

REPORT TO: LICENSING SUB COMMITTEE

DATE: 14 JULY 2021

TITLE: APPLICATION TO VARY THE PREMISES LICENCE – THE CHEQUERS, 2 MARKET STREET, OLD HARLOW, ESSEX, CM17 0AH

LEAD OFFICERS: CHRIS BENNETT, PRINCIPAL ENVIRONMENTAL HEALTH OFFICER (LICENSING) (licensing@harlow.gov.uk)

RACHEL CROUCH, SENIOR LICENSING OFFICER

ADAM SHERWOOD, SENIOR LICENSING OFFICER

CONTRIBUTING OFFICER: MICHAEL PITT, ENVIRONMENT AND LICENSING MANAGER (env.health@harlow.gov.uk)

EXECUTIVE SUMMARY

1. Following an application to Vary the premises licence in respect of The Chequers, 2 Market Street, Old Harlow, Essex, CM17 0AH made by the licence holder Ei Group Ltd on 21 May 2021, the Sub Committee is requested to consider the application following representations which have been received during the consultation period.

RECOMMENDATIONS

2. That the Sub Committee:

When considering this application the following options are available to the Sub Committee:

- a) Grant the Premises Licence variation as applied for;
- b) Grant the Premises Licence variation as applied for along with any additional conditions considered appropriate to promote one or more of the licensing objectives on which relevant representations have been received. This may include attaching different conditions to different parts of the premises or to different licensable activities.

- c) Grant the Premises Licence variation but reduce the hours being sought during which the licensable activities may take place; or
 - d) Reject the whole or part of the Premises Licence variation application.
3. 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:
- a) The prevention of crime and disorder
 - b) Public Safety
 - c) The prevention of public nuisance
 - d) The protection of children from harm
4. 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 representations by the parties.
5. Finally, Members are also reminded that in determining the application, consideration also needs to be given to:
- a) The rules of natural justice
 - b) The provisions of the Human Rights Act 1998

BACKGROUND

6. The purpose of this report is for the committee to consider an application for the variation of a premises licence pursuant to section 35 of the Licensing Act 2003 ("the Act").
7. The matter has been referred to the committee for determination following receipt of relevant representations from a responsible authority namely the Essex Police together with three representations from interested parties. Further detail about the representations received is shown below.
8. On 21 May 2021, an application to vary the premises licence was received from Ei Group Ltd. A full copy of the application is set out in Appendix A to the report.
9. The variation application submitted relates to premises known as The Chequers situated at The Chequers, 2 Market Street, Old Harlow, Essex, CM17 0AH. Currently the Premises Licence does not include any external bars. This application seeks to introduce an additional bar to be located in the rear garden adjacent to the covered terrace area and near to the existing

commercial kitchen. The purpose of the application to vary the licence is to permit the sale of alcohol from the outside bar. A copy of the proposed licensable activities plan of the premises is set out in Appendix B to the report.

Consultation

10. In accordance with the Licensing Act 2003 regulations, public notices have been displayed and published. Responsible authorities were notified of the application. A copy of the public notice is set out in Appendix C to the report.
11. In respect of the variation one objection was received from Essex Police, a responsible authority. A copy of the objection is set out in Appendix D to the report.
12. A further three representations from different local residents have been received and are set out in Appendices E, F and G to the report.
13. The representation received from Essex Police has been made in relation to the prevention of public nuisance.
14. 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.
15. 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.
16. Environmental Health, in their capacity as a responsible authority have not made any formal representations. However, in conjunction with the applicant the following condition was agreed on 25 May 2021 and will be added to the premises licence:

“The external bar servery shown on the plan attached to the premises licence shall be closed by 2100 every day”
17. A representation is “relevant” if it relates to the likely effect of the grant of a licence on the promotion of at least one or more of the licensing objectives. Representations can be in opposition and/or support of an application. As stated at paragraphs 5.2 to 5.5 above, the application attracted four relevant representations, all of which are in opposition.

18. All parties were sent the statutory Notice of Hearing as was the applicant and/or their representative. The Notice invited the various parties to attend the hearing and specifically asked whether they wished to be represented at the hearing.

The Premises and History

19. 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.

20. On 1 April 2021 an application was made to transfer and vary the DPS in respect of the premises licence HARLOW/PREM/0012 issued under the Licensing Act 2003 for The Chequers, 2 Market Street, Old Harlow, Essex, CM17 0AH.

21. Mr Hakan is a tenant and the Designated Premises Supervisor at this premises and the freeholder of the property is Ei Group Ltd.

22. 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 Ei Group Ltd Premises Licence Holder (PLH). A copy of the premises licence is set out in Appendix I to the report.

23. The Licence is subject to a number of conditions from the operating schedule, some of which were attached by the Licensing Committee following the hearing to determine an application for review on 2 December 2020. The Premises is licensed for the following licensable activities:

Times the licence authorises the carrying out of licensable activities

Exhibition of a film – Indoors

Monday to Thursday	11:00 to 23.30
Friday and Saturday	11:00 to 00.00
Sunday	11:00 to 23.00

Non-Standard Timings:

31st December from	11:00 to 00:00
1st January from:	11.00 to 23:00
24th December from:	11:00 to 00.30
26th December from:	11:00 to 00.00

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends: from 11:00 hours to 23.30 hours.

Indoor Sporting Events

Monday to Thursday	11:00 to 23.30
Friday and Saturday	11:00 to 00.00
Sunday	11:00 to 23.00

Non-Standard Timings:

31st December	from: 11:00 to 00:00
1st January	from: 11.00 to 23:00
24th December	from: 11:00 to 00.30
26th December	from: 11:00 to 00.00

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 23.30 hours.

Recorded Music (Indoors)

Monday to Thursday	11:00 to 23.00
Friday and Saturday	11:00 to 23.30
Sunday	11:00 to 23.00

Non-Standard Timings:

31st December	from: 11:00 to 00.30
1st January	from: 11.00 to 23:00
24th December	from: 11:00 to 00.30
26th December	from: 11:00 to 00.00

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 23.30 hours.

Provision of entertainment or similar (Indoors)

Monday to Thursday	11:00 to 23.00
Friday and Saturday	11:00 to 00.00
Sunday	11:00 to 23.00

Non-Standard Timings:

31st December	from: 11:00 to 00.30
1st January	from: 11.00 to 23:00
24th December	from: 11:00 to 00.30
26th December	from: 11:00 to 00.00

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 23.30 hours.

Sale or Supply of Alcohol – Consumption On and Off Premises

Monday to Thursday	11:00 to 23.00
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Friday and Saturday	11:00 to 23.30
Sunday	11:00 to 22.30

Non-Standard Timings:

31st December	from: 11:00 to 00.30
1st January	from: 11.00 to 23:00
24th December	from: 11:00 to 00.30
26th December	from: 11:00 to 00.00

On Fridays, Saturdays, Sundays and Mondays of Bank Holiday weekends:
from 11:00 hours to 23.30 hours.

24. Following the re-opening of pub gardens on 12 April 2021 the Council has made a provision for patrols of the Town by COVID ambassadors. In total over 45 daytime and evening visits have been made to Market Street, Old Harlow from 15 April to 5 July 2021.

25. The purpose of these visits is to identify any specific COVID compliance issues and also to observe any potential licensing or crime or nuisance issues. Whilst all areas of the Town are covered by these patrols some site specific information is provided to ensure more targeted monitoring. For example, in relation to the Chequers the ambassadors would be aware of the 9pm closure of the outside areas.

26. A review of the visit notes has identified no significant issues in relation to the Chequers.

Reasons for recommendations

27. When considering this application the following options are available to the Sub Committee:

- a) Grant the Premises Licence variation as applied for;
- b) Grant the Premises Licence variation as applied for along with any additional conditions considered appropriate to promote one or more of the licensing objectives on which relevant representations have been received. This may include attaching different conditions to different parts of the premises or to different licensable activities.
- c) Grant the Premises Licence variation but reduce the hours being sought during which the licensable activities may take place; or
- d) Reject the whole or part of the Premises Licence variation application.

28. The Licensing 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. This is set out in Appendix J to the report.

30. The following extracts from the Council's statement of licensing policy are brought to the general attention of Members.

(1.2) When assessing applications, the Council must be satisfied that the measures proposed in the applicant's operating schedule aim to achieve the four licensing objectives.

(1.5) Applicants will have to set out details within their operating schedule measures which are of the right kind and go far enough to meet each of the four licensing objectives. Applicants will need to provide evidence that these measures will be put in place and maintained. The applicant will in the same way also have to set out support with evidence any measures needed to deal with any special event or promotion, which is likely to attract more customers than usual.

(1.18) When considering applications etc. the Council will have regard to:

- The Licensing Act 2003 and the licensing objectives,
- Government guidance issued under Section 182 of the Licensing Act 2003,
- Any supporting regulations
- This statement of licensing policy

(1.19) This does not however undermine the rights of any person to apply under the 2003 Act for a variety of permissions and have the application considered on its individual merits, nor does it override the right of any person to make representations on any application or seek a review of a licence or certificate where they are permitted to do so under the 2003 Act.

(1.20) When the Council is considering any application, it will avoid duplication with other regulatory regimes, so far as possible and does not intend to use the licensing regime to achieve outcomes that can be achieved by other legislation. In particular, its licensing functions will be discharged separately from its functions as the local planning authority.

(1.28) Licensing is about the appropriate control of licensed premises, qualifying clubs, temporary events and the people who manage them or hold personal licences within the terms of the 2003 Act. Where relevant representations are made, the Council will make objective judgements as to whether it should attach conditions to a licence to secure achievement of the licensing objectives. Any conditions arising from the operating schedule, or as a result of representations, will primarily focus on the direct impact of the activities taking place at licensed premises on those attending the premises and members of the public living, working or otherwise engaged in normal activity in the area concerned. The conditions will cover matters that are within the control of individual licensees.

(1.31) All applications will be considered on an individual basis. In order to avoid the imposition of disproportionate or burdensome conditions, any conditions attached to a licence will be tailored to the individual premises. Standard conditions, other than mandatory conditions, will therefore be avoided and no condition will be imposed that cannot be shown to be necessary for the promotion of the licensing objectives.

Secretary of State's Guidance

31. The updated statutory guidance issued by the Home Secretary in accordance with section 182 of the Act refers to the consideration of applications for the grant or variation of premises licences in Chapter 9. This is set out in Appendix K to the report.
32. Members will wish to consider the relevant parts of Chapter 9 when determining this application. Particular reference should be made to paragraphs 9.37, 9.42, 9.43 and 9.44.
33. In relation to changing conditions attached to a premises licence Members will wish to note paragraphs 10.8 and 10.9 that have been extracted from the section 182 guidance.
 - a) Paragraph 10.8 "The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives. In order to promote the crime prevention licensing objective conditions may be included that are aimed at preventing illegal working in licensed premises. This provision also applies to minor variations."

- b) Paragraph 10.9 "It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives."
- 34. The Sub Committee must consider each application on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 35. 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.
- 36. Members are reminded that should any conditions be added or modified, they should be practical, enforceable and appropriate to promote the Licensing Objectives.

Legal Considerations

- 37. There is a right of appeal for all parties against the review decision within 21 days. Schedule 5, part 1, of the Act sets out the appeal provisions in relation to the determination of an application to vary a premises licence.
- 38. Where the Licensing Authority rejects (in whole or in part) an application, the applicant may appeal against the decision to the Magistrates' Court.
- 39. Should the committee grant (in whole or in part) an application, the applicant may appeal against any decision to modify the conditions of the licence.
- 40. Where a person who made relevant representations in relation to the application contends that:
 - a) that any variation made ought not to have been made, or
 - b) that, on varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under section 4 of that section,

He may appeal against the decision.

- 41. Human Rights considerations must be taken into account fully in balancing licensing issues, in particular, article 1 of the first protocol and articles 6 and 8. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property (holding a licence would be considered a possession). Article 8 relates to the right to respect for private and family life, home and correspondence. Article 6 relates to the right to a fair trial. These

are however qualified rights and can be deprived of "in the public interest".
Interference is permissible if what is done: -

- a) Has its basis in law;
 - b) Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim;
 - c) Is proportionate to the aims being pursued; and
 - d) Is related to the prevention of crime or, the protection of public order or health or the protection of the rights and freedoms of others.
42. All applications before the Sub Committee must be considered against the backdrop of anti-discriminatory legislation including the Equality Act 2010.
43. In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from Responsible Authorities and any other person(s).

IMPLICATIONS

Environment and Planning (Includes Sustainability)

As set out in the report.

Author: Andrew Bramidge, Head of Environment and Planning

Finance (Includes ICT, Properties and Facilities)

In the event of an appeal being lodged against the Committee's decision then should that appeal be successful cost could be awarded against the Council. In such circumstances costs would in the first instance be met from within existing budgets.

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 contained within the report.

Author: Jane Greer, Head of Community Wellbeing

Governance (Includes HR)

Members must have due regard to the application for a variation to the Premises Licence and the proposed licensable activities, the representations received and determine the application in accordance with the promotion of the licensing objectives. Further legal advice in relation to any aspect of this application may be provided by an Officer at the Sub-Committee hearing to enable the process to be fair to all parties.

Author: Simon Hill, Head of Governance

Appendices

Appendix A - Application to Vary Premises Licence

Appendix B – Proposed Licensable Activities Plan

Appendix C – Public Notice

Appendix D - Essex Police Objection

Appendix E – Interested Party Representation 1

Appendix F - Interested Party Representation 2

Appendix G - Interested Party Representation 3

Appendix H - Location Plan for the Premises

Appendix I - Copy of Premises Licence

Appendix J - Harlow District Council Statement of Licensing Policy

Appendix K - Secretary of State's Guidance

Background Papers

None.