

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	28 JULY 2010
TITLE OF REPORT:	APPLICATION FOR GRANT OF AN OCCASIONAL PREMISES LICENCE WYESIDE MUSIC FESTIVAL 2010, WERGINS BRIDGE FIELDS (GRID REF: SO 52827/44579), SUTTON ST NICHOLAS, HEREFORD. - LICENSING ACT 2003
PORTFOLIO AREA:	ASSISTANT DIRECTOR (EHTS) PUBLIC HEALTH DIRECTORATE

CLASSIFICATION: Open

Wards Affected

Sutton Walls

Purpose

To consider an application for a grant of an occasional premises licence in respect of the Wyeside Music Festival 2010, Wergins Bridge Fields (Grid Ref: so 52827/44579), Sutton St Nicholas, Hereford.

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

- 2 public representations against the application
- 2 Environmental Health representations
- 1 Police representation

Options

- 1 a) Grant the Licence consistent with the operating schedule 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 premises supervisor;
- e) To reject the application.

Reasons for Recommendations

- 2 Ensures compliance with the Licensing Act 2003.

Introduction and Background

3 Background Information

Applicant	Mr S Symonds 4 Lichfield Avenue, Hereford. HR1 2RH	
Solicitor	N/A	
Type of application: New Premises	Date received: 9/6/10	28 Days consultation 6/7/10

Licence Application

- 4 The application is for a grant of a premises licence; this has received 5 representations and is brought before the committee for determination. The application is for a grant of an occasional premises licence for 20 August 2010 until 22 August 2010.

Summary of Application

- 5 The application is for live music, recorded music, performances of dance, provision of facilities for making music & dancing, late night refreshment and the supply of alcohol.

The following hours have been applied for (all outdoors) in respect of: -

Live music, performance of dance, provision of facilities for making music & dancing;

Friday 17:00 to 00:00
Saturday 11:00 to 02:00

Recorded music;

Friday 17:00 to 00:00
Saturday 11:00 to 00:00

Late night refreshment;

Friday 17:00 to 02:00
Saturday 11:00 to 02:00

Supply of alcohol (on premises);

Friday 17:00 to 23:30
Saturday 11:00 to 01:30

The premises to be open to the public:-

Friday 17:00 to 00:00
Saturday 11:00 to 02:00

Summary of Representations

- 6 Copies of the representations can be found within the background papers.
- 7 The Licensing Section received one representation from the Parish Council and ten representations from local residents; of these ten, nine were found not to be relevant representations, as they either failed to address one of the four Licensing Objectives or failed to show any 'real' evidence to support the comment made.
- 8 The accepted Parish Council representation and the one accepted local resident representation contained other comments which were not relevant. Therefore these have been removed leaving only those comments which form a relevant representation under the Act.
- 9 The Interested Parties representation address the licensing objectives of: -
Prevention of Public Nuisance.
- 10 Representations were also received from the Police and from two Environmental Health Officers, each representing either the Commercial (health & safety) or the Pollution (noise) team.

Key Considerations

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

Community Impact

- 12 The granting of the licence as applied for may have some impact on the Community.

Legal Implications

- 13 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.
- 14 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.
- 15 In this case it was summed up that: -

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

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.

- 16 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 the reason for imposing these conditions.
- 17 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'.
- 18 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'.
- 19 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."
- 20 The Committee are also reminded that they should only hear representations which address one of the four licensing objectives and that any representation can only be made by a person who lives or has a business interest within the vicinity of the premises.
- 21 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.
- 22 Failure to follow any of the above could leave the Licensing Authority open to a Judicial Review.
- 21 Schedule 5 gives a right of appeal to: -

Rejection of applications relating to premises licences

1. Where a licensing authority—

- (a) rejects an application to vary the 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).

22 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

- 23 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 24 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.
- 25 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 local newspaper. This notice has been seen and was correct.
- 26 The applicant has produced a copy of that advertisement. Whilst this covers the main application, there is no reference to the provision of late night refreshment and likewise the site notice failed to advertise this activity.

Appendices

- 27
 - a. Copy of Application
 - b. Representation – Police
 - c. Representation – EHO Pollution
 - d. Representation – EHO Commercial
 - e. Representation – Parish Council
 - f. Representation – Local Resident

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.