

WELWYN HATFIELD COUNCIL
LICENSING SUB COMMITTEE
REPORT OF THE LICENSING OFFICER

Hatfield Central

REPORT TO LICENSING SUB COMMITTEE

**VARIATION OF A PREMISES LICENCE FOR POINT ONE AFRICAN RESTAURANT,
11-13 THE ARCADE, HATFIELD, AL10 0JY**

1 Summary of the Application

Premises Licence Holder(s)
CHIDOZIE ONWUMECHILI
Address of Premises
11-13 THE ARCADE HATFIELD AL10 0JY

This committee report contains an application for the variation of an existing premises licence for 11 – 13 The Arcade, Hatfield, AL10 0JY. The application is contained in Appendix A to this report.

Summary of Application Received

An application has been received from the Applicant under the Licensing Act 2003 for a variation to the premises licence to extend the premises opening hours to the public Thursday – Saturday to 13:00 – 03:30, Sale of alcohol Thursday - Saturday 13:00 - 03:30 on the premises, Late night refreshment Thursday - Saturday 23:00 - 03:30 indoors only and recorded music Thursday - Saturday 13:00-03:30 indoors only.

The applicant is in line with legislation by displaying Blue Notices at the Premises on the 10th June 2022 and advertised the application in the Welwyn Hatfield Times on the 22nd June 2022, the Public register was updated and placed on the Councils website and all the Responsible Authorities, Parish Councils and Councillors were notified.

1.1 Unresolved representations

The Licence Hearing is as a result of the Licensing Authority receiving 1 formal written relevant representation against the application from Hertfordshire Police and a formal written relevant representation requesting conditions from Environmental Health within the 28 day consultation period. The representations to the application have been submitted under the Licensing Act 2003 on the statutory grounds of:

- Prevention of Crime and Disorder
- Prevention of Public Nuisance

Part 2 Appendix A - Premises licence variation application form

Part 2 Appendix B – Written representation against the application from Hertfordshire Police

Part 2 Appendix C - Written representation from Environmental Health requesting conditions

2 Details of Representations Received

Two formal written relevant representations have been submitted to the premises licence variation application, one representation from Hertfordshire Police and one from Environmental Health. These representations have been judged as appropriate and have therefore been brought to the Licensing Sub Committee to be determined. The representations are detailed in Appendices B and C.

The representation from Hertfordshire Police is made on the grounds of Crime and Disorder and the Prevention of Public Nuisance. The representation expresses Police concern that the extension of hours will result in an unacceptable return of violence at the premises. The lack of incident at the premises since 2018 while this represents a number of years, the period has been highly unusual and particularly restrictive on licensed premises, which may not present a realistic picture of potential change.

Late hours are particularly problematic in regards to violent crime, the proposed hours of 03:30am would likely mean that people who had been drinking in other locations would visit the premises after the other venues close. In terms of Public Nuisance, the area has residential premises, music and disturbance up to 03:30am, which is likely to be 4am once everyone has dispersed is going to cause public nuisance. This is likely to extend beyond the area around the premises as patrons filter off to train/bus and taxi locations. The application does not feature a drinking up time, as the alcohol sales also go up until 03:30am this means people will be slow to leave the premises therefore extending this time even further.

Police believe the lack of incident at the premises since 2018 is clear evidence of the current hours working to reduce the crime and disorder in Hatfield Town Centre.

The representation from Environmental Health is being made on the grounds of the Prevention of Public Nuisance, the authority is not looking for a full refusal but that should the variation application be granted that conditions recommended by Environmental Health should form part of the premises licence conditions. The applicant is however advised that if complaints are received and substantiated, the licence will be called in for review.

The applicant is applying to vary the existing premises licence to extend the hours that the licensed premises is open to the public and permitted times for licensable activities at these premises (recorded music, late night refreshment and sale of alcohol) into unsociable hours (03.30 am) on Thursdays, Fridays, and Saturdays. The applicant's original application for the existing premises licence,

submitted to the Council in 2019, also included a request for licensable activities into unsociable hours (03.00 am). Following representations from responsible authorities, including Environmental Health, and subsequent to a hearing on 19th December 2019 the Licensing Sub Committee set the existing premises licence conditions (see representation Appendix A)

When making the representation in 2019 Environmental Health acknowledged that the applicant's premises (under a different name and licensee) had been able to operate without issue on occasions but there had also been a number of issues with noise disturbance both from the music and customers reported to the Council's Environmental Health Team. The premises will of course have been subject to considerable restrictions during the pandemic; however, the Council's records also indicate that adherence with existing licence conditions has proven to be successful in mitigating nuisance from there.

Environmental Health are recommending the following conditions:

1. Doors and Windows

Doors and windows to be kept closed whilst live or recorded entertainment is played in the premises (including karaoke), all external doors and windows must be kept closed.

Reason: To protect nearby residential properties from noise disturbance.

2. Bottling out

The practice of "bottling out" (tipping of empty bottles or cans into refuse bins) shall not take place between the hours of 23:00 and 08:00 hours.

Reason: To protect nearby residential properties from noise disturbance.

3. Admittance to premises by customers

Customers shall only gain admittance to the premises up until 00:00 hours, with no admittance permitted after this time for new customers.

Reason: To protect nearby residential properties from noise disturbance.

4. Drinks not to leave premises

Drinks shall not be removed from the premises, and smokers shall not be able to take their drinks with them when smoking outside.

Reason: To protect nearby residential properties from noise disturbance.

5. Monitoring for noise levels

On Fridays and Saturdays, monitoring at 22:00 hours, 23:00 hours, 00:00 hours, 01:00 hours and 02:00 hours must be conducted by the premises manager or their representative to check noise levels from music emitted from the premises at the nearest residential properties. Noise levels must then be reduced if found to be too loud (at most just audible after 22:00 hours). A record of these actions and findings must be kept and made available for inspection by the Licensing Authority and Statutory Consultees.

Reason: To protect nearby residential properties from noise disturbance.

6. Door supervisors

From 22:00 hours until closing on Friday and Saturday nights, two SIA accredited door supervisors must be in attendance at the premises and shall ensure compliance with conditions 1, 3 and 4.

Reason: To protect nearby residential properties from noise disturbance.

3 Background

The application submitted is for the variation of a premise licence by Chidozie Onwumehili for Point One African Restaurant, 11 – 13 The Arcade, Hatfield, AL10 0JY. The premises is located within the Hatfield Central Ward and in Hatfield Town Centre.

The variation application submitted is seeking to increase the premises opening hours, sale of alcohol, recorded music and late night refreshment for Sunday - Wednesday 13:00 - 23:30 and Thursday - Saturday 13:00 - 03:30am.

During the course of the application the applicant agreed the following conditions in response to concerns expressed by Hertfordshire Public Health. The acceptance of these conditions satisfied Hertfordshire Public Health's concerns and as such the authority did not object to the application on this basis.

1. The licensee and staff will ask persons who appear to be under the age of 25 for ID.
2. All staff will be trained for underage sales prevention.
3. A register of refused sales shall be kept and maintained on the premises

4 Explanation

The committee is obliged to determine this application for the variation of the existing premises licence for Point One African Restaurant. In determining the application the sub-committee must take account of the council's duty to promote the statutory licensing objectives namely:

- A) The prevention of Crime and Disorder
- B) Public Safety
- C) The Prevention of Public Nuisance
- D) The Protection of children from harm.

In making its decision, the committee is also obliged to have regard to the National Guidance and the Councils own Licensing Policy (Previously circulated).

5 Licensing Policy

- 5.1 The sub committee will also wish to be aware of the Guidance issued under section 182 of the licensing Act 2003.

Guidance 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.

Guidance 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.

Guidance 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.

Guidance 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. Whilst 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. 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.

Guidance 10.10

The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

Guidance 10.13

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 regarding licensed opening hours as part of the implementation of its licensing policy statement and 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.

- 5.2 The sub-committee will also wish to be aware of Welwyn Hatfield Council Statement of Licensing Policy, which includes

Licensing Hours

- 27.1 Licensing hours should not inhibit the development of a thriving safe night-time local economy which is important for investment and employment locally and attractive to domestic and international tourists. We will expect applicants to consider whether conditions are necessary for applications in areas which have denser residential accommodation.
- 27.2 We will consider individual applications on their own merits. Fixed predetermined closing times for particular areas will not form part of the policy. Restriction on trading hours will be considered only where necessary to meet the licensing objectives. There will be a presumption to grant the hours requested unless there are objections to those hours raised by responsible authorities or the public on the basis of the licensing objectives.
- 27.3 The commercial demand for additional premises licences (as distinct from cumulative impact) will not be a matter for us as the licensing authority. These are matters for the local planning authority and market demand.
- 27.6 The Council operates an out of hours noise service based on the assessment of need. The nature and number of complaints are recorded and may be used when compiling reports for our licensing committee and sub committees.
- 27.7 Where relevant representations are made, the Council will consider the proposed hours on their individual merits. Notwithstanding this, the Council may require stricter conditions in areas that have denser residential accommodation to prevent public nuisance. The Council will endeavour to work with all parties concerned in such instances to ensure that adequate conditions are in place.

6 Recommendation

- 6.1 The committee must have regard to the application made and the evidence it hears. The sub-committee is therefore asked to determine the application.

6.2 In determining the application, the sub-committee may on behalf of the licensing authority, and having regard to the promotion of the licensing objectives, statute, guidance and policy decide on the following courses of action:

- a) To grant the variation of the licence as proposed.
- b) To modify the conditions of the licence by altering or omitting or adding to them (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).
- c) To exclude any of the licensable activities to which the application relates.
- d) To refuse to specify a person in the licence as the designated premises supervisor.
- e) To reject the whole of the application or part of it.

The licensing authority may grant an application subject to different conditions in respect of

- a) different parts of the premises concerned
- b) different licensable activities

7 Appendices

- A. Premises licence variation application form
- B. Written representation against the application from Hertfordshire Police
- C. Written representation from Environmental Health requesting conditions

Nicol Tupling Licensing Technical Officer
Date – 25/07/2022