

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 8th January 2021

Report by: Jonathan Geall, Head of Housing and Health

Report Title: Application for a New Premises Licence For Mr Tom Wilkes / Waterbridge 2021, Waterbridge, Frogmore Hill, Watton At Stone, Hertford (20/0907/PI)

Ward(s) affected: Datchworth and Aston

Summary

- An application for a new premises licence has been made and representations against the application have been received from Hertfordshire Constabulary acting as a Responsible Authority. When representations have been received against an application and have not withdrawn, it is for a meeting of the Licensing Sub-Committee to decide that application. The report is to inform that decision.

RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

(a) The application for a new premises licence is decided.

1.0 Proposal(s)

- 1.1 Members of the Licensing Sub-Committee should determine the application for a new premises licence through consideration of the information contained in this report and appendices combined with submissions made at the Licensing Sub-Committee hearing.

2.0 Background

2.1 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.

2.2 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.

2.3 The licensing objectives are:

- prevention of crime and disorder
- public safety
- prevention of public nuisance; and
- protection of children from harm.

3.0 Reason(s)

3.1 The application for a new premises licence was submitted and completed by Mr Tom Wilkes on 29th October 2020. The application has been correctly advertised and consulted upon as required by legislation and regulations.

3.2 The application requests the supply of alcohol for consumption on the premises.

Licensable Activity	Day	Hours applied for
Plays Films Live Music Recorded Music and Opening hours	Friday - Sunday	10:00 – 23:00
Supply of Alcohol (for consumption both on and the premises)	Friday - Sunday	11:00 – 23:00

- 3.4 A redacted copy of the application form and supporting documents are attached as **Appendix 'A'**.
- 3.5 The Event Management Plan (EMP) describes that events are to be held fortnightly on Friday, Saturdays and / or Sundays between May and September 2021.
- 3.6 Section 18 of the application form asks the applicant to describe any steps they intend to take to promote the four licensing objectives as a result of the application. The steps stated are:
- a) Suitable number of SIA and stewards employed
 - b) CCTV covering the event spaces, retained for a minimum of 14 days and be produced on the request of the police
 - c) The event will be entirely seated, allowing plenty of space for marshals and SIA to roam the viewing area.
 - d) Incident book recording full details of all occurrences of disorder.
 - e) No alcohol, weapons, fireworks (plus a number of other

prohibited items) allowed on site.

- f) The event will be on a secure site, and all present will have accreditation.
- g) Re-entry will be permitted to mitigate issues at the door.
- h) Entry times will be staggered to prevent build up of queues, and reduce risk of impatience and aggression.
- i) Customers will have the option to park, thus reducing the likelihood of crime and disorder in neighbouring areas and/or the local towns.
- j) Expectations will be managed in terms of event rules, COVID-secure guidelines and processes by publishing these details to ticket holders prior to the event.
- k) The premises will operate a Challenge 25 Policy and request photographic identification to anyone who appears to be under the age of 25.
- l) Primarily, the safety of all our guests, staff, contractors, suppliers, performers, and security is our main concern throughout the entire festival period.
- m) All guidelines around CV19 will be adhered to, along with best practice as advised in the Purple Guide and government website.
- n) Entry is only permitted up to the licensed capacity, checked by clickers on site.
- o) Site only opened once checked by Site, Event and Security management.
- p) Staff briefed and trained in Challenge 25 and their social and legal obligations and their responsibilities regarding the sale of alcohol.
- q) Free drinking water is made available at all times the premises is open to the public.
- r) All electrical, gas and other means of fuel are suitably tested prior to use on site.
- s) All food vendors vetted for certificates, insurance, RAMS and hygiene status prior to arrival on site
- t) Event and fire RA created and adhered to for each event.
- u) Adequate level of first aid provision on site.
- v) The numbers of attendees are small in comparison to the

existing license, and we anticipate only a small number of people may leave the site on foot after the event. We will look to add elements to the event to mitigate this where necessary (i.e. if we can finish later, add camping, introduce a shuttle service etc).

- w) Security staff to patrol perimeter and neighbouring hotspots regularly.
- x) Volume levels will be limited and monitored.
- y) Ample waste bins at exits to discourage littering offsite - no drinks permitted to be taken off site.
- z) Drinks to be supplied in reusable / single-use plastic (dependent on guidelines): no glass.
- aa) We anticipate a number of our events will be over 18s only, however we always adopt our in-house Safeguarding policy.
- bb) SIA staff are DBS checked, there is a lost/found persons procedure in use by the staff, the site is secure to prevent anyone.
- cc) leaving/gaining access to the site accidentally which is reinforced with accreditation to prove lawful access to site.
- dd) Challenge 25 in operation
- ee) No under 18s permitted without designated adult over 21
- ff) Only plastic cups or bottles on site - no glass

3.7 During the 28 day statutory public consultation period the applicant varied his application in consultation with the Environmental Health to include the following additional steps to promote the licensing objectives:

1. *The event will run to the COVID restrictions in place at that time, with multiple dates across weekends in Summer 2021 (from the 1st May 2021 to the 27th September 2021). The events will consist of outdoor cinemas, theatrical performances, family entertainment, live and DJ music and comedy.*
2. *Events to be held every other weekend across the dates of the*

1st May 2021 and the 27th September 2021 (except for August bank holiday weekend and the following 3/4/5th of September 2021 where both events are allowed).

3. *Events to be held over two days on either a Friday, Saturday or Sunday.*

3.8 During the 28 day statutory public consultation period one valid objection was received from Hertfordshire Constabulary (Responsible Authority) against the application. This representation is attached as **Appendix 'B'**.

3.9 The main concerns of the Police are the number of events being proposed by the applicant, the impact to traffic, noise and litter to the neighbouring area. The representation engages the prevention of public nuisance, prevention of crime and disorder and public safety licensing objectives.

3.10 The Police are requesting a significant reduction in the number of persons at the events (capacity) and the number of events being held at the premises.

3.11 A plan of the area in which the premises is located is attached as **Appendix 'C'**. This can be used to illustrate the location of the premises in relation to residents and other businesses.

Policy and Guidance

3.11 Section 4 of the East Herts Statement of Licensing Policy (herein 'the 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 under which the application best fits would be defined as 'other entertainment venue'.

3.12 The proposed premises are not in a Town Centre location so is classed as being in 'other areas'.

- 3.13 The table at 4.3 of the Policy details this authority's approach to hours for licensed 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 a "café-bar" for the on sales and "off licence" for off sales in this type of location when valid and relevant representations have been received:

May be limited to midnight

- 3.14 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."

- 3.15 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."

3.16 Section 9.0 of the East Herts Statement of Licensing Policy relates to the prevention of public nuisance. Specifically section 9.3 of the policy states:

The Licensing Authority will expect applicants to demonstrate they have considered:

- 1) the proximity of residential accommodation;*
- 2) the type of use proposed, and the likely numbers of customers;*
- 3) proposed hours of operation and the frequency of activity;*
- 4) the steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices. This may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices;*
- 5) the steps taken or proposed to be taken by the applicant to prevent disturbance by customers arriving at or leaving the premises. This will usually be of greater importance between 10 p.m. and 7 a.m. than at other times of the day;*
- 6) the steps taken or proposed to be taken by the applicant to prevent queuing (either by pedestrian or vehicular traffic). If some queuing is inevitable then queues should be diverted away from neighbouring premises or be otherwise managed to prevent disturbance or obstruction;*
- 7) the steps taken or proposed to be taken by the applicant to help ensure patrons and staff leave the premises quietly;*
- 8) the arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents;*
- 9) the provision for public transport in the locality (including taxis and private hire vehicles) for patrons;*
- 10) the level of likely disturbance from associated vehicle*

- movements;*
- 11) *the use of smoking shelters, gardens and other open-air areas;*
 - 12) *the location of delivery and collection areas and delivery/collection times;*
 - 13) *the appropriate placing of external lighting, including security lighting;*
 - 14) *refuse storage and litter (including fly posters and illegal placards);*
 - 15) *the history of nuisance complaints against the premises, particularly where statutory notices have been served on the present licensees;*
 - 16) *the applicant's past success in controlling anti-social behaviour and preventing nuisance;*
 - 17) *odour nuisance, e.g. cooking smells;*
 - 18) *any other relevant activity likely to give rise to nuisance;*
 - 19) *any representations made by the Police, or other relevant agency or representative;*

This list is not exhaustive and the Licensing Authority remains aware of its obligation to consider each case on its merits."

3.24 Paragraph 9.37 and 9.38 of the government's revised Guidance issued under section 182 of the Licensing Act 2003 (herein '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.

In determining the application with a view to promoting the licensing objectives 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;*
- *this Guidance;*
- *its own statement of licensing policy.*

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

3.26 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.

3.27 Chapter 11 of the Guidance deals with reviews and paragraphs 11.16 – 11.23 are particularly relevant as it deals with the powers the licensing authority has to determine the application.

Officer observations

3.28 The Police are aware that the applicant has agreed conditions with Environmental Health meaning that the events will be every other weekend (except for August bank holiday and 3rd – 5th September 2021) as opposed to the number originally applied for.

3.29 If Members are minded to grant this application then it is recommended that the period for supply of alcohol for consumption on the premises is reduced by 20 minutes to

allow for drinking up time in order to support the crime and disorder licensing objective.

- 3.30 It is recommended that should the application be granted that the following conditions are added:

An Event Management Plan (EMP), including a Noise Management Plan and Traffic Management Plan, shall be submitted to the responsible authorities no less than 3 months prior to the start of the event. The EMP must demonstrate that resourcing and infrastructure is based on the threat and risk of the event. The final version of the EMP must be supplied to all responsible authorities a minimum of 21 days before the event takes place.

Responsible authorities must notify the licence holder of any concerns with the final EMP within 10 working days of receiving it.

Any changes proposed to the final EMP, later than 21 days prior to the event start date, must be circulated immediately to all responsible authorities for approval.

In the event of any of the responsible authorities advising the licensing authority that the Event Management Plan (EMP) does not in their professional view satisfy the requirements to promote the four licensing objectives, the event will not proceed until such time as those requirements are met or the responsible authority confirms they are.

- 3.31 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.

- 3.32 If Members believe that the application would not undermine any of the licensing objectives then the application should be

granted as requested.

- 3.33 Members should consider if they believe the applicant has provided evidence that the licence if granted would promote and not undermine the licensing objectives. This evidence should be balanced against the evidence given by those making representations that the licensing objectives would be undermined.
- 3.34 If Members believe that there is evidence that the granting of the licence would not promote the licensing objectives then it is within their remit to take the action they believe is appropriate and proportionate to address their concerns. Members can attach conditions or take any steps they believe appropriate to promote the licensing objectives including: limiting the days, limiting the hours or even refusing the application in its entirety.
- 3.35 Put in its simplest terms, 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.
- 3.36 If additional conditions are considered, Members should decide whether these steps would in fact address their concerns if the decision was made to grant the hours requested.
- 3.37 Members may wish to seek the opinion of the applicant on any proposed conditions to clarify which are agreeable so that the hearing can focus on those which are disputed.
- 3.38 For conditions to be enforceable they need to be clear, unambiguous and free from subjective terms. If a condition cannot be enforced then it should not be placed on any granted licence.

4.0 Options

4.1 The actions open to the Licensing Sub-Committee are:

- 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.

4.2 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 Risks

5.1 A decision on the application must be made and any decision made can be appealed at the Magistrate's Court. Therefore the Licensing Sub-Committee should ensure that when giving their decision on the application they give clear reasons on how and why they have made their decision. In doing so, the council's ability to defend its decision is strengthened and the risk of its decision being over-turned on appeal is lessened, although, of course, this risk can never be entirely removed.

6.0 Implications/Consultations

6.1 There has been a statutory 28 day public consultation.

Community Safety

The report details the four licensing objectives, these objectives are detailed in paragraph 2.3, therefore Community Safety will be considered when determining the application.

Data Protection

Where the appendices originally contained personal data this has been redacted.

Equalities

Consideration has made to the Equality Act 2010 and the Public Sector Equality Duty in this report and will be considered during the Licensing Sub-Committee hearing.

Environmental Sustainability

No

Financial

There will be a cost to the authority in holding the Licensing Sub-Committee hearing, this will be covered by the existing budget.

There would be a cost if the decision of the Licensing Sub-Committee is appealed to the Magistrates Court and the authority chooses to defend that appeal.

Health and Safety

No

Human Resources

No

Human Rights

As with all applications and Council functions, the Human Rights Act 1998 has been considered in this report and will be considered during the Licensing Sub-Committee hearing.

Legal

All statutory requirements have been considered in preparing this report.

Specific Wards

Yes – Datchworth and Aston

7.0 Background papers, appendices and other relevant material

- 7.1 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
- 7.2 East Herts Statement of Licensing Policy 2016 –
https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Statement_of_Licensing_Policy.pdf
- 7.3 Night Time Economy (NTE) Position Statement –
https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Night_Time_Economy_NTE_Position_Statement.pdf
- 7.4 Appendix 'A' – Application for a New Premise Licence, including plans of the premises.
- 7.5 Appendix 'B' – Representations against the application.
- 7.6 Appendix 'C' – Map showing location of the premises.

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