

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>19 JULY 2012</b>
<b>TITLE OF REPORT:</b>	<b>APPLICATION FOR A VARIATION OF A CLUB PREMISES CERTIFICATE 'LEOMINSTER &amp; DISTRICT ROYAL BRITISH LEGION, SOUTH STREET, LEOMINSTER, HR6 8JQ' – LICENSING ACT 2003</b>
<b>PORTFOLIO AREA:</b>	<b>ASSISTANT DIRECTOR (EHTS) PEOPLE'S SERVICES DIRECTORATE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Leominster

### **Purpose**

To consider an application for the variation of a Club Premises Certificate in respect of 'Leominster & District Royal British Legion, South Street, Leominster, HR6 8JQ'.

### **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 **appropriate** 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**

- **Three (3)** representations from Responsible Authorities (Police, Trading Standards & Licensing Authority)

## 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	<b>Leominster &amp; District Royal British Legion, South Street, Leominster, HR6 8JQ'.</b>	
Representative	<b>N/K</b>	
Type of application: <b>New Application</b>	Date received: <b>28/05/2012</b>	28 Days consultation <b>24/06/2012</b>

### Licence Application

- 4 The application for a variation to the Club Premises Certificate has received representations and is therefore brought before the Regulatory Sub-Committee for determination.

### Current Licence

- 5 The current licence authorises:

Performance of a play: Annual Christmas pantomime (One performance on a Sunday during the Christmas/New Year period between 14:00 – 19:00)

A performance of live music

Friday-Saturday: 19:00 - 01:00  
Sunday: 19:00 - 23:30

Any playing of recorded music; Dancing; Other entertainment facilities;

Tuesday & Sunday: 19:00 - 23:30  
Friday-Saturday: 19:00 - 01:00

Making music

Wednesday & Sunday: 19:00 - 23:30  
Friday-Saturday: 19:00 - 01:00

Sale by retail of alcohol

Monday-Thursday, Sunday: 10:00 - 23:30  
Friday-Saturday: 10:00 - 01:00

Additional outside area licensed until 22.30 (as per plan submitted on 22.8.07)

Non Standard Timings:

Any playing of recorded music; A performance of live music; Dancing; Other entertainment facilities; Supply by retail of alcohol

A further additional hour into the morning following every: -

Friday, Saturday, Sunday and Monday for each May Bank Holiday, spring/Whitsun Bank Holiday and every August Bank Holiday weekend.

Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend.

Christmas Eve and Boxing Day.

Club Christmas Draw and party night 10.00 to 00.30 next day.

A performance of live music

Christmas draw and party night

Christmas Day 11.00 to 13.00, 19.00 to 22.30

Supply of alcohol: End of permitted hours on New years Eve until the start of permitted hours on New Years Day

Seasonal variations:

Performance of a play - Annual Christmas pantomime with live or recorded music. (One performance on a Sunday during the Christmas/New Year period between 14:00 – 19:00)

## Summary of Application

6 The application requests on the following hours and licensable activities:

Plays, Films, Indoor Sporting Events, Live Music, Recorded Music, Performance of Dance, Anything similar to Live/Recorded Music/Performance of Dance, Facilities for Making Music & Dancing, Facilities Similar to Making Music/Dance, Supply of Alcohol

Monday to Thursday 1800 – 2330

Friday & Saturday 1000 – 0200

Sunday 1000 – 2330

Non Standard Timings

All activities - End of authorised hours on New Years until the start of authorised hours on New Year's Day. On Sunday before a Bank Holiday until 0030 hours.

The application also asks to remove all existing conditions to be replaced with those shown within the application form.

## Summary of Representations

- 7 A copy of the representations can be found within the background papers.
- 8 Representations have been made by **Three (3)** Responsible Authorities (Trading Standards, Police, Licensing Authority)

## Key Considerations

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

## Community Impact

- 10 The granting of the licence as applied for may have an impact on the Community.

## Legal Implications

- 11 The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
- 12 The 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: -
- 13 A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.
- 14 Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.
- 15 This judgement is further supported in the case of The Queen on the Application of Bristol Council v Bristol Magistrates' Court, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:
- 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
- In addition to this it was stated that any condition attached to the licence should be an enforceable condition.
- 16 Schedule 5 gives a right of appeal to: -

Rejection of applications relating to club premises certificates

10 Where a licensing authority—

- (a) rejects an application for a club premises certificate under section 72, or

- (b) rejects (in whole or in part) an application to vary a club premises certificate under section 85,

the club that made the application may appeal against the decision.

#### Variation of club premises certificate

12(1) This paragraph applies where an application to vary a club premises certificate is granted (in whole or in part) under section 85.

(2) The club may appeal against any decision to modify the conditions of the certificate under subsection (3)(b) of that section.

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

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

(b) that, when varying the certificate, the licensing authority ought not to have modified the conditions of the certificate, or ought to have modified them in a different way, under subsection (3)(b) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 85(5).

#### General provision about appeals under this Part

15(1) An appeal under this Part must be made to a magistrates' court.

(2) An appeal under this Part must be commenced by notice of appeal given by the appellant to the designated officer for the magistrates' court within the period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

(3) On an appeal under paragraph 11(3), 12(3) or 13(2)(a) or (c), the club that holds or held the club premises certificate is to be the respondent in addition to the licensing authority.

## Consultees

- 17 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 18 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.
- 19 The notice of application was 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.
- 20 The applicant has produced a copy of the advertisement which is correct.

## **Appendices**

- 21     a.     Application Form  
       b.     Police Representation  
       c.     Trading Standards Representation  
       d.     Licensing Authority Representation

## **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.**