

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	29 MAY 2012
TITLE OF REPORT:	APPLICATION FOR A NEW PREMISES LICENCE 'MCDONALD'S RESTAURANT, 46 COMMERCIAL STREET, HEREFORD, HR1 2DJ – LICENSING ACT 2003
PORTFOLIO AREA:	ASSISTANT DIRECTOR (EHTS) PEOPLE'S SERVICES DIRECTORATE

CLASSIFICATION: Open

Wards Affected

Central

Purpose

To consider an application for a new premises licence in respect of 'McDonald's Restaurant, 46 Commercial Street, Hereford, HR1 2DJ'.

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

- **Two (2)** representation from a member of the public
- **One (1)** representations from Responsible Authorities (Police)

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	Kemco (Hereford) Ltd Blenheim House, Fitzalan Court, Newport Road, Cardiff, CF24 0TS	
Representative	Shoosmiths Solicitors	
Type of application: New Application	Date received: 03/04/2012	28 Days consultation 30/04/2012

Licence Application

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

Summary of Application

- 5 The application requests that:
Late Night Refreshment 23:00 – 04:00 Friday & Saturday

Non Standard Timings: None

Summary of Representations

- 6 A copy of the representations can be found within the background papers.
- 7 Representations have been made by:
Two (2) members of the public
One (1) from Responsible Authorities (**Police** who have **objected** to the grant of the licence)

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

- 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.
- 12 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.
- 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 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"'.

16 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).

17 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

- 18 Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
- 19 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.
- 20 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.
- 21 The applicant has produced a copy of the advertisement which is correct.

Additional Information

Section 8 of the Herefordshire Council Licensing Policy states at:

- 8.6 Particular consideration will be given to the following:
- The likelihood of any public disorder, violence or other alcohol related crime arising if a licence were to be granted.

Guidance issued under Section 182 of the Licensing Act 2003

THE NEED FOR LICENSED PREMISES

- 13.18 There can be confusion about the difference between the “need” for premises, and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel, and is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.

THE CUMULATIVE IMPACT OF A CONCENTRATION OF LICENSED PREMISES

WHAT IS CUMULATIVE IMPACT?

- 13.19 “Cumulative impact” is not mentioned specifically in the 2003 Act. In this Guidance, it means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement.
- 13.20 **In some areas, where the number, type or density of premises selling alcohol is high or exceptional, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport.**
- 13.21 Queuing in itself may lead to conflict, disorder and anti social behaviour. Moreover, large concentrations of people may also increase the incidence of other criminal activities such as drug dealing, pick pocketing and street robbery. Local services such as public transport services, public toilet provision and street cleaning may not be able to meet the demand posed by such concentrations of drinkers leading to issues such as street fouling, littering, traffic and

public nuisance caused by concentrations of people who cannot be effectively dispersed quickly.

- 13.22 Variable licensing hours may facilitate a more gradual dispersal of customers from premises. However, in some cases, the impact on surrounding areas of the behaviour of the customers of all premises taken together will still be greater than the impact of customers of individual premises. These conditions are more likely to arise in town and city centres, but may also arise in other urban centres and the suburbs, for example on smaller high streets with high concentrations of licensed premises.

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.

13.37 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. Public houses, nightclubs, restaurants, hotels, theatres, concert halls and cinemas all could sell alcohol, serve food and provide entertainment but with contrasting styles and characteristics. Proper regard should be given to those differences and the differing impact they will have on the promotion of the licensing objectives.

Appendices

- 22
- a. Application Form
 - b. Public Representation
 - c. Police Representation
 - d. Additional Police Representation
 - e. Herefordshire Council Special Policy

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.