and windows being opened, such as window locks and automatic door closers, should the application be granted.
- 3.28 Bullet points 4 and 5 are slightly contradictory so need some clarification. Point 4 says that '*smokers during late closes*' will be allowed to use the garden area but will not be allowed to take drinks outside but point 5 says '*no open vessels*' to be taken outside after 22:00. This would leave a gap between 20:00 and 22:00 when smokers could take drinks outside. For conditions to be enforceable they need to be clear and unambiguous.

- 3.29 If members are minded to allow the 12 later events requested then the report author would suggest that there is a need for some additional condition, again to give clarity. The request is for 12 events but there is no detail about when these would be held. Whilst one event a month may not have a huge impact on the premises neighbours without some more detail there is the potential that all 12 events could be held on consecutive days which could increase the potential for nuisance. The applicant also states that they will give 24 hours notice of an event to the Police and Licensing Authority but this is such short notice that it is of no practical use with regards to compliance, particularly if an event is on a Sunday and the authorities are notified on a Saturday. Members may wish to ask the applicant what their intention was when offering this condition and then could suggest an alternative wording for a condition that would deliver what members believe is necessary.
- 3.30 If members have concerns regarding the 12 later events per year and cannot agree on conditions to mitigate those concerns then this part of the application could be refused. The applicant would still be able to have these events using Temporary Event Notices (TEN's) which are designed to allow these sorts of events. The licence holder could apply for each event as little as five days in advance and each application would be scrutinised by the Police and Environmental Health meaning that any issues from previous events could be considered before the events went ahead. Of note, the 12 proposed events is well within the 15 event per calendar year limit allowed for TENs at a premises.
- 3.31 Seven of the objectors directly raise concerns regarding the potential impact of alcohol sales including anti-social behaviour and noise nuisance from customers. Some of the representations objecting to the licence differentiate between the later events and allowing alcohol sales during the normal

operating hours of the premises. This is echoed in one of the representations supporting the application. Members may wish to ask any interested parties in attendance whether removing the 12 additional later events would mitigate their concerns about alcohol sales?

- 3.32 A recurrent theme running through the representations objecting to the application is parking. For parking to be a valid consideration then it must be linked to one or more of the Licensing Objectives. Matters such as residents not having their own drives or not being able to park easily are not valid considerations. Members may wish to ask the interested parties how they know that any current parking issues relate to the operation of this premises and which of the Licensing Objectives they believe this issue impacts? Concerns are raised regarding access for emergency vehicles and it should be noted that whilst both the Police and Fire service were consulted, neither raised this as a concern.
- 3.33 There were two representations in support of the application, one from a local resident living in the same street as the premises and the other is from customers of the premises who live several miles away. Members should attach the weight they believe appropriate to these submissions.
- 3.34 Representation 17 from the Parish Council states that it neither objects to or supports the application but as the points raised do engage the Licensing Objectives the representatin has been included in the report and appendices for completeness.
- 3.35 The applicants operating schedule has been recreated as **Appendix 'E'** and the author has included comments regarding each condition for members to consider. Much of what has been detailed in section 18 of the application cannot be attached to any granted licence as it is ambiguous, unclear

or simply a comment rather than a condition. Members may wish to consider if they want to impose conditions relating to the points raised to help mitigate their concerns. Members may wish to question the applicant regarding the intention of each point before suggesting any revised wording.

- 3.36 The applicant's states that they only provide background music currently. If a premises licence is granted to allow alcohol sales for consumption on the premises then the deregulation of entertainment will mean that they can provide live and recorded music on any day between 08:00 and 23:00. As this would be permitted under the deregulation no conditions can be imposed in relation to live and recorded music between these times.
- 3.37 The Sub-Committee should consider whether the operation of the licensed premises would be likely to cause a public nuisance having considered the evidence presented and the location of the premises.
- 3.38 Section 5 of the East Herts 'Statement of Licensing Policy' relates to Pre-application advice and engagement.

*5.7 Engagement is an important element of the licensing process. Applicants are expected to have considered the location and community it is proposing to operate in.*

- 3.39 Members may wish to enquire with the applicant as to what, if any, engagement the applicant undertook prior to the application being made? How did the applicant gain an understanding of the location and community and is this reflected in the application before members today? The applicant recognises the benefit of liaison in the operating schedule but there is no evidence of this taking place prior to the application being made.

- 3.40 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.
- 3.41 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.
- 3.42 Whilst the hours and activities applied for are longer than those detailed in East Herts' 'Statement of Licensing Policy' this does not fetter the Sub-Committee's ability to decide that the hours applied for are appropriate in the circumstances of this individual application. If the Policy is departed from then clear reasons need to be given for this decision.
- 3.43 If the Sub-Committee believes that granting the application as requested would promote the Licensing Objectives, then the application should be granted as requested.
- 3.44 If the Sub-Committee believes that granting the application as requested would not promote the Licensing Objectives, then the starting point should be to consider if there are conditions that could be added to mitigate concerns.
- 3.45 In considering additional conditions, members should decide whether these steps would in fact address the concerns raised if the decision was made to grant the hours and activities as requested.
- 3.46 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.

- 3.47 Aside from adding conditions, it is open to members to limit the hours of operation and/or licensable activities further but clear reasons for this step would need to be given.
- 3.48 However, if adding conditions and/or limiting the hours beyond those requested and/or limiting licensable activities does not mitigate members' concerns regarding the promotion of the Licensing Objectives then the application should be refused.
- 3.49 Put in its simplest terms, what are the minimum measures that can be put in place to address concerns? Refusal of the application should be the last option considered.
- 3.50 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.
- 3.51 The comments, observations and suggestions contain within the body of the report and associated appendices do not fetter the Sub-Committees discretion to reach the decision they believe is most appropriate when considering all the merits of the individual case.

## **4.0 Options**

- 4.1 The actions open to the Licensing Sub-Committee are:
- grant the application as requested if members feel the application would promote and not undermine the Licensing Objectives; or

- grant the application but at the same time impose additional conditions or amend the activities or times requested if members feel it is necessary to promote the Licensing Objectives; 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 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.

## **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.

6.2 The 28-day public consultation commenced on 7<sup>th</sup> October 2023 and ended on 3<sup>rd</sup> November 2023.



## **Community Safety**

The report details the four Licensing Objectives 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

All statutory requirements have been considered in preparing this report.

## Specific Wards

Yes – Ware Rural.

### 7.0 Background papers, appendices, and other relevant material

7.1 Revised Guidance issued under section 182 of the Licensing Act 2003 (August 2023) -

<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>

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%2022.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>

7.4 **Appendix 'A'** – Application for a New Premise Licence (redacted).

7.5 **Appendix 'B'** – Representations

7.6 **Appendix 'C'** – Premises plan

7.7 **Appendix 'D'** - Location plan

## 7.8 **Appendix 'E'** – Operating Schedule with analysis

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