

# East Herts Council Report

## Licensing Sub-Committee

**Date of Meeting:** 11 July 2024

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

**Report title:** Application to vary a premises licence for Hertfordshire Oktoberfest, Hartham Common Park, Hartham Lane, Hertford, Hertfordshire (24/0623/PLV)

**Ward(s) affected:** Hertford Bengo

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### Summary

- An application to vary a premises licence for the Hertfordshire Oktoberfest has been received from Barbican Events Ltd. 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 Where a representation is received against an application, and not withdrawn, there must be a Licensing Sub-Committee meeting to decide that application.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 Barbican Events Ltd was validated on 2<sup>nd</sup> May 2024. The applicant describes the nature of the variation as:

*Proposed Variations are listed in bold below;*

***Change floor plan layout New floor plan layout - Attached***

***Change Condition 23 Request to change the maximum capacity of the event from 1300 to 2000 (inc. staff and artists). Current Condition.23 - The maximum capacity for any event at any one time shall be 1300 people, this is to include all staff and artists on site. Proposed New Condition. 23 - The maximum capacity for any event at any one time shall be 2000 people, this is to include all staff and artists on site.***

***Change Condition 42.C Current condition 42.C - alcohol sales must stop at least 45 minutes prior to the time the customers are expected to have vacated (Opening hours) (This encourages sensible drinking by allowing people time to finish the drinks they have prior to closure) Proposed New Condition 42.C - alcohol sales must stop at least 15 minutes prior to the time the customers are expected to have vacated***

***(Opening hours) (This encourages sensible drinking by allowing people time to finish the drinks they have prior to closure)***

***Remove Condition 62 - Not relevant***

***Change Annex 3, Condition 2 - This static security guard did nothing whilst the event was on. It was a waste of personnel. The Thornton street area will be covered by our roaming security and will still be a static security position during egress. Current Annex 3 Condition 2 - Static security to be provided at Thornton street, Hertford; Friday 14:00-23:30, Saturday 11:00- 23:30 Sunday 12:00-21:30. Proposed Annex 3 Condition 2 - Static security to be provided at Thornton street, Hertford; Friday 22:00-23:30, Saturday 15:00 - 16:30, Saturday 22:00- 23:30, Sunday 20:00-21:30.***

3.2 The application seeks to vary the hours for the following licensable activities:

<b>Licensable Activity</b>	<b>Day</b>	<b>Existing hours</b>	<b>Hours applied for</b>
Supply of alcohol (for consumption ON the premises only)	Friday	14:00 – 22:15	16:00 – 23:00
	Saturday	11:00 – 22:15	11:00 – 23:00
	Sunday	12:00 – 20:00	12:00 – 20:00
Live Music (outside)	Friday	14:00 – 22:30	16:00 – 23:00
	Saturday	11:00 – 22:30	11:00 – 23:00
	Sunday	12:00 – 20:00	12:00 – 20:00
Recorded Music (outside)	Friday	14:00 – 22:30	16:00 – 23:00
	Saturday	11:00 – 22:30	11:00 – 23:00
	Sunday	12:00 – 20:00	12:00 – 20:00
Hours premises open to the public (not a licensable activity)	Friday	14:00 – 23:00	16:00 – 23:00
	Saturday	11:00 – 23:00	11:00 – 23:00
	Sunday	12:00 – 21:00	12:00 – 20:00

3.3 A copy of the variation application (24/0625/PLV) is **Appendix 'A'**.

3.4 A copy of the existing premises licence (23/0362/PL) granted following a Licensing Sub-Committee hearing held on 22<sup>nd</sup> May 2023 showing activities, hours and conditions is attached at

**Appendix 'B'**. For ease, the parts the applicant is seeking to vary are highlighted in yellow.

- 3.5 The plans attached to the existing premises licence (23/0362/PL) are **Appendix 'C'** and the varied plans for this application (24/0625/PLV) are **Appendix 'D'**.
- 3.6 During the 28-day statutory public consultation period six representations against the application were received from interested parties. Four being from residents, one from Hertford Town Council and one from a local ward councillor. In addition to this, one comment was received which neither supported nor objected to the application and this has been included for completeness. The representations are attached as **Appendix 'E'**.
- 3.7 The representations suggest that all four of the Licensing Objectives, the Prevention of Public Nuisance, Public Safety, Prevention of Crime & Disorder and Protection of Children from Harm, 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 Hertfordshire Oktoberfest 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 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.*

3.12 Section 15, paragraphs 15.1 and 15.2 of the Policy deal with the 'Operating Schedule'. These paragraphs reflect the information in the Section 182 of the ['Guidance issued under section 182 of the Licensing Act 2003'](#) (herein 'the Guidance') issued by the Secretary of state.

3.13 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.*

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

3.15 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**

3.16 As this is a variation application members can only consider the changes requested and can amend or change any part of the existing premises licence which will remain unchanged should the

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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.

variation be refused.

- 3.17 The variation applied for seeks to amend conditions from Annex 2 and Annex 3 of the existing premises licence (23/0362/PL). Annex 2 conditions are those which are consistent with the operating schedule of the application, so offered or agreed by the applicant prior to any hearing. Annex 3 conditions are conditions attached after a hearing by the Licensing Authority, these being conditions considered necessary and proportionate to promote the Licensing Objectives.
- 3.18 The application, including the operating schedule at Section M, is attached as **Appendix 'A'**. The operating schedule is the part of the application where the applicant can detail additional steps they intend to take to promote the Licensing Objectives as a result of the application. Therefore, the variation should be considered in light of the contents of the operating schedule.
- 3.19 Officers have been through the operating schedule and would make the following observations.

<b>Box</b>	<b>Comments</b>
General – all four licensing objectives	All four points appear on the existing licence, Annex 2, conditions 2, 3, 4, 7 and 19
Prevention of crime and disorder	All four points appear on the existing licence, Annex 2, conditions 5, 6, 7 and 61
Public safety	Point 1 is to replace Annex 2, condition 62. The four other points appear on the existing licence, Annex 2, conditions 9, 11, 12 and 14
Prevention of public nuisance	Points 1, 4 and 5 appear on the existing licence, Annex 2, conditions 13, 53 and 63. There are two point 2's and both of these are slightly amended versions of what appear on the existing licence at Annex 2, conditions 16 (reference to glass added) and 33 (reference to taxis removed). Point number 3 is new and will be relevant if regulated

	entertainment is granted extended as part of this application.
Protection of children from harm	The first two points appear on the existing licence, Annex 2, condition 3. The third point relating to fake identification does not appear on the licence.

3.20 This comparison to the existing licence shows that in the operating schedule the applicant is offering one new condition and slight amendments to the wording of others. These amendments were not detailed in the field where the applicant was asked to describe the application. As such they have not been advertised or been part of the consultation and the original wording of the conditions should remain. Members may wish to ask the applicant to explain why they believe only one additional condition is needed to ensure the Licensing Objectives would be promoted if the application were to be granted as requested.

3.21 In section L of the application covering the hours the premises would be open to the public, the applicant has put the following comment in the box for non-standard timings:

*License will only be applicable for a maximum of two weekends of the year – in either September or October subject to council and SAG approval.*

3.22 This did not form part of the variation and directly contradicts Annex 2, condition 1 which states:

*The Premises Licence is limited to 1 event per calendar year, this event must be held over a maximum of 3 consecutive days in September and/or October.*

3.23 Again this change was not detailed in the field where the applicant was asked to describe the application. As such it has not been advertised or been part of the consultation so the original wording of the condition should remain. If the applicant wishes to make this change to the licence then it would require a further application so members cannot agree it at this time.



- 3.24 If members are minded to grant the request to amend condition 42c so that alcohol sales finish 15 minutes before the event ends then it would be clearer to simply remove 42c and shorten the permitted hours for the sale of alcohol. By making the change in this way it will make it clearer when the sale of alcohol would end rather than having a time on the front of the licence and then a condition that restricts this. Unlike the condition, the timing change would appear on the premises licence summary which must be on display to the public at the premises.
- 3.25 Representation 1 – This short representation from a local resident raises concerns regarding the reduction in the security provision at Folly Island and requests more instead. On 10<sup>th</sup> June 2024, a request was sent by the Licensing team for further information to support the interested party's position but no response was received.
- 3.26 Representation 2 – This representation is from a local ward councillor and states that last year's event caused significant concern amongst the local community. The representation goes on to detail what the issues were and how the variation would impact these. Matters raised include:
- attendees all leaving at the same time
  - attendees urinating and vomiting in the vicinity
  - the event's proximity to the children's playground.
- 3.27 This representation objects to the proposed amendment to condition 42, which is the increase in capacity and the decrease in security at Thornton Street.
- 3.28 Representation 3 – The representation from a local resident state that there was little negative impact caused by last year's event due to the conditions on the licence. Concern is raised regarding increasing capacity and drinking time whilst reducing the security provision. The interested party finishes by stating that they strongly object to any variation of the licence conditions.
- 3.29 Representation 4 – This representation details increases in antisocial behaviour and nuisance linked to last year's event. The interested party mentions that they do not feel that Hartham

Common should be used for this type of event. This, however, is not a relevant consideration as it does not engage the Licensing Objectives directly.

- 3.30 Representation 5 – This representation is from Hertford Town Council and deals with each part of the application individually:
- change of floor plan – Increase in numbers would affect public safety
  - reduction in security – Considered unwise in light of the increased capacity
  - increase in capacity – Likely to mean an increase in intoxicated revellers, foul language and antisocial behaviour
  - alcohol sales stopping 15 minutes before closing – May encourage revellers to finish drinks quickly or take them when they leave.
- 3.31 Representation 6 – This representation is from a local resident who attended last year's event. Issues with the safety of the event are raised following the power cutting out at last year's event. Members may wish to ask the applicant what occurred with the power supply last year and what contingency, if any, is in place for this year to stop or minimising the risk of it reoccurring.
- 3.32 The other issues raised in representation 6 are not relevant considerations as they do not engage any of the Licensing Objectives.
- 3.33 During the statutory consultation period one comment neither supporting nor objecting the application was received from a Hertford resident. As it is just a comment it is for the applicant to consider rather than the Licensing Sub-Committee but it has been included for completeness.
- 3.34 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.

- 3.35 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.
- 3.36 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, Protection of Children from Harm and Public Safety would be undermined.
- 3.37 If the Sub-Committee believes that granting the application to vary to licence would promote the Licensing Objectives, then the application should be granted as requested.
- 3.38 If the Sub-Committee believes that granting the variations to the licence 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.
- 3.39 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 varied hours and activities as requested.
- 3.40 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.
- 3.41 Aside from adding conditions, it is open to members to limit the hours of operation and/or activities requested in the variation but clear reasons for this step would need to be given.
- 3.42 However, if adding conditions and/or limiting the hours or area beyond those requested in the variation application does not mitigate members' concerns regarding the promotion of the Licensing Objectives then the variation application should be

refused. The existing premises licence will then remain in place unchanged.

- 3.43 Put in its simplest terms, what are the minimum measures that can be put in place to address concerns? Refusal of the application to vary the existing licence should be the last option considered.
- 3.44 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.
- 3.45 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 variation application as requested if members felt that the application would promote and not undermine the Licensing Objectives; or
  - grant the variation application but at the same time impose additional conditions or amend the varied activities or varied 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 variations sought would promote the Licensing Objectives then the variation 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 2<sup>nd</sup> May 2024 and on 13<sup>th</sup> May 2024 officers visited the site to ensure the statutory notices were being displayed. During this visit it was found that some notices were missing so the application was invalidated. On the 17<sup>th</sup> May 2024 the notices were replaced and the new consultation period ended on 15<sup>th</sup> June 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 None arising directly from this report.

### **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 None arising directly from this report.

### **Human Resources**

- 6.9 None arising directly from this report.

### **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 Bengo.

## **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'** - Existing premises licence (23/0362/PL)
- 7.6 **Appendix 'C'** - Existing plans (23.0362.PL)
- 7.7 **Appendix 'D'** – Varied plans
- 7.8 **Appendix 'E'** – Representations

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