

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	6 JANUARY 2014
TITLE OF REPORT:	APPLICATION FOR A VARIATION TO THE PREMISES LICENCE IN RESPECT OF ' THE POTTING SHED, RYELANDS STREET, HEREFORD
REPORT BY:	LICENSING OFFICER

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

St Nicholas

4. Purpose

To consider an application for a variation to the Premises Licence in respect of **THE POTTING SHED, RYELANDS STREET, HEREFORD.**

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 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 Sale of Alcohol and Indoor Sporting events. It also requests the addition of the licensable activity of Regulated Entertainment –Recorded music.
- The application requests the removal of all existing conditions from the existing premises licence and the introduction of new conditions which are relevant, achievable and enforceable for the purpose of promoting the licensing objectives.
- Representations have been received from Members of the Public and are attached at Appendix 3.
- The police have no objection to the application. (See Appendix5)

7. Options

There are a number of options open to the Sub-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 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	Lucie Watts	
Representative	N/K	
Type of application:	Date received:	28 Days consultation
Variation	11.11.2013	09.12.2013

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. The current licence is attached at appendix 2.

Summary of Application

- 9.2 The application requests that:

Sale of Alcohol and Indoor Sporting Events as follows:

Sale of Alcohol and Indoor Sporting events

Sat – Wed 10:00 – 00:00

Thurs - Fri 10:00 – 01:00

and Recorded Music (Indoors only) as follows:

Recorded music

Sat – Wed 10:00 – 00:00

Thurs - Fri 10:00 – 01:00

- 9.3 The application requests the removal of the following conditions to be replaced with those submitted within the application- (see Appendix1):

- No open containers shall be removed from the premises.
- Sporting events shall be confined to snooker, billiards, pool and other games of a similar nature.
- All staff should be aware of proof of age regulations and Proof of Age Cards and/or Citizen Cards should be displayed on the premises.
- Associated notices indicating restrictions on access by children shall be conspicuously displayed throughout the premises
- Proven methods shall be employed for the prevention of unlawful supply, consumption and use of alcohol, drugs and other similar products
- Under 16 year olds will only be permitted after 1800hrs if accompanied by an adult and at the proprietor (or his representative's discretion).

Summary of Representations

- 9.4 A copy of the representations from the public is attached at Appendix 3. Personal details have been redacted and points that cannot be considered, as they are outside the remit of the Licensing Act, have been struck through. A petition was submitted but the petition in question is not considered to be a valid representation.
- 9.5 Representations have been made by: **FIVE (5)** members of the Public and **ONE (1)** Elected Councillor.
- 9.6 The Police response to the application is set out at Appendix 5.

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.

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

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. This is attached at Appendix 4.

17. Appendices

1. Application Form
2. Current premises licence
3. Representations from the Public
4. Copy of newspaper advert
5. Copy of Police response to application

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.