

REPORT TO: LICENSING SUB COMMITTEE

DATE: 16 JANUARY 2023

TITLE: APPLICATION TO VARY A PREMISES LICENCE:
THE CHEQUERS PUBLIC HOUSE, 2 MARKET
STREET, HARLOW, ESSEX, CM17 0AH

LEAD OFFICER: NORAH NOLAN, ASSISTANT DIRECTOR
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RECOMMENDED that:

- A. The Licensing Sub Committee consider an application made by Hakan Hayrettin under section 34 of the Licensing Act 2003 (“The Act”) to vary a premises licence in respect of The Chequers Public House, 2 Market Street, Harlow, Essex, CM17 0AH. This application has received relevant representations during the consultation period and therefore the Sub Committee is requested to determine what steps, if any, it considers are appropriate to promote the Licensing Objectives for the overall interests of the community.
- B. In carrying out its licensing functions, the Sub Committee should give appropriate weight and consideration to:
- a) The Licensing Act 2003 (“The Act”),
 - b) Secondary regulations issued under the Act,
 - c) The Section 182 guidance issued to local authorities under the Act,
 - d) The Harlow Council Licensing Policy 2019 – 2024,
 - e) The steps that are appropriate to promote the licensing objectives,
 - f) The application to vary the premises licence, and
 - g) Relevant representations (and any supporting evidence) submitted by all parties.

BACKGROUND

1. 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
2. Where appropriate, options available to the Sub Committee under section 35(4) of the Act in relation to an application to vary the premises licence for the promotion of the licensing objectives:
- a) To grant the licence as applied for;
 - b) To modify the conditions and hours of the licence;
 - c) To reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

3. The Chequers Public House is a grade II listed building. It's situated amongst a small residential area with housing on all sides. Facing the front of the pub on Market Street, it has a gated side entrance leading into the rear beer garden. A location map can be viewed at **Appendix A**
4. The premises licence HARLOW/PREM/0012 was originally granted on 15 July 2005 under the Licensing Act 2003. Hakan Hayrettin has been the designated premises supervisor since 1 April 2021. On 26 April 2022 the premises licence was transferred from Ei Group Ltd to Mr Hayrettin. **Appendix B**
5. A Review of the premises licence on 2 December 2020, imposed *Condition 3.0 The Performance of Live Music (indoors) is prohibited at all times.*
- A Review of a premises licence allows a licensing authority to add a condition relating to music as if music were regulated entertainment, and as if that premises licence licensed the music.
6. During the year 2022, the Licensing Team was served 17 valid Temporary Event Notices (TENs) for the premises. These totalled 26 days, the maximum permitted under The Alcohol Licensing (Coronavirus) (Regulatory Easements) (Amendment) Regulations 2021. The TENs permitted licensable activities beyond the existing premises licence. **Appendix C**

Application

7. A valid application was submitted by Mr Hayrettin on 16 November 2022 under section 34 of the Licensing Act 2003 to vary the premises licence in respect of The Chequers Public House. **Appendix D**
8. The variations sought are as follows:

1. To extend the sale of alcohol on Friday and Saturday from 23:30 to 00:00
2. To extend the hours of recorded music on Friday and Saturday from 23:30 to 00:00
3. To extend the opening hours of the premises on Friday and Saturday from 00:00 to 00:30
4. To amend condition 3.13 and extend the use of the garden from 22:00 to 23:00
5. To delete condition 3.0 to allow the performance of live music.

Supply of alcohol non-standard timings: 26 December 11:00 to 00:30

Recorded music non-standard timings: 26 December 11:00 to 00:30

Opening hours of the premises non-standard timings:

24 December 11:00 to 01:00

26 December 11:00 to 01:00

Live music: Sunday 16:00 to 21:00

9. The Sub Committee should be mindful that if Condition 3.13 were to be amended to extend the use of the garden area, Conditions 3.19 and 3.23 may also require amendment to reflect the change.
10. 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 14 December 2022.

ISSUES/PROPOSALS

Consultation

11. Essex Police and Environmental Health responded in their capacity as Responsible Authorities. The representation from Essex Police objects on the grounds of prevention of public nuisance. **Appendix E**
12. The representation from Environmental Health objects on the grounds of prevention of public nuisance. **Appendix F**
13. Representations from 18 other persons were received relevant to the four licensing objectives. **Appendix G1-G18**
14. The applicant and all other parties that made representations have been sent the statutory Notice of Hearing, inviting them to attend this hearing with or without representation.

Determine the application

15. 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.
16. 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

17. 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

18. 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 16 'Regulated Entertainment' in the Section 182 Guidance
19. 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...
20. Para 9.4 ...*There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.*
21. 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.*

22. *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.*
23. *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.*
24. *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...*
25. *Para 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.*
26. *Para 10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.*

Legal Considerations

27. 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.
28. 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
29. 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).

30. There is a 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.
31. Under section 181 and Schedule 5 of the Licensing Act 2003, there is a right of appeal for the applicant or a party to the hearing against a decision of the Licensing Sub Committee to the Magistrate's Court within 21 days of being notified.

IMPLICATIONS

Strategic Growth and Regeneration

As set out in the report.

Author: Tanusha Waters, Assistant Director Planning and Building Control

Finance

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, 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 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 - Location Area Plan

Appendix B - Premises Licence

Appendix C - TEN applications for 2022

Appendix D - Variation Application

Appendix E - Representation Essex Police

Appendix F - Representation Environmental Health
Appendix G1-18 - Representations from Other Persons

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 \(December 2022\)](#)

Glossary of terms/abbreviations used

DPS - Designated Premises Supervisor

TENs - Temporary Event Notices