

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	23 SEPTEMBER 2013
TITLE OF REPORT:	APPLICATION FOR A VARIATION TO THE PREMISES LICENCE - THE VICTORY, 88 ST OWENS STREET, HEREFORD
REPORT BY:	LICENSING OFFICER

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

Central

4. Purpose

To consider an application for a variation to the Premises Licence for 'The Victory, 88 St Owens Street, Hereford.

5. Recommendation(s)

THAT

The Sub-Committee determines 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 appropriate to promote the licensing objectives,**
- **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 variation to the timings/hours with regard to the licensable activities of Regulated Entertainment – Live and Recorded music.
- The application requests the removal of all existing conditions deemed irrelevant or unworkable from the existing premises licence and the introduction of new conditions which are both achievable and enforceable for the purpose of promoting the licensing objectives.
- Representations have been received from the Police, Trading Standards and Licensing Authority with regard to the addition of conditions to the licence

7. Options

There are a number of options open to the Sub-Committee:

- a) To 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) To grant the licence subject to modified conditions to that of the operating schedule where the Sub-Committee considers it appropriate 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; or
- d) To reject the application.

8. Reasons for Recommendations

To ensure compliance with the legislation.

9. Introduction and Background

Background Information

Applicant	J KENYON	
Representative	N/K	
Type of application: Variation	Date received: 02.08.2013	28 Days consultation 30/08/2013

Licence Application

- 9.1 The application for a variation to the premises licence has received representation and is brought before the Sub-Committee for determination.

Summary of Application

- 9.2 The application requests:

Live Music (Indoors & Outdoors) and Recorded Music (Indoors & Outdoors) as follows:

Live music

Mon – Thurs 10:00 – 24:00

Fri, Sat & Sun 10:00 – 01:00

Amplified music will be restricted to indoor areas only.

Outside music will be non amplified (acoustic only) with a finish time of 22.30 on all days

Recorded music

Mon – Sun 10:00- 01:00

Recorded music will be played via jukebox and DJs between 10:00 and 01:00

In the outside area recorded music will be of background type and restricted to the hours of 10:00-23:00 on all days.

- 9.3 The application requests an increase in the maximum number of persons allowed to use the premises in Condition 4.1 from 150 people to 200.

- 9.4 The application requests the removal of the following conditions:

No outdoor area including the beer garden shall be used for licensable activities after 12 midnight on any day other than in accordance with a Temporary Event Notice (TEN) and its use by patrons shall be strictly controlled by the Licensee to prevent nuisance to neighbours.

The sound limiting/cut out device installed at the premises shall be maintained in full working order and used each time entertainment is provided in the entertainment areas. The maximum sound level shall be agreed and approved by the Council's Environmental Protection team.

- 9.5 The application requests a change to the condition 'children *permitted after 20:00. Children only allowed at rear/not in bar*' to Children permitted only in rear function room until 2200 on all days.

Summary of Representations

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

- 9.7 Representations have been made by:

THREE (3) Responsible Authorities (Police, Trading Standards and Licensing Authority).

Summary of Representations/Conditions which could not be agreed following negotiation between the applicant and the THREE (3) Responsible Authorities:-

- 9.8 The Premises Licence Holder or DPS or a person nominated by them in writing for the purpose will employ SIA doorstaff on a risk assessed basis. The risk assessment shall be in writing and shall be made immediately available on request to an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or the Police
- 9.9 The Premises Licence Holder or DPS or a person nominated by them in writing for the purpose, shall maintain a register of door supervisors which shall be kept on the premises showing the names and addresses of the door supervisors, their badge numbers and shall be signed by the door supervisors as they commence and conclude duty. The register shall be made available on demand for inspection by an 'authorised person' (as defined by Section 13 of the Licensing Act 2003), or the Police or an authorised officer of the SIA.
- 9.10 Signage in not less than 32 font shall be clearly displayed prominently at the point of access to the premises in relation to the Admission Policy, Age Policy, Drug Policy, and Dress Policy.
- 9.11 The premises shall operate a Challenge 25 Policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or the police or an authorised Trading Standards Officer of Herefordshire Council. Prominent, clear and legible signage (in not less than 32 font bold) shall also be displayed at all entrances to the premises as well as at, at least one location behind any bar advertising the scheme operated.

10. Key Considerations

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

The licensing objectives are:

- The prevention of crime and disorder,
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

11. Community Impact

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

12. Equality and Human Rights

- 12.1 No implications identified.

13. Financial Implications

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

14. Legal Implications

- 14.1 The Sub-Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
- 14.2 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.
- 14.3 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'. (Since the stated case, amendments have been enacted to the Licensing Act which replace the word necessary with appropriate. Members will need to give due consideration to the intended meaning of this change and give weight to the difference as they see fit. Whilst the wording of the judge cannot be altered, it may be useful for Members to read the advice by replacing the words necessary and proportionate with appropriate).

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

- 14.4 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 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 e-mail 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. Current premises licence
- C. Local Authority Representation
- D. Police Representation
- E. Trading Standards rep

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.