

MEETING:	REGULATORY-SUB COMMITTEE
DATE:	16 NOVEMBER 2009
TITLE OF REPORT:	APPLICATION FOR GRANT OF PREMISES LICENCE FOR 'CATS', LEYS HILL, WALFORD, ROSS ON WYE, HR9 5QU. - LICENSING ACT 2003
PORTFOLIO AREA:	Report by Head of Environmental Health & Trading Standards ENVIRONMENT & CULTURE

CLASSIFICATION: Open

Wards Affected

Kerne Bridge

Purpose

To consider an application for a premises licence in respect of 'CATS', Leys Hills, Ross on Wye, HR9 5QU.

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

- 16 Public Representations against the application
- No Representations from the Responsible Authorities

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	Graham John Mitchell & Stella Louise Mitchell CATS, Leys Hills, Ross on Wye, HR9 5QU.	
Solicitor	N/A	
Type of application:	Date received:	28 Days consultation
New Application	23/09/09	21/10/09

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 live music, recorded music, performance of dance, anything of a similar nature to live/recorded music or performance of dance, provision of 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: -

All licensable activities applied for (except Late Night Refreshment):

All days of the week 09:00 to 01:00

Late Night Refreshment:

All days of the week 23:00 to 01:00

- 9 The premises to be open to the public:
All days of the week 09:00 to 01:00

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

Supply of alcohol - persons resident on the premises can be served anytime.

Premises to be open to the public- premises are open 24 hours for residents.

Summary of Representations

- 11 Copies of the representations and suggested conditions can be found within the background papers.
- 12 No representations have been received from any of the Responsible Authorities.
- 13 16 Local residents have made representations against the application.
- 14 These in main address the two licensing objectives of: -
- Prevention of Public Nuisance, and
 - Protection of Children from Harm.

Key Considerations

- 13 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.
- 14 In relation to the licensing objective of the 'Prevention of Children from Harm', the Licensing Officer draws the attention of the Committee to the Nursery which is attached to the premises.

Community Impact

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

Legal Implications

- 16 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.
- 17 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.
- 18 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. Licensing authorities may depart from it if they have reason to do so, but will need to give full reasons for their actions.

19 The Committee's attention is drawn to the Guidance issued under Section 182 which states at para 13.65:

"The planning and licensing regimes involve consideration of different (albeit related) matters. For instance, licensing considers public nuisance whereas planning considers amenity. As such, licensing applications should not be a re-run of the planning application and should not cut across decisions taken by the local authority's planning committee or following appeals against decisions taken by that committee. Licensing committees are not bound by decisions made by a planning committee, and vice versa".

20 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 any reason for imposing these conditions.

21 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".

22 It was further said in this case that the Licensing Authority have a duty:

"to translate the proposals contained in the operating schedule to promote the licence objectives into clear and understandable conditions".

23 It was also said that;

"For some premises, it is entirely possible that no measures will be needed to promote one or more of the licensing objectives, for example, because they are adequately dealt with by other existing legislation."

24 The Committee are also reminded that they should only hear representations which address one of the four licensing objectives and that any representations can only be made by a person who lives or has a business interest within the vicinity of the premises.

25 It is possible for the Committee to hear from any person providing that they are representing a person who has made relevant representation and that the Licensing Authority have been notified prior to the hearing of that fact.

26 Failure to do follow any of the above could leave the Licensing Authority open to a Judicial Review.

27 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).

28 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

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

30 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.

31 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. 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

- 33 a. Public Representations
- b. Application Form
- c. Location Plan

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.