

REPORT TO: LICENSING SUB COMMITTEE

DATE: 2 DECEMBER 2020

TITLE: REVIEW HEARING – THE CHEQUERS, 2
MARKET STREET, OLD HARLOW, ESSEX,
CM17 0AH

LEAD OFFICERS: CHRIS BENNETT, PRINCIPAL
ENVIRONMENTAL HEALTH OFFICER
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EXECUTIVE SUMMARY

1. Following an application for Review of the premises licence in respect of **The Chequers, 2 Market Street, Old Harlow, Essex, CM17 0AH** made by **Stuart Athol, Principal Environmental Health Officer, Environmental Health, Harlow Council** on 8 October 2020, the Sub-Committee is requested to consider the review application and any relevant representations and determine what steps, if any, it considers are appropriate to promote the Licensing Objectives.
2. The report provides details of a review pursuant to Section 51 of the Licensing Act 2003 in relation to the premises and outlines the evidence presented by the parties in relation to the review.

RECOMMENDATIONS

- A** That the Sub-Committee consider the application for review and any **RELEVANT** representations and take such of the following steps, if any, as it considers appropriate for the promotion of the licensing objectives:
- i) to modify the conditions of the licence;
 - ii) to exclude a licensable activity from the scope of the licence;
 - iii) to remove the designated premises supervisor from the licence;
 - iv) to suspend the licence for a period not exceeding three months; or to revoke the licence.

For this purpose the conditions of a premises licence are modified if any of them are altered or omitted or any new condition is added.

- B** Acting in the capacity of the Licensing Authority, Members must seek to promote the Licensing Objectives. Where Members consider that matters have engaged one or more of the Objectives, they may exercise their discretion. The Licensing Objectives are:
- i) The prevention of crime and disorder
 - ii) Public Safety
 - iii) The prevention of public nuisance
 - iv) The protection of children from harm
- C** Members of the Licensing Sub-Committee are reminded that they may not exercise discretion in any case, merely because it considers it desirable to do so. Careful consideration should be given to the application and the evidence presented by the parties in relation to the review.
- D** Finally, Members are also reminded that in determining the application, consideration also needs to be given to:
- i) The rules of natural justice
 - ii) The provisions of the Human Rights Act 1998

INTRODUCTION

3. The Licensing Act 2003 provides that, where an application has been received in respect of the review of a premise licence, a hearing must be held to consider it. Sub-Committees have been established in accordance with provisions of the Act for the purpose of hearing such applications.
4. Section 51 Licensing Act 2003, allows Interested Parties or Responsible Authorities to request a review of a Premises Licence where one or more of the Licensing Objectives are not being met.

Application and Background

5. On 8 October 2020, an application for Review was received from Stuart Athol Principal Environmental Health Officer, on behalf of the Environmental Health, Harlow Council. A fully copy of the application and supplementary information in support of review is attached as Appendix A to the report.
6. The Application for the review of the premise licence is made pursuant to Section 51 of the Licensing Act 2003 and the relevant Section of the Act

dealing with the determination of such an Application is contained in Section 52 of the Act. The grounds for the review set out by Stuart Athol, Environmental Health Officer, are;

- i) The Licence holder has failed to uphold the Licensing Objective of the Prevention of public nuisance.
- ii) Mr Reeve has not taken appropriate steps to protect the licensing objective even when asked or required to do so.
- iii) Mr Reeve has repeatedly breached licence condition which requires;

2.4 The outside drinking area shall be restricted to:
23:20hrs Monday to Saturday
22:30hrs Sunday

- iv) To date we have not seen any documented evidence that condition 2.5 is being adhered to.

2.5 Noise levels must be monitored at regular intervals by Management to ensure that no nuisance is being created by the entertainment being provided

Whereas there is substantial evidence of nuisance caused by business at the premises.

- v) The premises has repeatedly failed to comply with formal COVID-19 guidance and restrictions thus putting staff patrons and members of the wider community at risk of transmission of COVID-19 with the attendant risk of causing additional demand on health care services.

This posed a risk of infection among customers with the added risk of all those customers taking an infection back to their own homes and the subsequent impact on the safety of the wider community that they come into contact with and constituting a nuisance in accordance with the s182 Guidance (gatherings being prejudicial to health due to the COVID-19 infection risk).

Consultation

- 5. In accordance with the Licensing Act 2003 regulations, public notices have been displayed and published. The notices can be seen at Appendix B to the report. Responsible authorities were notified of the application.
- 6. In respect of the review application no other representations were received from any of the responsible authorities, however, representations have been

received from five different local residents and a representation from the freeholder, Ei Group Ltd, of the premises. The representations are attached at Appendix C to the report.

7. The representations received from local residents have been made in relation to the prevention of public nuisance objective and in relation to the crime and disorder objective.
8. At the time of receiving the local resident's representations during the consultation period, residents have requested that the personal data in respect of their written submission be withheld. The reasons they have provided have been considered in respect of the Section 182 guidance and the validating officer is satisfied that they meet the guidance outlined in respect of this.
9. To provide context in relation to the location of the premises the licensing authority have attached a plan and images of the premises in Appendix D to the report.

The Premises and History

10. The Chequers is a two-storey traditional style pub in the centre of Old Harlow. The pub sits in a conservation area with modern décor with some original features. The external side has been laid with cobble effect paving leading onto a large patio area to the rear, which can accommodate approx. 50 covers. This leads onto a grassed garden area which can accommodate approx. 40 - 50 covers.
11. Mr Reeve is a tenant at this premises and the freeholder of the property is Ei Group Ltd.
12. A premises licence HARLOW/PREM/0012 issued under the Licensing Act 2003 is held for The Chequers, 2 Market Street, Old Harlow, Essex, CM17 0AH by Mr Bradley Reeve Premises Licence Holder (PLH). A copy of the premises licence is attached as Appendix E to the report.
13. The Licence is subject to a number of conditions from the operating schedule. The Premises is licensed for the following licensable activities:

Sale or Supply of Alcohol – Consumption On and Off Premises

Monday to Thursday	11:00 - 00:00
Friday and Saturday	11:00 - 00:30
Sunday	11:00 - 00:00

Non-Standard Timings:

31st December	from: 11:00 hours to: 00:00 hours
1st January	from: 00:00 hours to: 23:00 hours
24th December	from: 11:00 hours to: 01:00 hours
26th December	from: 11:00 hours to: 01:00 hours

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 01:00 hours.

Exhibition of a film – Indoors

Monday to Thursday	11:00 to 00:30
Friday and Saturday	11:00 to 01:00
Sunday	11:00 to 00:30

Non-Standard Timings:

31st December	from: 11:00 hours to: 00:00 hours
1st January	from: 00:00 hours to: 23:00 hours
24th December	from: 11:00 hours to: 01:00 hours
26th December	from: 11:00 hours to: 01:00 hours

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 01:00 hours.

Indoor Sporting Events

Monday to Thursday	11:00 - 00:30
Friday and Saturday	11:00 - 01:00
Sunday	11:00 - 00:30

Non-Standard Timings:

31st December	from: 11:00 hours to: 00:00 hours
1st January	from: 00:00 hours to: 23:00 hours
24th December	from: 11:00 hours to: 01:00 hours
26th December	from: 11:00 hours to: 01:00 hours

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 01:00 hours.

Live Music (Indoors)

Monday to Sunday	11:00 - 23:30
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Recorded Music (Indoors)

Monday to Thursday	11:00 - 00:00
Friday and Saturday	11:00 - 00:30

Sunday 11:00 - 00:00

Non-Standard Timings:

31st December from: 11:00 hours to: 00:00 hours
1st January from: 00:00 hours to: 23:00 hours
24th December from: 11:00 hours to: 01:00 hours
26th December from: 11:00 hours to: 01:00 hours
On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 01:00 hours.

Provision of entertainment or similar (Indoors)

Monday to Thursday 11:00 - 00:00
Friday and Saturday 11:00 - 00:30
Sunday 11:00 - 00:00

Non-Standard Timings:

31st December from: 11:00 hours to: 00:00 hours
1st January from: 00:00 hours to: 23:00 hours
24th December from: 11:00 hours to: 01:00 hours
26th December from: 11:00 hours to: 01:00 hours
On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 01:00

14. Application History in respect of the premises licence:

- 10.10.2019 – Application to Transfer – Applicant Mr Bradley Reeve
- 17.01.2014 – Application to Transfer – Applicant Harvard Bars Lounge Ltd
- 07.06.2013 – Application to Vary DPS – Applicant to vary DPS – Mr Bradley Reeve
- 20.03.2013 – Application to Transfer - Applicant Chequers Old Harlow Ltd
- 02.06.2010 – Application to Transfer – Applicant Mrs Edwards
- 17.07.2007 – Application to Vary DPS – Applicant to vary DPS – Kim Tiffin
- 09.06.2005 – Application for Premises Licence – Mr Diggle & Kim Tiffin

15. The premises recently came to the attention of Harlow District Council's Licensing Service as a result of an increase in complaints received in respect

of the premises, specifically following 4th July 2020 when premises could re-open following a period of “lockdown” as a result of the Covid-19 pandemic.

16. The council received complaints from local residents in respect of alleged noise nuisance and crime and disorder associated with the premises. On the 10 July 2020 a letter was sent by Michael Pitt, Environment and Licensing Manager, advising Mr Reeve of the complaints received and a request was made to;
 - i) Cease to play or permit loud music
 - ii) Prevent communal dancing
 - iii) Cancel any bookings that you have made for any DJ
 - iv) Make it clear through the same channels that you have used to advertise the presence of DJs that they have been cancelled and that there will be no musical entertainment
17. The Licensing service was notified by Andrew Bramidge, Head of Environment and Planning, of a Community Protection Warning issued on the 14 August 2020 under Section 43 Anti-Social Behaviour Crime and Policing Act 2014. This was served on the premises licence holder as the Council were satisfied that the precautions necessary to control the spread of COVID-19 were not being taken at the premises.
18. The Licensing Services was further notified by Environmental Health colleagues that a prohibition notice was issued on 14 September 2020 under The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 in respect of the premises.
19. Patrols were carried out by officers and, in the opinion of the officers, it was believed that the noise from licensable activities carried out at the premises may cause nuisance to local residents, particularly when providing entertainment from the temporary structure that has recently been built in the rear garden. Music was being played particularly loud on 12 September 2020 which finished at 23:16hrs.
20. On 12 September 2020, officers witnessed the outside area to the side of the premises open to members of the public beyond 23:20hrs. This is contrary to the premises licence condition.
21. On 14 September 2020, the Licensing service requested Mr Reeve to provide details in respect of noise levels that were monitored in accordance with the premises licence conditions, details of which should have been taken on 12 September 2020. A copy of the letter sent to Mr Reeve is attached as Appendix F to the report.

22. Mr Reeve to date has not provided any of these details in respect of noise level monitoring nor has Mr Reeve given reasons as to why these details haven't been taken.
23. Looking at the records held by the Licensing Service, a number of meetings have taken place with the Licensing Service and Mr Reeve, inclusive of a multi-agency meeting held on 17 December 2018. A documented list of letters which have been sent to the premises licence holder are dated 31 July 2015, 13 August 2015, 15 September 2015, 3 May 2016, 9 June 2016 and 4 June 2018. Some of the letters are attached to the application for review at Appendix A to the report. The letters that have not been attached by the applicant with the application are attached at Appendix G to the report.
24. In addition to the letters sent to Mr Reeve in respect of complaints and observations, the details of the complaint history held in respect of the premises is attached at attached Appendix H to the report.
25. I note that whilst the premises licence has been transferred to different licence holders during the period of the licence, the DPS, Mr Bradley Reeve, has remained the same following an application made in 2013. Mr Reeve has been involved with the premises and been the active director in companies which have held the premises licence during the period of the licence, therefore, officers are satisfied that Mr Reeve has previously been made aware and given ample warning of premises licence breaches, public nuisance and crime and disorder concerns associated with this premises.

Reasons for the Decision

26. The following steps that the licensing authority can take are:
- i) the modification of the conditions of the premises licence;
 - ii) the exclusion of a licensable activity from the scope of the licence;
 - iii) the removal of the designated premises supervisor from the licence;
 - iv) the suspension of the licence for a period not exceeding 3 months; and
 - v) the revocation of the licence.
27. Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.
28. The Licensing Act Sub-Committee has the power to determine this application in accordance with the provisions of the Licensing Act 2003 and the Council's Constitution, and provide the key reasons why the recommendation/s has been made.

Statement of Licensing Policy

29. The Licensing Authority has adopted a Statement of Licensing Policy in accordance with Section 5 of the Licensing Act 2003. The policy can be seen at Appendix I to the report.
30. Relevant policy sections include:
- i) Para 1 – Where appropriate any Responsible Authority will likely give early warning to licence holders of any concerns about problems identified at premises and of the need for improvement.
 - ii) Para 5 – The Council intends to interpret “public nuisance” in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area.
31. Applicants need to be clear that the Council will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received. Conversely, premises for which it can be demonstrated effective measures planned to prevent public nuisance are in place, may be suitable for longer opening hours.

Secretary of State’s Guidance

32. The Licensing Authority must also have due regard to the guidance issued under Section 182 of the Licensing Act 2003. A copy of the guidance can be found at the link under “background papers” at the end of this report.
33. Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law definition. This is addressed, at paragraphs 2.18-2.21, by the S182 of Guidance under the Licensing Act 2003.
34. The public nuisance objective is designed to focus on the effect of licensable activities at specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate and unreasonable.
35. The issue in the context of LA03 was taken to the higher courts in the case of ‘The Endurance’, R (Hope and Glory Public House Ltd) v City of Westminster Magistrates’ Court [2009] EWHC 1996.

This case ‘Hope and Glory’ is important because it:

- illustrates that licensed premises, and the activities that take place in those premises, exist in a dynamic environment and should not be looked at entirely in isolation
- confirms that this can include the impact that licensable activities have on a range of factors such as crime, the quality of life for residents and visitors to the area, and demand for licensed premises
- sets out the approach that should be taken when making licensing decisions

Lord Justice Toulson said: Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance.

Although such questions are in a sense questions of fact, they are not questions of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

36. S182 - Section 11 Reviews sets out powers of a Licensing Authority on the determination of a review.
37. Members should provide reason(s) for any decision taken and should set out the reasoning where they determine to depart in any way from the Policy or Guidance.
38. Members are reminded that should any conditions be added or modified, they should be practical, enforceable and appropriate to promote the Licensing Objectives.

Secretary of State's Guidance

32. By virtue of section 52(11) of the Licensing Act 2003, any decision of the Sub-Committee to take one or more of the steps set out above does not have effect: a) Until the end of the period given for appealing against the decision; or b) If the decision is appealed against, until the appeal is disposed of.

33. Members are also reminded of the statutory obligation placed on the Local Authority under section 17 of the Crime and Disorder Act 1988 to exercise its various functions doing all that it can to prevent Crime and Disorder, and Anti-Social Behaviour, behaviour adversely affecting the environment as well as the misuse of drugs, alcohol and re-offending in the Local Environment.
34. Disclosure of personal details of persons making representations.
35. 9.26 - Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.
36. 9.27 - In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.
37. 9.28 - Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.
38. 9.29 - For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.
39. 9.30 - The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action.

Legal Considerations

40. There is a right of appeal for all parties against the review decision within 21 days.
41. Grounds for appeal against the decision of the Licensing Sub-Committee are made available by section 181 and schedule 5 of the Act. Schedule 5, 8 provides that an appeal may be made against the decision by;
- i) The applicant for the review,
 - ii) The holder of the premises licence,

- iii) Any other person who made a relevant representation in relation to the application.

IMPLICATIONS

Environment and Planning (Includes Sustainability)

As set out in the report.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, and Property and Facilities)

None specific.

Author: Simon Freeman, Head of Finance and Deputy to the Chief Executive

Housing

As outlined in the report.

Author: Andrew Murray, Head of Housing

Community Wellbeing (Includes Equalities and Social Inclusion)

As outlined in the report.

Author: Julie Houston, Strategy & Economic Development Manager on the behalf of Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

Members must have due regard to the application for this review of the Premises License, the representations received and determine the application in accordance with the promotion of the licensing objectives. Further legal advice in relation to any aspects of this application will be provided by an Officer at the Sub Committee hearing to enable the process to be fair to all parties.

Author: Dimple Roopchand, Principal Solicitor on the behalf of Simon Hill, Head of Governance

Appendices

Appendix A - Application for Review 08.10.2020 (Appendix 4 of this Appendix is a series of videos which will be supplied at the meeting)

Appendix B - Copy of Public Notice

Appendix C - Copy of Representations from Interested Parties

Appendix D - Location Plan for the Premises

Appendix E – Copy of Premises Licence

Appendix F- Copy of letter sent by Licensing Team to Premises Licence Holder 14.09.2020

Appendix G – Copy of Historic Letters sent by Licensing Team

Appendix H – Complaints History held for The Chequers, Old Harlow

Appendix I - Harlow District Council Statement of Licensing Policy

Background Papers

Secretary of State Guidance -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf