

**REPORT TO:** LICENSING SUB COMMITTEE

**DATE:** 29 MARCH 2022

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

**LEAD OFFICERS:** ADAM SHERWOOD, PRINCIPAL LICENSING OFFICER (01279) 446561

RACHEL CROUCH, SENIOR LICENSING OFFICER (01279) 446015

**CONTRIBUTING OFFICERS:** MICHAEL PITT, ASSISTANT DIRECTOR ENVIRONMENT (01279) 446114

## **EXECUTIVE SUMMARY**

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 2 February 2022, the Sub Committee is requested to consider the application following representations which have been received during the consultation period.

## **RECOMMENDATIONS**

1. The Sub Committee, when considering this application have the following options available:
  - 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.

2. 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
3. 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 to any representations received.
4. 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**

5. The purpose of this report is for the Sub Committee to consider an application for the variation of a premises licence pursuant to section 35 of the Licensing Act 2003 ("the Act").
6. The matter has been referred to the Sub Committee for determination following receipt of relevant representations from interested parties. Further details about the representations are contained within this report.
7. On 2 February 2022, 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.
8. The variation application submitted relates to premises known as The Chequers situated at 2 Market Street, Old Harlow, Essex, CM17 0AH.
9. The current licence including conditions is reproduced at **Appendix G**. The variation application proposes to amend the licence as follows:
  - a) To extend the hours for alcohol sales, the provision of recorded music and entertainment of a similar description from 11:00am to 00:30 on Fridays and Saturdays.
    - The premises licence currently provides:

- For recorded music from 11:00am to 23:30
  - For entertainment (or similar) from 11:00am to 00:00
- b) To extend the opening hours on Fridays and Saturdays from 11:00am to 01:00.
  - The premises licence currently provides:
    - For opening hours from 11:00am to 00:00
- c) To delete condition 3.11 to allow the use of glassware in the garden.
  - Condition 3.11 states:
    - No drinks shall be served in glass containers for consumption in the garden or at the front of the premises.
- d) To amend condition 3.13 to allow the use of the garden until 22:30.
  - Condition 3.13 states:
    - The beer garden and all external areas including the covered areas to the right hand side of the main public house (as viewed from Market Street) building and the covered areas at the rear of the main building shall only be open to customers from 11.00am until 21:00. Adequate notices shall be displayed in appropriate locations to ensure that this information is brought to the attention of patrons. The licensee shall make appropriate management arrangements to ensure that patrons do not occupy these areas at any other time.
- e) To amend condition 3.19 to allow the use of tables and chairs in the garden until 22:30.
  - Condition 3.19 states:
    - There shall be a documented smoking policy that is compliant with the Health Act 2006 and implemented at the premises.
    - Notices shall be prominently displayed at any designated area used for smoking, requesting patrons to respect the needs of local residents and use the area quietly.
    - Staff shall monitor customers smoking outside the premises on a regular basis and ensure patrons do not cause a public nuisance.
    - Outside tables and chairs (in the beer garden) shall be rendered unusable by 21:00 hours each day.

- Patrons permitted to temporarily leave and then re-enter the premises, eg. to smoke, shall not be permitted to take drinks or glass containers with them.
- f) To delete condition 3.0 to allow the performance of live music indoors.
- Condition 3.0 states:
    - The performance of live music (indoors) is prohibited at all times.
- g) To amend condition 3.23 to allow the outside bar to operate until 22:00
- Condition 3.23 states:
    - The external bar servery shown on the plan attached to the premises licence shall be closed by 21:00 every day

## Consultation

10. In accordance with the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, public notices have been displayed and published. Responsible authorities were notified of the application. A copy of the public notice is set out at **Appendix B** to the report.

11. Essex Police, in their capacity as a responsible authority has not made any formal representations. However, in conjunction with the applicant the following conditions were agreed on 25 February 2022 and are considered amended on the variation application. Communication between Essex Police and the applicant is set out at **Appendix C** to the report.

12. It states:

a) Condition 3:11 amended to:

No drinks in glass containers will be allowed outside the front of the premises.

People who wish to have their drinks taken outside the front of the premises should have their drinks decanted into plastic/polycarbonate containers.

b) Condition 3:13 amended to:

The beer garden and all external areas including the covered areas to the right hand side of the main public house (as viewed from Market Street) building and the covered areas at the rear of the main building shall only be open to customers from 11.00am until 10pm. Adequate notices shall be displayed in appropriate locations to ensure that this information is brought to the attention of patrons.

The licensee shall make appropriate management arrangements to ensure that patrons do not occupy these areas at any other time.

c) Condition 3:19 amended to:

There shall be a documented smoking policy that is compliant with the Health Act 2006 and implemented at the premises.

Notices shall be prominently displayed at any designated area used for smoking, requesting patrons to respect the needs of local residents and use the area quietly.

Staff shall monitor customers smoking outside the premises on a regular basis and ensure patrons do not cause a public nuisance.

Outside tables and chairs (in the beer garden) shall be rendered unusable by 2200 hours each day.

Patrons permitted to temporarily leave and then re-enter the premises, eg. to smoke, shall not be permitted to take drinks or glass containers with them.

d) Condition 3:23 amended to:

The external bar servery shown on the plan attached to the premises licence shall be closed by 21:30 every day.

13. Environmental Health, in their capacity as a responsible authority has not made any formal representations. However, in conjunction with the applicant the following conditions were agreed on the 25 February 2022 and are considered amended on the variation application. Communication between Essex Police and the applicant is set out at **Appendix D** to the report.

14. It states:

While in agreement to delete condition 3.0 (to allow the performance of live music indoors), it has been agreed to amend the operating schedule:

To allow live music until 11.30pm on Friday's & Saturday's.

Under the Live Music Act 2012, removal of condition 3.0 will allow provision of live music Sunday to Thursday but would be restricted to 11:00pm only.

Therefore, live and recorded music would both be permitted until 11.00pm Sunday to Thursday.

15. The Licensing Authority have received 15 interested party representations which are attached as **Appendix E1-E15**.
16. The representations received were all from local residents in the area and have been submitted in relation to the prevention of public nuisance objective and in relation to the crime and disorder objective.
17. At the time of submission, some of the residents have requested that their 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 (9.26-9.30) and the validating officer is satisfied that they meet the guidance outlined in respect of this.
18. 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 above, the application attracted 14 relevant representations, all of which are in opposition.
19. All parties including the applicant and/or representative were sent the statutory Notice of Hearing. The Notice invited the various parties to attend the hearing and specifically asked whether they wished to be represented at the hearing.
20. To provide context in relation to the location of the premises, a plan of the premises and surrounding areas can be viewed at **Appendix F** to the report.

### **The Premises and History**

21. 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. Looking to the front of the Pub, the right hand side of the building has been laid with cobble effect paving leading onto a large patio area to the rear, which in turn leads onto a grassed garden area.
22. A premises licence PREM2/21/00115 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 G** to the report.
23. Ei Group Ltd is the freeholder of the property; Mr Hakan is a tenant at the premises and was appointed Designated Premises Supervisor (DPS) for the premises licence on 1 April 2021.
24. An overview of the application history (all granted) relevant to the PLH is set out below in respect of this premises licence:

21.05.2021 – Application to Vary (include outside bar) – Applicant Ei Group Ltd

01.04.2021 – Application to Vary DPS – New DPS Hakan Hayrettin

01.04.2021 – Application to Transfer – New Licence Holder Ei Group Ltd

25. The Licence is subject to a number of conditions some of which derive from the applicants operating schedule; others were attached by the Licensing Committee following a hearing to determine an application for review on 2 December 2020. The Premises is licensed for the following licensable activities during the hours stated:

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  
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.

26. In accordance with the premises licence conditions the Council has received and holds on record the following operational policies for the premises sent by the premises licence holder dated April 2021;

- Dispersal Policy – As set out in **Appendix H** to the report
- Drug Policy – As set out in **Appendix I** to the report
- Smoking Policy – As set out in **Appendix J** to the report

27. Since the appointment of the new DPS, the Licensing Team have received complaints from members of the public regarding the premises related to the



public nuisance and crime and disorder licensing objectives. To investigate, the Licensing Team and other Council Enforcement Teams have undertaken a number of compliance visits to the premises, the compliance report provides a summary of any visits and investigations and is set out in **Appendix K** to the report.

28. No formal enforcement action against the premises licence holder Ei Group Ltd or the DPS, Mr Hakan has been recorded in respect of these premises.

### **Reasons for Recommendations**

29. 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.

30. 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**

31. Harlow Council (the Licensing Authority) has adopted a Statement of Licensing Policy in accordance with section 5 of the Licensing Act 2003 as set out in **Appendix L**, from which the following is an extract.

(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.

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

- a) The Licensing Act 2003 and the licensing objectives,

- b) Government guidance issued under Section 182 of the Licensing Act 2003,
- c) Any supporting regulations
- d) This statement of licensing policy

(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.

(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**

32. 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 M** to the report.

33. Members will wish to consider the relevant parts of Chapter 9. Particular reference should be made to the following paragraphs under determining applications:

34. Paragraph 9.37 of the Guidance states:

*"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".*

35. Paragraph 9.42 states:

*"Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be."*

36. Paragraph 9.43 states:

*"The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."*

37. Paragraph 9.44 states:

*"Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination."*

38. The Guidance also states, in relation to applying conditions to a premises licence:

39. 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."*

40. While Paragraph 10.9 adds:

*"It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives."*

41. The Guidance also considers the hours of trading in paragraph 10.13, it states:

*"The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application."*

42. Paragraph 10.14 adds:

*"Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested."*

43. 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.

44. 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.

45. 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**

46. 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.

47. Where the Licensing Authority rejects (in whole or in part) an application, the applicant may appeal against the decision to the Magistrates' Court.

48. 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.

49. 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.

50. 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.

51. All applications before the Sub Committee must be considered against the backdrop of anti-discriminatory legislation including the Equality Act 2010.

52. 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**

### **Strategic Growth and Regeneration**

As set out in the report.

**Author: Andrew Bramidge, Director of Strategic Growth and Regeneration**

### **Finance**

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

**Author: Donna Beechener, Assistant Director Revenues & Benefits on behalf of Simon Freeman, Deputy to the Chief Executive and Director of Finance**

### **Housing**

As outlined in the report.

**Author: Andrew Murray, Director of Housing**

### **Communities and Environment**

As contained within the report.

**Author: Jane Greer, Director of Communities and Environment**

### **Governance and Corporate Services**

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, Director of Governance and Corporate Services**

## **Appendices**

Appendix A - Application for Full Variation of Premises Licence

Appendix B – Consultation Public Notice  
Appendix C – Essex Police Amended Conditions  
Appendix D – Environmental Health Amended Conditions  
Appendix E1-E15 Interested Party Representations  
Appendix F – Location Plan of Premises and Surrounding Areas  
Appendix G – Premises Licence incl. Plan: The Chequers  
Appendix H – The Chequers Dispersal Policy  
Appendix I – The Chequers Drug Policy  
Appendix J – The Chequers Smoking Policy  
Appendix K – Licensing Compliance Visit Report  
Appendix L – Harlow Council Statement of Licensing Policy  
Appendix M – Section 182 Guidance issued under Licensing Act 2003

### **Background Papers**

[www.local.gov.uk/publications/licensing-act-2003-councillors-handbook-england-and-wales-0](http://www.local.gov.uk/publications/licensing-act-2003-councillors-handbook-england-and-wales-0)

### **Glossary of terms/abbreviations used**

The “Act” - Licensing Act 2003  
PLH - Premises Licence Holder  
DPS - Designated Premises Supervisor