

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 27 April 2023

Report By: Jonathan Geall, Head of Housing and Health

Report Title: Application for a new premises licence for WH Smith, Bishop's Stortford Railway Station, Station Road, Bishop's Stortford, Hertfordshire, CM23 3BL (23/0300/PL)

Ward(s) affected: Bishop's Stortford Central

Summary

- An application for a new premises licence has been received from WH Smith Retail Holdings Limited. 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 Where representations are received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide that application. 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 WH Smith Retail Holdings Limited 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 WH Smith Retail Holdings Limited on 2nd March 2023. 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 originally applied for
Supply of alcohol (for consumption on and off the premises)	Monday – Sunday	08:00 – 21:00
Opening times	Monday – Sunday	08:00 – 21:00

- 3.3 A redacted copy of the application form for a new premises licence 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 representations were received from three individuals as interested parties. All the representations are attached as **Appendix 'B'**.
- 3.6 Between them the representations detail that all four of the Licensing Objectives; Protection of children from harm, Prevention of public nuisance, Public Safety and Prevention of Crime and Disorder would be undermined should the application be granted as applied for.
- 3.7 A plan of the area in which the premises are located is attached as **Appendix 'C'**. This can be used to illustrate the location of the premises in relation to residents and other businesses.
- 3.8 Following receipt of the representations the representative of WH Smith forwarded a reply which was sent to each interested party. This response is **Appendix 'D'**.

3.9 The applicant subsequently amended the requested hours for the sale of alcohol, so that they finish earlier than originally requested, and offered three additional conditions. The correspondence to the interested parties regarding the amendment is **Appendix 'E'**.

Licensable Activity	Day	Hours originally applied for
Supply of alcohol (for consumption on and off the premises)	Monday – Friday	08:00 – 19:00
	Saturday	08:00 – 18:00
	Sunday	08:00 – 16:00
Opening times	Monday – Sunday	08:00 – 21:00

The three additional conditions offered are:

- No 1 litre bottles of beer/cider/wine to be sold (being products that may appeal to street drinkers)
- Contact telephone number or email to be provided to the local residents
- The premises licence holder will become part of any community safety initiatives coordinated by the Police and/or Licensing Authority in so far as they relate to the four licensing objectives

3.10 As a result of the amendments two of the three interested parties withdrew their representations.

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 WH Smith 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 The hours applied for on the application are well within those detailed in East Herts own Licensing Policy as they finish at 19:00.
- 3.20 The interested party does not live within the vicinity of the station, so it is safe to assume that they are a station user rather than a concerned local resident. This representation references all four of the licensing objectives so we will deal with each in turn.
- 3.21 Protection of children from harm – Concern is raised that school age children will be able to purchase alcohol posing a risk to their safety on the train station. There are several offences related to the sale of alcohol to minors and the applicant, as a national retailer will be aware of these, and has offered conditions such as 'Challenge 25' to mitigate concerns about underage sales. Should this occur it would risk the applicant's licence and they would face possible prosecution for each offence.
- 3.22 Reference is also made that the licence would put children in the presence of alcohol daily that they otherwise would not have seen. Little weight should be attached to this comment as the Guidance, *states* at para 2.22:
- 3.23 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). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.

- 3.24 Simply opening a premises which retails alcohol for consumption off the premises does not create a risk to children 'from moral, psychological and physical harm'. If this were the case, then similar licence applications would be refused nationally.
- 3.25 Public nuisance – This part of the representation references the amenities in the area and that 'alcohol encourages people to linger and drink the alcohol in quiet out of the way places' and 'the sale of alcohol poses a risk of disruption, noise and alcohol induced antisocial behaviour'. The Sub-Committee may wish to ask the interested party to explain further why they believe that the granting of a premises licence to WH Smith for off sales of alcohol would lead to these issues?
- 3.26 Public safety – The interested party has detailed the location of the proposed licensed premises and amenities in the vicinity, but this is then linked back to antisocial behaviour which is better dealt with under the objective of 'Prevention of Crime and Disorder'. The Guidance states at para 2.7 that Public safety is concerned with:
- 3.27 ... the safety of people using the relevant premises rather than public health which is addressed in other legislation. Physical safety includes the prevention of accidents and injuries and other immediate harms that can result from alcohol consumption such as unconsciousness or alcohol poisoning. Therefore, the public safety objective is not engaged.

- 3.28 Prevention of Crime and Disorder – This part of the representation references that the area around the shop ‘is a possible magnet to people loitering and drinking alcohol purchased from WH Smiths in unseen areas which tends to lead to unsocial behaviour’. The Sub-Committee may wish to question the interested party as to the reasons for this belief and if they have any evidence to support the assertion?
- 3.29 The representation continues to suggest that the new premises licence would lead to *‘an increased possibility for damage to be done to these belongings’* and again the Sub-Committee may wish to look into this in more detail.
- 3.30 The final paragraph of the representation details planning permission that has been granted in the vicinity of the proposed licensed premises and that for this reason it would be *‘unacceptable and irresponsible for the Council’* to grant a premises licence in this location. The paragraph then goes on to detail that there are other premises in the area selling alcohol already. This paragraph cannot carry any weight, in reaching a decision, as it does not engage a licensing objective and ‘need’ for a particular premise is excluded from being a valid consideration.
- 3.31 When considering the three representations together it appears that, although detailed, the licensing objectives of Protection of children from harm and Public safety have not been engaged. The points raised fall under the licensing objectives of Prevention of Crime and Disorder and Public nuisance so any additional measures the Sub-committee may consider should be in relation to these two objectives.
- 3.32 The Guidance, at para 2.1, states in relation to the Prevention of Crime and Disorder that:
- 3.33 Licensing authorities should look to the police as the main

source of advice on crime and disorder. They should also seek to involve the local Community Safety Partnership (CSP).

- 3.34 The Police did not make a representation against this application and this should be taken into consideration when deciding what weight to attach to the concerns of a potential increase in crime and disorder if the licence is granted.
- 3.35 The Guidance, at para 2.15 states in relation to Public nuisance:
- 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.
- 3.36 Environmental Health whose area of expertise includes nuisance did not make representation against the application.
- 3.37 The Sub-Committee should consider whether the operation of the licensed premises would be likely to cause a public nuisance having considered the evidence presented and the location of the premises.
- 3.38 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.

- 3.39 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.
- 3.40 Whilst the hours and activities applied for are within those detailed in 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.
- 3.41 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.
- 3.42 If the Sub-Committee believes that granting the application as requested would promote the licensing objectives, then it should be granted as requested.
- 3.43 If the Sub-Committee believe that granting the application as requested would not promote the licensing objectives, then the starting point should be to consider if there are conditions that could be added to mitigate concerns.
- 3.44 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.
- 3.45 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.

- 3.46 Aside from adding conditions, it is open to members to limit the hours of operation further but clear reasons for this step would need to be given.
- 3.47 However, if adding conditions and/or limiting the hours beyond those requested does not mitigate members' concerns regarding the promotion of the licensing objectives *then the* application should be refused.
- 3.48 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 (December 2022) - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1125660/Revised_guidan

[ce issued under section 182 of the Licensing Act 2003 December 2022.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 (redacted).
- 7.4 **Appendix 'B'** – Plan showing location of the premises.
- 7.5 **Appendix 'C'** – Representations against the application.
- 7.6 **Appendix 'D'** – Applicant's response to interested parties.
- 7.7 **Appendix 'E'** – Applicant's letter of amendment to interested parties.

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