

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 29 March 2021

Report by: Jonathan Geall, Head of Housing and Health

Report title: Application for a Variation of a Premises Licence for Rush Green Service Station, Stanstead Road (A414), Hertford, SG13 7SH (21/0059/PLV)

Ward(s) affected: Hertford Kingsmead

Summary

- An application for a variation of a premises licence has been received and representations against the application have been made by 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 Where representations are received against an application and not withdrawn there must be a Licensing Sub-Committee to decide that application.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.

RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

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

1.0 Proposal(s)

1.1 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 Statement of Licensing Policy (herein 'the 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 BP Oil UK on 1 February 2021. The application has been correctly advertised in the newspaper and consulted upon as required by legislation and regulations.

3.2 The application seeks approval to vary the current premises licence by extending the supply of alcohol to between 07:00 and 23:00 daily and to remove and replace all conditions of the licence.

3.3 The application seeks the following Annex 2 conditions to be removed:

- 1) CCTV system to be installed or existing system to be maintained and be fit for purpose and fully operational. The system will be capable of producing immediate copies of recordings. Recordings will be retained and stored in a secure manner for a minimum of 28 days and shall be made available, subject to compliance with data protection legislation, to the Police for inspection on request.
- 2) The CCTV System will cover the entrance door and alcohol display, the precise positions may be agreed, subject to compliance with data protection legislation, with the police from time to time and will be of identification standard and display the correct time and date with a complete audit trail.
- 3) Waste receptacles to be placed immediately outside the premises.
- 4) A Challenge 21 proof of age scheme shall be operated at the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
- 5) Prominent notices will be displayed in the store advising customers that they may be asked to provide evidence of age.

3.4 The premises currently hold a premises licence for the supply of alcohol between 08:00 and 23:00 daily as such this is an extension of one hour per day. The opening hours of 24 hrs remain unchanged although it is understood that they are currently open between 07:00 and 22:00 Monday to Saturday and 09:00 and 20:00 Sunday although they could open longer if they wished.

3.5 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'**.

3.6 Section 16 of 18 on 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 conditions to replace the current Annex 2 conditions:

- 1) A digital CCTV system will be installed, or the existing system maintained, such system to be fit for the purpose.
- 2) The CCTV system shall be capable of producing immediate copies on site. Copies of recordings will either be recorded digitally on to CD/DVD or other equivalent medium.
- 3) Any recording will be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police for inspection on request.
- 4) The precise positions of the cameras may be agreed, subject to compliance with Data Protection legislation, with the police from time to time.
- 5) The system will display, on any recording, the correct time and date of the recording.
- 6) The CCTV system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
- 7) The premises licence holder will at all times maintain adequate levels of staff. Such staff levels will be disclosed, on request, to the Licensing Authority and police.

- 8) Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises.
- 9) The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form or method of identification that complies with any mandatory condition that may apply to this licence.

3.7 During the 28 day statutory public consultation period eight representations were received from Interested Parties, including the local county councillor and seven residents. These representations are attached as **Appendix 'B'**.

3.8 The representations from the Interested Parties each engage of the public safety licensing objective with one representation engaging the prevention of public nuisance objective. The main concerns over extra traffic this application will bring to the roundabout.

3.9 There have been no representations from any responsible authority.

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

3.11 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

3.12 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.”

3.13 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.

3.14 With paragraph 9.38 of revised the Guidance stating:

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.*

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

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.

Officer observations

3.16 Paragraph 10.15 of the Guidance is clear in that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

3.17 The Interested Parties have suggested that the application would undermine the prevention of public nuisance and public safety licensing objectives. Members should consider whether the variation application would likely add to the traffic between 07:00 and 08:00 each morning so that it would cause a public nuisance or a risk to public safety. Members can therefore ask questions of both the applicant and the interested parties on this before making their determination.

- 3.18 One of the representations mentions that the Police have issued a notice in regards to traffic at the site. The Police issued a Community Protection Warning to both the applicant and McDonalds in February 2018. The Police have been consulted on this application and have not made any representation and chose to agree conditions therefore they are satisfied that the application would not undermine the licensing objectives.
- 3.19 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, (although in this case the applicant is requesting that they are removed so Members should consider whether they should remain on the licence) and
 - the conditions that are present on the application.
- 3.20 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.
- 3.21 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.
- 3.22 If Members believe that the application would not undermine any of the licensing objectives then the application should be granted as requested.
- 3.23 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.

- 3.24 In considering additional conditions Members should decide whether these steps would in fact address their concerns if the decision was made to grant the hours requested.
- 3.25 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.
- 3.26 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.
- 3.27 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 could include amending 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 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, a variation of an existing 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 – Hertford Kingsmead

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.

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