

SUBJECT:	APPLICATION FOR A VARIATION OF A PREMISES LICENCE at: The Eagle, 145 High Street, Amersham, Buckinghamshire, HP7 0DY
REPORT OF:	Application under section 34, Licensing Act 2003
Responsible Officer	Charlie Robinson – Licensing Manager
Report Author	Charlie Robinson – Licensing Manager
Ward/s Affected	Penn Wood and Old Amersham

1. Purpose of Report

To provide Members with information enabling the determination of an application to vary a Premises Licence, in respect of which relevant representations have been received. The Application has been submitted by Flint Bishop LLP, St Michael's Court, St Michael's Lane, Derby DE1 3HQ, on behalf of their client; Punch Partnerships (PTL) Limited, Elsley Court, 20-22 Great, Titchfield Street, London, W1W 8BE ("The Applicant") in respect of The Eagle, 145 High Street, Amersham, Buckinghamshire, HP7 0DY ("the premises").

2. Background

2.1. The premises consist of a Grade 2 listed building which is located at the end of a terrace of properties within Amersham 'Old Town' and is located to the north west of the High Street. The premises share a party wall with a residential property to one side and shares a boundary with the Amersham High Street Methodist Church on the other side. A location plan showing the premises location is attached to this report marked **Appendix 1**. As shown on the location plan, the premises is in close proximity to a number of residential dwellings located directly opposite and on either side. The premises also has an outside/garden area which directly backs on to a green recreational space known as Barn Meadow.

2.2. The premises currently benefits from a premises licence issued under the Licensing Act 2003 which has been in place since the Act came into force in 2005, a copy of the existing licence is attached at **Appendix 2**.

3. The Application

3.1. This application is to vary the Premises Licence to commence with immediate effect upon the decision to grant by this licensing authority. A copy of the application, including a premises plan is attached to this report marked **Appendix 3**. During the 28-day consultation period, the applicant amended their application with a view to address some concerns raised. The amendment (copy attached at **Appendix 4**) was to remove the proposed non-standard timing of Monday for each Bank Holiday and Maundy Thursday for live music and entertainment of a similar description. This is now reflected in the table below.

3.2. The newly proposed variation to licensable activities are as follows:

<u>Current</u>	<u>Proposed</u>	<u>Effect of proposal</u>
<p><u>Live music & Entertainment of a similar description</u></p> <p>Sunday 11:00 - 22:30 Monday to Saturday 11:00 - 23:00</p> <p>Non Standard timings: Live amplified or acoustic music consisting of not more than two performers may be performed outdoors at the premises between the hours of 11.00 a.m. to 10.00 p.m. each day.</p> <p>(Please note, this non-standard timing is no longer enforceable following deregulation of Live Music in 2012)</p>	<p><u>Live music & Entertainment of a similar description</u></p> <p>Sunday 11:00 - 22:30 Monday to Saturday 11:00 - 23:00</p> <p>Non Standard timings: A further additional hour into the terminal hour on – Friday, Saturday and Sunday for each May Bank Holiday, Spring/Whitsun Bank Holiday, August Bank Holiday, Easter Bank Holiday, Xmas Eve and Boxing Day</p> <p>New Year's Eve – From the end of permitted hours on New Year's to the start of permitted hours on New Year's Day</p>	<p>Non Standard timings:</p> <p>- An additional hour on all days specified within the proposed non-standard timings.</p> <p>- Addition of extended hours on New Year's Eve</p>
<p><u>Late night refreshment</u></p> <p>Monday to Saturday 23:00 - 23:30 New Year's Eve 23:00 - 05:00</p> <p>Non Standard timings: None</p>	<p><u>Late night refreshment</u></p> <p>Monday to Saturday 23:00 - 23:30 New Year's Eve 23:00 - 05:00</p> <p>Non Standard timings: A further additional hour into the terminal hour on – Friday, Saturday, Sunday, Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday, August Bank Holiday, Easter Bank Holiday, Thursday before Good Friday, Xmas Eve and Boxing Day</p> <p>New Year's Eve – From the end of permitted hours on New Year's to the</p>	<p>Non Standard timings:</p> <p>- An additional hour on all days specified within the proposed non-standard timings.</p> <p>- Addition of extended hours on New Year's Eve</p>

	start of permitted hours on New Year's Day	
<p><u>Sale by retail of alcohol</u></p> <p>Monday to Thursday 11:00 - 23:00 Friday to Saturday 11:00 - 23:30 Sunday 12:00 - 22:30</p> <p>Christmas Day 12:00 - 15:00 19:00 - 22:30</p> <p>Non Standard timings: Alcohol may be sold or supplied for consumption on or off the premises for a further additional hour on: i) Christmas Eve ii) Boxing Day</p> <p>A further additional hour into the morning following every Friday, Saturday, Sunday, Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday, August Bank Holiday, Easter Bank Holiday, Thursday before Good Friday, Xmas Eve, Boxing Day.</p> <p>Alcohol may be sold or supplied for consumption on or off the premises from 11.00 a.m. on New Year's Eve to 11.00 p.m. on New Year's Day save: a. when New Year's Eve falls on a Sunday, when alcohol may be sold or supplied for consumption on or off the premises from 12 noon on New Year's Eve to 11.00 pm on New Year's Day; and b. when New Year's Day falls on a Sunday, when alcohol may be sold or supplied for consumption on or off the premises from</p>	<p><u>Sale by retail of alcohol</u></p> <p>Monday to Thursday 11:00 - 23:00 Friday to Saturday 11:00 - 00:00 Sunday 12:00 - 22:30</p> <p>Christmas Day - Restrictions removed</p> <p>Non Standard timings: A further additional hour into the terminal hour on – Friday, Saturday, Sunday, Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday, August Bank Holiday, Easter Bank Holiday, Thursday before Good Friday, Xmas Eve and Boxing Day</p> <p>New Year's Eve – From the end of permitted hours on New Year's to the start of permitted hours on New Year's Day</p>	<p>Additional 30 minutes for sale of alcohol on Friday and Saturday nights.</p> <p>Removal of restrictions on Christmas Day meaning the standard timings for the relevant day will apply.</p> <p>Non Standard timings: No change.</p>

11.00 a.m. on New Year's Eve to 10.30 p.m. on New Year's Day. New Year's Eve/Day to reflect existing hours.		
<u>Opening Hours</u> Monday to Thursday 08:00 - 23:30 Friday to Saturday 08:00 - 00:00 Sunday 09:00 - 23:00 Non Standard timings: None	<u>Opening Hours</u> Monday to Thursday 08:00 - 23:30 Friday to Saturday 08:00 - 00:30 Sunday 09:00 - 23:00 Non Standard timings: A further additional hour into the terminal hour on – Friday, Saturday, Sunday, Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday, August Bank Holiday, Easter Bank Holiday, Thursday before Good Friday, Xmas Eve and Boxing Day New Year's Eve – From the end of permitted hours on New Year's to the start of permitted hours on New Year's Day	Non Standard timings: - An additional hour on all days specified within the proposed non-standard timings. - Addition of extended hours on New Year's Eve

* The Panel should note that the playing of recorded music and performance of live music are de-regulated between the hours 0800 and 2300 hours and therefore fall outside of the jurisdiction of The Licensing Act 2003 unless part of a Review application under section 51.

3.3. Changes have also been proposed in relation to the plan of the premises, the full extent of which can be seen in the attached proposed plan that forms part of Appendix 3. The applicant describes these proposals as follows:

‘Our application seeks to amend the licensing plan which along with a general refurbishment includes the following proposed changes to the layout –

- Addition of fixed seating
- New screens
- Inclusion of food counter
- Creation of an external bar servery in the rear garden

The proposal is for the external bar servery to be included in the licensed area to permit the sale of alcohol from. We are seeking this in order to take the pressure off the main bar servery inside the premises at peak trading times, to facilitate social distancing, and to create a better customer experience.’

4. Relevant Representations

4.1. Responsible Authorities:

- 4.1.1. The Chief Officer of Police: Response received – no objection.
 - 4.1.2. The Licensing Authority: Response received – no objection.
 - 4.1.3. The Local Environmental Health Authority (Head of Environmental Health): Response received – no objection following amended application. **Appendix 5.**
 - 4.1.4. The relevant enforcing authority under the Health and Safety at Work etc. Act 1974: Response received – no objection.
 - 4.1.5. The Fire and Rescue Authority: Response received – no objection.
 - 4.1.6. The Local Planning Authority (Head of Sustainable Development): No response received.
 - 4.1.7. Weights and Measures Authority (Trading Standards Officer): No response received.
 - 4.1.8. The Safeguarding and Child Protection Unit: No response received.
 - 4.1.9. The Primary Care Trust: No response received.
 - 4.1.10. No responses were received from any other Responsible Authority.
- 4.2. **Any other persons:** Five (5) objections were received during the 28-day consultation process a copy of which are attached marked **Appendix 6.**
- 4.3. No letters of support were received.

5. Licensing Officer's Observations:

5.1. The Relevant Representations received raise the follows issues:

5.2. The prevention of public nuisance

Residents living nearby have expressed significant concerns in their representations about the potential for increased noise disturbance if this variation is granted. Residents feel that the addition of the outside bar/servery will lead to an increase of noise from the outside space as more patrons are encouraged to use the area. The extension of alcohol sales, opening hours and proposed non-standard timings are also opposed by residents as they feel this will result in an increase and extension of noise disturbance from the premises from both regulated entertainment and other noise associated with a premises of this nature.

5.3. The prevention of crime and disorder

Objectors have outlined their concern and opposition to the premises receiving the proposed extensions to its licence due to the anticipated increase in anti-social behaviour that is already experienced with the premises' current operating hours. Residents have detailed incidents such as public urination, and littering which has been linked to patrons

from the premises and feel that a longer duration of alcohol sales will increase such occurrences.

6. Policy Considerations

6.1. Regard must be given to the Council's Licensing Policy (last published 17th October 2017) when determining this application. Of particular relevance (but not limited to) are paragraph, 2.10 with regard to the Council's approach to licensing hours and noise control in the case of premises which are situated in largely residential areas;

2.10 In general, the Council will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence, stricter conditions are likely to be imposed with regard to noise control in the case of premises which are situated in largely residential areas, including premises which are licensed for and the supply of Alcohol both on and off the premises, and/or regulated entertainment.

6.2. Paragraphs 6.10 – 6.12 should also be considered, which detail the Council's approach to the prevention of nuisance objective:

6.10 The Council will protect the amenity of residents and businesses in the vicinity of licensed premises, and for these purposes 'vicinity' is taken to mean the immediate area around licensed premises.

6.11 The Council will 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.

6.12 At the same time the Council is aware of the importance of the licensed trade to the revitalisation of the local area. Accordingly, it will try and work together with other persons, statutory agencies and licensed businesses to ensure a mutual co-existence.

6.3. Regard must also be had to the national Guidance issued by the Home Office under Section 182 of the Licensing Act 2003, as amended. Of particular relevance is paragraphs 9.42 – 9.44 regarding the determination of applications that are appropriate for the promotion of the licensing objectives

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.

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.

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. 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.

6.4. Paragraphs 10.8 – 10.9 of the statutory guidance which relate to imposing conditions are also relevant and should be considered as part of determining this application. As are paragraphs 10.13 – 10.15 relating to hours of trading:

- 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.
- 10.9 It is possible that in some cases no additional conditions will be appropriate to promote the licensing objectives.
- 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 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.
- 10.14 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.
- 10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

7. Links to Council Policy Objectives

- 7.1. The Authority regards existing and future environmental qualities and character of the District to be important when consideration is given to granting licences for any purpose. When considering licensing applications where relevant representations have been made,

the Authority will consider its effect on the licensing objectives and in particular the effect the licence will have on the public nuisance objective.

8. Resources, Risk and Other Implication

8.1. **Resource:** The only resource implications to date has been officer time. If the applicant or persons making relevant representations appeals against the decision of the Licensing Sub – Committee, however, this would result in legal fees to defend the appeal and further costs. In the event of a successful appeal the Council may also have to pay the applicant/other party's costs.

Human Rights

8.2. The Panel should consider its responsibilities under the Human Rights Act when considering the fair balance between the interests of the applicant and the rights of local residents. Any decision taken must be appropriate and proportionate to the objective being pursued. In particular, the following should be taken onto consideration:

- Article 6 - the right to a fair hearing
- Article 8 - respect for private and family life
- Article 1 - First Protocol - peaceful enjoyment of possessions (which can include the possession of a licence).

8.3. Interference with these rights is acceptable within the terms of the Human Rights Act 1998 if it safeguards the rights of others, is legitimate, proportionate and balanced in that there is a need to find a fair balance between the protection of individual rights and the interests of the community at large – other than rights under Article 6 and 14 which are absolute rights and cannot be interfered with.

8.4. Therefore, if Members refuse to grant the application for a new Premises Licence in whole or part or grant it subject to conditions, this will be a breach of the rights of the Applicant unless such refusal (in full or part) is, and/or the conditions imposed are, appropriate, proportionate and can be justified, on balance, by being outweighed by the rights of the community at large to peaceful enjoyment of their property/possessions. Any restriction placed upon the Premises Licence must not go beyond what is strictly necessary to achieve its legitimate purpose in order to mitigate the interference with the rights of individuals within the community to the enjoyment of their property/possessions.

8.5. By taking into consideration all the material considerations relating to this application and balancing the interests/rights of all parties involved it is considered that the Licensing Sub-Committee's decision will be both proportionate and justified having had regard to the Human Rights Act 1998.

8.6. 8.6 The Equality Act 2010, including the Council's Public Sector Equality Duty, must be taken into account when making decisions in relation to licensing applications.

9. Determination by the Licensing Sub-Committee

9.1. The Sub Committee is obliged to determine applications in the light of the above and any other material considerations with a view to promoting the four licensing objectives.

- The prevention of crime and disorder

- The prevention of public nuisance
- The protection of children from harm
- Public safety

9.2. Regard must also be had to the Council's Licensing Policy, October 2017, Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended, relevant representations received and the evidence presented at the Hearing.

9.3. Each application must be considered on its own merits and any conditions attached to premises licences must be tailored to the individual style and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed, may be unlawful where they cannot be shown to promote the licensing objectives in any individual case.

9.4. The Sub Committee must avoid duplication of other legal requirements and should only impose conditions on a premises licence which are appropriate and proportionate for the promotion of the licensing objectives and where additional and/or supplementary measures are required in order to promote the licensing objectives.

9.5. The following options are available to the Licensing Sub Committee:

9.5.1. Grant the Variation Application in full or part - subject to any Conditions to be attached to the premises licence (which modify, or add to or vary the Conditions already imposed on it) which are consistent with the Operating Schedule and which are considered appropriate and proportionate for the promotion of the four licensing objectives in response to relevant representations received – and any relevant Mandatory Conditions.

On a “without prejudice” basis, a draft list of **proposed Conditions** is attached to this Report marked “The Schedule”.

9.5.2. Reject the whole of the Variation Application.

9.5.3. Grant the Variation Application subject to different conditions for different parts of the premises or licensable activities if this is considered appropriate and proportionate to promote the four licensing objectives and in response to the representations received).

9.6. The Sub-Committee is asked to note that

9.6.1. It may not reject the whole or part of the application or modify or add to or vary the existing conditions - merely because it considers it desirable to do so. It must be **appropriate and proportionate** in order to promote the four licensing objectives and be in response to the representations received. Full reasons must be given for the Sub-Committee's decision.

9.6.2. When determining the application to vary the Premises Licence consideration must be given to the effect of the variations proposed. Any modification or variation to

Conditions or any additional Conditions to be added to the Premises Licence must also be as a result of the effect of the variation if granted on the promotion of the four licensing objectives.

10. Conditions

- 10.1. No additional conditions or controls have been proposed by the applicant in respect of this variation.

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Background Papers:	Application reference 21/01179/LAPVA Licensing Act 2003, as amended Licensing Policy - Chiltern Area Published 2017. Home Office Guidance issued under Section 182 of the Licensing Act 2003, as amended.