

EAST HERTS COUNCIL

LICENSING SUB-COMMITTEE – 26 NOVEMBER 2019

REPORT BY HEAD OF HOUSING AND HEALTH

APPLICATION FOR A NEW PREMISES LICENCE FOR PERRINS BARBERS
5 OLD CROSS, HERTFORD, HERTS, SG14 1HX

WARD(S) AFFECTED: HERTFORD BENGEO

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.

<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 Mr David Perrin was received by the licensing authority on 2nd October 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 and Opening Times	
Tuesday	09:00 – 18:00
Wednesday	09:00 – 22:00
Thursday	09:00 – 18:00
Friday	09:00 – 22:00
Saturday	09:00 – 17:00
Sunday	10:00 – 16:00

2.3 Section 18 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. A digital closed circuit television (CCTV) system to be installed internally ensuring the following:
 - a) All entry and exit points to be covered to enable frontal identification of every person entering the premises in any light condition.
 - b) the CCTV system shall continually record whilst the premises is open for licensable activities and during times when customers remain on the premises.
 - c) All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available immediately upon request of Police or authorised Officer throughout the preceding 30 day period.
 - d) A staff member from the premises who is knowledgeable with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public and this staff member must be able to show and supply if requested by Police or authorised Officer recent data or footage with the absolute minimum of delay when requested.
2. A written record of all refused sales shall be kept on the premises. It will include details of the member of staff who refused service, time and date it occurred and the reason for refusal. The record shall be made available to Police and/or local authority immediately upon request and shall be kept for at least one year from the date of last entry.
3. An incident book shall be maintained to record any activity

related to drugs or of a violent, criminal or serious anti-social nature and be available for inspection at all times (when the premises is open) by an authorised Officer of relevant responsible authority, it will record the following details:

- a) Time and date and nature of incident
 - b) People involved
 - c) Action taken
 - d) Details of the person responsible for the management of the premises at the time of the incident
4. The Premises Licence Holder or Designated Premises Supervisor to ensure that all management and staff are fully trained and briefed on the four licensing objectives, Challenge 25, the conditions of this licence, policies referred to in this licence. Also, any other police initiatives, such as tackling Child Sexual Exploitation. Every 6 months these staff are to be given refresher training and this is to be documented in such a way that it can be given to an authorised Officer on request. Staff should also sign documentation confirming the training has taken place and the date.
5. The age verification policy operated at the premises shall be "Challenge 25". This means that whilst alcohol may be sold to persons aged 18 years or over, any person who appears under 25 years of age shall be required to provide proof of age using an acceptable form of ID. Notices advertising that the premises operate a "Challenge 25" scheme shall be displayed in a clear and prominent position at the premises entrance and inside at the premises bar serving area. The only forms of ID that may be accepted shall be:
- a) Proof of age card bearing the PASS hologram logo
 - b) Passport; or
 - c) UK photo driving licence

6. Alcohol is to be served in the licensed downstairs area of the premises only.
7. All members of the "300 Club" to be fully paid up and up to date details held by the premises.
8. All members of the "300 Club" will be 18 years of age or older.
9. Children under the age of 18 years of age to be accompanied by a "300 Club" member in the licensed area.
10. A copy of the membership register is to be kept on site and be available for inspection at all times by an authorised Officer of a relevant responsible authority.
11. Alcohol will only be served to members of the "300 Club" and one guest at any one time (over 18 years of age). Details of the guest to be obtained and recorded by the premises.
12. At all times the premises will operate under and in accordance with the licence: the primary purpose of the premises is to be a Barber Shop.
13. Staff to actively seek to prevent customers from exiting the premises onto Old Cross with drink glasses, bottles, cans or any other vessel whether containing alcohol or not.
14. A4 size white notices in size 50 Arial stating "Please respect our neighbours and leave the area quietly" need to be displayed at the exit of the downstairs licensed area.

A copy of the application form and accompanying plan is attached as **Essential Reference Paper 'B'**.

- 2.4 There has been no representation from any Responsible Authority.
- 2.6 During the 28 day statutory public consultation three valid representations were received from District / Town Councillors. The representations are attached as **Essential Reference Paper 'C'**.
- 2.7 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 licensing objectives.
- 2.8 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:
- , It should be borne in mind that any question regarding whether there is a perceived or actual "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.
 - The question regarding alcohol being available for sale whilst children of all ages are able to enter the premises is covered under paragraph 10.2 of the Councils Statement of Licensing Policy that "The legislation recognises the right of licence holders (serving alcohol) to allow accompanied children into their premises at any time. The Licensing Authority will not normally seek to limit their access (above that specified in the Act) to any premises unless it is necessary for the prevention of physical, moral or psychological harm".
 - 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?

- Is there any evidence that any of crime and/or disorder at the premises?

2.9 A plan of the area in which the premises is located is attached as **Essential Reference Paper 'D'**. This can be used to illustrate the location of the premises in relation 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 5 Old Cross, Hertford best fits the definition of other entertainment venues:

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 Hertford Town Centre. The table at 4.3 of the policy details this 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 following hours would normally be granted to this style of premises in this location when valid and relevant representations have been received:

May be limited to midnight

3.3 Section 6 of the Statement of Licensing Policy ('the 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 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 8.0 of the Policy contains information on how the Licensing Authority considers applications under the Public Safety licensing objective. Paragraph 8.2 states *“Conditions to promote public safety will be those that are appropriate, in particular circumstances of any individual premises or club premises, and will not duplicate other requirements of the law. Equally, the attachment of conditions to the premises licence or certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work Act 1974, Associated Regulations and especially the requirements under the management of Health and Safety at Work Regulations 1999 and Regulatory Reform (Fire Safety) Order 2004, to undertake risk assessments. Employers should assess the risks, including risks from fire and take measures necessary to avoid and control these risks. Licence conditions enforcing those requirements will therefore not be attached.”*
- 3.7 Section 9.0 of the 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.”*
- 3.8 Section 10.0 of the Policy contains information on how the Licensing Authority considers applications under the prevention of public nuisance licensing objective. Paragraph 10.4 states *“The legislation recognises the right of licence holders (serving alcohol) to allow accompanied children into their premises at any time. The Licensing Authority will not normally*

seek to limit their access (above that specified in the Act) to any premises unless it is necessary for the prevention of physical, moral or psychological harm. Where relevant representations are received, and harm is likely, conditions may be imposed that restrict children from entering all or part of licensed premises:

- (1) at certain times of the day;*
- (2) when certain licensable activities are taking place;*
- (3) under certain ages, e.g. 16 or 18;*
- (4) unless accompanied by an adult.”*

3.9 Paragraphs 9.37 and 9.38 of the revised Guidance issued under section 182 of the Licensing Act 2003 ('the Guidance') 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.

3.10 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.

- 3.11 Paragraphs 9.42-9.44 of the Guidance deal with how to determine actions that are appropriate for the promotion of the licensing objectives.
- 3.12 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 of the Guidance 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 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
- 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 summarised 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 application 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

Contact Member: Councillor P Boylan, Executive Member for Neighbourhoods.

Contact Officer: Jonathan Geall – Head of Housing and Health, Tel: 01992 531594. jonathan.geall@eastherts.gov.uk

Report Author: Brad Wheeler – Senior Licensing and Enforcement Officer, Tel: 01992 531520. brad.wheeler@eastherts.gov.uk