

MEETING:	REGULATORY SUB COMMITTEE
DATE:	27 NOVEMBER 2009
TITLE OF REPORT:	APPLICATION FOR VARIATION OF PREMISES LICENCE 'DUSK, 100 COMMERCIAL ROAD, HERFORD, HR1 2BJ.' - LICENSING ACT 2003
PORTFOLIO AREA:	ENVIRONMENT & CULTURE

CLASSIFICATION: Open

Wards Affected

Hereford City

Purpose

To consider an application for a variation of the premises licence in respect of the Dusk, 100 Commercial Road, Herford, HR1 2BJ.

Key Decision

This is not a Key Decision.

Recommendation

THAT the Sub-Committee determines 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

- 1 Public Representation 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	Dusk, 100 Commercial Road, Hereford, HR1 2BJ	
	Helena Leisure 28 Ltd	
Solicitor	Poppleston Allen	
Type of application:	Date received:	28 Days consultation
New Application	2/10/09	30/10/09

Licence Application

- 7 The application for a variation of the premises licence has received a representation and is brought before the committee for determination.

Current Licence

- 8 The premises is currently licensed as follows: -
An exhibition of a film; A boxing or wrestling entertainment; A performance of live music; Any playing of recorded music; A performance of dance; Provision of facilities for Making music; Provision of facilities for Dancing; Sale by retail of alcohol
Monday-Sunday: 11:00 - 03:00

Provision of late night refreshment
Monday-Sunday: 23:00 - 03:00

Non-Standard Timings

An additional hour to the standard and non standard times on the day when British Summer Time Commences.

New Years Eve from 1100 to end of permitted hours on New Years Day

Seasonal variations: None

Summary of Application

- 9 The application is for An exhibition of a film; A boxing or wrestling entertainment; A performance of live music; Any playing of recorded music; A performance of dance; Provision of facilities for Making music; Provision of facilities for Dancing; Late Night Refreshment, (all indoors), Sale by retail of alcohol (on the premises)

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

All the licensable activities (except Late Night Refreshment)

Friday & Saturday 11:00 to 04:00

Late Night Refreshment

Friday & Saturday 23:00 to 04:00

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

All licensable activities Bank Holiday Sundays until 0400 the following morning.

Summary of Representations

- 11 A copy of the representations made by the Local Resident can be found within the background papers.

- 12 No representations have been received from the Responsible Authorities.

- 13 These in main address the 2 licensing objectives of: -

Prevention of Public Nuisance

Key Considerations

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

Community Impact

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

Legal Implications

16 The Committee are reminded that these premises are within the area of the Herefordshire Council Special Policy (Appendix a).

17 The Committees attention is drawn to the Guidance issued under Section 182 which states at:

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.

18 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.

19 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.

20 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.

21 The case of R. (on the application of JD Wetherspoon Plc) v Guildford BC, 2006 EWHC 815 (Admin) in the High Court of Justice in the Queens Bench Division Administrative Court, Royal Courts of Justice, Strand, London, WC2A 2LL on Tuesday 11th April, 2006 before : The Honourable Mr Justice Beaton.

22 This case involved an application by JD Wetherspoon PLC at their Lloyds No.1 Premises in Guildford which involved an increase in hours within an area of Special Policy. In this case it was said that; -

'the words "material variation" are capable of including a variation of hours if such variation is directly relevant to the cumulative impact policy.'

23 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).

24 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

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

26 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.

27 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.

28 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

29 a. Special Policy
b. Public 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.