

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 21 OCTOBER 2019

REPORT BY JONATHAN GEALL – HEAD OF HOUSING AND HEALTH

APPLICATION FOR A NEW PREMISES LICENCE FOR LUSO FLAVOURS,
24-26 HOCKERILL STREET, BISHOP'S STORTFORD, HERTS. CM23 2DW

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

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.

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| <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 Amaral & Riberio Ltd was received by the licensing authority on 23rd August 2019, the application was not made correctly as such a full application was validated as received on 2nd September 2019.

2.2 The application was subsequently amended on 9th September 2019 and advertised in the Bishop's Stortford Independent on 11th September 2019 for the following licensable activities:

| | | |
|---|-------------------|---------------|
| Sale of Alcohol (on and off the premises) | Monday - Thursday | 08:00 – 23:00 |
| | Friday - Saturday | 08:00 – 00:00 |
| | Sunday | 08:00 – 22:00 |
| Late Night Refreshment | Friday - Saturday | 23:00 – 00:00 |

| | | |
|--------------------------|-------------------|---------------|
| Recorded Music (Indoors) | Friday - Saturday | 23:00 – 00:00 |
| Opening hours | Monday - Thursday | 07:00 – 23:30 |
| | Friday - Saturday | 07:00 – 00:30 |
| | Sunday | 08:00 – 22:30 |

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 there will be use of CCTV operating whilst trading, No glasses to be taken outside, appropriate staff training, keeping doors shut during entertainment or after 9pm barring access and egress, Challenge 25.

A copy of the application form and accompanying plan and confirmation of the amendments 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.

2.5 The agreed conditions:

- strengthen conditions relating to CCTV;
- seek to address noise and vibration from the premises;
- requires doors and windows to be kept closed during regulated entertainment;
- patrons to be discouraged from congregating outside;
- limit the numbers of customers smoking outside;
- children under 12 must be accompanied after 20:00;
- use of challenge 25 to operate;
- records of refusals and incidents shall be maintained;
- require the premise to have a written drugs and dispersal policy;
- require prominent, clear and legible notices requesting the public to respect the needs of local residents and leave quietly;

- no super-strength beer, lagers or ciders of 5.5% ABV (alcohol by volume) or above shall be sold at the premises; and
- no Liquor over 40% shall be sold at the premises.

The exact wording of the conditions is attached as **Essential Reference Paper 'C'**.

- 2.5 There has been no representation from any Responsible Authority.
- 2.6 During the 28 day statutory public consultation four 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 raise a number of concerns that the application, if granted as requested, would undermine the prevention of public nuisance licensing objective.
- 2.8 A plan of the area in which the premise is located is attached as **Essential Reference Paper 'E'**. This can be used to illustrate the proximity of the premises to residents and other 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).
- 3.2 It is not clear from the application form which category of the "Premises definitions" the activities at these premises would fall under so both options are detailed below:

Restaurant

The sale of food and drink for consumption on the premises with full waiter service and/or full food menu throughout the trading period, and which typically has only incidental background music. Alcohol sales do not predominant over activities. It may occasionally include the provision of other licensable activities such as recorded or amplified music and limited facilities for the provision of dancing

The other possible "Premises definition" is:

Café-bar

The sale of food and or light refreshments, and where alcohol sales are not a predominant feature of the premises

- 3.3 The premises fall within what is considered in section 6 of the Statement of Licensing Policy to be "other areas" rather than a "Town Centre" location. 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:

For a restaurant:

Will generally be allowed alcohol sales to midnight only (other than for special occasions).

For a café bar:

Will generally be granted according to the application

- 3.4 As the premises appears to be split 50:50 between café / restaurant it is for Members to which category the premises falls within and subsequently which hours from the policy could or should be applied if the application is granted. Members may wish to question the applicant about how the premises will operate in practice to inform their decision.

3.5 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.”*

3.6 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 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.
- 4.2 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.
- 4.3 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.
- 4.4 Members should consider whether the conditions both offered and agreed are adequate to promote the licensing objectives during the amended hours that have been requested.
- 4.5 In order to come to a view on the adequacy of the conditions; Members may question those in attendance from both sides.
- 4.6 Having considered the conditions and, if so desired, questioned the parties, Members need to determine a course of action.

- 4.7 If Members believe that the evidence shows that the application would promote the licensing objectives then the application should be granted in full.
- 4.8 If however, Members believe that the representations provide evidence that the application, if granted, 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.
- 4.9 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.
- 4.10 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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