

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 19 SEPTEMBER 2019

REPORT BY JONATHAN GEALL – HEAD OF HOUSING AND HEALTH

APPLICATION FOR A NEW PREMISES LICENCE FOR THE BURGER BOX,
23 PARLIAMENT SQUARE, HERTFORD, HERTS, SG14 1EX

WARD(S) AFFECTED: HERTFORD CASTLE

Purpose/Summary of Report

- An application for a new 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.

RECOMMENDATION FOR LICENSING SUB-COMMITTEE: That:

(A)	The application be determined.
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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 TRS Bars and Restaurants Ltd was received by the licensing authority on 27th July 2019. The application was correctly advertised and consulted upon as required.

2.2 The application requests the supply of alcohol for consumption on and off the premises.

Sale of Alcohol	Monday to Sunday	10:30 – 21:00
Opening hours	Monday to Sunday	08:00 – 22:00

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:

1. The Challenge 25/Think 25 proof of age scheme shall be operated at the Premises. All customers who appear to staff to be under the age of 25 will be challenged to prove that they are over 18 when attempting to purchase alcohol. Acceptable forms of ID include a photo driving licence, passport, or home office approved identity card bearing the holographic 'PASS' mark. If the person seeking alcohol is unable to produce an acceptable form of identification, no sale or supply of alcohol shall be made to or for that person.
2. All staff involved in the sale or supply of alcohol shall be trained, as part of their induction, in the responsible sale of alcohol. Such training will include challenging every individual who appears to staff to be under 25 years of age and to refuse service where individuals cannot produce acceptable means of ID, and using the Refusals Log. Such training (including any refresher training) will be recorded in the Training Log.
3. Signage shall be displayed conspicuously on the premises in customer facing areas to advise customers that suitable proof of age documentation will be required for all purchasers who appear to staff to be under 25.
4. Water and non-intoxicating beverages will be readily available during the hours that alcoholic beverages are available for purchase;
5. The Premises shall install and maintain a comprehensive CCTV system as per the minimum requirements of a local Police Crime Prevention Officer.
6. All entry and exit points will be covered enabling front identification of every person entering in any light condition. The CCTV system will be capable of obtaining clear facial recognition images and a clear head and shoulders image of every person entering or leaving the Premises;
7. The CCTV system shall display on any recording the correct time and date of the recording; The CCTV shall continuously record while the Premises is open for licensable activities and during all times when customers

- remain on the Premises.
8. All recordings shall be stored for a minimum period of 31 days with date time stamping.
 9. Recordings shall be made available immediately upon reasonable enquiries of the Police or authorised officer, through the preceding 31 day period.
 10. A staff member from the Premises who is conversant with the operation of the CCTV System shall be on the Premises at all times the premises is open to the public. This staff member must be able to show a police or authorised officer recent data or footage with the absolute minimum of delay when requested.
 11. Sales of alcohol in the premises shall only be served to customers sitting inside the premises and to those who are seated at tables within the designated seating area in Parliament Square for which planning permission has been obtained under the authority of a planning inspector's decision reference APP/J1915/W/16/3155135 dated 3rd November 2016 and planning application 3/16/1056/FUL

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 East Herts Police raised some points and as a result the application was varied to include additional conditions agreed with the Police. These conditions are attached as **Essential Reference Paper 'C'**. Thus, East Herts Police have not made any representations regarding the application as varied.
- 2.5 There has been no representation from any other Responsible Authority.
- 2.6 During the 28 day statutory public consultation three valid representations were received from or on behalf of residents of neighbouring properties. The representations are attached as **Essential Reference Paper 'D'**.

- 2.7 The representations from the public 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.
- 2.8 It should be noted that a number of the concerns have been addressed by the applicant by the additional conditions already agreed as part of their operating schedule.
- 2.9 Furthermore, it should be borne in mind that any question regarding whether there is a “need” for such premises raised in the representations is irrelevant to the determination of the application as this matter is not related to the licensing objectives.
- 2.10 A plan of the area in which 28 Parliament Square 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.
- 2.11 It is understood that an application has been made to the Hertfordshire County Council for a pavement licence under S.115E of the Highways Act 1980. The applicant has provided the Licensing Authority with a copy of the plan that has been submitted to Hertfordshire County Highways and this is attached as **Essential Reference Paper ‘F’**.

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 23 Parliament Square 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. Paragraphs 10.8-10.10, 10.13-10.15 would be particularly relevant.

4.0 Officer Observations

- 4.1 Hertford Town Centre has a number of licensed premises selling food and alcohol which benefit from a pavement licence area. These pavement areas do not need a licence under the Licensing Act 2003 as they are used for the consumption of alcohol and it is the sale of alcohol that is the licensable activity.
- 4.2 To obtain a pavement licence, an application would be required by Hertfordshire County Council under S.115E of the Highways Act 1981.
- 4.4 On the date that this report was drafted, the applicant had not yet been granted a pavement licence. Without this permission being granted the applicant will be unable to place tables and chairs on the public highway despite the planning permission. Members may wish to ask the applicant if a pavement licence has been granted since this report was drafted.
- 4.5 Members may wish to question the applicant regarding the proposed business model and how the applicant believes it can be operated whilst promoting the licensing objectives.
- 4.6 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.
- 4.7 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.
- 4.8 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.

4.9 In order to come to a view on the adequacy of the conditions; Members may question those in attendance from both sides.

4.10 Having considered the conditions and, if so desired, questioned the parties, Members need to determine a course of action.

4.11 If Members believe that the evidence shows that the application would promote the licensing objectives then the application should be granted in full.

4.12 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.

4.13 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 or amend the times for the supply of alcohol.; *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.

4.14 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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