

Meeting:	Regulatory Sub-Committee
Meeting date:	22nd August 2016
Title of report:	APPLICATION FOR THE VARIATION OF A PREMISES LICENCE IN RESPECT OF 'COTTERELL STREET STORES, 87 COTTERELL STREET, HEREFORD. HR4 0HJ – LICENSING ACT 2003
Report by:	EMMA BOWELL – LICENSING TECHNICAL OFFICER

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Greyfriars

Purpose

To consider an application for the variation of a premises licence in respect of 'Cotterell Street Stores, 87 Cotterell Street, Hereford. HR4 0HJ

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	Rajeetha Rajaguru of 87 Cotterell Street, Hereford. HR4 0HJ	
Solicitor	Not Known	
Type of application: Variation	Date received: 1st July 2016	28 Days consultation ended 28th July 2016

5. **Summary of Application**

The application requests To extend Sale/Supply of Alcohol (for consumption off the premises) Mon – Sun 06:00-23:00

6. **Current Licence**

The current licence authorises the following licensable activities during the hours shown:

Sale/Supply of Alcohol (for consumption off the premises)

Mon-Sat 08:00-23:00

Sun 10:00-22:30

Christmas Day
12:00 – 15:00
19:00 – 22:30

Good Friday
08:00 – 22:30

Non Standard Timings:
None

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 (**Trading Standards and the Police**). Both have submitted representations that have not been acknowledged by the applicant.

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.

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 Representation
- c) Trading Standards Representation

Background Papers

None.