

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	16 SEPTEMBER 2011
TITLE OF REPORT:	APPLICATION FOR VARIATION OF A PREMISES LICENCE 'THE PRINCE OF WALES, CHURCH LANE, LEDBURY HR8 1DL – LICENSING ACT 2003
PORTFOLIO AREA:	ASSISTANT DIRECTOR (EHTS) PEOPLE'S SERVICES DIRECTORATE

CLASSIFICATION: Open

Wards Affected

Ledbury

Purpose

To consider an application for the variation of a premises licence in respect of 'The Prince of Wales, Church Lane, Ledbury HR8 1DL'.

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

- **Ten (10)** representation from members of the public
- **Three (3)** representations from Responsible Authorities (Police, Trading Standards & Environmental Protection)

Options

- 1 a) to modify the conditions of the licence;
- (b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Reasons for Recommendations

- 2 Ensures compliance with the Licensing Act 2003.

Introduction and Background

3 Background Information

Applicant	Leslie John Smith Pebble Walk Ltd, The Prince of Wales, Church Lane, Ledbury HR8 1DL	
Agent	Gemma Goodwin Licensing Matters Ltd, Time Technology Park, Blackburn Road, Simonstone, Burnley BB12 7TW	
Solicitor	N/K	
Type of application: Variation Application	Date received: 01/08/2011	28 Days consultation 29.08.2011

Licence Application

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

History of Premises Licence

- a. **2005** - The premises licence was converted from a Justices Licence (on the introduction of the Licensing Act 2003) for the following licensable activities:-

Provision of regulated entertainment

1. A performance of live music (Indoors)
2. Playing of recorded music (Indoors)
3. A performance of dance (Indoors)

Provision of entertainment facilities

4. Making music (Indoors)
5. Dancing (Indoors)

Provision of refreshment or alcohol

6. Late Night Refreshment
7. Sale by retail of alcohol (For consumption both on and off the premises)

Further details:

(A performance of live music) Live bands may perform on occasion.

(A performance of dance) Performance of dancers may take place on certain entertainment nights.

(Dancing) Dancing may occur throughout the bar and lounge customer areas on evenings when entertainment is provided.

Description of facilities provided (Making music) Live bands, karaoke and DJ unit will be used when hired.

The licence was issued subject to conditions consistent with the operating schedule accompanying the application and the existing Public Entertainment Licence Conditions.

- b. **November 2007** - Application to vary the premises licence to change the Designated Premises Supervisor to Leslie John Smith – licence issued.
- c. **18 February 2011** – failed test purchase. Two (2) 16 year old females were served alcohol without being challenged concerning their age.
- d. **17 Mar 2011** – Application, by Herefordshire Council Trading Standards, to review the premises licence relating to The Prevention of Crime and Disorder and Protection of Children from Harm following failed test purchase. Need for hearing dispensed with following submission of minor variation to amend licence conditions
- e. **10 May 2011** – Application for minor variation received to amend licence conditions.
- f. **24 May 2011** – Current licence issued (see appendix a)

Summary of Application

- 5 This application requests:

The removal of all conditions on the licence (apart from mandatory) & replace with new conditions consistent with the operating schedule accompanying the application (see appendix b).

Summary of Representations

- 6 A copy of the representations can be found within the background papers.
- 7 Representations have been made by:
Ten (10) members of the public
Three (3) from Responsible Authorities (Police, Trading Standards & Environmental Protection) – representations not accepted.

Key Considerations

- 8 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

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

Legal Implications

- 10 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.
- 11 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.
- In this case it was summed up that: -
- 12 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.
- 13 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.
- 14 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.

15 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).

16 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

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

18 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.

19 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.

20 The applicant has produced a copy of the advertisement which is correct.

Appendices

- 21
- a. Current Licence
 - b. Application Form
 - c. Public Representation
 - d. Police Representation
 - e. Trading Standards Representation
 - f. Environmental Protection 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.

10.4 Under former licensing regimes, the courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.

IMPOSED CONDITIONS

10.11 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.