

# East Herts Council Report Template

## Licensing Sub-Committee

**Date of Meeting:** 15 October 2021

**Report by:** Jonathan Geall, Head of Housing and Health

**Report Title:** Application for a Variation of a Premises Licence for Town Express, 9 Railway Street, Hertford, Hertfordshire, SG14 1BG  
21/0754/PLV

**Ward(s) affected:** Hertford Castle

---

### Summary

- An application for a variation to a premises licence has been made and representations against the application have been received. The representation submitted by the Police, acting as a Responsible Authority, has subsequently been withdrawn following the applicant amending the application. A representation from an Interested Party remains. When representations have been received against an application and have not been withdrawn, it is for a Licensing Sub-Committee to decide that application. This report is to inform that decision.

### RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

**(A) The application for a new premises licence be determined.**

#### **1.0 Proposal(s)**

1.1 Members of the Licensing Sub-Committee should determine the application for a variation to the 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 variation to a premises licence was submitted and completed by Mr Adem Altunatmaz on 23<sup>rd</sup> August 2021. The application has been advertised and consulted upon as required by legislation and regulations.
- 3.2 The application requested the following licensable activities:

Licensable Activity	Day	Hours currently licenced for:	Hours applied for:	Difference
Original variation Request: Supply of Alcohol (for consumption off the premises) and Opening Times	Monday - Sunday	08:00 – 23:00	08:00 – 01:00	2hrs
Amended variation Request: Supply of Alcohol (for consumption off the premises) and Opening Times	Monday - Sunday	08:00 – 23:00	08:00 – 00:00	1hr

- 3.3 The application also seeks to remove condition 10 from the existing premises licence which restricts the supply of beer or cider in single containers and to amend condition 11 to read “The alcohol content of all beer, lager and cider sold must be no higher than 7.5%ABV (currently 5.5%ABV) (alcohol by volume)”.
- 3.4 On 8<sup>th</sup> October 2021 the applicant amended his application to reduce the time for Licensable Activities until 12.00am midnight.
- 3.5 A redacted copy of the application form and supporting documents are attached as **Appendix ‘A’**.
- 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; however the applicant has not offered any additional conditions other than those contained within the current licence.

- 3.7 During the 28 day statutory public consultation period two objections were received one from the Police acting as a responsible authority and the other from a local ward councillor acting as an interested party against the application. The Police however withdrew their representation on 8<sup>th</sup> October 2021 following the amendment to the closing time from 1.00pm to 12.00pm. The remaining representation is attached as **Appendix 'B'**.
- 3.8 The councillor's objection is that the application will encourage late night drinking, street drinking and loitering in the town centre. The councillor references a serious assault in the town centre that necessitated a very lengthy hospital stay and which is still under Police investigation. There is reference to complaints about the town centre use as well as outstanding planning enforcement issues with the premises.
- 3.9 The current premises licence and conditions are attached as **Appendix 'C'**.
- 3.10 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 6 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 'Off-licence'.
- 3.13 The premises are on Railway Street, Hertford as such, in an area classed as Town Centre under Section 7 of the Policy.

- 3.14 The premises are also located in a Sensitive Licensing Area as such the East Herts Pool of Model Conditions should be considered.
- 3.15 The table at 6.9 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 an 'Off-licence':

*'Will generally be granted alcohol sales no later than midnight'*

- 3.16 Section 8.6 of the Policy contains information on how the Licensing Authority considers applications under the prevention of crime and disorder licensing objective. Paragraph 8.8 states:
- "The Authority will expect applicants to take appropriate and proportionate measures to promote the crime and disorder objective. Examples of the sources of crime and disorder which the Authority would require applicants to take into consideration may include, but are not limited to:*

- *Underage drinking*
- *Drunkness on the premises*
- *Public drunkenness*
- *Drugs*
- *Violent behaviour*
- *Overcrowding/occupancy capacity*
- *Anti-social behaviour*

- 3.17 When determining licence applications and reviews the Licensing Authority will give consideration to:

- *whether the premises make or will make a significant contribution to levels of crime and disorder in the local area, and*
- *whether the operating schedule demonstrates that an adequate risk assessment of the likelihood of crime and*

*disorder occurring as the result of the issue of an authorisation has been carried out by the applicant.*

- *the ability and competency of the person in charge of the premises to monitor the premises at all times it is open;*
- *the training given to staff in how to defuse or manage conflict amongst patrons and crime prevention measures appropriate to those premises;*
- *the physical security features installed in the premises. This may include matters such as the position of cash registers, and the security of cash boxes in gaming machines on the premises; where alcohol is stored in 'off-licences'; the standard of CCTV that is installed; adequate lighting; metal detection and search facilities; the use of toughened drinking glasses in pubs and clubs; the removal of glasses or glass bottles used or discarded outside of the applicants premises;*
- *risk assessment of drinks promotions which may contribute to the impact on crime and disorder (e.g. 'happy hours'), and plans for minimising risks;*
- *measures to prevent the consumption or supply of illegal drugs, including any search procedures and entry policies. On licensed hotel or Bed and Breakfast premises, this should extend to keeping proper registrations of guests, with proofs of identification, and records of car registration numbers. Where applicable, applicants are encouraged to show that they can comply with the Home Office guidance Safer Clubbing in relation to the control of illegal drugs on their premises, and they should agree a protocol with the police on the handling of illegal drugs found on their premises.;*
- *where premises are subject to age-restrictions, the procedures in place to conduct age verification checks;*
- *the use or not of an ID scanning type system;*
- *the likelihood of any violence, public disorder or policing problem if the licence is granted;*
- *whether design of the premises has been considered having regard to reducing conflict and minimising opportunities for crime;*
- *the measures taken to control admission to, and dispersal*

*from, the premises, including the use of registered door supervisors;*

- *any other such measures as may be appropriate, such as participation in a local pub watch scheme or other body designed to ensure effective liaison with the local community, 'music wind-down policies',*
- *restrictions on 'happy hours', and other examples of industry best practice;*
- *the arrangements for delegating and accounting for responsibility for the supply of alcohol on community premises operated without a DPS.*

3.18 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.*

- 3.18 Paragraphs 9.42 – 9.44 of the Guidance deal with how to determine actions that are appropriate for the promotion of the licensing objectives.
- 3.19 If the Sub Committee 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**

- 3.20 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.
- 3.21 Evidence needs to be shown on how having alcohol has increased crime and disorder. There is no evidence in the whole representation relating to the specific premises. The Police have referenced an increased risk to staff of assaults and public order but this does not appear to be supported by evidence. Members may wish to consider whether a condition to add SIA door staff would help prevent this? The applicant may also wish to comment about the viability of any such condition.
- 3.22 With regards to the councillor's representation, 'need' is not a relevant factor when looking at licence applications. The comments regarding the assault, which was a very serious assault by a group of males kicking the injured party in the head, has not been linked to this premises or any other licenced premises by the Police. In relation to any outstanding planning enforcement the planning department are a responsible authority and have not made any representation regarding this application.



- 3.23 Although the Police have withdrawn their representation, in relation to the licence holder's request to remove the condition on single containers and the amendment of the ABV, being that the premises are in a Sensitive Licencing Area it is recommended that this part of the application is refused unless the licence holder is able to show the Sub-Committee that the removal or amendment of these conditions will not have an effect on the licensing objectives.
- 3.24 When looking at the East Herts Pool of Model Conditions the Sub-Committee members may wish to consider the following conditions:
- a) after 23:00 a minimum of (X) SIA licensed door supervisors shall be on duty at the premises at all times whilst it is open for business.
  - b) after 23:00 there shall be no supply of alcohol if the product is in a glass container.
- 3.25 If Members are minded to add these, or any other conditions, then the applicant should be given the opportunity to comment on any issues that they may create or any factors that would make them impractical or inappropriate.
- 3.26 If the Sub-Committee believes that the application would not undermine any of the licensing objectives then the application should be granted as requested.
- 3.27 The Sub-Committee 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.
- 3.28 If the Sub-Committee believes 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.

3.29 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.

3.30 If additional conditions are considered, the Sub-Committee should decide whether these steps would in fact address their concerns if the decision was made to grant the hours requested.

3.31 The Sub-Committee 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.

3.32 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.

4.1 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;
- 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 the Sub-Committee has 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 its decision on the application it gives clear reasons on how and why it has made its 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 above, 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 Magistrate's Court and the authority chooses to defend that appeal, although if the appeal was subsequently dismissed by the court, the council could recover (at least some of) its costs.

### **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 - Castle

## **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](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 2021-2026  
[https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Statement\\_of\\_Licensing\\_Policy.pdf](https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Statement_of_Licensing_Policy.pdf)
- 7.3 [East Herts Pool of Model Conditions 2021](https://eastherts.fra1.digitaloceanspaces.com/s3fs-public/2021-08/Pool%20of%20Model%20Conditions%202021%20%28accessible%29.pdf)  
<https://eastherts.fra1.digitaloceanspaces.com/s3fs-public/2021-08/Pool%20of%20Model%20Conditions%202021%20%28accessible%29.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'** – Current Premise Licence.
- 7.7 **Appendix 'D'** - Map showing location of the premises.

**Contact Member** Councillor Jan Goodeve – Executive Member for Planning and Growth  
[jan.goodeve@eastherts.gov.uk](mailto:jan.goodeve@eastherts.gov.uk)

**Contact Officer** Jonathan Geall – Head of Housing and Health  
Contact No: 01992 531594  
[jonathan.geall@eastherts.gov.uk](mailto:jonathan.geall@eastherts.gov.uk)

**Report Author**

Brad Wheeler – Senior Licensing and  
Enforcement Officer

Contact No: 01992 531520

[brad.wheeler@eastherts.gov.uk](mailto:brad.wheeler@eastherts.gov.uk)