

# East Herts Council Report

## Licensing Sub-Committee

**Date of Meeting:** 19<sup>th</sup> June 2024

**Report by:** Jonathan Geall, Head of Housing and Health

**Report title:** Application for a new time limited premises licence for Dog and Whistle Festival, Brickendon Bury Estate, Brickendon Lane, Hertfordshire (24/0608/PL)

**Ward(s) affected:** Hertford Heath and Brickendon

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### Summary

- An application for a new time limited premises licence for the Dog and Whistle Festival has been received from Dog and Whistle Limited. Representations against the application have been made by interested parties. Where a representation is received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide that application.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 ('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 from Dog and Whistle Limited was validated on 26<sup>th</sup> April 2024. The applicant describes the nature of the event as:

*The Dog and Whistle Festival 2024 is a two-day open-air festival at Brickendonbury Estate, Hertford. The festival is over 2 days on 20th and 21st July 2024. The festival can accommodate up to 2,000 people on each day with each day's event starting at midday and running until 22:00 with everyone to have left the site by 23:00.*

*On Saturday the music entertainment will just be by way of D.J performers and a silent disco and on the Sunday D.J performers, live music by tribute bands and a silent disco. This entertainment will be on 3 different stages.*

*There will be a street food village providing food and drink, a pop-up Dog and Whistle Pub, a range of stalls, roaming entertainment throughout the site and a fun fair.*

*Saturday 20th July is for over 18s only and Sunday 21st July is a day designed for families and the music on each day will be such that it appeals to the people expected to attend on each day.*

- 3.2 The following licensable activities and timings have been applied for:

<b>Licensable Activity</b>	<b>Day</b>	<b>Hours applied for</b>
Supply of alcohol (for consumption ON the premises only)	Saturday and Sunday	12:00 – 22:00
Live Music (outside)	Saturday and Sunday	12:00 – 22:00
Recorded Music (outside)	Saturday and Sunday	12:00 – 22:00
Performances of Dance (outside)	Saturday and Sunday	12:00 – 22:00
Entertainment of a similar description to above (outside)	Saturday and Sunday	12:00 – 22:00

- 3.3 The premises will be open to the public between 12:00 - 23:00 on both the Saturday and Sunday of the event.
- 3.4 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'** and the plan that accompanied the application is **Appendix 'B'**. The applicant offered a number of conditions to be attached to the premises licence and these are attached as **Appendix 'C'**. A draft premises licence, which reflects what has been applied for, is attached at **Appendix 'D'**.
- 3.5 During the 28-day statutory public consultation period six representations against the application were received from interested parties. Five being from residents and one from a local business. The representations are attached as **Appendix 'E'**.
- 3.6 The representations suggest that the Prevention of Public Nuisance, Public Safety and Prevention of Crime and Disorder Licensing Objectives would be undermined if the application is granted as requested.

## **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 Dog and Whistle Festival would be classed as a *'Festival'*.
- 3.9 The proposed location for the event is not within a Town Centre as defined in section 7.0 of the Policy so is considered to be in an *'Other area'*.
- 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 a *'Festival'* located in an *'Other area'*, it states:

*Will generally be allowed licensable activity until 01:00 on Friday and Saturday. On Sunday to Thursday 23:00, unless the following day is a Bank Holiday or recognised National Holiday.*

- 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 one of the Licensing Objectives identified within the representations 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:

*9.37As 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 If members are minded to impose conditions to mitigate concerns regarding the suggested undermining of the Licensing Objectives, then Chapter 10 of the Guidance deals with conditions attached to premises licenses. The Guidance should be considered along with the East Herts ['Pool of Model Conditions'](#)<sup>1</sup>.

### **Officer observations**

3.18 The hours applied for are within those hours suggested for this type of event in the Policy. Simply requesting hours which are within those detailed in the Policy, however, does not fetter the Sub-Committee's discretion to decide on shorter hours, or even 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.

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<sup>1</sup> 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.

3.19 In the representations, several issues have been raised that can engage one or more of the Licensing Objectives, these include:

- Drugs
- Alcohol
- Access to and from the site
- Violent behaviour
- Safety of residents

These are matters that the applicant or his representative can address.

3.20 The lack of engagement with the local community has been raised and whilst this does not undermine the Licensing Objectives directly it may be an indication of the approach taken by the applicant. Section 5 of the Policy deals with pre-application advice and early engagement and paragraph 5.7 suggests bodies and individuals that applicants may wish to engage with. This includes businesses and residents in the vicinity of the premises.

3.21 One of the representations raises several issues that cannot be considered during decision making as they do not engage the Licensing Objectives, these include:

- Detrimental effects to wildlife and general landscape/nature
- Native fish species and ornamental fish
- Other livestock
- Drainage issues on site
- Grade 2 listed building.

However, the other issues raised by the interested party around the risk of deep water, the impact on businesses and residents on the site, access and egress to the site by vehicles and controlling access to ticket holders on site all engage one or more of the Licensing Objectives.

3.29 Members may wish to ask the applicant to clarify what the capacity of the event is on each day as the description of the event and the offered condition 2 seem contradictory.

- The festival can accommodate up to 2,000 people on each day.
- The total capacity including all staff on site on each date of the Event will not exceed 4000.

Members may wish to amend the wording of offered condition 2 for clarity having heard from the applicant.

- 3.30 The Sub-Committee should consider whether the operation of the licensed premises would be likely to fail to promote one or more of the Licensing Objectives 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 Objectives of prevention of public nuisance, Prevention of crime and disorder and public safety would be undermined.
- 3.33 If the Sub-Committee believes that granting the application would promote the Licensing Objectives, then the application should be granted as requested.
- 3.34 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.
- 3.35 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.



- 3.36 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.
- 3.37 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.
- 3.38 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.
- 3.39 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.
- 3.40 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.
- 3.41 The comments, observations and suggestions contained within the body of this report and associated appendices do not fetter the Sub-Committee's 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 a premise licence or review of a premise licence there is a 28-day public consultation.

6.2 The 28-day public consultation commenced on 26<sup>th</sup> April 2024 and ended on 24<sup>th</sup> May 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 – Hertford Heath and Brickendon

### **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 form

7.5 **Appendix 'B'** – Premises plans

7.6 **Appendix 'C'** – Offered conditions

7.7 **Appendix 'D'** – Draft premises licence

7.8 **Appendix 'E'** – Representations

**Contact Officer:** Jonathan Geall – Head of Housing and Health,  
Tel: 01992 531594.  
[jonathan.geall@eastherts.gov.uk](mailto:jonathan.geall@eastherts.gov.uk)

**Report Author:** Oliver Rawlings – Service Manager, Licensing  
and Enforcement Officer, Tel: 01992 531629.  
[oliver.rawlings@eastherts.gov.uk](mailto:oliver.rawlings@eastherts.gov.uk)