

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	2 DECEMBER 2013
TITLE OF REPORT:	APPLICATION FOR A VARIATION TO THE PREMISES LICENCE - 'CONNOLLY'S' BAR, 7 GLOUCESTER ROAD, ROSS ON WYE
REPORT BY:	LICENSING OFFICER

1. Classification

Open

2. Key Decision

This is not an executive decision.

3. Wards Affected

Ross on Wye (East)

4. Purpose

To consider an application for a variation to the Premises Licence in respect of 'Connolly's' Bar, 7 Gloucester Road, Ross on Wye, HR9 5BU'.

5. Recommendation

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 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 the timings/hours with regard to the licensable activities of Regulated Entertainment – Live and Recorded music.
- The application requests 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 and Trading Standards with regard to the addition of conditions to the licence.
- Relevant extracts from the Council's Licensing Policy are set out at Appendix A.

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	Punch Taverns Plc Jubilee House, Second Avenue, Burton Upon Trent, Staffordshire, DE14 2WF	
Representative	TLT Solicitors	
Type of application:	Date received:	28 Days consultation
Variation	08/10/2013	04/11/2013

Licence Application

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

Current Licence

The following is authorised under the current licence:

1. Provision of live music (Indoors)
2. Provision of recorded music (Indoors)
3. Supply of alcohol (For consumption both on and off the premises)

During the following hours:

Monday-Wednesday: 11:00 - 23:00
Thursday-Saturday: 11:00 - 01:00
Sunday: 12:00 (Midday) - 00:30

Non-Standard Timings:

A further additional hour every Christmas Eve

A further additional hour every Boxing Day

To reflect existing New Year's Eve/Day hours

Summary of Application

The application requests the following:

Recorded music (Indoors) and Suopply of Alcohol (Both on & off premises)

Monday to Wednesday 0900 – 0000

Thursday to Saturday 0900 – 0100

Sunday 0900 – 0030

Late Night Refreshment

Monday to Wednesday 2300 – 0000

Thursday to Saturday 2300 – 0100

Sunday 2300 – 0030

Summary of Representations

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

Representations have been made by:

Two (2) Responsible Authorities (Police & Trading Standards)

Whilst all the conditions have been agreed there still remains 2 police conditions and one trading standard condition which the applicant will not agree. They are:

(Police)

- *All bar staff engaged in the sale of alcohol to be trained in Responsible Alcohol Retailing to the minimum standard of BIIAB level 1 or any other training recognised and agreed with Trading Standards. (All existing staff shall be trained within one month of the date that this condition appears on this licence. All new staff shall be trained within one month of taking up employment. All staff shall be re-trained twelve monthly thereafter. Training records shall be kept on the premises which shall show the name of the training course attended, the date of the training, the name of the Person undertaking the training and shall be produced to the police, an authorised Herefordshire Trading Standards Officer or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) on demand.*

- *All existing staff shall be trained within one month of the date this condition appears on this licence. All new staff shall be trained within one month of taking up employment. All staff shall be re-trained twelve monthly thereafter. The training shall include:
Drugs Awareness
Conflict resolution
Selling to under age person
Selling to drunks
Training records shall be kept on the premises which shall show the area of training covered, the date of the training, the name of the person and shall be signed by the trainer and trainee. This shall be produced to the police, an authorised Herefordshire Trading Standards Officer or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) on demand.*

Trading Standards

- *All staff engaged in the sale of alcohol to be trained in Responsible alcohol retailing to the minimum standard of BIIAB level 1 or any equivalent training agreed by Herefordshire Council Trading Standards within 1 month of commencing employment at the premises. (Where there are existing staff this training shall be completed within 3 months of the date that this condition first appears on the licence). Retraining shall take place every 6 months. Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council on demand*

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

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

12. Equality and Human Rights

No implications have been identified.

13. Financial Implications

There are unlikely to be any financial implications at this time to the authority except if the decision is appealed.

14. Legal Implications

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.

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'. (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.

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

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. Extracts from the Herefordshire Council Licensing Policy
- b. Application Form
- c. Police Representation
- d. Trading Standards representation

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.

HERFEORDSHIRE COUNCIL LICENSING POLICY (Extracts)

20.5 Training

The licensing authority acknowledges that training and good management play a key part in preventing alcohol and drug related crime.

20.6 The authority recommends that all licensees of on-licensed premises attend training programmes which will raise their awareness of the issues relating to drugs, violence in licensed premises and deals with conflict resolution.

20.7 Suitable training should be extended to all bar staff and door staff so that drug dealers and troublemakers will be deterred from using licensed premises.

20.8 Licensees are also encouraged to attend training programmes to help identify children at risk and issues of basic child protection.

23.31 It is unlawful to sell or supply alcohol to persons under the age of 18, and applicants are recommended to adopt the 'Challenge 25' policy. The recommended conditions are:

1. The Licensee to adopt a "Challenge 25" policy where all customers who appear to be under the age of 25 and attempt to purchase alcohol or other age-restricted products are asked for proof of their age.

The Licensee to prominently display notices advising customers of the "Challenge 25" policy.

The following proofs of age are the only ones to be accepted:

- . UK Photo Driving licence
 - . Passport
 - . PASS Hologram
2. Staff Competence and Training:

The Licensee to keep a written record of all staff authorised to sell alcohol, the record to contain the full name, home address, date of birth and national insurance number of each person so authorised. The staff record to be kept on the licensed premises and made available for inspection by the Licensing Officer, Trading Standards or the Police.

The Licensee to ensure that each member of staff authorised to sell alcohol has received adequate training on the law with regard to age restricted products and that this has been properly documented and training records kept. The training record to be kept on the licensed premises and made available for inspection by the Licensing Officer, Trading Standards or the Police.

The Licensee to ensure that each member of staff authorised to sell alcohol is fully aware of his/her responsibilities in relation to verifying a customer's age and is able to effectively question purchasers and check evidence of proof of age.

The Licensee to ensure that each member of staff authorised to sell alcohol is sufficiently capable and confident to confront and challenge under – 18s attempting to purchase alcohol.

3. Refusals Book:

The licensee to keep a register of refused sales of all age- restricted products (Refusals Book).

The refusals book to contain details of time and date, description of the attempting purchaser, description of the age restricted products they attempted to purchase, reason why the sale was refused and the name/signature of the sales person refusing the sale.