

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	20 JULY 2009
TITLE OF REPORT:	APPLICATION FOR A VARIATION OF THE PREMISES LICENCE AT SAINSBURY'S, BROAD STREET, ROSS ON WYE, HR9 7YB – LICENSING ACT 2003
PORTFOLIO AREA:	ENVIRONMENT & CULTURE

CLASSIFICATION: Open

Wards Affected

Ross on Wye

Purpose

To consider an application for a variation of the premises licence relating to Sainsbury's, Broad Street, Ross on Wye, HR9 7YB.

Key Decision

This is not a Key Decision.

Recommendation

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- The steps that are necessary to promote the licensing objectives,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy

Key Points Summary

- Variation in existing hours to extend the period for the sale by retail of alcohol
- Addition of the licensable activity of Late Night Refreshment
- Two representations from interested parties
- No representations received from responsible authorities
- Hours of application do not match the hours the store will be open

Further information on the subject of this report is available from
Fred Spriggs – Licensing Officer 01432 383542

Options

- 1 a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003,
- b) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates,
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

Reasons for Recommendations

- 2 Ensures compliance with the Licensing Act 2003.

Introduction and Background

3 Background Information

Applicant	Sainsbury's Supermarket Limited 33 Holborn, London. EC1N 2HT.	
Solicitor	Winckworth Sherwood LLP	
Type of application: Review	Date received: 27/05/09	28 Days consultation 25/06/09

4 Current Licence

The current licence authorises the following licensable activity (off sales only) during the hours shown: -

Sale by retail of alcohol:

On weekdays, other than Christmas Day, 8 am to 11pm

On Sundays, other than Christmas Day, 10 am to 10.30 pm

On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm

On Good Friday, 8am to 10.30 pm, Sunday-Saturday: 10:00 - 00:00

5 Summary of Application

The application applies to vary the licence to include late night refreshment and the sale by retail of alcohol at the following times: -

Late Night Refreshment (Both indoors and outdoors): 23.00 - 24.00

(Further details: The applicant may elect not to open the store, or part(s) of the store, between these hours but wishes to have the flexibility to do provide late night refreshment should the store, or part(s) of the store, be open. The provision will take place inside the premises but customers may leave the premises with items purchased).

Sale by retail of Alcohol (Off the premises): 06.00 – 24.00.

(Further details: The applicant wishes to have the flexibility to sell alcohol at all times that the store or part(s) of the store, is open. The applicant may elect not to open the store, or part(s) of the store, from 6.00 to 24.00 every day.

6 **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

7 **Responsible Authorities**

No representations have been received from any of the responsible authorities.

8 **Interested Parties**

Two representations have been received from interested parties.

Other representations were received which were either out of time or considered not to be relevant representations.

9 One of the representees has supplied a copy of a newspaper article which shows that the premises only intends to open between 8am to 9pm.

Key Considerations

10 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

11 Section 17 (4) of the Licensing Act 2003 states that: -

An “operating schedule” is a document which is in the prescribed form and includes a statement of the following matters—

(b) the times during which it is proposed that the relevant licensable activities are to take place,

12 Guidance issued under Section 182 of the Licensing Act 2003 states at paragraphs: -

10.21. 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. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there.

And at paragraph: -

8.39 It should normally be possible for applicants for premises licences and club premises certificates to anticipate special occasions which occur regularly each year – such as bank holidays and St George’s or St Patrick’s Day – and to include appropriate opening hours in their operating schedules. Similarly temporary event notices should

be sufficient to cover other events which take place at premises that do not have a premises licence or club certificate.

The attention of the Committee is drawn to the stated case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

“Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

Community Impact

- 13 It is felt that whatever decision is made will have a minimal impact on the Community.

Legal Implications

- 14 Schedule 5 gives a right of appeal: -

Variation of licence under section 35.

4 (1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.

(2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.

(3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that any variation made ought not to have been made, or

(b) that, when 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 subsection (4)(a) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 35(5).

- 15 Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

Consultees

- 16 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.

- 17 A copy of the application was served on the responsible authorities. This was backed up by an

email sent to them by the Licensing Authority.

- 18 The notice of application was required to be displayed on the premises prior to the start of the consultation period and for a period of 28 days. In addition, notice of the application was required to be published in a newspaper which was circulated within the vicinity of the premises.
- 19 The applicant has failed to date to produce a copy of that advertisement.

Appendices

- 20
1. Application Form for Variations
 2. Public Representations
 3. Copy of newspaper article from the Ross Gazette

Background Papers

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford, 30 minutes before the start of the hearing.

NOTES

Licensing Authority's power to exercise substantive discretionary powers.

**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3)
The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.