

**MINUTES of the meeting of Regulatory Sub Committee held at Committee Room1, The Shire Hall, St Peter's Square, Hereford, HR1 2HX on Friday 22 January 2016 at 11.00 am**

**Present:**

**Councillors: BA Baker, DW Greenow and PJ McCaull**

**9. ELECTION OF CHAIRMAN**

Councillor DW Greenow was elected as Chairman for the Regulatory Sub-Committee hearing.

**10. DECLARATIONS OF INTEREST**

There were no declarations of interest made.

**11. APPLICATION FOR THE VARIATION OF A PREMISES LICENCE IN RESPECT OF YATES, 58 COMMERCIAL ROAD, HEREFORD, HR1 2BP - LICENSING ACT 2003**

In considering this application brought by Stonegate Pub company Ltd for a variation to the premises licence in respect of Yates, Commercial Road, Hereford, we have read all of the papers placed before us and heard representations from solicitor for the applicant (Mr Grimsey) and solicitor (Mr Whur) for the interested party Ms Rogers, Mr Firth (a further interested part) and Licensing Officers Fred Spriggs and Claire Corfield.

The sub Committee have determined the application with a view to promoting the licensing objectives in the overall interests of the local community and have given appropriate weight to the following:-

- a) Steps appropriate to promote the licensing objectives
- b) Representations ( including supporting information) presented by all parties
- c) Guidance issued to local authorities under Sec 182 Licensing Act 2003 and
- d) Herefordshire Council Statement of Licensing Policy 2015-2020

The Committee have considered the following options:-

1. 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
2. Grant the licence 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
3. To exclude from the scope of the licence any of the licensable activities to which the application relates
4. To refuse to specify a person in the licence as the premises supervisor or
5. To reject the application

With regard to the Special Cumulative Impact Policy A1 of which provides “ The Council recognises that the cumulative effect of licensed premises may result in adverse effects on the licensing objectives and amenity and this in turn may have a number of undesirable consequences for example an increase in crime against both property and persons, an increase in noise and disturbance to residents and traffic congestion and/or parking difficulties, littering and fouling. The licensing policy is not the only means of addressing such problems.

In particular we have considered A10 which states that the effect of the Cumulative Impact Policy is that it creates a rebuttable presumption that an application within the cumulative Impact area will normally be refused:-

1. Where relevant representations were received including variation of existing Premises Licences
2. Where the police have issued an objection notice in respect of TEN

Para A11 provides that this policy will not prevent applications in the above areas and 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.

The Committee in reaching their decision also considered paragraph 13.36 of the Cumulative Impact Policy and concluded that the interested parties had not shown that the grant of the application would undermine any of the licensing objectives.

The Committee took particular note of paragraph 9.41 to 9.43 of the Guidance issued under Section 182 and in particular 9.43.

We have carefully considered the case of Daniel Thwaites, in particular paragraph 63, and Wirral Mags Court 2008 which states 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 decision. We have also been referred to the case of Luminar leisure Ltd v Wakefield magistrates Court heard in the High Court on 18 April 2008 where the question asked was "Was it a proportionate response to refuse the licence rather than to impose conditions on any licence?" The case of The Queen on the application of JD Wetherspoon PLC v Guildford Borough Council 11 April 2006 states at paragraph 73 "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.

### Decision

The permitted hours for the sale of alcohol, regulated entertainment and late night refreshment be authorised until 0200 hours on all days – approved

That films and recorded music be permitted from 0700 hours on all days of the week – approved

That the opening hours be extended until 0230 hours on all days – approved

To remove the existing conditions shown in Annex 2 of the licence and replace them with the conditions shown in the application - approved

To have an additional hour on St Georges Day, St Patricks Day, St Andrews Day, burns night, Valentines Day, Halloween, Friday, Saturday and Sunday preceding a Bank Holiday Monday, Maundy Thursday, Christmas Eve, Christmas Day, Boxing Day 27<sup>th</sup>, 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> December, Bonfire Night and New Year's Day, On the commencement of British Summer Time – this is not approved

### Reasons for decision

The evidence of Mr Paul Neades was accepted and the Committee heard evidence that

- a) There has been no involvement from Environmental Health but if there were any issues re noise pollution Mr Neades and the company would be more than happy to meet to alleviate any difficulties
- b) That there is a good working relationship with the Police and for the last 10 months since the hours have been extended there has been no additional impact on the area
- c) A sophisticated music system has been introduced which can be zoned to manage music levels and the doors to the front of the premises have been fitted with automatic closing mechanisms and all external doors have incumbent rubber strips to prevent noise breakout.
- d) Mrs Rogers had commissioned a noise report in respect of the premises and it was noted that this had taken place on 21/22 March 2015. It was also noted that further work had been undertaken on the premises to prevent noise breakout.
- e) Yates do not empty their skips in the early hours of the morning
- f) Regular liaison takes place with local residents by way of meetings and their views are carefully considered and taken on board
- g) It was noted that the premises had operated until 2am since the end of March 2015 and that a Freedom of Information request had shown that no complaints had been received since the new hours had been in operation. The Committee also heard from Mr Firth who was one of the original objectors who confirmed that since the new hours had been granted it had not caused him any problems.

With regard to the evidence of Ms Rogers we heard that she owns residential property above the property which she has both lived in and rented out and that she has had to deal with noise from the venue in the past. Her evidence is that noise and nuisance is created and that she would prefer the hours to be brought back to midnight rather than extended to 2am. She fears that an extension of the hours will cause additional disruption and nuisance and she is concerned that Yates will be regarded by the public as a replacement to a nightclub in the area which has recently closed.

We are not persuaded by these arguments and can see no actual evidence that this is the case.

The meeting ended at Time Not Specified

**CHAIRMAN**