

REPORT TO: LICENSING SUB COMMITTEE

DATE: 1 NOVEMBER 2022

TITLE: APPLICATION FOR REVIEW OF A PREMISES LICENCE - THE THREE HORSESHOES PUBLIC HOUSE, THREE HORSESHOES ROAD, HARLOW, ESSEX, CM19 4HB

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EXECUTIVE SUMMARY

An application has been received from Councillor David Carter (on behalf of residents) under Section 51 of the Licensing Act 2003 for the review of the premises licence in respect of The Three Horseshoes PH, Three Horseshoes Road, Harlow, Essex, CM19 4HB.

RECOMMENDED that:

- A** The Sub Committee consider the application to review the premises licence, including any relevant representations and evidence received to determine what steps, if any, it considers are appropriate to promote the Licensing Objectives for the overall interests of the local community.
- B** Appropriate weight and consideration should be given to:
- i) The steps that are appropriate to promote the licensing objectives
 - ii) Councillor Carter application for the review
 - iii) The representations (including supporting evidence) submitted by all parties
 - iv) The Section 182 guidance issued to local authorities under the Licensing Act 2003
 - v) The Harlow Council Licensing Policy 2019 – 2024.

BACKGROUND

1. Acting in the capacity of the Licensing Authority, members of the Sub Committee must seek to promote the Licensing Objectives. 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
2. 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.
3. The Sub Committee shall consider any relevant representations made. Relevant representations are those that:
 - a) Relate to one or more of the licensing objectives
 - b) Have not been withdrawn
 - c) Are submitted by, or on behalf of the premises licence holder, a responsible authority, or an interested party.
4. 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.
5. Where appropriate, there are a number of options available to the sub-committee in relation to the review for the promotion of the licensing objectives:
 - a) to modify the conditions of the licence
 - b) to exclude a licensable activity from the scope of the licence
 - c) to remove the designated premises supervisor from the licence
 - d) to suspend the licence for a period not exceeding three months
 - e) or to revoke the licence.

The Sub Committee may modify conditions in step a) to include the alteration, omission, or the addition of any new condition to the licence. (S52(4) Licensing Act 2003)

For either step a) or b), the Sub Committee may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify. (S52(6) Licensing Act 2003)

6. A copy of the premises licence for The Three Horseshoes, Three Horseshoes Road, Harlow, Essex, CM19 4HB is set out in Appendix A to the report and an area map is set out in Appendix B to the report.
7. The premises licence holder is Punch Partnerships (PTL) Limited. The current DPS is Howard Lewis and has held position since 15 November 2021.

8. The premises is located on Three Horseshoes Road, looking out to a playing field to the front. The pub has a car park to the rear of the premises which is bordered with residential property or car garages. One other Public House is located at the end of Three Horseshoes Road.
9. The current premises licence has the following licensable activities:

Sale or Supply of Alcohol (On-Sales/Off-Sales) Monday to Thursday Friday to Saturday Sunday	10:00 - 00:00 10:00 - 01:00 12:00 - 00:00
Indoor Sporting Events (Indoors) Monday to Thursday Friday and Saturday Sunday	10:00 – 00:00 10:00 – 01:00 12:00 – 00:00
Live Music (Indoors) Monday to Thursday Friday and Saturday Sunday	10:00 - 23:00 10:00 - 00:00 12:00 - 23:00
Recorded Music (Indoors) Monday to Thursday Friday and Saturday Sunday	10:00 - 00:00 10:00 - 01:00 12:00 - 00:00
Non-Standard Timings Sale or Supply of Alcohol (On-Sales/Off-Sales) & Recorded Music Indoor Sporting Events (Indoors) & Live Music (Indoors)	An additional hour into the morning following every Sunday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend An additional hour into the morning following every Thursday and Sunday for the Easter Bank Holiday weekend An additional hour every Christmas Eve An additional hour every Boxing Day To reflect existing New year's Eve/Day hours An additional hour into the morning following every Sunday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend An additional hour into the morning following every

	Thursday and Sunday for the Easter Bank Holiday weekend An additional hour every Christmas Eve An additional hour every Boxing Day
Opening Hours of the premises as stated on Operating Schedule Monday to Thursday Friday and Saturday Sunday	08:00 - 00:30 08:00 - 01:30 08:00 - 00:30

10. Since January 2022, there has been a series of complaints received by the Licensing Team from residents and Councillors concerning the Three Horseshoes P.H., regarding the undermining of the licensing objectives for Public Nuisance and Crime and Disorder. Complaints have been very difficult to substantiate breach of licence conditions or the undermining of Licensing Objectives. The Licensing Team have advised all parties about what issues should be reported to the Police, Environmental Health or to Licensing. The Licensing Team have been made aware that several of the residents have been using the Environmental Health noise app facility, a statutory nuisance has not been established to date.
11. Some issues raised by residents were investigated by the Licensing Team. The Licensing Team met with the DPS on 28 January 2022 and 14 July 2022. Discussions at these visits concerned the conditions of the licence and to advise that complaints had been received. The following items have been discussed with the DPS:

Condition 2.23: a noise survey must be carried out on a regular basis.

- Agreed that perimeter checks are helpful to fulfil this. DPS advised these are conducted as a minimum on an hourly basis, but checks are made more frequently every 20-30 minutes collecting glasses. DPS has been advised to record observations/actions.

Condition 2.26: lobbied entrances must be in place which reduce noise emission.

- The pub has lobbied entrances to which the doors are kept closed in the evenings or when there is entertainment. DPS stated that the pub locks the rear doors to the car park at 10:30pm so may monitor patrons in and out of the premises more easily, in particular anyone who could be considering driving if they have been drinking.

Condition 2.24: Staff must, when required, organise a taxi home for customers when required & Condition 2.25: Customers must be seen off the premises and encouraged to disperse at closing time.

- The pub calls two local cab firms to book cabs for customers and let them know when the cab arrives. DPS stated this works well, but service can be really slow in Harlow.
- Dispersal Policy in operation 30 mins before closing time, during this time drinks are transferred to plastic glasses, incl. bottles so no glass leaves the premises.

Condition 2.29: No children are permitted in the bar after 19.00 unless eating in the dining area. & Condition 2.30: no children are permitted in the garden after 21.00.

- DPS states that staff monitor this, request any children/families to leave if not eating at 19:00 and from the garden at 21:00

Condition 2.27: Please respect our neighbours and leave quietly signs must be displayed.

- On first visit the pub had a sign at the back of the pub, this was obscured by bunting and quite small. Signage acceptable on second visit.

Condition 2.31: The AWP's and Cigarette machine must be positioned in sight of the bar.

- Any machines in view of bar area, DPS Advised monitored by staff.

Condition 2.3: The toilets must be checked on a regular basis.

- Toilet checks are undertaken (not currently recorded)

Other notable points from visits:

- CCTV is fully operational at the premises
- Refusals are recorded through the tills
- DPS has refused several customers suspected of drug use (not currently recorded)
- Aware of field across the road being used as a meeting place for members of the public (not customers). Suspicious/aware drug use, cars playing music.
- DPS advised they have been clearing field of broken glass but concerned glass is from another pub.
- DPS has requested a barrier to pub carpark. DPS also been woken by disturbances of people in the pub car park.
- The use of door staff was recommended, to be considered by DPS.

12. The Licensing and Environmental Health Teams have coordinated out of hours monitoring of licensed premises across Harlow between August and October 2022. Mostly provided by an external agency called Ex-Jobs. A schedule of observations and notes are set out in Appendix C to the report. Some

intelligence from these reports has been shared with Essex Police and has been redacted from the document.

13. A petition was received on 18 July 2022, signed by 34 residents stating they wished for the Three Horseshoes Public House to have its licence reviewed. Information was provided to the 'Three Horseshoes Resident Group' on how to make a review application and what it shall encompass.

ISSUES

Application

14. On 6 September 2022, under Section 51 of the Licensing Act 2003, a premises licence review application was submitted by Councillor Carter (on behalf of residents), in respect of the Three Horseshoes Public House, Three Horseshoes Road, Harlow, Essex, CM19 4HB to this authority. A copy of the application is set out in Appendix D to the report.
15. The grounds of the review application are that the premises have failed to uphold the Licensing Objectives for Crime and Disorder and the Prevention of Public Nuisance.

The review application includes:

- a) The applicant has applied on behalf of residents of Three Horseshoes Road, Jerounds, Hawkenbury, Rectory Lane and surrounding areas.
- b) The pub was closed for a long time and re-opened.
- c) The pub has a later closing time than many other pubs in Harlow.
- d) When other pubs close they move to this pub.
- e) Reports from residents of anti-social behaviour, drug taking and dealing, fighting, noise nuisance and disturbance.
- f) Reports of crime, public nuisance and disorder relating to the pub.
- g) The applicant has witnessed fights and disorder outside the pub either towards the end of the pubs licensed hours or as soon as the pub closes.

Consultation

16. In accordance with the Licensing Act 2003 regulations, public notices have been displayed and published. Responsible authorities were notified of the application. The consultation period ended on the 4 October 2022. A copy of the public notices are set out in Appendix E to the report.
17. Representations were received from Essex Police and residents/interested parties.
18. Essex Police representation is set out in Appendix F to the report. The representation includes:
 - a) Aware of reports from residents of various acts of public nuisance.

- b) Appears to be undermining of the Prevention of Public Nuisance licensing objective.
- c) It has been necessary to determine what incidents are directly attributable to the venue and which may be a result of management refusal to allow patrons into the venue, and nuisance emanating primarily from persons using the nearby park.
- d) Conversations with premises management did not improve the situation, [therefore] direct engagement with the licence holder was undertaken and proposals put to the licence holder to reduce the opening hours and adopt a number of licence conditions voluntarily.
 - To terminate all licensable activity at 23:30, and to close at midnight (save 'special occasions'). Includes off-sales to cease at 23:00.
 - The licence holder agreed to all recommended conditions, *save a requirement to have door staff on duty whenever the premises conducts licensable activity past 23:30 (allowing the condition to be added where a TEN application is received)*
- e) The licence holder has agreed with the Chief Officer of Police to submit a variation.
- f) Chief Officer of Police considers, should the licence holder apply to vary the licence to the licensing [hours] and conditions agreed upon... does not consider it necessary to launch review proceedings independent of those already underway.

19. Representations from residents draw on their personal experiences living in the area and are set out in Appendix G1 to G3 in the report. The representations include:

- a) Lack of sleep
- b) Effects on mental health, family relationships and quality of life
- c) Too scared to leave property
- d) Endured noise, antisocial behaviour, and illegal activity

Representations received by email (not the Representation Form) have been requested to provide an address to assist members how the premises may affect them when at home.

20. The applicant, Premises Licence Holder and any person who submitted a representation have been invited to attend the hearing.

Minor Variation

21. A minor variation application was received for the Three Horseshoes P.H. on 5 October 2022. The variation was shared with consultees and a public notice was displayed by the Premises Licence Holder at the site.

22. The consultation for the variation ends 19 October 2022 (after this report is published). The application must be determined by 26 October 2022.
23. The variation includes all hours and conditions proposed by the Chief Officer of Police, including the previously rejected condition “on any occasion where the premises conducts licensable activities past 23:30 hours, at least 2 SIA licensed door supervisors must be on duty from 22:00 hours until at least 30 minutes after the premises closes.”

PROPOSALS

Determine the Application

24. Any decision is to be made with regard to the Licensing Act 2003, the Secretary of State’s Revised Guidance issued under Section 182 of the Licensing Act 2003, and the Council’s adopted Statement of Licensing Policy. Some points of reference are included in this report.
25. Members are reminded that should any conditions be added or modified, they should be practical, enforceable, and appropriate to promote the Licensing Objectives.

Statement of Licensing Policy

26. Para 3 under Prevention of Crime and Disorder-

Harlow Council is committed to further improving the quality of life for the people of the District of Harlow by continuing to reduce crime and the fear of crime.

*Section 17 of the Crime and Disorder Act 1998 introduced a wide range of measures for preventing crime and disorder and imposed a duty on Harlow Council, Essex Police, Essex County Council, and others to **consider crime and disorder reduction** in the exercise of all their duties. The Licensing Act 2003 reinforces this duty for local authorities. The Anti-Social Behaviour, Crime and Policing Act 2014 provides for additional enforcement actions and sanctions which may be used by the Council and Police to deal with crime and anti-social behaviour.*

27. Para 5 under Prevention of Public Nuisance –

*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.*

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 Section 182 Guidance for the Licensing Act 2003

28. Para 2.16 **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 meaning...
29. The Sub-Committee's attention is directed towards Chapter 9 'Determining Applications' and Chapter 10 'Conditions Attached to Premises Licences and Club Premises Certificates' and Chapter 11 'Reviews' in the Section 182 Guidance.
30. Para 9.37 *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.*
31. Para 9.42 *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.*
32. Para 9.43 *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.*
33. Para 9.44 *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...*

Legal Considerations

34. 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.
35. The issue in the context of Licensing Act 2003 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

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 question 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. In addition to determining the application in accordance with the legislation, the Sub-Committee must have regard to the:
 - a) common rules of natural justice
 - b) provisions of the Human Rights Act 1998
 - c) considerations in Section 17 of the Crime and Disorder Act 1998
37. The Human Rights Act 1998, which requires authorities to take into account the rights of individuals to respect for their private and family life (Article 8), a right to a fair trial/hearing (Article 6) and to protection of their property (Article 1, Protocol 1).
38. Members are 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.
39. There is a right of appeal for the applicant or a party to the hearing against a decision of the Licensing Subcommittee to the Magistrate's Court within 21 days of being formally told in writing.
40. 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 in the report 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.

IMPLICATIONS

Strategic Growth and Regeneration

As set out in the report.

Author: Andrew Bramidge, Director of Strategic Growth and Regeneration

Finance

None specific.

Author: 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 outlined in the report.

Author: Jane Greer, Director of Communities and Environment

Governance and Corporate Services

Members are required to consider the review application and determine the application in accordance with the promotion of the licensing objectives. Further legal advice in relation to any aspect of this application will be provided by an Officer at the Sub Committee hearing to enable the process to be fair to all parties. Further Legal advice is provided within the body of the report.

Author: Simon Hill, Director of Governance and Corporate Services

Appendices

Appendix A - Premises Licence for the Three Horseshoes Public House

Appendix B - Area Plan Three Horseshoes Road

Appendix C - Schedule of monitoring by Licensing Team and Environmental Health

Appendix D - Review Application submitted by Cllr David Carter

Appendix E - Public Notice

Appendix F - Representation from Essex Police

Appendix G1 - Representation 1 from Cllr David Carter

Appendix G2 - Representation 2 from Resident

Appendix G3 - Representation 3 from Resident

Background Papers

[Crime and Disorder Act 1998 section 17](#)

[Harlow Council Statement of Licensing Policy](#)

[Licensing Act 2003](#)

[Licensing Act 2003 Councillor's Handbook](#)

[Secretary of State's Revised Guidance issued under Section 182 of the Licensing Act 2003](#)

Glossary of terms/abbreviations used

DPS - Designated Premises Supervisor