

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	5 AUGUST 2009
TITLE OF REPORT:	APPLICATION FOR GRANT OF PREMISES LICENCE 'JAMSTAND 2009, CAROLINE SYMONDS GARDENS, ROSS ON WYE.' - LICENSING ACT 2003
PORTFOLIO AREA:	ENVIRONMENT & CULTURE

CLASSIFICATION: Open

Wards Affected

Ross on Wye

Purpose

To consider an application for a premises licence in respect of the Jamstand 2009, Caroline Symonds Gardens, Ross on Wye.

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

- One off premises licence.
- Licensed for 3 days (7 August to 9 August 2009).
- Licensed for up to 4,999.

Further information on the subject of this report is available from
Fred Spriggs – Licensing Officer 01432 383542

- Representations from Responsible Authorities which have not been withdrawn.
- Four representations from interested parties.

Options

- 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	Jack Baldus	
	Linfield House, Gloucester Road, Ross on Wye. HR9 5LR	
Solicitor	N/A	
Type of application:	Date received:	28 Days consultation
New Application	22/06/09	19/07/09

Licence Application

- 5 The application for a new premises licence has received representations from the Environmental Health Officers (EHOs), the Police and 4 local residents.

Summary of Application

- 6 The application is for a time limited licence to operate between 7th August and 9th August 2009.
- 7 The licensable activities applied for (all indoors and outdoors) are as follows during the times shown: -

Live music, recorded music, performance of dance, provisions for making music and provision of facilities for dancing: -

Friday (7 Aug); 13:30 – 00:00

Saturday (8 Aug); 12:00 – 01:00

Provision of late night refreshment: -

Friday (7 Aug); 23:00 – 01:00

Saturday (8 Aug); 23:00 – 02:00

Sale by retail of alcohol: -

Friday (7 Aug); 12:00 – 00:00

Saturday (8 Aug); 12:00 – 01:00

Premises to be open to the public: -

Friday (7 Aug); 12:00 – 01:00

Saturday (8 Aug); 11:00 – 02:00

Summary of Representations

- 8 Copies of the representations and suggested conditions can be found within the background papers.
- 9 Representations have been received from the Environmental Health Officer (Pollution), the Environmental Health Officer (Commercial) and the Police

Interested Parties

- 10 Four representations were received from interested parties, all who are local residents.

Key Considerations

- 11 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

- 12 The attention of the Committee is drawn to the stated 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: -

“Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

Community Impact

- 13 The decision made will have differing impacts on the Community. If the application was to be granted it is difficult to gauge the extent of the impact. If the application was to be refused then clearly this will affect the large number of people who are likely to attend the event.

Legal Implications

- 14 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).

- 15 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

- 16 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 17 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.
- 18 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.
- 19 The applicant has produced a copy of that advertisement which complies with the legislation.

Appendices

- 20 a. Application Form
- b. Public Representations
- c. Representations from EHO Officers
- d. Police representation

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.

NOTES

Licensing Authority's 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.