

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 23 JULY 2019

REPORT BY HEAD OF HOUSING AND HEALTH

APPLICATION FOR A NEW PREMISES LICENCE FOR THE CRAFTY DUCK,
28 PARLIAMENT SQUARE, HERTFORD, HERTS, SG14 1EZ

WARD(S) AFFECTED: HERTFORD -CASTLE

Purpose/Summary of Report

- An application for a new premise licence has been received. An objection to the grant of the licence 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 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 new premise licence application submitted by Crafty Duck Bars Ltd was received by the licensing authority on 31st May 2019. The application was correctly advertised and consulted upon as required.

2.2 The application has been modified by the applicant to remove recorded music so that the only licensable activity being requested is the supply of alcohol for consumption on and off the premises. The timings requested are as follows:

Sunday to Thursday from 12:00 – 21:30

Friday and Saturday from 12:00 – 22:30

The premises to remain open for a further 30 minutes for soft drinks and drinking up time.

2.3 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 application. The applicant has stated that they will:

- participant of Pub Watch;
- have CCTV covering the entry point;
- risk assess the need for SIA door supervisors;
- ensure noise or vibration shall not emanate from the premises which could cause a nuisance to nearby properties;
- ensure doors and windows will be kept closed (but not locked) except for ingress and egress through the entrance;
- Ensure that after 18:00 all persons under 18 shall be accompanied by an adult when licensable activities are taking place. These matters will become conditions on any granted licence unless modified by the Sub-Committee. A copy of the application form and accompanying plan is attached as **Essential Reference Paper 'B'**.

2.4 During the 28 day statutory public consultation nine valid representations were received from or on behalf of residents of neighbouring properties. Following mediation and the amendments to the application five representations have been withdrawn leaving four outstanding representations. The outstanding representations are attached as **Essential Reference Paper 'C'**. There has been no representation from any Responsible Authority.

2.5 The representations raise a number of concerns about the application. These concerns are raised as the interested parties believe that the application, if granted as requested, will undermine the prevention of crime and disorder and the prevention of public nuisance licensing objectives.

- 2.6 During the application period sixteen comments were also received in support of the application, eight of these were from Hertford residents, these comments are attached as **Essential Reference Paper 'D'**. These comments have been added to the report for information purposes and the members of the Sub-Committee must decide how much weight they attach to these comments, however none of the people that have submitted supporting documents live in the immediate vicinity of the premises so would be unlikely to be affected by its operation.
- 2.7 During the 28 day statutory public consultation the application was varied and additional conditions agreed with Herts Police. These conditions are attached as **Essential Reference Paper 'E'**
- 2.8 The applicant further amended their application by agreeing conditions that they shall be ceasing alcohol sales 30 minutes before closing time, that the garden area would not be used, that the front of the premises shall be swept and maintained daily and CCTV being installed both internally and externally to the premises. The applicant sent out a letter to the interested parties to notify them of the changes and to try and mitigate their concerns and included a profile of the business. These letters are attached as **Essential Reference Paper 'F'**
- 2.9 A plan of the area in which 28 Parliament Square is located is attached as **Essential Reference Paper 'G'**. This can be used to illustrate the proximity of the premises to residents and other Town Centre Businesses

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 Crafty Duck 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 Section 7.0 of the Statement of Licensing Policy contains information on how the Licensing Authority considers applications under the prevention of crime and disorder licensing objective. Paragraph 7.2 states *“The Licensing Authority will expect the applicant to demonstrate how they will prevent disorderly conduct, prevent sale of alcohol to a person who is drunk, and prevent the obtaining of alcohol for a person who is drunk on the licensed premises, and how the licence holder will exercise these duties so as to prevent or reduce the risk of anti-social behaviour by customers occurring elsewhere after they have left the premises.”*

3.6 Section 9.0 of the Statement of Licensing Policy contains information on how the Licensing Authority considers applications under the prevention of public nuisance licensing objective. Paragraph 9.2 states *“In considering an application, the Licensing Authority will consider the adequacy of proposed measures to remove or effectively manage the potential for nuisance and antisocial behaviour.”*

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.

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

3.10 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 application 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 requested variation, Members should consider:
- the conditions that are already present on the application and subsequently made on after the application was submitted, and
 - the new conditions agreed with the Police.
- 4.4 In order to come to a view on the adequacy of the conditions; 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 application would promote the licensing objectives then the application should be granted in full.
- 4.7 If however, Members believe that the representations provide evidence that the application would undermine 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, 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 if they feel the application would promote and not undermine the licensing objectives; *or*
- grant the application as sought but at the same time impose additional conditions. Members are free to depart from 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 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

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