

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	15 SEPTEMBER 2009
TITLE OF REPORT:	APPLICATION FOR GRANT OF PREMISES LICENCE 'ARTE, 48-50 ST OWENS STREET, HEREFORD, HR1 2PU.' - LICENSING ACT 2003
PORTFOLIO AREA:	ENVIRONMENT & CULTURE

CLASSIFICATION: Open

Wards Affected

Hereford Central

Purpose

To consider an application for a premises licence in respect of the 'Arte', 48-50 St Owens Street, Hereford, HR1 2PU.

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

- Application for premises licence to replace 2 existing licences
- 4 Public Representations against the application
- 6 Public Representations in support of the application
- Representations from Environmental Health Pollution, a responsible authority

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	Miro Catering Ltd 14 – 15 Union Street, Hereford. HR1 2BT.	
Solicitor	Nil	
Type of application: New Application	Date received: 27/07/09	28 Days consultation 24/08/09

Premises History

- 4 The premises are currently licensed by two premises licences.
- 5 The area of the premises which fronts onto St Owen Street is covered by a licence issued under the name of Doodies, 48/50 St Owens Street, Hereford. This current licence was issued 31 October 2007. This licence covers the ground floor of the premises. A copy of this licence is attached within the background papers.
- 6. The second licence covers that area of the premises which fronts Cantilupe Street and was issued on 30 April 2008 under the name of 'Arte' 48/50 St Owen Street. This licence covers both the ground and first floor. A copy of this licence is attached within the background papers.

Licence Application

- 7 The application for a new premises licence has received representations and is brought before the committee for determination.

Summary of Application

- 8 The application is for Plays, Films, Live Music, Recorded Music, Performance of Dance, Provision of facilities for making music and dancing, late night refreshment (all indoors) and the supply of alcohol (on and off the premises).

The following hours have been applied for in respect of these: -

Plays, Films
All days of the week 10:00 to 23:00

Live Music
Wednesday & Thursday 10:00 to 00:00
Friday & Saturday 10:00 to 00:30
Sunday 10:00 to 23:00

Recorded Music
Monday to Thursday 10:00 to 00:00
Friday to Saturday 10:00 to 00:30
Sunday 12:00 to 23:00

Performance of dance
Monday to Saturday 10:00 to 23:00
Sunday 10:00 to 22:00

Provision of facilities for making music
Wednesday to Saturday 10:00 to 00:00
Sunday 10:00 to 22:00

Provision of facilities for dancing
Wednesday & Thursday 10:00 to 23:00
Friday & Saturday 10:00 to 00:00
Sunday 12:00 to 23:00

Late Night Refreshment
Monday to Saturday 23:00 to 00:00

Supply of alcohol
Monday to Thursday 10:00 to 00:00
Friday & Saturday 10:00 to 01:00
Sunday 12:00 to 23:00

9 The premises to be open to the public:-

Monday to Thursday 10:00 to 00:00
Friday & Saturday 10:00 to 01:00
Sunday 12:00 to 23:00

10 The application applies for non-standard timings as follows:-

Live Music & Supply of alcohol
Christmas Eve until 01:00
New Years Eve until 02:00

Recorded Music & Provision of facilities for dancing
Christmas Eve until 01:00
New Years Eve until 02:00
Friday & Saturday during December until 00:30

Premises to open to the public
Christmas Eve until 01:00

New Years Eve until 02:00

Summary of Representations

- 11 Copies of the representations and suggested conditions can be found within the background papers.
- 12 Representations have been received from the Environmental Health Officer (Pollution), 4 Local residents against the application and 6 local residents supporting the application.

Key Considerations

- 13 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.
- 14 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: -

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. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

Community Impact

- 15 The granting of the licence as applied for may have an impact on the Community.

Legal Implications

- 16 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).

17 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

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

19 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.

20 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.

21 The applicant has produced a copy of that advertisement. Whilst this covers the main application no reference has been made to the non-standard timings applied for.

Appendices

- 22 a. Application
- b. Copy of Premises Licence for Doodies
- c. Copy of Premises Licence for Arte
- d. Representations from EHO
- e. Public Representations

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.