

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	26 NOVEMBER 2010
TITLE OF REPORT:	APPLICATION FOR VARIATION OF A PREMISES LICENCE 'TJ'S BAR & BISTRO, 62 COMMERCIAL ROAD, HEREFORD, HR1 2BP.' - LICENSING ACT 2003
PORTFOLIO AREA:	ASSISTANT DIRECTOR (ENVIRONMENTAL HEALTH & TRADING STANDARDS) PUBLIC HEALTH DIRECTORATE

CLASSIFICATION: Open

Wards Affected

Hereford City

Purpose

To consider an application for the variation of a premises licence in respect of the 'T J's Bar & Bistro, 62 Commercial Road, Hereford, HR1 2BP'.

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

- 1 Public Representation against the application
- 1 Representation from the West Mercia Police as 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	Harjinder Singh 61A Commercial Road, Hereford, HR1 2BP	
Solicitor	Williams Beales & Co, 9 Broad Street, HR3 5DB	
Type of application: Variation Application	Date received: 3/09/10	28 Days consultation 30/09/10

Licence Application

- 4 The application for a variation to the premises licence has received representations and is therefore brought before the sub-committee for determination.

Current Licence

- 5 The current licence authorises: -

An exhibition of films, Any playing of recorded music

Monday - Sunday: 10:00 – 00:30

A performance of Live Music

Monday – Sunday: 12:00 – 23:30

Sale by retail of alcohol

Monday – Sunday: 12:00 – 23:30

Non Standard Timings:

10:00 on New Years Eve to the commencement of permitted hours on New Year's Day.

Summary of Application

- 6 The application applies for the following licensable activities during the hours shown (all indoors): -

Any playing of recorded music; Sale by retail of alcohol (on & off premises)

Monday - Sunday: 11:00 – 01:30

Sale by retail of alcohol (on premises)

Monday - Sunday: 12:00 – 01:30

Summary of Representations

- 7 A copy of the representations can be found within the background papers.
- 8 1 representation has been received from a Responsible Authority – West Mercia Police.
- 9 1 Local resident has made a representation against the application.

Key Considerations

- 10 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.
- 11 The premises are within the Special Policy Area (Cumulative Impact Area), as mentioned at Appendix 1 of the Herefordshire Council Licensing Policy 2008 – 2011.

Community Impact

- 12 The granting of the licence as applied for may have an 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: -
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 The Committee should be aware of the stated case of R (on the application of JD Wetherspoons) v Guildford Borough Council [2006] EWHC 815 (Admin). Wetherspoons applied for a variation to their Lloyds Number 1 Bar within the cumulative impact area of Guildford which was subject to their Special policy.
- 19 The Committee refused to grant this application on the grounds that the variation was likely to add to existing cumulative impact of the area.
- 20 This was appealed to the High Court and the appeal was dismissed.
- 21 The Committee’s attention is drawn to the guidance issued under Section 182 of the Licensing Act which states at paragraphs:

“THE CUMULATIVE IMPACT OF A CONCENTRATION OF LICENSED PREMISES

What is cumulative impact?

13.24 “Cumulative impact” is not mentioned specifically in the 2003 Act but means in this Guidance the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.

13.25 In some areas, where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport. Queuing in turn may be leading to conflict, disorder and anti-social behaviour. While more flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises, it is possible that the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater in these cases than the impact of customers of individual premises. These conditions are more likely to occur in town and city centres, but may also arise in other urban centres and the suburbs.

Effect of special policies

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”.

- 22 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).

23 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

- 24 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 25 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.
- 26 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.
- 27 The applicant has produced a copy of that advertisement which is correct.

Appendices

- 28
 - a. Public representation
 - b. Police representation
 - c. Application Form
 - d. Licensing Policy Appendix 1

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.