

Meeting:	Licensing sub-committee
Meeting date:	Tuesday 3 July 2018
Title of report:	Application for a new premises licence in respect of 'Barton Court, Colwall, WR13 6HN – Licensing Act 2003
Report by:	Licensing technical officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Hope End

Purpose

To consider an application for a new premises licence in of 'Barton Court, Colwall, WR13 6HN.

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,

- b) 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,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

Reasons for Recommendations

- 2. Ensures compliance with the Licensing Act 2003.

Key Considerations

- 3. The application for a grant of a premises licence has received representation and is brought before the committee for determination.
- 4. The details of the application are:

Applicant	James Wilson Meyer & Linda Louise Camp 14 Eldorado Road, Cheltenham. GL50 2PT	
Solicitor	Not applicable	
Type of application: New	Date received: 9 May 2018	28 Days consultation ended 6 June 2018

- 5. The application was first submitted on 21 March 2018 and the consultation has been re-started twice since then, due to the applicant not advertising in a local newspaper which is a requirement within the legislation.
- 6. The application (appendix 1) requests a new premises licence to allow the following licensable activities, during the hours shown as follows:

Plays (Outdoors)
Friday – Saturday
18:30 – 23:00

Live Music, Recorded Music (Indoors/Outdoors)
Friday 18:30-01:00
Sat 18:30-02:00
Sunday 12:00-18:00

Late Night Refreshment (Indoors)
Friday 23:00-01:00
Sat 23:00-02:00

Sale/Supply of Alcohol (consumption on the premises)
Monday – Sunday
24hrs

Summary of Representations

7. Two (2) representations have been received from the responsible authorities (trading standards and West Mercia Police) which have been accepted by the applicant.
8. Trading standards representation with accepted conditions can be found at appendix 2
9. West Mercia Police representation with accepted conditions can be found at appendix 3
10. Two (2) public representations have been received and accepted by the local authority. These can be found at Appendix 4 and 5.
11. Six (6) public representations were not accepted by the local authority.

Community Impact

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

Equality duty

13. There are no equality issues in relation to the content of this report.
14. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.
15. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Financial implications

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

Legal Implications

17. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention

of public nuisance; and the protection of children from harm in exercising its functions under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy. The options available to the licensing authority are set out in section 1 of this report.

18. 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.
19. 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.
20. 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.
21. 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.
22. 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'.
23. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

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

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).

- 25. Appeals should be made to the Magistrates Court and must be made within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

Risk Management

- 26. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

Consultees

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

Appendices

- Appendix 1 - Application Form
- Appendix 2 - Trading Standards Representation
- Appendix 3 - West Mercia Police Representation
- Appendix 4 - Public Representation 1
- Appendix 5 - Public Representation 2

Background Papers

None.

