

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 19th October 2022

Report by: Jonathan Geall, Head of Housing and Health

Report title:

Application for a new premises licence for Adnams, 10 High Street, Bishop's Stortford, Hertfordshire, CM23 2LT (22/1189/PL)

Ward(s) affected: Bishop's Stortford - Central

Summary

An application for a new premises licence has been received from Adnams PLC for premises at 10 High Street, Bishop's Stortford, Hertfordshire, CM23 2LT. Representations against the application have been made by a number of interested parties. Where representations are received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide that application.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 decided.

1.0 Proposal(s)

- 1.1 Members of the Licensing Sub-Committee should determine the application to grant a premises licence to Adnams PLC 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 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 submitted by Adnams plc Limited on 24th August 2022. The application has been correctly advertised and consulted upon as required by legislation and regulations.
- 3.2 The application originally requested the supply of alcohol for consumption on and off the premises and recorded music during the following times.

Licensable Activity	Day	Hours originally applied for
Supply of alcohol (for consumption on & off the premises)	Monday – Saturday	09:00 – 21:00
Recorded Music (Indoors)	Sunday	09:00 – 17:00
Opening times		

- 3.3 A redacted copy of the application form for a new premises license is attached as **Appendix 'A'**.
- 3.4 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.
- 3.5 During the 28 day statutory public consultation period the applicant agreed conditions with Hertfordshire Police. These conditions are attached as **Appendix 'B'**
- 3.6 Prior to the end of the public consultation, following receipt of some representations against the application, the applicant amended the application. **Of note, the amendments removed the request for recorded music and alcohol for consumption on the premises.** In addition the hours were amended as shown below.

Licensable Activity	Day	Hours as amended
Supply of alcohol (for consumption off the premises) Opening times	Monday – Saturday Sunday	09:00 – 18:00 10:00 – 16:00

- 3.7 In addition to amendments to the activities and hours the applicant provided the following additional information:

The deliveries will be once a week; the delivery of pallets of boxed items (no kegs or casks) will happen on the street adjacent to the store, where there is ample parking. We will use an electric pump truck to take the stock into the courtyard, where it will be stored in the shop. This activity normally takes us approximately an hour.

We will have a recycling bin and a normal waste bin (no glass bin is required).

Our van will be parked in the pay and display car park.

- 3.8 During the 28 day statutory public consultation period representations were received from 64 individuals as interested parties. All the representations are attached as **Appendix 'C'**.

- 3.9 Between them the representations detail that all four of the Licensing Objectives would be undermined should the application be granted as originally applied for. None of the representations were received after the application was amended.

- 3.10 A plan of the area in which the premises are 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 Adnams would be 'Off-licence'.
- 3.12 The proposed premises are within the area designated as a 'Town Centre' in section 7.0 of the Policy.
- 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 **midnight**.*

- 3.14 Section 8 of the Policy states that:
- 8.1 The Licensing Authority must carry out its functions with a view to promoting the four Licensing Objectives, each of which has equal importance:
- the prevention of crime and disorder,

- public safety,
- the prevention of public nuisance, and
- the protection of children from harm.

8.2 It is recognised that the licensing function is only one means of securing the delivery of the above objectives and should not therefore be seen as a means for solving all local problems. The Licensing Authority will therefore continue to work in partnership with all stakeholders and partners towards the promotion of the Licensing Objectives.

3.15 Paragraphs 8.6 to 8.39 of the Policy contain information on how the council considers applications in respect of each of the Licensing Objectives.

3.16 The Home Office issued '**Guidance issued under section 182 of the Licensing Act 2003**' (herein 'the Guidance') states at paragraph 9.37 and 9.38 that:

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. 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.

9.38 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.*

3.17 Paragraphs 9.42-9.44 of the Guidance deal with how to determine actions that are appropriate for the promotion of the Licensing Objectives.

3.18 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 the East Herts '**Pool of Model Conditions**'.

Officer observations

3.19 During discussions held between officers and the applicant, the applicant explained that they had applied for recorded music to allow them to play background music in the shop. Background music is not a licensable activity under the Licensing Act 2003 and therefore does not require 'record music' to be on the licence.

3.20 Furthermore, the applicant explained that on premises sales of alcohol were requested to allow 6-8 'tastings' per year when people would book and pay to attend the events. As such the applicant decided to remove 'on sales' from the application to avoid any further ambiguity regarding the purpose of the application.

3.21 The applicant believes that the purpose of the application has been misunderstood and chose to amend the

application to address residents' concerns. Some of the representations refer to the premises as becoming a 'bar' or 'pub' which the applicant has stated was never the purpose of the application.

- 3.22 Representations were received from 64 individuals, with the majority being in the form of a petition. It is unclear whether the people that completed the petition had viewed the notice of application at the premises or online. Many people have simply detailed one or more of the Licensing Objectives as their concern giving no additional information to support their positions.
- 3.23 The Licensing Authority has attempted to contact every person whose contact details have been submitted as making a representation against the application. Emails have been sent regarding the amendments to the application and the conditions agreed by the applicant. Unfortunately, due to the difficulty in reading some of the email addresses 11 emails were undeliverable. In addition to this four individuals gave no contact details at all.
- 3.24 Contact has been attempted with those that did not give reasons for making a representation and have simply listed one or more Licensing Objective, so that they had the opportunity to explain their concerns in support of their representation.
- 3.25 Efforts have been made to clarify the contact details of those included on the petition with the interested party that supplied the document. At the time of drafting the report no additional contact details had been received.
- 3.26 Following the initial attempts to contact individuals five representations were withdrawn.

- 3.27 When considering the weight to attach to the names on the petition members should consider a number of factors:
- only 13 individuals have provide their addresses. Whilst people are not required to live in the vicinity to make representation, addresses allow members to know the proximity of those objecting in order to form a view on the likelihood that they will be affected
 - four individuals have not provided any contact details at all
 - it is unclear what those signing were told before being asked to complete it
 - a number of the individuals on the petition have listed one or more of the licensing objectives but with no supporting reasons for why this premises, if granted a licence, would undermine them.
- 3.28 Although members will have read all of the representations, it is considered helpful to group the reasons for representations being made under the headings of the four Licensing Objectives. Reasons should be linked to the operation of this specific premises and the likelihood of the premises licence, if granted, failing to promote the licensing objectives.
- 3.29 **Prevention of crime and disorder** – reasons given by those making representation. Note: the representations are simply repeated without officers offering any comment on the veracity of points made:
- national statistics showing a correlation between alcohol and crime. Bishop's Stortford has one of the highest crime rates in the county. ASB is fueled by the sale of alcohol
 - the Police service in under resourced
 - a reference to another licensed premises in the area and problems associated with it

- comments regarding the sale of alcohol for consumption on and off the premises
- no doubt that a new alcohol outlet would contribute to the increasing crime rate
- incidents witnessed requiring Police attendance
- increased sale of alcohol with easier access will cause more ASB and crime.

3.30 In relation to the prevention of crime and disorder objective, officers would make the following observations regarding the reasons given in representations:

- whilst nationally there is a correlation between alcohol and crime
- Police resourcing is a matter specifically excluded from being a consideration when reaching licensing decisions. This is a matter for the Police and Central Government to consider
- references to issues caused by other licensed premises in the area are not directly relevant to these premises. The premises named has a significantly different licence to the one applied for by Adnams as it allows on-sales of alcohol and regulated entertainment until the early hours of the morning.
- any reference to issues linked to the consumption of alcohol on the premises should be disregarded as this is no longer part of the application
- there is no reason to believe that the responsible sale of alcohol is likely to contribute to crime and disorder and so a licence should not be granted as requested only if members do not believe the applicant will trade responsibly
- a comment was made regarding 'easier access' to alcohol but there is no explanation as to why these premises would allow 'easier access'.

3.31 The Home Office 'Revised Guidance issued under section 182 of the Licensing Act 2003' state in relation to the prevention of crime and disorder objective:

Licensing authorities should look to the police as the main source of advice on crime and disorder.

3.32 The Police were consulted as part of the application and agreed conditions with the applicant that they believed would mean that the granting of the licence, as requested, would not undermine the Licensing Objectives. These conditions were agreed prior to the applicant amending the application to remove certain licensable activities and shortening the hours of trading meaning that the Police were satisfied that the crime and disorder objective would not have been undermined even with the premises open later and allowing alcohol to be consumed on the premises and regulated entertainment.

3.33 Members may wish to question any interested parties present at the hearing to clarify their specific concerns regarding the undermining of the crime and disorder objective should a licence be granted.

3.34 **Public safety** – reasons given by those making representation. Note: the representations are simply repeated without officers offering any comment on the veracity of points made

- location. On a corner with narrow pavements
- deliveries. How they will be made and where, narrow street, illegal parking, danger to pedestrians (including children)
- bins. Location, access and bottles.

3.35 In relation to the public safety objective, officers would

make the following observations.

3.36 In response to these concerns the applicant has stated:

The deliveries will be once a week; the delivery of pallets of boxed items (no kegs or casks) will happen on the street adjacent to the store, where there is ample parking. We will use an electric pump truck to take the stock into the courtyard, where it will be stored in the shop. This activity normally takes us approximately an hour.

We will have a recycling bin and a normal waste bin (no glass bin is required).

Our van will be parked in the pay and display car park.

3.37 These measures appear to address the issues raised but members may wish to question the applicant regarding how they are confident that they can ensure that these steps will happen. Members may consider conditions regarding these issues if they believe it is necessary. East Herts Council's 'Pool of Model Conditions' contains sections relating to deliveries and rubbish which may be of assistance.

3.38 The Home Office 'Revised Guidance issued under section 182 of the Licensing Act 2003' state in relation to the public safety objective:

Licence holders have a responsibility to ensure the safety of those using their premises, as a part of their duties under the 2003 Act.

3.39 **Prevention of public nuisance** – reasons given by those making representation. Note: the representations are simply repeated without officers offering any comment on the veracity of points made:

- noise from deliveries, music noise and customers

- references to the premises being a pub and disturbance from this type of venue already
- smoking
- noise from customers of other venues.

3.40 In relation to the prevention of public nuisance objective, officers would make the following observations regarding the reasons given in representations:

- the noise from deliveries has been addressed by the applicant already but they may be willing to agree conditions regarding the time deliveries can be made and how, if members believe it is necessary
- reference to music noise is no longer relevant as the application does not request any form of regulated entertainment
- the hours applied for are normal shop hours so it is unlikely that customer noise will be an issue. The comments relating to customer noise seem concerned with late night noise when these premises will be closed
- references to the premises being a pub or bar are not relevant as the application only seeks permission to sell alcohol for consumption off the premises
- any noise created by customers of other venues, particularly those of a different nature to this premises, are not relevant
- members may wish to ask the applicant what arrangement will be made for staff that wish to smoke during their breaks
- members may wish to ask any interested parties that live in this building how they believe this premises will create public nuisance more than any previous occupants? These points can then be addressed by

the applicant and appropriate amendments made, if any are considered necessary.

- 3.41 The Home Office 'Revised Guidance issued under section 182 of the Licensing Act 2003' state in relation to the public nuisance objective:

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.

- 3.42 **Protection of children from harm** – reasons given by those making representation. Note: the representation are simply repeated without officers offering any comment on the veracity of points made:
- not related to protecting children from harm of the alcohol itself
 - concerns about wider issues: Smoke, deliveries, access to homes, noise from deliveries and music, being able to sleep
 - details of the effect on children from customers of other venues
 - don't want a bar next door
 - alcohol and drug fueled incidents causing local children anxiety.

- 3.43 In relation to the protection of children from harm

objective, officers would make the following observations regarding the reasons given in representations:

- many of the reasons for concern that this objective will be undermined have been dealt with under the other licensing objectives. The one that hasn't been specifically touched upon is children's ability to sleep in the vicinity of the premises. Members may wish to discuss this specific concern with any interested parties present at the hearing who live near to the premises and have children
- the drug and alcohol fuelled incidents mentioned are not related to the operation of this premises as it is not yet operating. Members should consider whether or not there is a likelihood that this premises operating would further contribute to these issues. Whilst East Herts does not have a cumulative impact policy in place the cumulative impact of types of premises in an area can still be considered.

3.44 The Home Office 'Revised Guidance issued under section 182 of the Licensing Act 2003' states in relation to the protection of children from harm objective:

The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment).

3.45 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.

- 3.46 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.
- 3.47 Whilst the hours and activities applied for are within those detailed within East Herts 'Statement of Licensing Policy' this does not fetter members' ability to decide that shorter hours or a refusal are more appropriate in the circumstances of an individual application. The Policy is a starting point from which decisions can be made but should the Policy be departed from then members should clearly give their reasons for doing this.
- 3.48 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.
- 3.49 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.
- 3.50 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.
- 3.51 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.

3.52 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 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 – Bishop’s Stortford - Central.

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%2022.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 proposed by Hertfordshire Police and 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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