

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 28 AUGUST 2019

REPORT BY JONATHAN GEALL – HEAD OF HOUSING AND HEALTH

APPLICATION FOR A NEW PREMISES LICENCE FOR SUNSET CINEMAS,
SWORDERS FIELDS, THE CAUSEWAY, BISHOP'S STORTFORD, HERTS.
CM23 .

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

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 decided

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 Sunset Cinema Ltd was received by the licensing authority on 5th July 2019. The application was correctly advertised and consulted upon as required.

2.2 The application seeks approval for the exhibition of films as a licensable activity on a Saturday between 13:00 and 23:59 and Late Night Refreshment on a Saturday between 23:00 and 23:59. This is limited to 3 events per year.

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 :

- there will be qualified first aiders and a first aid kit available for use
- there will be stewards around the area who are identifiable
- the use of BBFC ratings to ensure the protection of children from harm.

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 the application was varied and additional conditions agreed with Environmental Health and Herts Police.

These conditions regard that:

- any premise licence will be limited to 3 events per year during June and September each year
- the use of an Event Management Plan (EMP) and what should be included in the EMP, that it must be submitted and approved to the Local Authority before any licensable activities taking place
- the use of a Noise Management Plan (NMP) that must be submitted and approved by the Local Authority before any licensable activities take place
- no under seven year olds allowed on the premises after 20:00,
- all persons under 18 shall be accompanied by an adult over 21 years of age at all times
- there will be a DBS checked individual on site at all times to deal with any lost children
- the use of SIA door supervisors at all times and the number of SIA door supervisors being dependant on the capacity of the premises.
- there shall be no glass vessels and bottles allowed onto the premises
- limits to the quantity of alcohol permitted to be bought onto the premises is restricted.

These matters will become conditions on any granted licence unless modified by the Sub-Committee. A copy of the full conditions are attached as **Essential Reference Paper 'C'**

- 2.5 During the 28 day statutory public consultation one valid representation was received from or on behalf of residents of neighbouring properties. The outstanding representations are attached as **Essential Reference Paper 'D'**. There has been no representation from any Responsible Authority.
- 2.6 The representation raises 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 public nuisance licensing objective.
- 2.7 A plan of the area in which Sworders Field is located is attached as **Essential Reference Paper 'E'**. 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 Sunset Cinema best fits the definition of an 'other entertainment venue':

The sale of alcohol and provision of late night refreshment (hot food and drink) is either absent or only ancillary to other licensable activities

- 3.2 The premises fall within what is considered in section 6 of the Statement of Licensing Policy to be Bishop's Stortford 'other areas'. Using the table at 4.3 of the policy this details the

authority's approach to licensing premises when it has received relevant representations to an application. Notwithstanding that each application is considered on its own merits the policy states that licences:

May be limited to midnight

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) does the application contribute to the family-friendly development of the town centres;*

3.5 Section 7.0 of the Statement of Licensing Policy contains information on how the Licensing Authority considers applications under the prevention of the 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 Paragraphs 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 of the Guidance 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. Paragraphs 10.8-10.10, 10.13-10.15 would be particularly relevant to this application.

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 the application is 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 after the application was submitted, and
- the new conditions agreed with the Police and Environmental Health.

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 attach additional conditions or take any steps they believe appropriate to promote the licensing objectives including: limiting the hours for licensable activities. 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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