

Meeting:	Regulatory Sub-Committee
Meeting date:	Monday 21st December 2015 – 11:00am
Title of report:	APPLICATION FOR THE GRANT OF A PREMISES LICENCE IN RESPECT OF LUMINESCENCE LTD, 25 WIDEMARSH STREET, HEREFORD HR4 9EA – 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 Grant of a premises licence in respect of Luminescence.

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 grant of premises licence has received representation and is brought before the committee for determination.

4. The details of the application are:

Applicant	Luminescence Ltd 25 WIDEMARSH STREET, HEREFORD HR4 9EA	
Solicitor	None known	
Type of application: Variation	Date received: 29th October 2015	28 Days consultation ended 26th November 2015

5. Summary of Application

The application requests the grant of a premises licence to include the following:

- The permitted hours for Plays, be authorised from 10.00 until 23.00 hours on all days of the week
- That films and performance of dance be permitted from 0900 until 00.00 hours on all days of the week
- That live music be permitted from 09.00 until 00.00 Mon-Fri and 09.00 until 01.30 Sat and Sun.

- That recorded music be permitted from 07.00 until 04.00 on all days of the week
- That late night refreshment be permitted from 23.00 until 03.00 on all days of the week
- That Supply of alcohol be permitted from 09.00 until 03.30 on all days of the week
- That the opening hours be 07.00 until 04.00 hours on all days of the week

6. **Summary of Representations**

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

Representations have been made by:

Four of the Responsible Authorities (**Licensing Authority**), (**Police**), (**Trading Standards**) and (**Environmental Health**), the Police and Trading Standards representations has been agreed with the applicant.

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

Community Impact

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

Equality duty

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

Financial implications

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

Legal Implications

11. 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

12. 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

13. 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
- b) West Mercia Police Representation
- c) West Mercia Police Amended Representation
- d) Trading Standards Representation
- e) Environmental Protection Representation
- f) Local Authority Objection
- g) Correspondence by Applicant

Background Papers

None.