

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 08 JUNE 2018

REPORT BY HEAD OF HOUSING AND HEALTH

APPLICATION FOR REVIEW OF THE PREMISES LICENCE FOR DECO, 16-20 PARLIAMENT SQUARE, HERTFORD, SG14 1EZ (PL0505)

WARD(S) AFFECTED: HERTFORD CASTLE

Purpose/Summary of Report

- An application to review the above premises has been received from a local resident. Where a review application is made there must be a Licensing Sub-Committee to decide that application even where agreement is reached. The report is to inform that decision.

RECOMMENDATION FOR LICENSING SUB-COMMITTEE: That:

(A)	The application for review of the premises licence be determined.
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1.0 Background

1.1 Under the Licensing Act 2003 an application for review of a licence or certificate has to be.

1.2 Where a valid review application is made there must be a Licensing Sub-Committee hearing to decide that application even where agreement is reached. A Licensing Sub-Committee has the delegated authority to determine applications for review of 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:

- Make changes to the premises licence which are appropriate and proportionate for the promotion of the licensing objectives (either permanently or temporarily for up to 3 months);
- Suspend the licence for up to 3 months;
- Revoke the licence;
- Remove the designated premises supervisor (DPS);
- Make no changes to the licence.

2.0 Report

2.1 The valid review application was submitted by a local resident living near to Deco 13th April 2018. The application was correctly advertised and consulted upon as required by legislation and regulations.

2.2 The application details states that the current operation of the premises undermines the Licensing Objectives of:

- Prevention of Crime and Disorder;
- Public safety; and
- Prevention of public nuisance.

2.3 A redacted copy of the review covering email and application form is attached as **Essential Reference Paper 'B'**, the images submitted with the review are attached as **Essential**

Reference Paper 'C' and a redacted copy of the current premises licence is attached as **Essential Reference Paper 'D'**.

- 2.4 The review application details a number of issues around the operation of the premises following its refurbishment and reopening earlier in the year and makes particular reference to a new sound system being installed across all floors of the premises.
- 2.5 The issue relating to public nuisance is given as noise from both the internal and external areas of the premises on a weekly basis. This is said to mainly occur between 22:30-02:00 (music) and outside noise to 03:00 and beyond. The music from inside the premises is described as 'notably louder and has a deep, heavy base line'.
- 2.6 The outside noise is detailed as being from people in the smoking area screaming, shouting, swearing and singing. This area is detailed as in close proximity to residents. In addition when the premises closes there is further noise from customers directly outside the premises until after 03:30.
- 2.7 Concerns have also been raised about how the management control the capacity of the premises.
- 2.8 Details of a visit by a neighbour to the premises to obtain footage of the noise at the premises are detailed which resulted in a call to the Police are given. Video evidence of this incident has been supplied as part of a separate representation (Note: Press and Public should be excluded should Members wish to view the footage during the hearing as it shows third parties not involved in the incident who could be identified). The application goes on to give details of a subsequent visit to that neighbour by the premises licence holder.
- 2.9 Details are given of a particular incident when the review applicant felt forced to call the Police following an altercation

which started in Deco. Video evidence of this incident has been supplied (Note: Press and Public should be excluded should Members wish to view the footage during the hearing as it shows third parties not involved in the incident who could be identified).

- 2.10 The review application details concerns regarding children living in the vicinity being able to hear screaming, violence and threatening language being used.
- 2.11 There is an allegation that the premises doormen only ask the males visiting the premises for ID leaving the female customers age left unchallenged.
- 2.12 Issues with doormen from the premises parking across private access are detailed and a photograph to illustrate the issue was supplied.
- 2.13 Details of two further residents that support the review application were given and as stated both have made separate representations.
- 2.14 The final point of the review paperwork clearly sets out what the applicant for the review of the premises licence hopes can be achieved. It states that the application is not seeking to have the licence revoked but that the following matters need to be addressed:
 - i) The volume of music in the premises to be reduced to an acceptable level;
 - ii) A reduction in the noise from the smoking area;
 - iii) Controls on the use of the smoking area/queues outside the front of the premises; and
 - iv) Control of people leaving the premises.
- 2.15 The covering email with the review application mentioned breaches of conditions contained in Annex 2 of the current premises licence, namely:

- Condition 3 - The Licence holder shall erect and maintain suitable and sufficient conspicuous signage on the exterior of their premises advising patrons that causing any disturbance or disorder in a queue will result in admission being refused;
- Conditions 26 - The Licence holder and the Designated Premises Supervisor shall ensure that the maximum number of persons allowed onto the premises shall not exceed the capacity determined by the Hertfordshire Fire and Rescue Service.
- Condition 34 - Ground Floor Lounge Maximum Capacity: 100 Persons, First Floor Restaurant Maximum Capacity: 50 Persons
- Condition 35 - Amplified music to be played in basement club only, apart from non-regulated background music in the restaurant.

2.16 During the statutory 28 day consultation period four further representations were received in support of the review application:

- Two from local residents living in the vicinity of Deco; and
- Two from responsible authorities under the Licensing Act 2003: the Police and Environmental Health.

The representations are attached as **Essential Reference Paper 'E'**.

2.17 Residents representation 1 details that the resident has tolerated nuisance from inside and outside of the premises for two years. It again mentions the new sound system that has been installed at the premises and that this has made the music volume intolerable and that the people noise continues even after the music has ended.

2.18 The resident gives details of the same incident that was mentioned in the application for the review and they have

supplied footage of some of the incident taken on a mobile phone (Note: Press and Public should be excluded should Members wish to view the footage during the hearing as it shows third parties not involved in the incident who could be identified).

- 2.19 Details are given that the nuisance from the premises not only affects the residents sleep but also her weekend voluntary work.
- 2.20 Residents representation 2 mentions that a nuisance diary had been completed and upon searching the Council's records diary sheets were submitted in relation to noise from Deco during February and March 2018 by two separate individuals. These are attached as **Essential Reference Paper 'F'**. The diary sheets contain similar comments to those contained within the review application and the other representations.
- 2.21 The Police representation is based on three of the four licensing objectives, namely:
- Prevention of crime and disorder;
 - Prevention of public nuisance; and
 - Public safety.

The Police detail concerns regarding a GBH which occurred within the premises and how the incident was dealt with. The police state that more details are to follow and subsequently submitted some draft conditions that, if accepted by the licence holder, would mitigate their concerns. The proposed conditions are attached as **Essential Reference Paper 'G'**.

- 2.22 The Environmental Health representation is based on the prevention of public nuisance and proposed a number of conditions that they believe would mitigate their concerns. The proposed conditions are attached as **Essential Reference Paper 'H'**

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 Deco 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 Hertford 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 Deco 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.

3.10 Chapter 11 of the guidance deals with reviews and paragraphs 11.16 – 11.23 are particularly relevant as it deals with the powers the licensing authority has to determine the application.

4.0 Officer observations

- 4.1 All parties to the review believe the issues around noise nuisance from both inside and outside the premise can be addressed through the imposition of conditions. The residents have commented that they understand that they live in a Town Centre and cannot expect complete silence but that the level of noise from Deco since its refurbishment has become intolerable.
- 4.2 The authority received a number of noise complaints regarding Deco in February and March 2018 before the review application was made. This coincides with the reopening of Deco with its new sound system. The covering email with the application alleged a number of breaches of the premises licence and condition 35 of the premises licence would have a significant influence on the level of music noise from the premises.
- 4.3 Compliance with this condition was discussed with the licence holder on the 20th April 2018 at which the Police and Environmental were present. The licence holder believed that the condition had been removed by a previous licence application but it was demonstrated that it was still present. This explains the social media post supplied with the application that clearly states that the new sound system was installed on all floors of the premise. As such the condition had not been complied with following the refurbishment and this had led to the complaints about music noise.
- 4.4 A discussion took place with the licence holder around what level 'background music' would be in order to comply with the condition. Although there is no statutory definition the authority's opinion is that if you can hold a normal volume conversation without having to shout then the music is at a background level.

- 4.5 On the 12th May 2018 a Licensing Enforcement Officer visited the premises in the evening as part of routine visits with the Police Licensing Officer and a Technical Officer (Nuisance). During the visit it was noted that a DJ was located on the ground floor and that the music was at such a volume that it could not be considered to be at background level. The officers commented that they had to shout to hold a conversation until the music was turned down.
- 4.6 The Licensing Authority received complaints from the applicant for review and one of the residents that made representation regarding the music from Deco on this particular evening. A breach of condition makes carrying out licensable activity an offence under the Licensing Act.
- 4.7 Members may wish to ask the licence holder to explain the circumstances of this evidenced breach of condition? Members can also question the licence holder regarding the other alleged breaches of condition. This information will help Members to decide if they can have confidence in their management of the premises going forward?
- 4.8 The applicant for review and the other residents have confirmed that if the condition regarding background music on the ground and first floor is complied with going forward then the volume of the music from the venue would not cause them an issue.
- 4.9 Discussions have been held between the licence holder and the responsible authorities in an attempt to reach agreement. To date the Licensing Authority has not been notified that any agreement regarding the proposed conditions has been reached.
- 4.10 The proposed conditions were circulated to the applicant and residents for comment and their position as at 14th May 2018 is detailed below:

Thank you for sending the draft conditions through. They seem to cover our concerns and hopefully should result in resolving the issues we are facing.

In particular, I feel the following are absolutely important to retain:

- *Environmental Health condition 1 – I believe this should be being followed already, but appears not to be being adhered to at present*
- *Environmental Health condition 2 – This will be extremely helpful*
- *Environmental Health condition 7 & 8- Both conditions should assist with the level of noise in the courtyard*
- *Police condition 12 and 23- as above*

I believe some of the proposed conditions are currently in place already, but are not being adhered to, but I am happy these are being reinstated.

Just to also advise, the music was extremely loud again on Saturday, albeit intermittently. I was also woken up early on Sunday morning by persons leaving the premises. I am bringing this to your attention as we discussed last week that the issues seem to be getting better, but this is clearly not the case.

4.11 As complaints were continued to be received regarding noise nuisance from the premises throughout the consultation Member's may wish to ask the residents if there position regarding the conditions has changed.

4.12 It would appear that the applicant for review and those making representations in support of it have concluded that the proposed conditions would be enough to mitigate their concerns if they were added to the premises licence and then complied with.

4.13 Members may wish to question the applicant with regards to the proposed conditions and which they are willing to agree. The reasons for not accepting the other proposals should also be considered as any proposed conditions should be appropriate, proportionate, enforceable and achievable. If the licence holder believes that a particular condition is not workable then it is open to them to suggest an alternative which would have a similar effect.

4.14 Guidance requires that the minimum steps needed to mitigate the issues should be the steps that are taken by the authority. Therefore if Members believe that the licensing objectives are being undermined then any of the actions detailed in paragraph 1.4 of this report are available to them.

5.0 Officer recommendation

5.1 The officer recommendation is that new conditions be imposed on the premises licence to mitigate the concerns raised.

5.2 The officer recommendation in no way fetters Members discretion to make the decision which they believe is appropriate and proportionate in the circumstances of this individual application.

5.3 It is for Members to decide if conditions should be imposed on the licence and what the wording of such conditions should be. These can as proposed by the responsible authorities or amended as Members believe appropriate having heard all submissions.

5.4 Members may be concern by the licence holder's previous non-compliance with conditions. It should be noted that only one breach has been independently verified and any future breaches could result in prosecution or a further review of the licence.

6.0 Implications/Consultations

6.1 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

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