

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	2 OCTOBER 2012
TITLE OF REPORT:	APPLICATION FOR A VARIATION OF A PREMISES LICENCE THE 'CROWN INN, LEA, ROSS ON WYE, HR9 7JZ' – LICENSING ACT 2003
PORTFOLIO AREA:	HEALTH AND WELLBEING

CLASSIFICATION: Open

Wards Affected

Ross on Wye East

Purpose

To consider an application for the variation of a premises licence in respect of the 'Crown Inn, Lea, Ross on Wye, HR9 7JZ'.

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

- **Three (3)** relevant representation from members of the public
- **Three (3)** representations from Responsible Authorities (Police, Trading Standards and Environmental Health) The applicant has accepted the representations made and has agreed to all conditions recommended by the responsible authorities.

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	David Paul Spencer The Crown Inn, Lea, Ross on Wye, HR9 7JZ.	
Representative	Nil	
Type of application: New Application	Date received: 09/08/2012	28 Days consultation 06/09/2012

Licence Application

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

Current Licence

- 5 The premises is currently licensed as follows: -

On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 10 a.m. to 11 p.m.
On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m.
On Good Friday, 12 noon to 10.30 p.m.
On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day

Non Standard Timings

None

Summary of Application

6 The application requests that the premises be licensed as follows:

Live Music (Both Indoors & Out)	Friday & Saturday	20:00 – 23:00
	Sunday	16:00 – 20:00
Recorded Music (Indoors only)	Monday – Saturday	12:00 – 23:00
	Sunday	12:00 – 22:30

Non Standard Timings:

Live Music & Recorded Music	New Years Eve	12:00 – 01:00
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Seasonal variations: None

Summary of Representations

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

There are three (3) relevant representations made by members of the public and Three (3) from Responsible Authorities (Trading Standards, the Police and Environmental Health.

Key Considerations

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

Community Impact

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

Legal Implications

11 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.

12 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: -

13 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.

14 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.

15 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.

- 16 The committee should be aware that the Live Music Act 2012 commenced on 1st October 2012. This legislation will effect this application and states that:

‘where live music takes place on premises authorised to be used for the supply of alcohol for consumption on the premises by a premises licence, and—

- (a) at the time of the live music, the premises are open for the purposes of being used for the supply of alcohol for consumption on the premises,
- (b) either—
 - (i) the live music is unamplified, or
 - (ii) the live music is amplified and takes place in the presence of an audience of no more than 200 persons, and
- (c) the live music takes place between 8am and 11pm on the same day
- (2) Any condition of the premises licence or club premises certificate which relates to live music does not have effect in relation to the live music, unless it has been attached following a review of that premises

- 17 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).

18 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

- 19 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 20 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.
- 21 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.
- 22 The applicant has produced a copy of the advertisement which is only correct in part. There is no reference made to any of the licensable activities being outdoors. In respect of timings for live music it states on Friday, Saturday & Sunday 2100 – 2300. There is no reference to Non-Standard Timings.

Appendices

- 23
- a. Application Form
 - b. Public Representations
 - c. Police Representation
 - d. Trading Standards Representation
 - e. Environmental Health Representation

Background Papers

Background papers are available for inspection in Meeting Room 22a, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.