

Meeting:	Regulatory Sub-Committee
Meeting date:	4th November 2015
Title of report:	APPLICATION FOR THE VARIATION OF A PREMISES LICENCE IN RESPECT OF YATES, 58 COMMERCIAL ROAD, HEREFORD, HR1 2BP – LICENSING ACT 2003
Report by:	CLAIRE CORFIELD - LICENSING AND GYPSY TRAVELLER MANAGER

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Central Ward

Purpose

To consider an application for the variation of a premises licence in respect of 'Yates, 58 Commercial Road, Hereford, HR1 2BP.

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 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 Statement of Licensing Policy 2015 - 2020.

Options

1. 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,
 - c) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
 - d) To exclude from the scope of the licence any of the licensable activities to which the application relates,
 - e) To refuse to specify a person in the licence as the premise supervisor, or
 - f) To reject the application.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

3. **Licence Application**
The application for a variation to the premises licence has received representation and is brought before the committee for determination.
4. The details of the application are:

Applicant	Stonegate Pub Company Ltd Porter Tun House, 500 Capability Green, Luton, LU1 3LS	
Solicitor	Popleston Allen – Mr A Grimsey	
Type of application: Variation	Date received: 5th February 2015	28 Days consultation ended 4th March 2015

5. The initial application was made on 5th February 2015 and the 28 day consultation period concluded on 4th March 2015.
6. The matter appeared before the Regulatory Committee on 26th March 2015 where a decision was made.
7. On 16th April 2015 an appeal was lodged, by an interested party, to the Magistrates Court in respect of the decision made by the committee.
8. This appeal was disposed off by way of a consent order (Appendix f).

9. The consent order required that the case be remitted back to the Licensing Authority for re-hearing as follows:
- Any further evidence relevant to the application provided by any party to the remitted hearing be exchanged in writing no less than 14 days prior to the date of the hearing. Any response by way of rebuttal will be provide no less than 7 days before the hearing
 - The Regulatory Sub-Committee sitting at the remitted hearing will be constituted differently to the Committee which sat on the occasion which had been subject to the appeal

10. **Summary of Application**

The application requests the variation of the existing premises licence to include the following:

- The permitted hours for the sale of alcohol, regulated entertainment and late night refreshment be authorised until 0200 hours on all days
- That films and recorded music be permitted from 0700 hours on all days of the week
- That the opening hours be extended until 0230 hours on all days
- To remove the existing conditions as shown in Annex 2 of the licence and replace them with the conditions as shown in the application
- To have an additional hour on St George's Day; St Patricks Day; St Andrews Day; Burns Night; Valentine Day; Halloween; Friday, Saturday and Sunday preceding a Bank Holiday Monday; Maundy Thursday; Christmas Eve, Christmas Day; Boxing Day; 27th, 28th, 29th & 30th December ; Bonfire Night and New Years Day; On the commencement of British Summer Time

11. **Current Licence**

The current licence authorises the following licensable activities during the hours shown:

Films; Recorded Music: Monday - Sunday - from 08:00 - 01:00
Indoor Sporting Events; Live music; Dance; Other regulated entertainment: making music: Dancing; Other entertainment facilities
Monday - Sunday - 10:00-01:00
Late night refreshment: Monday - Sunday - 23:00-01:00
Supply/Sale of Alcohol: Monday - Sunday - from 08:00 - 01:00

Non Standard Timings:

Terminal hour for the sale of alcohol within the rear external area is 00:30hrs

New Year's Eve 36 hours

Change GMT to BST an additional hour;

Bank Holiday weekends Fridays to Mondays, on St Patrick's Day, St George's Day, St Andrews Day and St Valentine's Day and on the day before Chirstmas Eve to Boxing Day (Excluding Christmas Day) and New Year's Day - an additional hour.

Christmas Day: 12:00 - 23:00

On a maximum of 12 occasions a year, such hours as may be agreed by the police for special occasions, the police to have an absolute veto (not to be unreasonably

withheld). At least 7 days notice of such a request will be given to the council and police.

12. **Summary of Representations**

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

Representations have been made by:

One (1) of the Responsible Authorities (**Licensing Authority**) and **Nine (9)** representations from **Members of the Public**

13. The matter is therefore brought before Committee for determination.

Community Impact

14. Any decision is unlikely to have any impact on the local community.

Equality duty

15. There are no equality or human rights issues in relation to the content of this report.

Financial implications

16. There are unlikely to be any financial implications for the authority at this time.

Legal Implications

17. 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.

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"'.

The stated case of 'The Queen on the application of JD Wethersoon PLC v Guildford Borough Council which appeared in front of the Honourable Mr Justice Beatson at the Queens Bench Division Administrative Court on 11th April 2006 at paragraph 73 stated:

'The guidance provides that, where a cumulative impact policy is so adopted, there will be a rebuttable presumption that applications for new premises licences or material variations will normally be refused. To that extent, where there is such a policy, the guidance must permit an individual application to be considered on the basis of the rebuttable presumption so that the burden of proof lies on the applicant. In any event, if an area is so affected by serious alcohol related crime that the evidential basis for the special policy exists, requiring an applicant for a variation of the hours of premises in the area to demonstrate that the variation would not add to the area's problems does not mean that the "merits" of the application are not considered. A reversed burden of proof does not preclude consideration of the "merits" of an application.

Right of Appeal

18. Schedule 5 gives a right of appeal which states:

Variation of licence under section 35

4(1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.

(2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.

(3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that any variation made ought not to have been made, or

(b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 35(5).

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.

Risk Management

19. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court.

Consultees

20. All responsible authorities and members of the public living within Herefordshire.

Appendices

- a. Application Form – page 15
- b. Local Authority Representation – page 33
- c. Public Representations – page 35
- d. Papers submitted by the applicant in accordance with the consent order (Poppleston Allen) – page 59
- e. Consent Order from the Magistrates Court - Page 141
- f. The Herefordshire Council Statement of Licensing Policy 2015 – 2020: Special Cumulative Impact Policy. - 143
- g. Papers submitted by the appellant in accordance with the consent order (WoodWhur) – page 153
 - Public Representation – redacted – page 155
 - Current premises Licence – page 157
 - Current Premises Plan – page 169
 - Planning - Garden layout and Beer Garden – page 171
 - Images from flat and from Beer Garden – page 175
 - Location Plans – page 183
 - Yates Operation – Beer Gardens - Drinks promotions – page 187
 - Images of Outside Area and Fire Breather – page 201
 - Noise Assessment – page 205
 - Planning Documents – page 227
 - SOLP Extracts – page 239

Background Papers - None