

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	4 APRIL 2011
TITLE OF REPORT:	APPLICATION FOR VARIATION OF A PREMISES LICENCE 'JAILHOUSE, 1 GAOL STREET, HEREFORD, HR1 2HU.' - LICENSING ACT 2003
PORTFOLIO AREA:	ENVIRONMENTAL HEALTH & TRADING STANDARDS

CLASSIFICATION: Open

Wards Affected

Central

Purpose

To consider an application for the variation of a premises licence in respect of the 'Jailhouse, 1 Gaol Street, Hereford, HR1 2HU'.

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 have made representation 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	Steven Lloyd Harrison The Crozens, 114 Eign Road, Hereford, HR1 2RZ	
Solicitor	N/K	
Type of application: Variation Application	Date received: 11/02/11	28 Days consultation 10/03/10

The premises were visited by the Licensing Authority during the night of 3rd February 2011 were it was found that a number of conditions were not being complied with. This included the condition that there were to be 3 door supervisors on duty.

In addition to this it was noted that the current conditions shown on the licence were outdated and in most cases unenforceable.

As a result of that visit the applicant submitted the variation application now appearing before the committee.

Licence Application

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

Current Licence

- 5 The current licence authorises: -

A performance of live music; Any playing of recorded music; A performance of dance; Making music; Dancing; Sale by retail of alcohol

Monday: 12:00 - 01:30;

Tuesday-Thursday: 12:00 - 02:00;

Friday-Saturday: 12:00 - 03:00;

Sunday: 12:00 - 01:00

Provision of late night refreshment

Monday: 23:00 - 02:00;

Tuesday-Thursday: 23:00 - 02:30;

Friday-Saturday: 23:00 - 03:00;

Sunday: 23:00 - 01:30

Non Standard Hours

A performance of live music; Any playing of recorded music; A performance of dance; Making music; Dancing; Provision of late night refreshment

New Years Eve 24 hr

Xmas Eve 12:00-02:00

Sale by retail of alcohol

New Years Eve 24 hr

Xmas Eve 12:00-02:00

Bank Holidays 12:00 - 03:00

Summary of Application

- 6 The application requests that the condition in relation to the door staff be amended as shown at Part 3 of the variation form.

In addition the applicant requests to amend the condition in relation to fly posting.

Summary of Representations

- 7 A copy of the representation can be found within the background papers.
- 8 Representation has been made by the police as a Responsible Authority.
- 9 The Licensing Authority has been working in partnership with the premises licence holder and the police. As a result a set of conditions has been agreed. These are:-

Prevention of Crime:

- i. CCTV will be provided in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition.

Cameras shall encompass all ingress and egress to the premises, fire exits, outside areas, and all areas where the sale/ supply of alcohol occurs.

Equipment MUST be maintained in good working order , be correctly time and date stamped , recordings MUST be kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on demand.

The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format EITHER DISC or VHS to the Police/Local Authority on demand.

The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded.

In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Police on contact number 0300 333 3000 immediately.

- ii. The Premises Licence Holder or DPS or a person nominated by them in writing for the purpose, shall maintain a register of door supervisors which shall be kept on the premises showing the names and addresses of the door supervisors, their badge numbers and shall be signed by the door supervisors as they commence and conclude duty. The register shall be made available on demand for inspection by Officers of the Fire Authority, Police or Licensing Authority.

- iii. An incident log must be kept at the premises, and made immediately available on request to an authorised officer of the Council or the Police, which must record the following:

- all crimes reported to the venue
- all ejections of patrons
- any complaints received
- any incidents of disorder
- seizures of drugs or offensive weapons
- any faults in the CCTV system or searching equipment or scanning equipment
- any refusal of the sale of alcohol
- any visit by a relevant authority or emergency service

- iv. The DPS and all other staff shall ensure that no open containers are taken off the premises by customers.

- v. The premises shall be an active member of the HAND Scheme (Pub Watch)

- vi. A Hereford City centre 'Pub Radio' shall be held at the premises. A responsible person shall log on at the control centre at the commencement of licensable activities. A responsible person shall monitor the radio throughout the period which the premises are open for licensable activities. Any information likely to have an impact on any of the licensing objectives shall be transmitted on the radio immediately.

- vii. A dispersal policy in relation to the premises shall be kept on the premises and produced to the Police and Authorised Local Authority Licensing Officers on request

Public Safety:

- viii. The maximum permitted numbers of persons in the premises including staff shall not exceed 300
- ix. A system shall be place which is capable of showing the number of persons on the premises at any one time. This number shall be given immediately on demand to an officer from the Licensing Authority or police.
- x. No rubbish or waste paper shall be stored or allowed to accumulate in any part of the premises.
- xi. The premises shall be kept properly and sufficiently ventilated and heated to the satisfaction of the Licensing Authority. All equipment shall be maintained in a proper working condition and any fuel stored in a safe manner.

Electrical & Gas Installations

- xii. All electrical wiring and distribution systems shall be tested at least once a year and signed off by a competent person whose name is shown within the Local Authority Building Control Part P Competent Persons Register (<http://www.competentperson.co.uk/search.asp>). The sign off certificate shall be produced to an authorised Licensing Authority officer or Police on demand.
- xiii. All portable electrical equipment shall be powered through a sensitive earth leakage protection system (residual current device) having a rated residual operating current not exceeding 30 milliamps and a maximum operating limit of 30 milliseconds.
- xiv. The residual circuit device shall be tested at lease once a week and a record of this check shall be kept at the premises.
- xv. Any and all gas appliances used in the premises must be tested at least once a year and signed off by a competent person whose name appears within the current Gas Safety register (GSR). The sign off certificate shall be produced to an authorised Licensing Authority officer or Police on demand.

Special Effects

- xvi. The installation and use of laser beams, pyrotechnics or real flames, explosive or highly flammable or smoke producing agent, for any purpose shall not be permitted without specific written consent of the Licensing Authority. Application for consent, together with a detailed description of the method of use, should be made to the Licensing Authority not less than 14 days prior to the day on which the laser equipment is to be used.
- xvii. Strobe lights shall be operated on a fixed rate of not more than four flashes per second. Where more than one strobe light is used, the flashes shall be synchronised. In any case, such lights shall not be installed without the prior written approval of the Licensing Authority.
- xviii. The use of foam shall not be permitted unless with the prior written approval of the Licensing Authority.

Prevention of Public Nuisance:

- xix. The premises licence holder or DPS or nominated responsible person (in writing) shall ensure that noise and vibration does not emanate from the premises so as to cause a nuisance to any person residing in any noise sensitive dwelling and the music from the premises shall not be audible at any noise sensitive dwelling after 00.00 (midnight).
- xx. All parts of the licensed premises and all fixtures and fittings therein including seating, door fastenings, notices, floors, carpets and furniture shall be kept clean and maintained in good order.
- xxi. The Premises Licence Holder or DPS or the responsible person must immediately comply with any request to adjust noise levels/ frequency spectra made by a local authority officer or the Police.
- xxii. Any musical amplification system/equipment located at the premises, prior to use, shall be wired through a sound limiting device located in a separate and remote lockable cabinet. The level shall be pre-set by a responsible person in charge of the premises to ensure that no noise nuisance is caused to local residents. The operational panel of the noise limiter shall then be secured. The keys securing the noise limiter cabinet shall be held by the licence holder or authorised manager only, and shall not be accessed by any other person.
- xxiii. Prominent, clear and legible signage (in not less than 32 font bold) shall be displayed at all exits to the premises requesting the public to respect the needs of local residents and to leave the premises and the area quietly.
- xxiv. Bottling out shall not take place between 23.00 hours and the end of licensable activities.

Litter and Fly-Posting

- xxv. The premises licence holder or DPS or Agent acting on their behalf shall not aid, abet, counsel or procure the commissioning of any illegal placarding or fly-posting. Illegal in this context means at places not authorised by the Local Authority.

Protection of Children:

- xxvi. Challegne 21 will be operated at the premises and prominent, clear and legible signage (in not less than 32 font bold) shall be displayed at all entrances to the premises as well as at at least 6 other locations within the premises advising this.
- xxvii. All staff shall be aware and trained in the age restriction policy operated at the premises and a record of the training shall be kept within the training records held at the premises.

10 The following 2 conditions have not been agreed by the applicant and are shown on the current licence.

- xxviii. Two (2) SIA Licensed Door staff shall be employed at the premises from 2000 hrs until the termination of licensable activities. When employed externally Door staff shall wear hi-viz reflective jackets. When employed internally they shall be readily identifiable as doo staff.

xxix. No person under the age of 21 shall be permitted entry to the premises other than a person employed at the premises.

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 no mention has been made of licensable activities taking place outdoors and no non-standard timings are shown.

Appendices

- 26 a. Police representation
b. Application Form

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.