

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 3 APRIL 2019

REPORT BY HEAD OF HOUSING AND HEALTH

APPLICATION FOR VARIATION OF THE PREMISES LICENCE FOR THE HORN AT THE HALF MOON, 31 NORTH STREET, BISHOP'S STORTFORD, HERTFORDSHIRE, CM23 2LD

WARD(S) AFFECTED: BISHOP'S STORTFORD – MEADS

Purpose/Summary of Report

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

<u>RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE: That:</u>	
(A)	The application be determined.

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:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm.

1.3 In determining this application, the Sub-Committee must have regard to the representations and take such steps as it considers appropriate for the promotion of licensing objectives. The steps available to the Sub-Committee are:

- a) grant the application in full
- b) modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding them
- c) reject the whole or part of the application.

2.0 Report

2.1 The valid variation application submitted by the licence holders, Mr. Adrian Bell and Mr. James McLaughlin, was received by the licensing authority on 7th February 2019. The application was correctly advertised and consulted upon as required.

2.2 The application seeks to vary the hours for the licensable activities and opening hours on Fridays and Saturdays, Christmas Eve and Boxing Day. The table below shows the currently granted hours for licensable activities on a Fridays Saturdays, Christmas Eve and Boxing Day and the hours requested by the variation:

Activity	Granted	Requested
Sale of alcohol Friday and Saturday	11:00 – 00:00	11:00 – 02:00 (+2:00)
Films Friday and Saturday	11:00 – 00:30	11:00 – 02:00 (+1.5)
Films Christmas Eve and Boxing Day	If Sun 11:00 – 23:00 If Mon – Thu 11:00- 00:00 If Sat – Sun 11:00- 00:30	11:00 – 02:00 (Between+1.5 and 3 depending on the day)
Indoor Sporting Events Friday and Saturday	11:00 – 00:30	11:00 – 02:00 (+1.5)
Indoor Sporting Events Christmas Eve and Boxing Day	If Sun 11:00 – 23:00 If Mon – Thu 11:00- 00:00 If Sat – Sun 11:00- 00:30	11:00 – 02:00 (between+1.5 and 3 depending on the day)
Live Music Friday and Saturday	11:00 – 00:30	11:00 – 01:00 (+0.5)
Recorded Music Friday and Saturday	11:00 – 00:30	11:00 – 02:00 (+1.5)
Recorded Music Christmas Eve and Boxing Day	If Sun 11:00 – 23:00 If Mon – Thu 11:00- 00:00 If Sat – Sun 11:00- 00:30	11:00 – 02:00 (Between+1.5 and 3 depending on the day)
Performance of Dance Friday and Saturday	11:00 – 00:30	11:00 – 02:00 (+1.5)

Performance of Dance Christmas Eve and Boxing Day	If Sun 11:00 – 23:00 If Mon – Thu 11:00-00:00 If Sat – Sun 11:00-00:30	11:00 – 02:00 (Between+1.5 and 3 depending on the day)
Late Night Refreshment Friday and Saturday	23:00 – 00:30	23:00 – 02:00 (+1.5)
Late Night Refreshment Christmas Eve and Boxing Day	If Sun - Sat 23:00 – 00:30	23:00 – 01:00 (+0.30)
Opening times	Mon - Sun 11:00 - 00:30	Mon -Thu 11:00 - 00:30 (Same) Fri – Sat 11:00 – 02:30 (+2:00)

2.3 The application also looks to vary the conditions of the licence, in regards to open vessels to be used in the garden area, persons admitted and re admitted after 01:00 on a Friday and Saturday, to remove the capacity condition and for the applicant to make their own risk assessment on capacity on advice from the Fire Safety Officer in line with the Regulatory Reform (Fire Safety) Order 2005 and to remove the condition in regards to age restriction and make the premises available to a person over the age of 14.

2.4 Section 16 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 has stated that they believe the conditions on the existing licence are sufficient. 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'**.

- 2.5 During the 28 day statutory public consultation one valid representations was received from a resident of a neighbouring property. This representation is attached as **Essential Reference Paper 'D'**.
- 2.6 This representation raises concerns about the impact of loud music coming from the premises. These concerns are raised as they believe that the application, if granted as requested, will have an impact on "The prevention of public nuisance" licensing objective.
- 2.7 During the 28 day statutory public consultation the application was varied and conditions agreed with Herts Police. These conditions are attached as **Essential Reference Paper 'E'**
- 2.8 In particular condition 19 states that:
- Noise or vibration shall not emanate from the premises which could cause a nuisance to nearby properties.
 - Except for ingress and egress through the entrance, doors and windows shall be kept closed (but not locked) whilst regulated entertainment is taking place.'
- 2.9 Environmental Health and Hertfordshire Fire and Rescue commented that they do not object to this application and have no relevant representations to make.

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 The Horn at the Half Moon best fits the definition of a Public House:

Primarily for the sale of alcohol and food for consumption on the premises, and which may include the provision of other licensable activities. Will include a "drinking up period" between the last sale of alcohol and the closing time of the premises.

- 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 alcohol sales to midnight only, and until 10.30 pm on Sunday (other than for special occasions).

- 3.3 The hours for The Horn at The Half Moon are currently 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 9pm 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.

3.8 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;
- the Revised Guidance issued under section 182 of the Licensing Act 2003 ;
- 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. Paragraph's 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 objectives 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 So as to ascertain whether these are adequate to promote the licensing objectives during the extend hours of operation, Members should consider:

- the conditions that are already present on the licence and
- the new conditions agreed with the Police.

4.4 In order to come to a view on the adequacy of the conditions (existing and new), Members may question those in attendance from both sides.

4.5 Having considered the conditions (existing and new) and, if so desired, questioned the parties, Members need to determine a course of action.

4.6 If Members believe that the evidence shows that the variation will promote the licensing objectives then the application should be granted in full.

4.7 If however, Members believe that the representations provide evidence that either:

- the operation of the premises *already* undermines the licensing objectives and thus it would be reasonable to assume this would continue with varied hours *or*
- although the current operation does not undermine the licensing objectives, the varied hours would

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, Members should ask themselves, 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.

4.8 Actions Members can take are as follows:

- accept the varied hours sought but at the same time impose additional conditions, although these additional conditions would only apply during the additional hours granted as part of this application. These conditions could not be applied to the hours the premises already benefits from. Members are free to depart from the hours contained in the Licensing Policy but should clearly explain why this has been done when giving detailed reasons for their decision *or*
- if Members believe that there is evidence that shows that there are *no* steps that can be taken to ensure that the variation in hours sought would promote the licensing objectives then the application should be refused.

4.9 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

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