

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 8 March 2021

Report by: Jonathan Geall, Head of Housing and Health

Report title: Application for a variation of a Premises Licence for Maltons, Cambridge Road, Thundridge, Ware SG12 0ST (21/2389/PLV)

Ward(s) affected: Thundridge

Summary

An application for a variation of a premises licence has been received and representations against the application have been made by responsible authorities and interested parties. Where representations are received against an application and not withdrawn there must be a Licensing Sub-Committee to decide that application. The report is to inform that decision.

RECOMMENDATION FOR LICENSING SUB-COMMITTEE

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

1.0 Proposal(s)

Members of the Licensing Sub-Committee should determine the application for a variation of a 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 2003 (herein 'the Guidance').
- 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 variation to a premises licence was submitted by Mr Faizollah Shafiy on 7th January 2021. The application has been correctly advertised in the newspaper and consulted upon as required by legislation and regulations.
- 3.2 It should be noted that the consultation period was extended due to the location of the original notice not being in public view or abutting the highway.
- 3.3 The application seeks approval to vary the layout and design of the premises which consists of permitting the use of a servery area for the sale of alcohol, within the external area and a

reconfigured external drinking area, terrace and gazebo.

- 3.4 The application also seeks to remove the condition that live music is to be performed by no more than two entertainers.
- 3.5 The application also requests the removal of embedded conditions and a condition that there will be no amplified music although these conditions were removed in an application made in September 2012 and so are not relevant to this application. The applicant's solicitor has confirmed that he was using an old licence when the application was made.
- 3.6 The internal licensable area of the premises is to remain unchanged.
- 3.7 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'**.
- 3.8 Section M 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 proposed the following additional conditions:
 - a) The external bar servery is to operate for the sale and supply of alcohol during the following times; Monday to Saturday from 12:00h until 23:00h and Sunday from 12:00h until 22:30h.
 - b) When the external area is in use, regular checks of the garden will include the removal of empty glasses and bottles.
 - c) Whenever the external area is used for licensable activities, a sufficient number of staff members, which will be determined on a risk assessed basis, will operate, monitor and supervise the area for customer behaviour and to monitor noise levels.
 - d) The external area will remain open for customers for the consumption of food/drink only once the external bar has

- closed, until the terminal hour for licensable activities for the premises, with staff making regular checks during this time.
- e) An appropriate risk assessment will take place whenever the premises conducts regulated entertainment events, which will detail the requirement for any doorstaff, monitoring of noise levels and a rota for staff to patrol the external areas to record the noise level.

3.9 During the 28 day statutory public consultation period representations were received from Environmental Health and Hertfordshire Constabulary acting as Responsible Authorities under the Act and twenty three valid representations were received from Interested Parties, including the local MP, the local ward councillor and parish Council, the including a petition that includes signatures from 14 residents, covering 9 properties. These representations are attached as **Appendix 'B'**.

The representation from Environmental Health engages the prevention of public nuisance licensing objective. The representation brings to the Licensing Sub-Committees attention that they have received complaints from residents regarding the use of the external area that the applicant is requesting is now licensed. The representation wishes to highlight paragraphs 2.15 and 2.16 of the Guidance and the officer's opinion that should the application be granted then this would have an effect on the promotion of the prevention of public nuisance licensing objective. The officer representing Environmental Health (a qualified Environmental Health Officer):has however suggested the if further to submissions made by the applicant / their representative as part of a Licensing Sub-Committee Hearing it is considered appropriate to grant this variation Environmental Health would recommend the following conditions are attached to any variation:

1. The external bar servery shall operate for the sale and supply of alcohol between 12:00 hours to 21:00 hours only.

2. The external area shall only be used for the provision of regulated entertainment between 12:00 hours to 21:00 hours only.
3. There shall be no regulated entertainment or recorded music played in, or for the benefit of customers in, the external area after 21:00 hours.
4. Signs shall be prominently displayed around the external area reminding customers that there are residents living nearby and instructing them to respect the neighbours while on and leaving the premises.
5. When a microphone is available in connection with any regulated entertainment, an announcement will be made at the end of any entertainment reminding customers that there are residents living nearby and instructing them to respect the neighbours while on and leaving the premises.
6. Noise from the premises and / or the external area shall not be audible at the boundary of the nearest noise sensitive properties.
7. A responsible member of staff shall carry out proactive noise assessments outside the premises at least once an hour during the provision of regulated entertainment to ensure that noise is not audible at the boundary of the nearest noise sensitive properties and remedial action shall be taken where noise is found to be audible.
8. A written record of proactive external noise assessments and, where applicable, remedial actions taken shall be kept for a minimum of 31 days from the date of the last entry in the record and this record shall be available for inspection on demand by Council Officers at all times the premises are open.
9. A telephone number for the premises shall be displayed so that it is plainly visible from the public highway for members of the public to lodge complaints.
10. A complaints book shall be maintained on the premises to record details of any complaints received from neighbours. The information to be recorded shall include the date, time and nature of complaint and subsequent remedial action

undertaken (if any) and, where disclosed, the complainant's name and location.

11. The complaints book shall be kept for 12 months from the date of the last record made and shall be available for inspection on demand by Council Officers at all times the premises are open.

3.10 The representation from the Police engages the prevention of public nuisance and prevention of crime and disorder licensing objectives. The police have listed a number of complaints and visits in regards to the external area. The police "strongly object" to this variation application and asked the Licensing Sub-Committee to refuse the application in full.

3.11 The representation from the Member of Parliament and local ward member also engages the public safety and prevention of public nuisance. With the Parish council engaging each of the licensing objectives.

3.12 The representations from the Interested Parties engage each of the licensing objectives, with the main concerns over alleged noise, antisocial behaviour and parking. The Interested Parties requesting that the application is refused as they believe the application undermines the licensing objectives.

3.13 One of the interested parties engaged a solicitor in making their representation. This representation engages each of the licensing objectives. At the end of this representation the representation states that whilst their client, in the strongest possible terms, has asked for a full refusal of the application, purely to reserve their position with regard to all eventualities fully, they have included below a list of conditions which they would ask the Sub-Committee to consider attaching to the premises licence if they are minded to approve this application:

1. A terminal hour of 9pm for any external bar and closing time

of 10pm for the external area and any structures located in that area based on its residential location.

2. After 10pm customers permitted to temporarily leave and then re-enter the premises to smoke shall be limited to 4 persons at any one time.
3. Use of the external area and structures shall not commence until 6pm to prevent the area from being used in such a way that children and residents from neighbouring premises cannot enjoy their gardens.
4. Alcohol shall not be sold or supplied to customers for consumption in the external areas otherwise than to persons who are seated and who are taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals.
5. An appropriate capacity limit to be imposed on the external area.
6. Customers shall not be permitted to take drinks to or smoke in the car park.
7. A professional acoustic company to be instructed by the Applicant to advise on appropriate noise level and all speakers to operate through a noise limiting device set at an appropriate level measured by the Environmental Health Authority internally and externally and for the Applicant to agree a noise management plan.
8. The premises shall not be used under the terms of the premises licence until all internal areas have been insulated so as to prevent the transmission of sound from the premises to neighbouring residential dwellings and details thereof have been submitted and approved in writing by the Council's Environmental Health authority.

The insulation works shall only be installed in accordance with the details so approved and shall be maintained.

9. Perimeter noise checks to be carried out every 30 minutes from 6pm until closing at weekends and bank holidays.
10. The premises licence holder to be required to plant and

maintain a substantial mature natural native hedge to provide dense noise screening along the car park boundary on Poles Lane and the boundary with North Lodge and any other boundary where this is possible and to renew the wooden fence along Poles Lane.

11. Doors and windows to remain closed when regulated entertainment is taking place.
12. CCTV to be installed throughout the premises to the satisfaction of the Police to cover all customer areas. Recordings to be kept for a minimum of 31 days and made available to the Police on request.
13. Prominent signage to be displayed around the external area, car park and buildings requesting patrons keep the noise down and avoid use of foul and abusive language as it is a residential area.
14. Prominent signage to be displayed in the premises and external area emphasising that customers parking in the area must not block roads, pavements or leave their vehicles in hazardous locations.
15. Prominent signage to be displayed in the premises encouraging customers not to drink and drive and the licence holder shall enter into an agreement with a dedicated taxi firm to provide transport for customers, with contact numbers made readily available to customers who will be encouraged to use such services.
16. A dispersal policy to be provided and agreed with the relevant officers from the Environmental Health Authority and the Licensing Authority and copies to be provided to residents.
17. Off sales to be limited to the external area and only in plastic containers.
18. All tables and chairs in the external area to be fitted with rubber feet.
19. Specific provisions for a minimum of two SIA registered security staff to be employed on key trading days such as Friday, Saturday, Bank holiday weekends, New Year's Eve etc and at all times the external bar is in operation.

20. A contact telephone number to be provided to the local residents, the Environmental Health Authority and the Licensing Authority for direct contact to the on-duty manager at all times.
21. A log of residential complaints to be maintained at the premises and available for inspection by the responsible authorities.
22. Lighting in signs, planters and in car park to be turned off outside of trading hours.
23. Staff members to receive appropriate training in respect of their duties under the licensing objectives and refresher training to be provided at regular intervals.
24. Challenge 25 policy to be implemented and prominent notices around the premises notifying customers of the policy.
25. During the hours of operation of the premises, the licence holder shall ensure sufficient measures are in place to remove and prevent litter or waste arising or accumulating from customers in the area immediately outside the premises, and that this area shall be swept and or washed, and litter and sweepings collected and stored in accordance with the approved refuse storage arrangements by close of business.

A copy of the current premises licence and licence plan are attached as **Appendix 'C'**.

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

Policy and Guidance

- 3.17 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.”

3.18 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 2005, 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.”

3.19 Section 9 of the 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.”

3.20 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.

3.21 With paragraph 9.38 of revised the Guidance statings:

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;*
- *this Guidance;*
- *its own statement of licensing policy.*

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

3.23 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.

3.24 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

3.25 As brought to the Sub-Committee's attention by the representation by the Environmental Health Officer, paragraph 2.15 of the Guidance states "The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter."

3.26 Some of the Interested Parties have made reference to a precedent being in place due to a refusal by Welwyn Hatfield Borough Council regarding a variation application of a premise with similar issues. This would not however set a precedent as this in line with paragraph 1.17 of the Guidance each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy. This being a different application and different statement of licensing policy.

3.27 A couple of the representations refer to the application being invalid due to the name of applicant being incorrect, this is not the case as in fact the name of the applicant matches that of

the applicant, although the applicant is also known by another name.

- 3.28 Some of the representations references a planning enforcement notice which has recently been served or the variation application being invalid due to there not being appropriate planning. It should be noted that planning and licensing are different regulatory regimes, although similar in many ways. An applicant can apply for a licence with different hours / restrictions to their planning consent and this can be granted if the Licensing Sub-Committee feel that this would not undermine the licensing objectives. The applicant would then need to apply for the appropriate planning consent or would face possible enforcement action from Planning. This is echoed in paragraph 14.64 of the guidance.
- 3.29 The current licence does not include permission to carry out licensable activities, including regulated entertainment, outside of the premises. Although there is a workplace exemption under the Licensing Act 2003 as amended by the Live Music Act 2012 that would allow live music at this premises between 11:00 and 23:00 on Monday to Saturday and 12:00 – 23:00 Sunday.
- 3.30 Should a licence be granted for the supply of alcohol in the outside area this would allow for exemptions under the Licensing Act 2003 as amended by the Live Music Act 2012 and The Legislative Reform (Entertainment Licensing) Order 2014 for live and recorded music to be played in the outside area.
- 3.31 So as to ascertain whether the proposed steps are adequate to promote the licensing objectives with the requested variation, the Sub-committee should consider:
- the conditions that are already present on the licence, and
 - the conditions that are present on the application.

- 3.32 To be clear about any conditions being proposed by the applicant, a responsible authority or interested parties, Chapter 9 of the Guidance sets out how a licensing authority should determine applications for a new licence or to vary an existing premises licence. Licence conditions imposed, in accordance with paragraphs 9.41 to 9.43, for live or recorded music activities will only apply if the activity meets the criteria of having more than 500 people present, and/or the activities are taking place between 23.00 and 08.00.
- 3.33 If Members believe that the application would not undermine any of the licensing objectives then the application should be granted as requested.
- 3.34 As stated in the Guidance, the authority's decision should be evidence based, justified as being appropriate for the promotion of the licensing objective's and proportionate to what it is intended to achieve.
- 3.35 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 objective would be undermined.
- 3.36 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.
- 3.37 In considering additional conditions Members should decide whether these steps would in fact address their concerns if the decision was made to grant hours the hours requested.
- 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.

3.39 Aside from adding conditions it is open to the Sub-Committee to limit the hours of operation under the licence but clear reasons for this step would need to be given. However if simply limiting the hours beyond those requested does not mitigate Members' concerns regarding the promotion of the licensing objectives then the option to also impose appropriate and proportionate conditions is available.

3.40 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.

4.0 Options

4.1 The options 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 modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding to them. This would include amending the times for the supply of alcohol to the outside area Members believed it was appropriate.
- 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 reject the whole or part of the application that would lead to the application undermining the licensing objectives.

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 As with any application for a new premise licence / variation of premise licence or review of a premise licence there is a 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 have shown 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 – Thundridge

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 variation of a Premise Licence.
- 7.5 Appendix 'B' – Representations against the application.
- 7.6 Appendix 'C' – Current Premises Licence and plan.
- 7.7 Appendix 'D' – Map showing location of the premises.

Contact Member Councillor Peter Boylan – Executive Member for Neighbourhoods
peter.boylan@eastherts.gov.uk

Contact Officer Jonathan Geall – Head of Housing and Health
Contact Tel No. 01992 531594
jonathan.geall@eastherts.gov.uk

Report Author Brad Wheeler – Senior Licensing and Enforcement Officer
Contact Tel No. 01992 531520
brad.wheeler@eastherts.gov.uk