

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	26 APRIL 2011
TITLE OF REPORT:	APPLICATION FOR VARIATION OF A PREMISES LICENCE 'MALTHURST NORTHSIDE SERVICE STATION, HEREFORD ROAD, HOPE UNDER DINMORE HR6 0PJ.' - LICENSING ACT 2003
PORTFOLIO AREA:	ENVIRONMENTAL HEALTH & TRADING STANDARDS

CLASSIFICATION: Open

Wards Affected

Hampton Court

Purpose

To consider an application for the variation of a premises licence in respect of the 'Malthurst Northside Service Station, Hereford Road, Hope under Dinmore, HR6 0PJ.'

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 necessary 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

- The police have made representation as a Responsible Authority
- One (1) representation from members of the public

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	Malthurst Limited Vincent House, 4 Grove lane, Epping CM16 4LH	
Solicitor	Winkworth Sherwood LLP Minerva House, 5 Motague Close, London, SE1 9BB	
Type of application: Variation Application	Date received: 05/03/2011	28 Days consultation 01/04/2011

Licence Application

- 4 The application for a variation to the premises licence has received representation and is brought before the committee for determination.

Current Licence

- 5 The current licence authorises: -

Sale by retail of Alcohol:

Monday – Saturday 08:00 – 23:00

Sunday 10:00 - 22:30

Non Standard Hours: None

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

Good Friday 08:00 – 22:30

Summary of Application

6 The application requests:

i) The hours be extended as follows:

Sale by retail of Alcohol (Off premises):
Monday – Sunday 00:00 – 24:00

ii) Removal of the restrictions relating to:

Christmas Day 12:00 – 15:00 and 19:00-22:30
Good Friday 08:00 – 22:30

iii) Addition of the following licensable activity:

Provision of Late Night Refreshment (both indoors and outdoors)
Mon – Sun 2300 – 0500

iv) Removal of the embedded restrictions in Annex 2 of the licence – ‘Conditions consistent with the operating schedule’ and all references to embedded restrictions.

v) Include in Annex 2 – the conditions in boxes b to e of Section P of the operating schedule

Summary of Representations

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

8 Representation has been made by:
The Police
One (1) member of the public

Key Considerations

9 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 necessary 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.

Clarification on a particular point

To assist with the hearing, the authority will want clarification on the following point(s): -

The Licensing Authority will require evidence to show that the premises are not an ‘excluded premises’ as defined in Section 176 of the Act.

Clarification is required of the term ‘adequate’ used in relation to ‘levels of staff’ under Public Safety and ‘waste receptacles’ under The Prevention of Public Nuisance.

Clarification is required in relation to the level and nature of training provided to cashiers under the Protection of Children from Harm.

You are invited to offer enforceable conditions in relation to Public Safety, The Prevention of Public Nuisance and Protection of Children from Harm.

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 *Murco Petroleum Limited - v - Bristol City Council* (Case No: CO/14774/2009) in the High Court of Justice, Queen's Bench Division Administrative Court on 24 June 2010 Before : MR JUSTICE CRANSTON

- 13 A High Court case that clarified the interpretation of s176 of the Licensing Act 2003:

176 Prohibition of alcohol sales at service areas, garages etc.

(1) No premises licence, club premises certificate or temporary event notice has effect to authorise the sale by retail or supply of alcohol on or from excluded premises.

(2) In this section "excluded premises" means—

(a) premises situated on land acquired or appropriated by a special road authority, and for the time being used, for the provision of facilities to be used in connection with the use of a special road provided for the use of traffic of class I (with or without other classes); or

(b) premises used primarily as a garage or which form part of premises which are primarily so used.

(3) The Secretary of State may by order amend the definition of excluded premises in subsection (2) so as to include or exclude premises of such description as may be specified in the order.

(4) For the purposes of this section—

(a) "special road" and "special road authority" have the same meaning as in the Highways Act 1980 (c. 66), except that "special road" includes a trunk road to which (by virtue of paragraph 3 of Schedule 23 to that Act) the provisions of that Act apply as if the road were a special road,

(b) "class I" means class I in Schedule 4 to the Highways Act 1980 as varied from time to time by an order under section 17 of that Act, but if that Schedule is amended by such an order so as to add to it a further class of traffic, the order may adapt the reference in subsection (2)(a) to traffic of class I so as to take account of the additional class, and

(c) premises are used as a garage if they are used for one or more of the following—

(i) the retailing of petrol,

(ii) the retailing of derv,

(iii) the sale of motor vehicles,

(iv) the maintenance of motor vehicles.

The court also addressed the issue of the power of licensing sub-committees to make enquiries of the applicant at licensing hearings, and to adjourn decisions under s12 of the

Hearings Regulations.

Key points:

Primary use and trading information

* If the licensing authority's discretion is engaged by the submission of a relevant representation, the licensing sub-committee is entitled to request information from the applicant regarding primary use of the premises. (In this case the information sought related to trading information relevant to the issue of "excluded premises" under s176 LA03.

* As a matter of law, trading figures can be used to determine the issue of primary use under s176 LA03.

Procedural issues: questions at the hearing; adjournments

* The sub-committee is entitled to ask questions regarding the application at the hearing itself, as s17 of the Hearings Regulations permits the sub-committee to ask any question of any party (i.e. the sub-committee is not limited to the questions that may have been set out in advance within the notice of hearing under regulations 6 and 7 of the hearings regulations.

* If the information supplied by the applicant does not satisfactorily address the authority's question, then an adjournment to a specified date is permitted under s12 Hearings Regulations.

* A further adjournment to a specified date if the requested information is still not provided by the applicant is also valid under s12 of the regulations, meaning that a sub-committee is entitled to adjourn the matter until the information is provided.

* In contrast, a general adjournment (i.e. with no specific date) would not be valid.

- 14 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: -

- 15 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.
- 16 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.
- 17 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.

- 18 Schedule 5 gives a right of appeal to: -

Rejection of applications relating to premises licences

1 Where a licensing authority—

- (a) rejects an application for a premises licence under section 18,

- (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
- (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
- (d) rejects an application to transfer a premises licence under section 44,
the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2(1) This paragraph applies where a licensing authority grants a premises licence under section 18.

(2) The holder of the licence may appeal against any decision—

(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section,
or

(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

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

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 18(6).

19 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.

Consultees

20 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.

21 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.

22 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.

23 The applicant has produced a copy of the advertisement but this cannot be verified at this time as no newspaper or date is shown on the cutting.

Appendices

- 24 a. Police representation
- b. Application Form
- c. Public Representation
- d. LACORS guidance

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.