

# East Herts Council Report Template

## Licensing Sub-Committee

**Date of Meeting:** 8<sup>th</sup> November 2021

**Report by:** Jonathan Geall Head of Housing & Health

**Report title:** Application for Review of the Premises Licence for The Mixer, 6 Baldock Street, Ware, Hertfordshire SG12 9DZ (21/0739/PLV)

**Ward(s) affected:** Ware Christchurch

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### Summary

- An application to review the above premises licence has been received from an Interested Party. Where a review application is made there must be a Licensing Sub-Committee to decide that application even where agreement is reached. The report is to inform that decision.

### RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

**(A) The application for review of the premises licence be decided.**

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

1.1 Members of the Licensing Sub-Committee should determine the application to review 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 an application for review of a licence or certificate has to be determined.
- 2.2 Where a valid review application is made there must be a Licensing Sub-Committee hearing to decide that application even where agreement is reached. A Licensing Sub-Committee has the delegated authority to determine applications for a review of licences and certificates. Such decisions 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 valid review application was submitted by Miss M King on 20<sup>th</sup> August 2021 acting as an individual. The application was consulted upon but it became apparent during the consultation period that the Blue Notice advertising the application had been put in a place where it did not conform to the regulations. As such the application was re-advertised and a notice was put up in a location that conformed to the regulations.
- 3.2 The application details state that the current operation of the premises undermines the Licensing Objective of:
- Prevention of public nuisance.

- 3.3 A redacted copy of the application form and additional information is attached as **Appendix 'A'**.
- 3.4 The applicant states that the premises have been causing noise issues for many surrounding residents although the application is from the applicant as an individual. One cause of noise nuisance is reported as being the outside area of the premises that closes at 22:00, after this time it reported that people then gather in the archway by the main entrance which is not an area covered by the premises.
- 3.5 The applicant is concerned about noise escape from the premises when there are live bands or live DJ sets as doors and windows are often kept open allowing noise to escape more easily.
- 3.6 The applicant has requested that the Sub-Committee either closes the garden or brings forward the closing time for this area to earlier than 22:00 and that the premises have a condition that windows and doors should be closed at the same time to prevent noise leakage.
- 3.7 During the statutory 28 day consultation period further representations were received from:
- Environmental Health
  - Hertfordshire Police
  - one district councillor
  - one local town councillor
  - four local residents / local businesses.

These representations are attached as **Appendix 'B'**.

- 3.8 The representation from Environmental Health confirms they have received numerous complaints over several years. They have installed noise equipment in the applicant's home in November 2019 and offered it more recently but the applicant

has declined this.

- 3.9 Environmental Health has also made unannounced visits to the premises and at present they have not established the existence of statutory noise nuisance as defined under the Environmental Protection Act 1990. The Environmental Health Officers stated that they have worked both with the applicant and premises licence holder and also have given the Sub-Committee advice on the applicant's requests.
- 3.10 The Police's representation gives a brief history of the premises and informs the Sub-Committee of the number of Police reports. They state that they have received eleven reports between 5<sup>th</sup> October 2019 and 25<sup>th</sup> June 2021 in relation to noise, including music and a further two in relation to people noise in June/July 2021.
- 3.11 The Police have stated that they have visited the area and on three occasions between June and August officers have reported loud music. They report a further visit where people outside the premises and within the archway were being noisy.
- 3.12 The Police have suggested conditions in paragraph 1.12 and 1.14 of their report. They have stated that they believe there is evidence that the music played at the premises is loud and impacts on residents and the use of the archway is also causing nuisance. The Police have gone further and ask that the deregulation exemption is removed so that conditions relating to noise apply before 23:00.
- 3.13 The representation from a district councillor reports that although he does not represent Ware – Christchurch ward, he has received a number of complaints from residents of his neighbouring ward and of Ware generally regarding the premises, all alleging noise.
- 3.14 The representation from a local town councillor reports that

she received a number of complaints from residents alleging noise from the premises. She also gives information of an incident of Saturday 11<sup>th</sup> September where the pavement was blocked. It is understood from the premises licence holder that he was trying to use this area as a smoking area to stop the use of the archway but this seemed to cause more problems.

3.15 With reference to the other Interested Parties, two representations from the closest neighbour to the rear and from a business to the side of the premises both state that they have never had any issues with noise. One representation from a resident of Chapmore End has simply stated that the premises are a friendly place to go and she has not witnessed any trouble. A further representation from a resident of Black Swan Court, which is on the opposite side of the road, states that she is disturbed by the premises and can hear the bass of music inside her property.

3.16 The current premises licence is attached as **Appendix 'C'**.

3.17 To assist members in making a decision, a map showing the location of the site is attached as **Appendix 'D'**.

### **Policy and Guidance**

3.18 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.*

- 3.19 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.
- 3.20 Paragraphs 9.42-9.44 deal with how to determine actions that are appropriate for the promotion of the licensing objectives.
- 3.21 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.
- 3.22 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**

- 3.23 When looking at the applicant's evidence, the noise recordings are not time and date stamped and appear to have been on a mobile phone app. The Sub-Committee may wish to ask whether the mobile phone has been acoustically calibrated as this will have an impact on the accuracy of the results.
- 3.24 The applicant last identified issues in July of this year although

the review was made the end of August. Both the Police and Environmental Health have shown that no complaints have been received since this time. The Sub-Committee may wish to ask the premises licence holder if they have made any changes since the end of August that has reduced the number of complaints?

- 3.25 In the case of noise, a statutory nuisance as defined by the Environmental Protection Act 1990 as noise emitted from premises so as to be prejudicial to health or a nuisance. A public nuisance is defined as arising from an act that endangers the life, health, property, morals or comfort of the public or obstructs the public in the exercise or enjoyment of rights common to all. A public nuisance is actionable in tort and can also be a criminal offence.
- 3.26 The report author agrees with the Environmental Health Officer in that should the Sub-Committee be minded to add a condition relating to the closure of doors and windows this would normally be a requirement when regulated entertainment is carried out.
- 3.27 The Police have suggested a number of conditions to Premise Licence holder in both paragraphs 1.12 of their representation.
- 1) *Prior to 20:00 hours, the courtyard at the rear of the premises will be restricted to a maximum of 10 (ten) persons at any time. (Currently 20 (twenty)).*

Whilst this would reduce the noise from the courtyard there has been no evidence of complaints prior to 20:00

- 2) *The use of the courtyard at the rear of the premises between 20:00 – 22:00 hours:*
  - a) *To be used as a designated smoking area only.*
  - b) *No open vessels to be permitted in this area.*
  - c) *There are to be no more than 5 (five) people using this*

*area at any one time.*

Should the Sub-Committee hear evidence that this area has become a public nuisance then this condition may reduce any public nuisance from the area.

- 3) *From 20:00 hours, no customers to congregate in the alleyway to the side of the premises, unless queuing to get into the venue*

This condition would reduce the likelihood of people noise echoing from the archway although the alleyway is not part of the licenced premises.

- 4) *The following Conditions apply to the designated smoking area on the pavement to the front of the premises:*

- a) There are to be no more than 10 (ten) people using this area at any one time.*
- b) No open vessels to be permitted in this area.*
- c) Staff from the premises to monitor this area when in use by customers*

There is no designated smoking area to the front of the premises; the committee cannot place a condition on a designated smoking area that does not exist.

3.28 The Police have suggested a number of conditions to the licence holder in paragraph 1.14 of their representation

- 1) *When music is being played inside the premises, above background level, all doors and windows to be closed after 22:00 hours except for ingress and egress unless otherwise stated, subject to UK Government pandemic guidelines.*

This condition, except for the wording of 'subject to UK Government pandemic guidelines' would promote the licensing objectives by reducing the likelihood of noise exposure to neighbours.



- 2) *From 16:00 hours, no customer pedestrian access from the premises to the car park at the rear of the premises, unless during an emergency situation.*

Although this condition could prevent complaints from residents, there has been no allegation that customers are causing nuisance in the review documents and the car park is not within the licenced area.

- 3) *Between 22:00 hours and 09:00 hours, there shall be no disposal of bottles, or other refuse, or deliveries or collecting, relating to licensable activities at the premises, except the weekly refuse collection.*

*Deliveries to be made to the front of the premises only.*

*A written dispersal policy, approved by a Police Licensing Officer, will be in place and a copy available at the premises. As a minimum, the policy must cover actions to be taken to reduce the impact on the local community when customers are leaving the premises. The policy must be operated and adhered to by the staff at the premises.*

This condition will aid in ensuring neighbours are not disturbed by bin / bottle collections or deliveries. A dispersal policy is key to the premises reducing the impact to neighbouring properties on dispersal. The report's author does however believe that the wording "*relating to licensable activities*" should be removed as this would mean that items such as items such as glass bottles of non-alcoholic drinks can be disposed of out of these times with a potential of causing nuisance? Also how would the premises licence holder be able to ensure that deliveries are not made to the rear?

- 4) *In addition to the dispersal policy, the Premise Licence holder will ensure that a soft closure procedure is followed at the end of the evening, 30 minutes before the time the premises are*

*due to close.*

- a. *This must include lowering any music, informing people of the approaching closing time, not selling excessive amounts of drinks to people within this time period, encourage sensible drinking and ensuring people have time to finish the drinks they have prior to closure.*

This is a sensible condition in that customers aware that the premises will be closing and aids with dispersal.

- 5) *The Licence Holder shall actively participate in the PubWatch Scheme, including attending the meetings, and supporting the PubWatch banning systems including keeping records and sharing information with the police.*

Whilst this is an important condition, the Police have stated that the premises licence holder already attends and participates in the Pubwatch Scheme. It is also questionable on how this condition would reduce the impact of any noise nuisance.

- 6) *There will be no use of outside speakers at the rear of the premises.* – This condition would reduce any impact of noise transmission from the premises to the residential properties to the rear.

3.29 The Police have advised that the Sub-Committee should remove the deregulation exemption in order to allow for conditions to be in place prior to 23:00. There are no conditions relating to noise on the current licence and as this is a review hearing, any condition placed regarding noise would be enforceable at any time.

3.30 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.

- 3.31 Members should consider all of the evidence submitted by the applicant, the representations submitted in support of the review application, the evidence submitted by premises licence holder and the representations received supporting the premises licence holder in order to determine whether the licensing objectives are being undermined.
- 3.32 If members believe that the evidence shows that the premises do undermine the licensing objectives then guidance requires that the minimum steps needed to mitigate the issues should be the steps that are taken by the authority. Therefore if members believe that the licensing objectives are being undermined then any of the actions detailed in the first four bullet points of paragraph 4.1 of this report are available to them. If, however, members feel the premises do not undermine the licensing objectives then no changes are required to the licence.

## **4.0 Options**

- 4.1 The actions open to the Licensing Sub-Committee are:
- modify the conditions of the premises licence, which includes adding new conditions or any alteration or omission of an existing condition which are appropriate and proportionate for the promotion of the licensing objectives (either permanently or temporarily for up to 3 months);
  - exclude a licensable activity from the scope of the licence;
  - suspend the licence for up to 3 months;
  - revoke the licence;
  - remove the designated premises supervisor (DPS);
  - make no changes to the licence.

## **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 that they give clear reasons on how and why they have made their decision.

## **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 will be made to the Equality Act 2010 and the Public Sector Equality Duty.

### **Environmental Sustainability**

No

### **Financial**

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

There may also be a cost if the decision of the Licensing Sub-Committee is appealed to the Magistrates Court.

### **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 –** Ware – Christchurch

### **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/2021-08/Statement%20of%20Licensing%20Policy%202021-26%20%28accessible%29.pdf>
- 7.3 **Appendix 'A'** – Application for a Review of a Premise Licence.
- 7.4 **Appendix 'B'** – Representations both supporting the review application and supporting the Premises.

7.5 **Appendix 'C'** – Current Premise Licence of The Mixer.

7.6 **Appendix 'D'** – Map showing location of the premises.

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