

<b>Meeting:</b>	<b>Regulatory Sub-Committee</b>
<b>Meeting date:</b>	<b>22<sup>nd</sup> August 2016</b>
<b>Title of report:</b>	<b>APPLICATION FOR THE VARIATION OF A PREMISES LICENCE IN RESPECT OF 'MUNCHIES, 59 COMMERCIAL ROAD, HEREFORD, HR1 1BP – LICENSING ACT 2003</b>
<b>Report by:</b>	<b>EMMA BOWELL – LICENSING TECHNICAL OFFICER</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Central Ward

## **Purpose**

To consider an application for the variation of a premises licence in respect of 'Munchies, 59 Commercial Road, Hereford, HR1 1BP.

## **Recommendation**

**That:**

**The 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 Statement of Licensing Policy 2015 - 2020.

## Options

1. There are a number of options open to the Sub-Committee:
  - a) Grant the licence variation 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 variation subject to modified conditions to that of the operating schedule where the committee considers it appropriate 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 reject the application.

## Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

## Key Considerations

3. **Licence Application**  
The application for a variation to the premises licence has received representation and is brought before the committee for determination.
4. The details of the application are:

Applicant	<b>Ardalan Ghafour</b> <b>59 Commercial Road, Hereford, HR1 2BP</b>	
Solicitor	Neil Coulson – Coulson Read Lewis Solicitors	
Type of application: <b>Variation</b>	Date received: <b>5<sup>th</sup> July 2016</b>	28 Days consultation ended <b>2<sup>nd</sup> August 2016</b>

5. **Summary of Application**  
The application requests To extend Late Night Refreshment  
Monday-Sunday: 23:00 - 03:30  
  
To amend the conditions relating to door staff from 22:00 start to 01:00 start
6. **Current Licence**  
The current licence authorises the following licensable activities during the hours shown:  
Late night refreshment: Monday - Sunday - 23:00 to 01:30

Non Standard Timings:

Until 04:30 on Bank Holidays at Spring Bank Holiday, May Day, Easter, August Bank Holiday, Christmas and New Year

Conditions:

On Friday and Saturday nights from 10.00 pm, two SIA Licensed Door Supervisors will be employed at the premises until the termination of licensable activities. When employed externally door staff shall wear high visibility reflective jackets or vests.

The Premises Licence Holder will employ SIA door staff at other times when risk assessments dictate door supervision to be necessary.

7. **Summary of Representations**

A copy of the representations can be found within the background papers.

Representations have been made by:

**Two (2)** of the Responsible Authorities (**Licensing Authority and the Police**). Both have submitted an outright objection.

8. The matter is therefore brought before Committee for determination.

**Community Impact**

9. Any decision is unlikely to have any impact on the local community.

**Equality duty**

10. There are no equality or human rights issues in relation to the content of this report.

**Financial implications**

11. There are unlikely to be any financial implications for the authority at this time.

**Legal Implications**

12. 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.

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: -

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.

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.

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.

The case of Luminar Leisure Ltd v Wakefield Magistrates' Court, Brooke Leisure Limited, Classic Properties Limited, Wakefield Metropolitan District Council, heard before the High Court of Justice, Queen's Bench Division The Administrative Court, 18 April 2008, [2008] EWHC 1002 (Admin) would appear to be relative in this matter.

This matter involved an application by Luminar for a nightclub which was located just outside the Wakefield Cumulative Impact Area. The application was granted by the Local Authority and that decision was subsequently appealed.

The judge allowed the appeal on the grounds 'because of the effect which the increase in the number of people attending such a venue in Westgate would have, generally, on crime and disorder in the area'.

The matter was further appealed to the High Court by way of case stated.

Three questions were posed for the Judge to address. The last question asked was 'Was it a proportionate response to refuse the licence rather than to impose conditions on any licence?'

In respect of this it was stated 'To put a limit on the extent to which cumulative impact is legally relevant is something which seems to me not to be permitted by the statute. But with all that this condition was not sought. So the answer to question 3 is "yes"'.

The stated case of 'The Queen on the application of JD Wethersoon PLC v Guildford Borough Council which appeared in front of the Honourable Mr Justice Beatson at the Queens Bench Division Administrative Court on 11<sup>th</sup> April 2006 at paragraph 73 stated:

'The guidance provides that, where a cumulative impact policy is so adopted, there will be a rebuttable presumption that applications for new premises licences or material variations will normally be refused. To that extent, where there is such a policy, the guidance must permit an individual application to be considered on the basis of the rebuttable presumption so that the burden of proof lies on the applicant. In any event, if an area is so affected by serious alcohol related crime that the evidential basis for the special policy exists, requiring an applicant for a variation of the hours of premises in the area to demonstrate that the variation would not add to the area's problems does not mean that the "merits" of the application are not considered. A reversed burden of proof does not preclude consideration of the "merits" of an application.

## Right of Appeal

13. Schedule 5 gives a right of appeal which states:

### ***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).

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.

## Risk Management

14. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court.

## Consultees

15. All responsible authorities and members of the public living within Herefordshire.

## Appendices

- a) Application Form
- b) Police Objection
- c) Local Authority Objection

## Background Papers

None.