

Meeting:	Regulatory sub-committee
Meeting date:	10 April 2017
Title of report:	To consider an application for a variation of a premises licence in respect of 'The Golden Galleon, 61 Commercial Road, Hereford, HR1 2BP' – Licensing Act 2003.
Report by:	Licensing officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Central

Purpose

To consider an application for a variation of a premises licence (appendix A) in respect of 'The Golden Galleon, 61 Commercial Road, Hereford, HR1 2BP.

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) to modify the conditions of the licence;
 - (b) to reject the whole or part of the application.

Reasons for recommendations

2. Ensures compliance with the Licensing Act 2003.

Key considerations

Licence application

3. The application for a variation of the premises licence has received relevant representations and is brought before the committee for determination. A copy of the current premises licence is attached as appendix D
4. The details of the application are:

Applicant	Harjinder Singh 61 Commercial Road, Hereford. HR1 2BP	
Solicitor	Michael Jones	
Type of application:	Date received:	28 days consultation ended
Variation	14 February 2017	13 March 2017

Summary of application

5. The application requests a variation of the premises licence to allow the following licensable activities, during the hours shown as follows:

Late Night Refreshment (Indoors)

All days 23:00 – 03:30

Non Standard Timings:

None

Current hours

6. Late Night Refreshment (Indoors)

All days 23:00 – 03:00

Summary of representations

7. One (1) representation has been received from the responsible authorities (licensing authority) (appendix B) who object to the licence being granted.
8. The matter is brought before sub-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 issues in relation to the content of this report.
11. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.
12. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Financial implications

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

Legal Implications

14. The statutory framework relating to variations to premises licences is contained in Section 34 and Section 35 of The Licensing Act 2003. Where relevant representations are made the licensing authority must hold a hearing, unless such a hearing is considered unnecessary and having regard to the relevant representations take such steps as it considers are "appropriate" for the promotion of the licensing objectives.
15. The steps are to i) modify the conditions on the licence or ii) reject the whole or part of the application.
16. In exercising its functions as the authority should have regard to the need to promote the four licensing objectives under section 4 of the Licensing Act 2003, the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy.
17. 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.
18. 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.

19. 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.

20. 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.

21. 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'.

22. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Guidance Issued under Section 182

23. 8.34 *Applicants are, in particular, expected to obtain sufficient information to enable them to demonstrate, when setting out the steps they propose to take to promote the licensing objectives that they understand:*

- *the layout of the local area and physical environment including crime and disorder hotspots, proximity to residential premises and proximity to areas where children may congregate;*
- *any risk posed to the local area by the applicants' proposed licensable activities; and*
- *any local initiatives (for example, local crime reduction initiatives or voluntary schemes including local taxi-marshalling schemes, street pastors and other schemes) which may help to mitigate potential risks.*

8.35 *Applicants are expected to include positive proposals in their application on how they will manage any potential risks. Where specific policies apply in the area (for example, a cumulative impact policy), applicants are also expected to demonstrate an understanding of how the policy impacts on their application; any measures they will take to mitigate the impact; and why they consider the application should be an exception to the policy.*

8.36 *It is expected that enquiries about the locality will assist applicants when determining the steps that are appropriate for the promotion of the licensing objectives.*

Relevant, vexatious and frivolous representations

9.4 *A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. a number of conditions none of the above issues have been addressed.*

Statement of Licensing Policy – Special Cumulative Impact

24. This premises is in Commercial Road, Hereford and are therefore subject to the above policy (appendix C) that provides;

A10 *The effect of the Cumulative Impact Policy is that it creates a rebuttable presumption that application within the cumulative impact area will normally be refused: -*

Where relevant representations are received against any:

- *New applications for Premises Licences, Club Premises Certificates or Provisional Statement, or Variation applications for an existing Premises Licences or Club Premises Certificates*

Where the police have issued an objection notice in respect of a Temporary Event Notice

A11 *However, this Policy will not prevent applications in the above areas. Each case will be decided on its own merits, but applicants will have to comprehensively demonstrate in their application that it will not add to existing problems in the area.*

25. Regard should be had to the above provisions as well as the other matters outlined in this report in the determination of this application

Right of appeal

26. Schedule 5 gives a right of appeal to the Magistrates Court where the Sub-Committee refuse to grant the application to vary the premises licence in whole or part or against the modification of the conditions. Further there is also a right of appeal for those who have made relevant representations against the grant of the variation application or in relation to the modifications made/or not made in relation to the conditions on the premises licence. Any appeal must be made 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.

Risk management

27. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

Consultees

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

Appendices

Appendix A - application form

Appendix B - local authority representation

Appendix C - Herefordshire Council's - special cumulative impact policy

Appendix D – current premises licence

Background Papers

None