

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	14 MAY 2013
TITLE OF REPORT:	TO CONSIDER AN APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF '59 COMMERCIAL ROAD, HEREFORD, HR1 2BP' – LICENSING ACT 2003.
REPORT BY:	CLAIRE CORFIELD – LICENSING MANAGER

1. Classification

Open

2. Key Decision

This is not a key decision

3. Wards Affected

Central

4. Purpose

To consider an application for a new Premises Licence in respect of '59 Commercial Road, Hereford, HR1 2BP.

5. Recommendation(s)

THAT

The 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 police application for a review,
- The Guidance issued to local authorities under the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy.

6. Key Points Summary

- The application requests a new licence in respect of Late Night Refreshment until 0130 hours.
- The premises is within the area covered by the Herefordshire Council Special Policy (Cumulative Impact Policy)
- The Police and Licensing Authority both have objected to the grant of the licence.

Further information on the subject of this report is available from
Clare Corfield, Licensing Manager 01432 26012

7. Options

There are a number of options open to the committee:

- 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.

8. Reasons for Recommendations

Ensure compliance with the legislation.

9. Introduction and Background

Background Information

Applicant	Faisal KHALID Kashmire House, 12A Greenhill, Bath Road, Worcester, WR5 2AT	
Representative	Amanda Pillinger – MFG Solicitors	
Type of application:	Date received:	28 Days consultation
Variation	20/03/2013	16/04/2013

Licence Application

The application for a new premises licence has received representation and is brought before the committee for determination.

Summary of Application

The application requests that:

Late Night Refreshment:	All days	2300-0130 hours
Non Standard Timings:	New Year's Eve	2300-0500 hours

Summary of Representations

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

Representations have been made by:

Two (2) from Responsible Authorities (Police and Licensing Authority)

One (1) representation was received from a member of the public which was out of time.

10. Key Considerations

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

11. Community Impact

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

12. Equality and Human Rights

"A public authority must, in the exercise of its functions, have due regard to the need to –

- eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it."

13. Financial Implications

There are unlikely to be any financial implications at this time to the authority.

14. Legal Implications

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.

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: -

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.

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.

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.

The case of *Luminar Leisure Ltd v Wakefield Magistrates' Court, Brooke Leisure Limited, Classic Properties Limited, Wakefield Metropolitan District Council*, heard before the High Court of Justice, Queen's Bench Division The Administrative Court, 18 April 2008, [2008] EWHC 1002 (Admin) would appear to be relative in this matter.

This matter involved an application by Luminar for a nightclub which was located just outside the Wakefield Cumulative Impact Area. The application was granted by the Local Authority and that decision was subsequently appealed.

The judge allowed the appeal on the grounds 'because of the effect which the increase in the number of people attending such a venue in Westgate would have, generally, on crime and disorder in the area'.

The matter was further appealed to the High Court by way of case stated.

Three questions were posed for the Judge to address. The last question asked was 'Was it a proportionate response to refuse the licence rather than to impose conditions on any licence?'

In respect of this it was stated 'To put a limit on the extent to which cumulative impact is legally relevant is something which seems to me not to be permitted by the statute. But with all that this condition was not sought. So the answer to question 3 is "yes"'.

The stated case of 'The Queen on the application of *JD Wethersoon PLC v Guildford Borough Council* which appeared in front of the Honourable Mr Justice Beatson at the Queens Bench Division Administrative Court on 11th April 2006 at paragraph 73 stated:

'The guidance provides that, where a cumulative impact policy is so adopted, there will be a rebuttable presumption that applications for new premises licences or material variations will normally be refused. To that extent, where there is such a policy, the guidance must permit an individual application to be considered on the basis of the rebuttable presumption so that the burden of proof lies on the applicant. In any event, if an area is so affected by serious alcohol related crime that the evidential basis for the special policy exists, requiring an applicant for a variation of the hours of premises in the area to demonstrate that the variation would not add to the area's problems does not mean that the "merits" of the application are not considered. A reversed burden of proof does not preclude consideration of the "merits" of an application.

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.

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- (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).

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.

15. Risk Management

15.1 No risk identified

16. Consultees

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

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.

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.

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

17. Appendices

- a. Application Form
- b. Local Authority Representation
- c. Police Representation
- d. Herefordshire Council Special Policy

18. 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.

Guidance issued under Section 182 of the Licensing Act 2003

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 the grant or variation of premises licences or club premises certificates which are likely to add to the existing cumulative impact will normally be refused or subject to certain limitations, following relevant representations, unless the applicant can demonstrate in the operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives. Applicants should give consideration to potential cumulative impact issues when setting out the steps they will take to promote the licensing objectives in their application.
- 13.30 However, a special policy must stress that this presumption does not relieve responsible authorities (or any other persons) of the need to make a relevant representation, referring to information which had been before the licensing authority when it developed its statement of licensing policy, before a licensing authority may lawfully consider giving effect to its special policy. If there are no representations, the licensing authority must grant the application in terms that are consistent with the operating schedule submitted.
- 13.31 Once adopted, special policies should be reviewed regularly to assess whether they are needed any longer or if those which are contained in the special policy should be amended.
- 13.32 The absence of a special policy does not prevent any responsible authority or other person making representations on an application for the grant or variation of a licence on the grounds that the premises will give rise to a negative cumulative impact on one or more of the licensing objectives.
- 13.33 Special policies may apply to the impact of a concentration of any licensed premises. When establishing its evidence base for introducing a special policy, licensing authorities should be considering the contribution to cumulative impact made by different types of premises within its area, in order to determine the appropriateness of including different types of licensed premises within the special policy.
- 13.34 It is recommended that licensing authorities should publish contact points in their statements of licensing policy where members of public can obtain advice about whether or not activities should be licensed.

LIMITATIONS ON SPECIAL POLICIES RELATING TO CUMULATIVE IMPACT

- 13.35 A special policy should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted. After receiving relevant representations in relation to a new application for or a

variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case. The impact can be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not. If the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.

- 13.36 Special policies should never be used as a ground for revoking an existing licence or certificate when representations are received about problems with those premises. Where the licensing authority has concerns about the effect of activities at existing premises between midnight and 6am on the promotion of the licensing objectives in a specific area, it may introduce an Early Morning Alcohol Restriction Order (EMRO) if there is sufficient evidence to do so (see chapter 16). The “cumulative impact” on the promotion of the licensing objectives of a concentration of multiple licensed premises should only give rise to a relevant representation when an application for the grant or variation of a licence or certificate is being considered. A review must relate specifically to individual premises, and by its nature, “cumulative impact” relates to the effect of a concentration of many premises. Identifying individual premises in the context of a review would inevitably be arbitrary.
- 13.37 Special policies can also not be used to justify rejecting applications to vary an existing licence or certificate except where those modifications are directly relevant to the policy (as would be the case with an application to vary a licence with a view to increasing the capacity limits of the premises) and are strictly appropriate for the promotion of the licensing objectives
- 13.38 Every application should still be considered individually. Therefore, special policies must not restrict such consideration by imposing quotas – based on either the number of premises or the capacity of those premises. Quotas that indirectly have the effect of predetermining the outcome of any application should not be used because they have no regard to the individual characteristics of the premises concerned.