

Meeting:	Licensing sub committee
Meeting date:	23 January 2018
Title of report:	Application for a variation of a premises licence in respect of: Jacqueline's Nite Spot and JD's Bar, 24 Broad Street , Ross on Wye, HR9 7ED – Licensing Act 2003
Report by:	Licensing Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Ross West

Purpose

To consider an application for a variation of a premises licence in respect of 'in respect of: Jacqueline's Nite Spot and JD's Bar, 24 Broad Street , Ross on Wye, HR9 7ED.

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;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

Licence Application

3. The application (appendix 1) for a variation of the premises licence has received representation and is brought before the committee for determination.
4. The details of the application are:

Applicant	Miss Charmaine Nicola Danter Jacqueline's Nite Spot And JD's Bar, 24 Broad Street Ross-On-Wye, HR9 7ED	
Solicitor	N/K	
Type of application: Variation	Date received: 7 December 2017	28 Days consultation ended 3 January 2018

Summary of Application

5. The application requests a variation to the premises licence as follows:

Live music, Recorded music, A performance of dance, Other regulated entertainment
(All indoors), Sale by retail of alcohol (On & Off premises)

Monday to Thursday 1100 – 0100
Friday & Saturday 1100 – 0300
Sunday 1100 – 0030

Late night refreshment
Monday to Thursday 2300 – 0100
Friday & Saturday 2300 – 0300
Sunday 2300 – 0030

Non Standard Timings:
Bank Holiday Sunday 1100 to 0200
Christmas Eve 11:00 – 02:00

New Year's Eve from the end of permitted time until the start of permitted time on New Year's Day.

In addition the applicant requests to remove all old conditions and replace them with conditions as contained within the application.

Current Licence

6. The current licence (appendix 2) authorises the following licensable activities during the hours shown:

Live music, Recorded music, A performance of dance, Other regulated entertainment (All indoors), Sale by retail of alcohol (On & Off)

Monday-Thursday: 11:00 – 01:00

Friday, Saturday: 11:00 - 02:00

Sunday and Easter Sunday until 00:30

Sale of alcohol and late night refreshment -

Jacqueline's Nitespot (ON)

Monday – Thursday: 23:00 – 01:00

Friday and Saturday: 23:00 – 02:00

Sunday: 19:00 – 00:30

JD's Bar and Jacqueline's Nitespot (Restaurant)

(1) On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10 am to 12midnight.

(2) On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12 noon to 11:30pm

(3) On Christmas Day: 12 noon to 11:30pm; For residential licence only from 12 noon to 10.30 with a break of four hours beginning at 3pm.

(4) On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

Summary of Representations

7. Three (3) representations have been received from the responsible authorities (environmental protection - appendix 3, trading standards – appendix 4, West Mercia Police – Appendix 5, Two (2) representations been received from the public (Appendices 6 and 7).
8. The representations from the three responsible authorities have all been agreed.

Community Impact

9. Any decision is unlikely to have any significant effect of the local community.

Equality duty

10. 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.

11. 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.
12. There are not considered to be any equalities implications arising from this report.

Financial implications

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

Legal Implications

14. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm in exercising its functions under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the council's own statement of licensing policy.
15. The options available to the licensing authority on considering this application under the Licensing Act 2003 are set out in section 1 of this report.
16. 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.
17. 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.
18. 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. It should be noted that hearsay evidence is admissible in the context of making decisions on licensing matters,
19. 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'.
20. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

21. There is a right of appeal to the Magistrates Court within 21 days of being notified in writing of the decision

Risk Management

22. 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

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

Appendices

- Appendix 1 - Application for a variation of a premises licence
- Appendix 2 - Current premise licence
- Appendix 3 - Environmental protection representation
- Appendix 4 - Trading standards representation
- Appendix 5 - West Mercia Police representation
- Appendix 6 - Public representation
- Appendix 7 - Public representation

Background Papers

The Section 182 and the council's statement of licensing policy.