

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 20 September 2022

Report By: Jonathan Geall, Head of Housing and Health

Report Title: Application for a new premises licence for Copper Tod, 48 The Elms, Hertford, Hertfordshire, SG13 7UX (22/1061/PL)

Ward(s) affected: Hertford Kingsmead

Summary

- An application for a new premises licence has been received from Audex Business Services Ltd T/a Copper Tod for 48 The Elms, Hertford, Hertfordshire SG13 7UX. Two 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 Where representations are received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide that application.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 to grant a premise licence to Audex Business Services Ltd T/a Copper Tod 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 council'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 council'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 originally submitted by Audex Business Services Ltd T/a Copper Todd on 23rd July 2022. 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 off the premises during the following times.

Licensable Activity	Day	Hours applied
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		for
Supply of alcohol (for consumption off the premises)	Monday – Tuesday	17:00 – 23:00
	Wednesday	12:00 – 23:00
	Thursday – Friday	17:00 – 23:00
	Saturday - Sunday	09:00 – 23:00

- 3.3 It is understood from the applicant that this application is solely for the use of selling gin distilled by the applicant at the premises in his spare time.
- 3.4 The premises are **not open to the public** for sales in person or for collections of pre orders.
- 3.5 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'**.
- 3.6 Section 18 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.
- 3.7 During the 28 day statutory public consultation period the applicant agreed conditions with Hertfordshire Police. These conditions are attached as **Appendix 'B'**
- 3.8 During the 28 day statutory public consultation period two valid representations were received from Interested Parties. These representations are attached as **Appendix 'C'**.
- 3.9 One representation from a neighbour asks a number of questions in relation to the commercial scale of the business, what is being sold and raises concerns over traffic to and from the property if the licence was granted. There are also other questions asked regarding the fire safety of the premises. Therefore the prevention of public nuisance and public safety licensing objectives are engaged.
- 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

- 3.11 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 of Copper Tod best fit would be 'off licence'.
- 3.12 The proposed premises are a residential property not and not in a Town Centre location so is classed as being in 'Other areas'.
- 3.13 The table at 6.9 of the Policy details the council'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 'Off licence' in this type of location when valid and relevant representations have been received:

Will generally be granted alcohol sales no later than 23:00.

- 3.14 Section 8.14 of the Policy contains information on how the council considers applications under the public safety licensing objective.
- 3.15 Paragraphs 8.15 and 8.16 state:

8.15 When considering this objective, the Licensing Authority will concern itself with the physical safety and wellbeing of the people who use licensed premises, and those who may be affected by the use of licensed premises (e.g. non-customers who happen to be in the immediate vicinity of a premise). This will include measures that seek to prevent accidents, injuries

and short- or long-term illnesses to staff, customers or other persons.

8.16 The Licensing Authority will have regard to the measures to be taken by applicants to ensure that the physical safety of any person visiting or working in licensed premises is not compromised. This should be demonstrated in an applicant's operating schedule. Factors that may be considered include, but are not limited to:

- The total occupancy capacity (staff, customers, others) of the premises
- Physical environment of the premises
- Customer Profile

3.16 Section 8.20 of the Policy contains information on how the council considers applications under the prevention of public nuisance licensing objective.

Paragraphs 8.21 to 8.29 state:

8.21 The Licensing Authority will interpret the term 'public nuisance' widely as advised in the Secretary of State's guidance. When considering this objective the Authority will take into account issues relating to noise, vibration, light, litter, offensive odours and anti-social behaviour arising from or in connection with the provision of licensable activities. Public nuisance can be at a low level only affecting a few people locally, as well as a major disturbance affecting the wider community.

8.22 This objective does not mean the complete prevention of all of the above issues, but rather the prevention of such unreasonable levels of these as would constitute a nuisance to the public or a section thereof. A degree of noise, for example, is an inevitable consequence of the provision of most forms of regulated entertainment. The Licensing

Authority will therefore seek to exercise its powers in a way which promotes the licensing objective, to discourage and eliminate the carrying on of licensable activities in a way that causes unreasonable inconvenience, upset or distress to others.

8.23 The Authority would expect applicants to have demonstrated in their operating schedule that public nuisance concerns have been identified, with suitable control measures implemented and maintained. Factors that may be considered include, but are not limited to:

- The location of the premises and proximity to residential and other noise sensitive premises*
- The hours of opening, including times when licensable activities may not be taking place, last admission time and 'wind down period'*
- Nature of activities provided*
- Supervision of customers including managing dispersal*
- Odour and light nuisance*
- Litter and waste disposal*
- the location of delivery and collection areas and delivery/collection times*
- Noise management plan (where appropriate)*

8.24 Steps that can be taken to minimise public nuisance include those 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;*
- prevent disturbance by customers and staff arriving at or leaving the premises;*
- prevent queuing (either by pedestrian or vehicular traffic);*

- *help ensure patrons and staff leave the premises quietly;*
- *minimise the effect of parking by patrons on local residents;*
- *minimise noise from the use of smoking shelters, gardens and other open-air areas.*

8.25 This lists above are not exhaustive and the Licensing Authority remains aware of its obligation to consider each case on its merits.

8.26 The Authority notes that, as with other licensing objectives, there are other regulatory regimes exist which may be used to control nuisance. The Environmental Protection Act 1990 in particular allows Environmental Health officers to require the abatement of a statutory nuisance, and would be considered the primary control for such issues. However, the Licensing Authority notes that this regime is largely reactive, whereas licensing may be used to establish proactive controls, preventing a nuisance from reaching a statutory level in the first instance.

8.27 Nuisance may arise directly as a result of licensable activities (for example, noise from music), or indirectly (noise from customers at the premises). Applicants and licence-holders are strongly encouraged to consider all possible sources of nuisance when compiling operating schedules, and to implement appropriate measures for the promotion of this objective. For many types of nuisance, this process will begin in the initial design stages prior to the construction or redevelopment of premises. The Council's Environmental Health officers may be consulted for informal advice, prior to the making of a licence application, on proposed measures likely to reduce or prevent the likelihood of public nuisance arising from the operation of licensed premises.

8.28 The Licensing Authority will have regard to best practice guidance when considering this licensing objective, including

but not limited to:

- *Guidelines on Community Noise (World Health Organisation)*
- *Effective Management of Noise from Licensed Premises (British Beer and Pub Association)*
- *Code of Practice on Environmental Noise Control at Concerts (Noise Council)*

8.29 Where premises which are the subject of licensing applications involving amplified musical entertainment beyond 11pm are in close proximity to residential properties, the Licensing Authority will require a comprehensive operating schedule listing measures that the applicant intends to implement to ensure the promotion of this licensing objective.

3.17 Paragraph 9.37 and 9.38 of the revised Guidance issued under section 182 of the Licensing Act 2003 (herein 'the Guidance') states:

9.37 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.

9.38 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.

3.18 In determining the application with a view to promoting the Licensing Objectives in the overall interests of the local community, the Licensing Sub-Committee 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.

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

3.20 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 along with selection F of the East Herts Pool of conditions.

Officer Observations

3.21 With regards to the representations of the Interested Parties, both have been contacted with regards to their objections, either through email or telephone. The Senior Licensing Officer has explained the application to one and informed the other in regards to Herts Fire and Rescue making no objection. Neither of the representations, however, have subsequently been withdrawn.

3.22 This application is for the supply of alcohol **off the premises** by retail sale. The applicant has the licences for the production, storage and wholesale sale via Her/His Majesty's Revenues and Customs (HMRC).

3.23 Looking at the steps the applicant has stated that they will take to promote the licensing objectives they applicant has

confirmed that no customers will be permitted on site neither will there be any customer collections.

- 3.24 The Fire Authority has confirmed with the Licensing Authority that they received the application and that they have no objections to this application.
- 3.25 There have been no objections from any responsible authority.
- 3.26 If Members believe that the application would not undermine any of the licensing objectives then the application should be granted as requested.
- 3.27 As stated in the Guidance, the council'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.
- 3.28 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.
- 3.29 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 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.
- 3.31 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.

3.32 Aside from adding conditions it is open to Members 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.

3.33 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 actions open to the Licensing Sub-Committee are:

- grant the application as requested if they feel the application would promote and not undermine the licensing objectives; or
- grant the application but at the same time impose additional conditions or amend the activities or times requested; 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 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 – 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 2021-2026 <https://cdn-eastherts.onwebcurl.com/s3fs-public/2022-03/Statement%20of%20Licensing%20Policy%202021-26%20Mar%202022.pdf>

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>

- 7.3 **Appendix 'A'** – Application for a New Premise Licence.
- 7.4 **Appendix 'B'** – Conditions by Hertfordshire Police agreed with the applicant.
- 7.5 **Appendix 'C'** – Representations against the application.
- 7.6 **Appendix 'D'** – Map showing location of the premises.

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