

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 21 JUNE 2019

REPORT BY JONATHAN GEALL – HEAD OF HOUSING AND HEALTH

APPLICATION FOR VARIATION OF THE PREMISES LICENCE FOR THE  
WHITE HART, SALISBURY SQUARE HERTFORD, HERTS. SG14 1BW

WARD(S) AFFECTED: -HERTFORD -CASTLE

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**Purpose/Summary of Report**

- An application to extend the licensable area and 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.

|  |                                   |
|--|-----------------------------------|
| <b><u>RECOMMENDATIONS 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 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.

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.

1.4 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, McMullens & Sons Limited, was received by the licensing authority on 30 April 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 as detailed below:

| <b>Licensable Activity</b> | <b>Day</b>   | <b>Current Hours</b>   | <b>Requested Hours</b>   |
|----------------------------|--|------------------------|--|
| Live Music - Indoors       | Mon-Thu  | 12:00- 00:00           | 12:00- 00:00<br>(No Change)  |
|                            | Fri-Sat  | 12:00 – 01:00          | 12:00 – 01:00<br>(No Change)   |
|                            | Sun  | 16:30 – 22:00          | 12:00 – 22:00<br>(Note time covered under Live Music Act 2012)   |
|                            | Sunday before a Bank Holiday                             | 16:30 – 22:00          | 12:00 – 00:00  |
| Live Music Outdoors        | Fri, Sat, Bank Holidays and Sunday before a Bank Holiday | Not currently licenced | 12:00 – 23:00  |
| Recorded Music - Indoors   | Mon-Thu  | 12:00- 00:00           | 12:00- 00:00<br>(No Change)  |
|                            | Fri-Sat  | 12:00 – 01:00          | 12:00 – 01:00<br>(No Change)   |
|                            | Sun  | 16:30 – 22:00          | <u>12:00 – 22:00</u><br><i>(Note time covered under The Legislative Reform (Entertainment Licensing) Order 2014)</i> |
|                            | Sunday before a Bank Holiday                             | 16:30 – 22:00          | 12:00 – 00:00  |
| Recorded                   | Fri, Sat,  | Not currently          | 12:00 – 23:00  |

|                                   |  |   |   |
|-----------------------------------|--|---|---|
| Music Outdoors                    | Bank Holidays and Sunday before a Bank Holiday           | licenced  |   |
| Late Night Refreshment            | Mon-Thu  | 23:00 – 23:30   | 23:00 – 23:30<br>(No Change)  |
|                                   | Fri, Sat, Bank Holidays and Sunday before a Bank Holiday | 23:00 – 23:30 on a Friday - Sat   | 23:00 – 01:30   |
| Supply of Alcohol on the premises | Mon-Thu  | 10:00 – 23:00   | 10:00 – 23:30   |
|                                   | Fri-Sat  | 10:00 – 23:00<br>(Extended to 01:00 if ancillary to music / dance)  | 10:00 – 01:00   |
|                                   | Sun  | 12:00 – 22:30   | 10:00 – 22:30   |
|                                   | Sunday before a Bank Holiday                             | 12:00 – 22:30   | 10:00 – 01:00   |
|                                   | New Year's Eve   | ON NEW YEAR'S EVE THE SALE OF ALCOHOL SHALL BE PERMITTED FROM THE START OF PERMITTED HOURS ON NEW YEAR'S EVE TO THE END OF PERMITTED HOURS ON <u>NEW YEAR'S DAY</u> | ON NEW YEAR'S EVE THE SALE OF ALCOHOL SHALL BE PERMITTED FROM THE START OF PERMITTED HOURS ON NEW YEAR'S EVE TO THE END OF PERMITTED HOURS <u>ON NEW YEAR'S DAY</u> |
| Opening Hours                     | Mon-Thu  | <u>10:00 – 23:30</u>  | 10:00 – 23:30   |
|                                   | Fri-Sat  | <u>10:00 – 23:30</u><br>(Extended to 01:30 if ancillary to music / dance)   | 10:00 – 01:30   |
|                                   | Sun  | 12:00 – 22:30   | 10:00 – 23:00   |

|  |                                       |  |   |
|--|---------------------------------------|--|---|
|  | Sunday<br>before a<br>Bank<br>Holiday | 12:00 – 22:30  | 10:00 – 23:30   |
|  | New Years<br>Eve                      | ON NEW YEAR'S EVE<br>THE OPENING HOURS<br>OF THE PREMISES<br>SHALL BE EXTENDED<br>FROM THE START OF<br>PERMITTED HOURS ON<br>NEW YEAR'S EVE TO<br>THE END OF<br>PERMITTED HOURS ON<br>NEW YEAR'S DAY | ON NEW YEAR'S EVE<br>THE OPENING<br>HOURS OF THE<br>PREMISES SHALL BE<br>EXTENDED FROM<br>THE START OF<br>PERMITTED HOURS<br>ON NEW YEAR'S EVE<br>TO THE END OF<br>PERMITTED HOURS<br>ON NEW YEAR'S DAY |

- 2.3 The application seeks to extend the licensable area, mainly a games room and crazy golf / table tennis room and to amend Condition 2 of Annex 2 – Conditions consistent with the operating schedule of the current licence to read *“The number of persons (excluding staff, attendants and performers) to be allowed at any one time in the revised licensed premises shall not exceed 499 with the following restrictions: No more than 200 persons in the barn and no more than 200 persons in the bar area.”* The application also seeks to remove the restriction that films are only used for karaoke.
- 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 the use of CCTV, staff training, Challenge 25, that a personal licence holder will be on the premises between 19:00 and close on Friday and Saturday nights and nights leading to a Bank Holiday. On Friday and Saturday nights and nights leading to a Bank Holiday there shall be a minimum of two SIA door supervisors from 21:00 until close, additional door supervisors shall be employed on occasions deemed necessary by the DPS or advised by the Police and that clear notices shall be erected and maintained in prominent position at every exit and in the outside area

requesting patrons avoid causing noise, nuisance or disturbance to local residents . 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 representation was received from a resident of neighbouring property. This representation is attached as **Essential Reference Paper 'D'**.

2.6 The representation raises a concern on the variation, the concern being the impact of the application to neighbouring properties in that the licensed premises' existing activities causes noise for local residents and that music is played loud on a Friday, Saturday and Bank Holiday Weekend. The concerns are raised as they believe that the application, if granted as requested, will have an impact on all of 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'**

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

3.3 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.*

3.4 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. The questions to be considered are, 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).*

3.5 Where an applicant wishes an exception to the presumption in the Licensing Policy, as set out in the paragraphs above, to be considered it is their responsibility to evidence how the exception being sought will promote and not undermine the Licensing Objectives (as laid in paragraph 1.3 above).

3.6 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.*

3.7 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. 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 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 operating schedule on the application 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:
- grant the application as requested if they believe the application would not undermine the licensing objectives; *or* grant the application as sought but impose additional conditions; *or*
  - grant the application with amended hours as detailed in the policy (Members are free to depart from the hours within the policy if they wish but detailed reasoning for this decision should be given; *or*

- grant the application with amended hours and additional conditions; *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/35475/Licensing-Act-2003--Licensing-Policy>

Night Time Economy (NTE) Position Statement -

<https://www.eastherts.gov.uk/article/35475/Licensing-Act-2003--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](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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