

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	24 JULY 2013
TITLE OF REPORT:	TO CONSIDER AN APPLICATION FOR A VARIATION OF THE PREMISES LICENCE IN RESPECT OF 'BROMYARD KERAB AND BURGER SHOP, 3 CRUXWELL STREET, BROMYARD, HR7 4EB' – LICENSING ACT 2003.
REPORT BY:	CLAIRE CORFIELD – LICENSING MANAGER

1. Classification

Open

2. Key Decision

This is not a key decision

3. Wards Affected

Bromyard

4. Purpose

To consider an application for the variation of a Premises Licence in respect of 'Bromyard Kebab and Burger Shop, 3 Cruxwell Street, Bromyard, HR7 4EB.

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 the removal of the condition in relation to SIA door staff and an extension of operating hours until 0130 hours.

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

- The conditions attached to the licence were imposed following a review on 9th May 2008 following serious disorder at the premises
- The Licensing Authority have objected to the variation of the licence.

7. Options

There are a number of options open to the committee:

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application,
- 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,
- To reject the application.

8. Reasons for Recommendations

Ensure compliance with the legislation.

9. Introduction and Background

Background Information

Applicant	Chui Chi Cheng 21 Broad Street, Leominster, HR6 8BT	
Representative	N/K	
Type of application:	Date received:	28 Days consultation
Variation	01/06/2013	28/06/2013

Licence Application

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

Summary of Application

The application requests that:

The condition attached to the licence which reads 'The provision of a minimum of two SIA registered door supervisors on the premise from 2300 to 0030 hours every Friday and Saturday night' be amended to read 'The premises licence holder will employ SIA registered door supervisor(s) on a risk assessed basis'

The application also requests that the hours be extended from 0030 hours on a Friday and Saturday to 0130 hours.

Summary of Representations

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

Representations have been made by:

One (1) from Responsible Authorities (Licensing Authority)

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

Review Details

On 9 May 2008 the premises licence was reviewed following a serious incident of disorder at the premises. The terminal hour of 0030 on a Friday and Saturday night were imposed by the committee together with the SIA condition. A copy of the decision notice is attached.

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.

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).

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 None 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. Decision Notice

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.