

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 21 MAY 2018

REPORT BY HEAD OF HOUSING AND HEALTH

APPLICATION FOR VARIATION OF THE PREMISES LICENCE FOR  
BACCHUS, ANCHOR STREET, BISHOP'S STORTFORD, CM23 3BP

WARD(S) AFFECTED: BISHOP'S STORTFORD CENTRAL

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**Purpose/Summary of Report**

- An application to vary the hours for licensable activity at the above premises has been received. Objections to that variation have been received so the decision falls to a Sub-Committee of the Licensing Committee. The report is to inform that decision.

<b><u>RECOMMENDATION FOR LICENSING SUB-COMMITTEE: That:</u></b>	
<b>(A)</b>	<b>The application be decided</b>

1.0 Background

1.1 Under the Licensing Act 2003 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.

1.2 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.

1.3 The Licensing Objectives are:

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

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

- Grant the application as applied for;
- Grant an appropriately amended application;
- Refuse the application.

## 2.0 Report

2.1 The valid variation application submitted by the licence holder, Breeze Bars Limited, was received by the licensing authority on 28 March 2018. The application was correctly advertised and consulted upon as required.

2.2 The application seeks to vary the hours for the sale of alcohol, regulated entertainment, late night refreshment and opening hours for Monday nights into the early hours of Tuesday mornings. The table below shows the currently granted hours for licensable activity on a Monday and those requested as part of the variation:

<b>Activity</b>	<b>Granted</b>	<b>Requested</b>
Films	12:00 – 00:30	12:00 – 02:00 (+1:30)
Live Music	12:00 – 00:30	12:00 – 02:00 (+1:30)
Recorded Music	12:00 – 00:30	12:00 – 02:00 (+1:30)
Performances of dance	12:00 – 00:30	12:00 – 02:00 (+1:30)
Anything of a similar description	12:00 – 00:30	12:00 – 02:00 (+1:30)
Late night refreshment	23:00 – 00:30	23:00 – 02:00 (+1:30)

<b>Activity</b>	<b>Granted</b>	<b>Requested</b>
Sale of alcohol	12:00 – 00:00	12:00 – 02:00 (+1:30)
Opening times	12:00 – 00:30	12:00 – 02:00 (+1:30)

- 2.3 Part M 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 variation. The applicant states that they believe that no additional conditions are required and as such have not detailed any additional steps. A redacted copy of the application form is attached as **Essential Reference Paper 'B'** and a redacted copy of the current premises licence is attached as **Essential Reference Paper 'C'**.
- 2.4 During the 28 day statutory public consultation three valid representations were received. Two of the representations were from East Herts Councillor's and the third was from an individual who lives and owns a business in the vicinity of Bacchus. The representations are attached as **Essential Reference Paper 'D'**.
- 2.5 The first representation seeks the refusal of the variation and is based on the assertion that the current operation of the premises already undermines the licensing objectives of prevention of public nuisance and prevention of crime and disorder. The representation details issues affecting the individual as a business owner as well as issues impacting on his family life.
- 2.6 It should be noted by Members that the purpose of the hearing today is to decide the application for variation and cannot be used to address issue, real or alleged, that are currently associated with the operation of the premises. However, if Members believe that there are current issues related to the management of the premises then this would be grounds for concern with regards to granting the application for extended hours.

- 2.7 The second representation was received from Councillor George Cutting (Bishops Stortford Central Ward). Councillor Cutting's representation is made on the basis that the proposed variation would undermine the prevention of public nuisance, prevention of crime & disorder and public safety objectives. The representation mentions the closure of nearby licensed premises (Club 7) and that Bacchus are making this application to gain additional trade from Air Crew that used to visit the now closed premises on a Monday night. Councillor Cutting mentions having spoken to the Police regarding incidents that occurred on a Monday evening at Club 7. It should be noted that the Police have not made representation against this variation application.
- 2.8 Councillor Cutting cites the lack of taxi marshalls on a Monday evening as having an impact on public safety as it will affect how fast and crowds disperse.
- 2.9 Councillor Cutting states that local residents have historically been disturbed by noise emanating from and created outside of these particular premises. He references their right to remain undisturbed, especially in the early hours.
- 2.10 The third representation was received from Councillor Norma Symonds (Bishops Stortford Central Ward) and is based on prevention of public nuisance and the prevention of crime & disorder. Councillor Symonds again reiterates that the premises are already causing disturbance to residents that live nearby. Councillor Symonds makes the link between the availability of alcohol and anti-social behaviour and states that the police have been called to the premises before.
- 2.11 Councillor Symonds references the closure of Club 7 and that Monday evenings was traditionally the Cabin Crew night and is afraid that this may lead to more anti-social behaviour and people drinking excessively.

### 3.0 Policy and Guidance

3.1 Section 4 of the East Herts Statement of Licensing 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 of Bacchus best fits the definition of a night club:

*Primarily for the provision of licensable activities at night (typically including music and dancing), where alcohol sales are a strong feature*

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

*Will generally be allowed licensable activities to 1 am only and until 10.30 pm on Sunday (other than for special occasions)*

3.3 The current hours for Bacchus on a Monday night are within this policy but the requested variation would take the licensable hours outside of the authority's policy.

3.4 Section 6 of the Statement of Licensing Policy details the authority's aspiration to create family friendly Town Centres. The approach to this is detailed in paragraph 6.4 of the policy:

1. *Where relevant representations have been received, we will consider granting applications which limit the hours of operation to those set out in this policy unless the exceptions detailed below can be demonstrated.*

2. *Where relevant representations have been received and exceptions can be shown for applications for public houses and night-clubs, we will consider whether to require waiter/table service for alcohol sales between 9 pm and the final time for the sale of alcohol.*
3. *Where relevant representations have been received against the sale of alcohol after 10 pm and exceptions can be shown, we will consider whether premises shall be required to demonstrate they have an effective dispersal management plan in place; to install a closed-circuit television system that meets the reasonable requirements of Hertfordshire Constabulary; installing an electronic identification entry system; and to have use of a Pubwatch radio.*

3.5 Paragraph 6.6 of the policy details matters that will be taken into account under this part of the policy where relevant representations have been received against an application. Does the application:

- (1) *contribute to the family-friendly development of the town centres; or*
- (2) *effect a real reduction in the capacity for alcohol sales in that premises (for example by replacing a vertical drinking establishment with seated consumption and waiter/waitress service).*

3.6 Where an applicant wishes an exception to this policy to be considered it is their responsibility to evidence this.

3.7 Paragraph 9.37 and 9.38 of the revised Guidance issued under section 182 of the Licensing Act 2003 states:

*As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely*

*on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.*

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- the steps that are appropriate to promote the licensing objectives;
- the representations (including supporting information) presented by all the parties;
- this Guidance;
- its own statement of licensing policy.

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

3.9 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.

#### 4.0 Officer observations

4.1 As stated in the Guidance the authority's decision should be evidence based, justified as being appropriate for the promotion of the licensing objective's and proportionate to what it is intended to achieve.

4.2 Members should consider if they believe the applicant has provided evidence that the proposed variation would promote and not undermine the licensing objectives. This evidence should be balanced against the evidence given by those

making representations against the application that the licensing objectives would be undermined.

- 4.3 Members should consider the conditions that are already present on the licence and whether these are adequate to promote the licensing objectives during the extended hours of operation. The applicant believes this is the case as they have not offered any additional steps to help promote the licensing objectives.
- 4.4 To help establish whether this is the case Members are free to question those in attendance from both sides. If Members believe that the representations are evidence that the operation of the premises already undermines the licensing objectives then it is appropriate to believe that this will, without further measures being put in place, continue into the extended period.
- 4.5 If Members believe that the evidence shows that the variation will promote the licensing objectives then the application should be granted in full.
- 4.6 If Members believe that there is evidence that the granting of the variation 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. 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.
- 4.7 If the applicant has not demonstrated that they should be an exception to the Family Friendly Town Centre Policy then Members think it appropriate to limit the hours to those within the policy (see paragraph 3.2 above).
- 4.8 However if simply limiting the hours to those within the policy does not mitigate Members concerns regarding the promotion

of the licensing objectives then the option to impose appropriate and proportionate conditions is available.

- 4.9 Additional conditions could only be imposed during any additional hours granted as part of this application and could not be applied to the hours the premises already benefits from.
- 4.10 In considering additional conditions Members should decide whether these steps would in fact address their concerns if the decision was made to grant hours beyond those within policy? Members are free to depart from the policy but should clearly explain why this has been done when giving detailed reasons for their decision.
- 4.11 If Members believe that there is evidence that shows that there are no steps that can be taken to ensure that any variation in hours would promote the licensing objectives then the application should be refused.
- 4.12 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 Implications/Consultations

- 5.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

### Background Papers

East Herts Statement of Licensing Policy 2016 -

<https://www.eastherts.gov.uk/article/35119/Licensing-Policy>

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](#)

Contact Officer: Jonathan Geall, Head of Housing and Health, Tel: 01992 531594 [jonathan.geall@eastherts.gov.uk](mailto:jonathan.geall@eastherts.gov.uk)

Report Author: Oliver Rawlings, Service manager (Licensing and Enforcement), Tel: 01992 531629 [oliver.rawlings@eastherts.gov.uk](mailto:oliver.rawlings@eastherts.gov.uk)