

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 4 SEPTEMBER 2019

REPORT BY HEAD OF HOUSING AND HEALTH

APPLICATION FOR A VARIATION OF PREMISE LICENCE FOR DECO
LOUNGE, 16-20 PARLIAMENT SQUARE, HERTFORD SG14 1EZ

WARD(S) AFFECTED: HERTFORD CASTLE

Purpose/Summary of Report

- An application for a variation to a premise licence has been received. Objections to the grant of the licence have been received so the decision falls to a Sub-Committee of the Licensing Committee. The report is to inform that decision.

<u>RECOMMENDATION 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 variation of a premise licence application submitted by Innis Independent Consultancy Ltd was received by the licensing authority on 17th July 2019. The application was correctly advertised and consulted upon as required.

2.2 The application seeks approval to extend a number of licensable activities for the **basement area only** as set out below:

Requested Activity	Requested Day	Requested Time	Proposed Change to basement area
Live Music	Monday – Thursday	18:00 – 00:30	No Change
Live Music	Friday	18:00 – 03:00	+1.5 hours
Live Music	Saturday	11:00 – 03:00	+1.5 hours

Live Music	Sunday	11:00 – 00:30	No Change
Live Music	Bank Holiday Sundays, Christmas Eve, Boxing Day & New Year's Eve	11:00 – 04:00	This would depend on day of the week
Recorded Music	Sunday – Wednesday	10:00 – 01:00	No change on Sundays -1 hour Mon - Wed
Recorded Music	Thursday	10:00 – 01:30	No change
Recorded Music	Friday - Saturday	10:00 – 04:00	+1.5 hours
Recorded Music	Bank Holiday Sundays, Christmas Eve, Boxing Day & New Year's Eve	11:00 – 04:00	This would depend on day of the week
Performances of dance	Sunday – Wednesday	23:00 – 01:00	+2 hours
Performances of dance	Thursday	23:00 – 01:30	+2.5 hours
Performances of dance	Friday - Saturday	23:00 – 04:00	+5 hours
Performances of dance	Bank Holiday Sundays, Christmas Eve, Boxing Day & New Year's Eve	23:00 – 04:00	+5 hours
Anything of a similar description of Live Music, Recorded Music or Performance of dance	Sunday – Wednesday	10:00 – 01:00	New Licensable Activity
Anything of a similar description of Live Music, Recorded Music or	Thursday	10:00 – 01:30	New Licensable Activity

Performance of dance			
Anything of a similar description of Live Music, Recorded Music or Performance of dance	Friday - Saturday	10:00 – 04:00	New Licensable Activity
Anything of a similar description of Live Music, Recorded Music or Performance of dance	Bank Holiday Sundays, Christmas Eve, Boxing Day & New Year's Eve	11:00 – 04:00	New Licensable Activity
Late Night Refreshment	Sunday – Wednesday	23:00 – 01:00	No change
Late Night Refreshment	Thursday	23:00 – 01:30	No change
Late Night Refreshment	Friday - Saturday	23:00 – 04:00	+1.5 hours
Late Night Refreshment	Bank Holiday Sundays, Christmas Eve, Boxing Day & New Year's Eve	23:00 – 04:00	This would depend on day of the week
Supply of Alcohol ON the premises	Sunday – Wednesday	10:00 – 00:45	-15 minutes
Supply of Alcohol ON the premises	Thursday	10:00 – 01:15	+15 minutes
Supply of Alcohol ON the premises	Friday - Saturday	10:00 – 03:45	+1 hour 45 minutes
Supply of Alcohol ON the premises	Bank Holiday Sundays, Christmas Eve, Boxing Day & New Year's Eve	11:00 – 04:00	This would depend on day of the week
Hours	Sunday –	08:00 – 01:00	+ 2 hours Sun

premises are open to the public	Wednesday		No change Mon-Wed
Hours premises are open to the public	Thursday	08:00 – 01:30	No Change
Hours premises are open to the public	Friday - Saturday	08:00 – 04:00	+1.5 hours
Hours premises are open to the public	Bank Holiday Sundays, Christmas Eve, Boxing Day & New Year's Eve	11:00 – 04:00	This would depend on day of the week

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:

- use of CCTV and ID Scan already in place
- SIA door supervisors must go to the front of the venue for 15 minutes after closing
- all customers entering the club are to be ID Scanned
- no one under 18 are to be in the venue.

- extra signs will be displayed for customers to be quiet when leaving the venue and in the smoking area.

It is suggested that should the licence be granted that this condition is amended to read:

At every entrance / exit to the premises there shall be notices asking customers to please respect our neighbours and leave quietly and in the in the smoking area at least 2 notices asking customers to please respect our neighbours and to be quiet. These notices are to be a minimum of A4 in size and the wording at least size 48 font.

- the smoking area will be monitored by a door supervisor to ensure that any noise and the number of persons can be monitored.

It is suggested that should the licence be granted that this condition is amended to read:

There shall be at least one door supervisor to monitor the number of persons using the smoking area and to request customers to be quiet if necessary.

These matters will become conditions on any granted licence unless modified by the Sub-Committee. A copy of the application form is attached as **Essential Reference Paper 'B'** and a copy of the current premises licence is attached as **Essential Reference Paper 'C'**

2.4 During the 28 day statutory public consultation the application was modified with Environmental Health to include the following conditions:

- *The movement of bins and rubbish outside the premises will be kept to a minimum after 21.00hrs.*

This condition is subjective and not enforceable as such it is suggested that the condition is modified to read:

There shall be no movement of bins and rubbish outside the premises after 21:00

- *Bottle/glass dumping to external areas shall not be permitted between the hours of 21.00hrs and 08.00hrs*
- *Bottle/glass collections will only be permitted by external companies between the hours of 07.00 and 21.00hrs.*

Confirmation of agreement to these amendments is at **Essential Reference Paper 'D'**

- 2.5 During the 28 day statutory public consultation twenty (20) valid representations were received. One of these objections was from Hertfordshire Police acting as a Responsible Authority, two from East Herts District Councillors, one from a Councillor of Hertford Town Council, one from Hertford and Ware Street Pastors and fifteen (15) representations from residents of Hertford including neighbouring properties. These representations are attached as **Essential Reference Paper 'E'**.
- 2.6 The representation from the Police raises a concern about the application. This concern is that the Police believe that the application, if granted as requested, will undermine the prevention of crime and disorder licensing objective. This concern is specifically around the request to increase the licensing hours between 22:00 and 03:00 on Friday and Saturday nights and nights leading into a Bank Holiday. The Police have stated that evidence shows that crime levels within the Hertford Town Centre night time economy go up each hour even though the number of people in the area goes down. The level increases dramatically between 22:00 and 03:00 on Friday and Saturday nights and nights leading into a Bank Holiday.
- 2.7 The police have stated that they believe that there would be an increased length of time over which violent crime can occur resulting in a rise in crime and disorder locally.
- 2.8 As part of the representations details regarding the impact on the police overtime costs are raised. These comments are not relevant and should not be considered as part of the decision making process.
- 2.9 At the time of writing this report the Police have not provided any more detailed information as they indicated they would in their representation.

- 2.10 The representations from the Interested Parties raise a number of concerns about the application. The interested parties believe that the application, if granted as requested, will undermine the prevention of crime and disorder, public safety and the prevention of public nuisance licensing objectives.
- 2.11 When viewing the representations made by the interested parties there are a number of factors or questions that need to be considered when deciding how much weight should be attached to each individual submission:
- Can the comments be specifically linked to the operation of the premises now or the proposed operation of the premises?
 - Are the comments of a general nature which cannot be directly linked to the premises in question?
 - Police resourcing is not a relevant consideration so any comments relating to this should be discounted.
 - The ability for a premises licence holder to control their patrons cannot be extended beyond the area that they can directly control. Once people leave the vicinity of a premises it is their personal responsibility to regulate their own behaviour.
 - Is there any evidence that any of the crimes referenced are specifically related to Deco or its patrons?
 - Where conditions are suggested as part of a representation do they mitigate concerns and are they appropriate to promote the licensing objectives?
 - The application must be considered on its own merits. If a licence is granted then it does not set a precedent should other premises wish to apply for later hours in the future.
 - The resourcing of the Hertford and Ware Street Pastors is not a relevant consideration.
 - The question of "need" for a premises is irrelevant.
 - A number of representations have been received from residents living a considerable distance from the premises in question. Members may wish to ask how these

residents know that it is the customers from Deco that are causing the issues they describe?

- 2.11 A plan of the area in which Deco is located is attached as **Essential Reference Paper 'F'**. 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 Deco best fits the definition of 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. 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:

Will generally be allowed licensable activities to 1 am 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) *does the application contribute to the family-friendly development of the town centres;*
- (2) *does the application 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 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 these are adequate to promote the licensing objectives during the requested variation, Members should consider:
- the conditions that are already present on the licence, and
 - the conditions that are present on the application, and
 - the new condition agreed with 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 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 if they feel the variation 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.
- 4.10 The hours of operation are above those stipulated in the East Herts statement of licensing policy. 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.

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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