

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 8th April 2024

Report by: Jonathan Geall, Head of Housing and Health

Report title: Application for a variation of the premises licence for The Old Bell, 38 Bell Street, Sawbridgeworth, Hertfordshire (24/0207/PLV)

Ward(s) affected: Sawbridgeworth

Summary

- An application to vary the premises licence for The Old Bell has been received from Admiral Taverns Limited. A representation against the application has been made by an interested party. Where a representation is received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide that application. This report is to inform the decision of the Licensing Sub-Committee.

RECOMMENDATIONS FOR LICENSING SUB-COMMITTEE

(A) The application to vary a premises licence be decided.

1.0 Proposal(s)

1.1 Members of the Licensing Sub-Committee should determine the application 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 Admiral Taverns Limited was validated on 15th February 2024. The applicant describes the nature of the variation as:

This is an application to extend the licensable area shown on the submitted plan to include the external area. This is to allow the use of a mobile bar in the external area within the current hours for licensable activities.

All conditions, hours and activities currently permitted by the licence are to remain unchanged.

3.2 The licensing authority contacted the applicant's representative for clarity regarding exactly what was being requested as part of the application and the response is below:

In line with the condition sale of alcohol will only be needed until 23:00 outside and inside hours to remain unchanged, apologies this wasn't added onto the licensing application there is already a condition on the planning where the outside area will not be used after 23:00.

Licensable Activity	Day	Hours applied for
Supply of alcohol (for consumption ON & OFF the premises) OUTSIDE	Monday – Saturday	10:00 – 23:00
	Sunday	12:00 – 23:00

- 3.3 The condition referenced above is Annex 3, condition 10 which states:

No use of the outside area except for smoking in the rear garden after 23:00 hours.

- 3.4 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'** and the revised plan that accompanied the application is **Appendix 'B'**. The current premises licence (23/0472/PLDPS) is attached at **Appendix 'C'** and plan attached to the current premises licence (23/0472/PLDPS) is attached for reference as **Appendix 'D'**.
- 3.5 During the 28-day statutory public consultation period one representation was received against the application from a from a local couple. The representation is attached as **Appendix 'E'**.
- 3.6 The representation suggests that the Prevention of Public Nuisance Licensing Objective would be undermined if the application is granted as requested. Reference is made to the likelihood of an increase to the level of disturbances experienced by the interested party.
- 3.7 A plan of the area in which the premises are located is attached at **Appendix 'F'**. This can be used to illustrate the location of the premises in relation to residents and other businesses.

Policy and Guidance

- 3.8 Section 6 of 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 the Old Bell would be classed as a *'Public House, wine bar, Café-bar or other drinking establishment'*.

3.9 The proposed premises are within a Town Centre as defined in section 7.0 of the Policy.

3.10 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. In relation to *'Public House, wine bar, Café-bar or other drinking establishment'* located in a *'Town Centre'*, it states:

*Will generally be granted alcohol sales for consumption on the premises no later than **midnight** and no later than **22:30** on Sunday.*

3.11 Paragraph 6.10 of the Policy states:

The hours detailed above will not be automatically applied where representations are received, and a Licensing Sub-Committee decides the application. Each application will be considered on its own merits and the most appropriate way to mitigate concerns will be taken.

3.12 Section 8 of the Policy deals with the Licensing Objectives:

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.

8.3 The Licensing Authority expects applicants to address the licensing objectives within their operating schedules, having regard to the nature of the premises, the licensable activities to be provided, operational procedures, and the nature of the location and the needs of local communities. The operating schedule should contain sufficient information to enable the Licensing Authority, responsible authorities and other persons who may be affected by the operation of the licensed premises to assess whether the steps which will be taken to promote the licensing objectives are sufficient to mitigate any potential adverse impact.

3.13 Paragraphs 8.20 to 8.30 deal with the Licensing Objective of 'Prevention of public nuisance'. This is the Licensing Objective identified within the representation against this application.

3.14 Section 15, paragraphs 15.1 and 15.2 deal with the 'Operating Schedule'. These paragraphs reflect the information in the Section 182 Guidance issued by the Secretary of state.

3.15 The Home Office-issued ['Guidance issued under section 182 of the Licensing Act 2003'](#) (herein 'the Guidance') states at paragraphs 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.*

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

3.17 Paragraph 9.45 of the Guidance deals with the consideration of cases where licensing and planning applications are made simultaneously and states:

Where businesses have indicated, when applying for a licence under the 2003 Act, that they have also applied for planning permission or that they intend to do so, licensing committees and officers should consider discussion with their planning counterparts prior to determination with the aim of agreeing mutually acceptable operating hours and scheme designs.

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. The Guidance should be considered along with the East Herts [‘Pool of Model Conditions’](#)¹.

Officer observations

3.19 Whilst the hours and activity applied for from Monday to Saturday are inside those hours suggested for this type of premises within the Policy, the Sunday hours go beyond 22:30. The existing premises licence allows alcohol sales inside the premises to continue until midnight on a Sunday. Simply requesting hours which are within those detailed in the Policy does not fetter the Sub-Committee’s discretion to decide on shorter hours, or even

¹ Conditions with a letter ‘B’ or marked ‘All’ are relevant to ‘Public House, wine bar, Café-bar or other drinking establishment’ located in a ‘Town Centre’ and some or all may be applied where appropriate having considered the merits of the individual application.

on refusal, if they believe this is more appropriate in the circumstances of the individual application. The Policy is a starting point from which decisions can be made; should the Policy be departed from then members should clearly give their reasons for doing this.

- 3.20 In the representation that has been received, the interested party has given details of issues with planning applications. Members understand that planning and licensing are two separate regimes that do not directly influence each other, what is issued as part of one decision does not have to be replicated by the other regime. It is important to focus on the Licensing Objectives and not get drawn into discussions about planning.
- 3.21 However, the Guidance does suggest that where there are simultaneous applications under both regimes, Licensing officers and their Planning counterparts should consider discussing what hours would be acceptable with regards to the proposed operations.
- 3.22 As Planning have not made representations against the application it would not be appropriate for them to speak at the Licensing Sub-Committee. Discussions have taken place at an officer level between the Licensing Authority and Planning. Planning have confirmed that there is a current planning application in relation to the Old Bell and that this will not be concluded before the Licensing Sub-Committee hearing. Therefore, any comments they make are not binding and do not fetter planning's discretion to reach a different decision after consultation.
- 3.23 Planning have stated that should planning permission be forthcoming, it is likely to be similar to the planning permission granted in January 2022 (ref. 3/21/1323/FUL). This included a condition which stated:

There shall be no use of the canopy area hereby approved after 23:00 hours on any day, and there shall be no live or recorded entertainment permitted in the rear garden area said area after 21:00 hours on any day.

3.24 The reason given for this condition was:

In order to ensure an adequate level of amenity for the occupants of nearby properties in accordance with Policy EQ2 Noise Pollution of the adopted East Herts District Plan 2018.

3.25 The interested party has submitted that they are extremely concerned that if accepted, the variation would "*lead to yet another increase in the disturbances we have experienced*". However, no details of the current issues have been included.

3.26 Both the Licensing Authority and Environmental Health have previously had contact from the interested party regarding disturbance from the Old Bell but none of the issues have been evidenced and therefore no action has been taken against the premises. Environmental Health has not made representations against this application; they are the responsible authority with the best knowledge of nuisance.

3.27 The representation does not give details of the types of disturbance suffered but does link these to the use of the outside areas. Members may wish to ask the interested party to expand on the details of the type of disturbance alleged and why they believe, if granted, this application would undermine the prevention of public nuisance licensing objective. The applicant could then have an opportunity to respond.

3.28 The interested party raises concerns about the use of a mobile bar in the outside area. A question is raised about what hours this will be for and that is answered in paragraph 3.2, it will cease at 23:00 when the use of the outside area ends.

3.29 The question of where the mobile bar can be located is also raised. Members may wish to question the applicant about this so that some clarity is gained before seeking the interested party's opinion. If the Sub-Committee believed it appropriate, a condition could be attached limiting where any temporary/mobile bar could be located.

3.30 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.

- 3.31 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.
- 3.32 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 of prevention of public nuisance would be undermined.
- 3.33 Whilst the hours and activity applied for on a Sunday are longer than those detailed in East Herts' 'Statement of Licensing Policy' this does not fetter the Sub-Committee's ability to decide that the hours applied for are appropriate in the circumstances of this individual application. If the Policy is departed from then clear reasons need to be given for this decision.
- 3.34 If the Sub-Committee believes that granting the application as requested would promote the Licensing Objectives, then the application should be granted as requested.
- 3.35 If the Sub-Committee believes 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.
- 3.36 In considering additional conditions, members should decide whether these steps would in fact address the concerns raised if the decision was made to grant the hours and activities as requested.
- 3.37 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.

- 3.38 Aside from adding conditions, it is open to members to limit the hours of operation and/or area further but clear reasons for this step would need to be given.
- 3.39 However, if adding conditions and/or limiting the hours or area beyond those requested does not mitigate members' concerns regarding the promotion of the Licensing Objectives then the application should be refused.
- 3.40 Put in its simplest terms, what are the minimum measures that can be put in place to address concerns? Refusal of the application should be the last option considered.
- 3.41 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.
- 3.42 The comments, observations and suggestions contain within the body of the report and associated appendices do not fetter the Sub-Committees discretion to reach the decision they believe is most appropriate when considering all the merits of the individual case.

4.0 Options

- 4.1 The actions open to the Licensing Sub-Committee are:
- grant the application as requested if members 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 if members feel it is necessary to promote the Licensing Objectives; 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 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.

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.
- 6.2 The 28-day public consultation commenced on 15th February 2024 and ended on 14th March 2024.

Community Safety

- 6.3 The report details the four Licensing Objectives therefore Community Safety will be considered when determining the application.

Data Protection

- 6.4 Where the appendices have shown personal data, this has been redacted.

Equalities

- 6.5 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

- 6.6 No

Financial

- 6.7 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

- 6.8 No

Human Resources

- 6.9 No

Human Rights

- 6.10 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

- 6.11 All statutory requirements have been considered in preparing this report.

Specific Wards

- 6.12 Yes – Sawbridgeworth.

7.0 Background papers, appendices, and other relevant material

- 7.1 Revised Guidance issued under section 182 of the Licensing Act 2003 (December 2023) -
<https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>
- 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>
- 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>
- 7.4 **Appendix 'A'** – Application for a New Premise Licence
- 7.5 **Appendix 'B'** – Premises plan proposed
- 7.6 **Appendix 'C'** – Current premises licence
- 7.7 **Appendix 'D'** – Currant premises plan
- 7.8 **Appendix 'E'** – Representation
- 7.9 **Appendix 'F'** - Location plan

Contact Member

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