

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>4 APRIL 2011</b>
<b>TITLE OF REPORT:</b>	<b>APPLICATION FOR VARIATION OF A PREMISES LICENCE 'MAMMA JAMMAS, 15A WEST STREET, HEREFORD, HR4 0BX.' - LICENSING ACT 2003</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENTAL HEALTH &amp; TRADING STANDARDS</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Central

### **Purpose**

To consider an application for the variation of a premises licence in respect of the 'Mamma Jammass, 15A West Street, Hereford, HR4 0BX'.

### **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**

- The police and EHO have made representation as Responsible Authorities.
- One (1) representation from the City Council.
- Eight (8) representations from members of the public.

## 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	<b>Jonathan George Charles Jones</b> <b>Orchard Rise, A49 Moreton on Jugg, HR4 8AH</b>	
Solicitor	<b>N/K</b>	
Type of application: <b>Variation Application</b>	Date received: <b>16/02/11</b>	28 Days consultation <b>15/03/10</b>

### Licence Application

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

### Current Licence

- 5 The current licence authorises: -

Live Music  
Wednesday 19:00 until 23:00

Recorded Music  
Sunday – Friday 17:00 until 02:00  
Friday – Saturday 17:00 until 03:00

Facility for Making Music  
Sunday – Thursday 17:00 until 01:30  
Friday – Saturday 17:00 until 02:30

Facility for Dancing  
Wednesday 19:00 until 23:00  
Friday - Saturday 21:00 until 03:00

Supply/Sale of Alcohol  
Sunday – Thursday 17:00 until 01:30  
Friday – Saturday 17:00 until 02:30

Non Standard Hours  
None

### **Summary of Application**

6 The application requests that the hours be extend as follows:

Live Music  
Monday – Sunday 1700 until 23:30

Recorded Music, Facility for Making Music, Facility for Dancing, Supply/Sale of Alcohol  
Sunday – Thursday 17:00 until 03:00  
Friday – Saturday 17:00 until 04:00

Non Standard Hours  
Until 0400 hours on New Years Eve and Christmas Eve

The applicant has also requested to remove the sound limiting device.

### **Summary of Representations**

7 A copy of the representations can be found within the background papers.

8 Representation has been made by:  
The police  
The EHO  
City Council  
Eight (8) members of the public

## **Key Considerations**

11 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.

## 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'.

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

- 18 This has been further supported by the case of R (on the application of Developing Retail Ltd) (Claimant) v South East Hampshire Magistrates' Court (Defendant) & (1) Martin Usher & Ors (2) Portsmouth City Council (Interested Parties) (2011) which appeared before the Queens Bench Division on 4/3/2011.

- 19 It was held that the condition imposed by the Magistrates Court was vague, imprecise and arbitrary and therefore was not enforceable.

- 20 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).

21 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

- 22 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 23 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.
- 24 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.
- 25 The applicant has produced a copy of that advertisement. However it is noted that the hours applied for states 17:00 to 03:00. No mention has been made of the non-standard timings.

## Appendices

- 26
- a. Police representation
  - b. EHO representation
  - b. Application Form
  - c. 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.