

APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF '37 COMMERCIAL STREET, HEREFORD, HR1 2BS.' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Herford

1 Purpose

To consider an application for a new premise licence in respect of 37 Commercial Road, Hereford, HR1 2BS.

2 Background Information

Applicant	Erkan VARLI	
Solicitor	National Association of Turkish Restaurants, Supermarkets & Take Aways	
Type of application:	Date received:	28 Days consultation:
New	17 October 2008	13 November 2008

The advertisement for the premise has been seen and is correct.

3 Summary of Application

The licensable activities applied for are: -
Provision of Late Night Refreshment (Indoors):
All days of the week 23:00 – 04:00

4. The premises to be open to the public: -
All days of the week 12:00 – 04:00

5. Non Standard hours

No application has been made for 'non-standard' hours in respect of the licensable activity.

6. Summary of Representations

Copies of the representations and suggested conditions can be found within the background papers.

West Mercia Police

An extensive representation has been received and they request that the Authority refuse the application as it is within the 'cumulative impact area'.

Environmental Health

The Environmental Health Officer has made an extensive representation and objects to the grant of the licence.

Fire Authority.

The fire authority has no comment to make in relation to the application.

Interested Parties.

One representation has been received from the Hereford City Partnership who represent local businesses; they raise a number of issues. They ask that the Licensing Authority refuse the licence.

7. Other Issues

The application refers to premises that are within this Authorities 'Cumulative Impact Area'.

In respect of this the Authority has a Special Policy (Appendix 1). This was last reviewed and consulted on in the Autumn of 2007.

In addition to this the matter is covered within the 'Guidance Notes' issued under Section 182 of the Licensing Act 2003 (Appendix 2).

8. Committees Responsibility

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must 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
- The Herefordshire Council Licensing Policy

9. Options: -

It is for the committee to take such steps below as it considers necessary for the promotion of the licensing objectives:

- 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.
- 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 condition set out in the Licensing Act 2003.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

10. Background Papers

- a. Environmental Health & Trading Standards Comments
- b. Police Representations
- c. Copy of the Application Form
- d. Location plan

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

Appendix 1

SPECIAL POLICY

1. There is a concentration of licensed premises in the Commercial Road Area of Hereford City which are already causing a cumulative and detrimental impact on the following licensing objectives:
 - The prevention of crime and disorder
 - Public Safety
 - The prevention of public nuisance
2. The specific areas made the subject of this special policy are as follows:-
 - The full length of Commercial Road from its junction with Blueschool Street to its junction with Aylestone Hill.
 - 100 metres of Blueschool Street, West from its junction with Commercial Road.
 - 50 metres of Bath Street, East from its junction with Commercial Square.
 - 50 metres of Commercial Street, South from its junction with Commercial Square.
 - 50 metres of Union Street, South from its junction with Commercial Square.
3. The Council has a Special Policy of refusing new licences whenever it receives relevant representations about the cumulative impact that it concludes should lead to refusal.
4. These conclusions will be drawn from an evidential basis. Consideration of the adoption of a Special Policy include:
 - Identification of concern about crime and disorder and public nuisance;
 - Consideration of whether it can be demonstrated that crime and disorder and nuisance are arising and are caused by the customers of licensed premises, and if so identifying the area and the boundaries of the area from which the problems are arising; or that risk factors are such that the area is reaching a point where a cumulative impact is imminent.
5. The effect of this is to create a rebuttal presumption that applications for new premises or material variations will normally be refused if relevant representations to that effect are made unless it can be demonstrated that the operation of the premises will not add to the cumulative impact already being experienced. The Special policy does not relieve responsible authorities or interested parties of the need to make a relevant representation.
6. Special Policies will be reviewed regularly to assess if they are still needed or if they require expansion.

Appendix 2

THE CUMULATIVE IMPACT OF A CONCENTRATION OF LICENSED PREMISES

What is cumulative impact?

- 13.24 “Cumulative impact” is not mentioned specifically in the 2003 Act but means in this Guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.
- 13.25 In some areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport. Queuing in turn may be leading to conflict, disorder and anti-social behaviour. While more flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater in these cases than the impact of customers of individual premises. These conditions are more likely to occur in town and city centres, but may also arise in other urban centres and the suburbs.

Effect of special policies

- 13.29 The effect of adopting a special policy of this kind is to create a rebuttable presumption that applications for new premises licences or club premises certificates or variations that are likely to add to the existing cumulative impact will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.
- 13.30 However, a special policy must stress that this presumption does not relieve responsible authorities or interested parties of the need to make a relevant representation, referring to information which had been before the licensing authority when it developed its statement of licensing policy, before a licensing authority may lawfully consider giving effect to its special policy. If there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.
- 13.31 Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or need expanding.
- 13.32 The absence of a special policy does not prevent any responsible authority or interested party making representations on a new application for the grant, or variation, of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.

Guidance Notes

RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

- 9.8 A representation would only be “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 businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.
- 9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.
- 9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.
- 9.11 Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgment. This may be difficult for ward councilors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councilor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.12 The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

Licensing Authorities power to exercise substantive discretionary powers.**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.