

Title of report: Application for a grant of a premises licence in respect of 'Shires Park, Ullingswick, Herefordshire. HR1 3JE– Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: Tuesday 18 May 2021

Report by: Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Hampton

Purpose

To consider an application for a grant of a premise licence in respect of Shires Park, Ullingswick, Herefordshire. HR1 3JE under the Licensing Act 2003.

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:

- a) The steps that are appropriate to promote the licensing objectives,**
- b) The representations (including supporting information) presented by all parties,**
- c) The guidance issued to local authorities under Section 182 of the Licensing Act 2003, and**
- d) The Herefordshire Council Statement of Licensing Policy 2020 – 2025.**

Reasons for Recommendations

Ensures compliance with the Licensing Act 2003

Alternative 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 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
 - d) To refuse to specify a person in the licence as the premise supervisor, or
 - e) To refuse the application

Key considerations

Licence Application

2. The application for the grant of a premises licence has received relevant representation and is therefore brought before the sub-committee for determination.
3. Herefordshire Council Statement of Licensing Policy 2020 to 2025 states "All representation must be 'relevant', for example they must be about the likely effect of the grant of the application". This followed paragraph 8.57 in the s182 Guidance which uses the same wording.
4. The details of the application are:

Applicant	Diane Elizabeth Thomas	
Agent	The Licensing Guys	
Type of application: Grant	Date received: 12 March 2021 28 day consultation started: 13 March 2021	28 Days consultation ended: 9 April 2021

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Summary of Application

5. The application (appendix 1) requests the grant of a premises licence to allow the following licensable activities, during the hours shown, as follows:

Live Music (Indoors/Outdoors), Recorded Music (Indoors),

Sunday – Thursday 11:00 – 23:00

Friday – Saturday 11:00 – 24:00

Late Night Refreshment (Indoors/Outdoors)

Friday – Saturday 23:00 – 01:00

Sale/Supply of alcohol (consumption on and off the premises)

Sunday – Thursday 09:00 – 23:00

Friday – Saturday 09:00 – 01:00

Non-Standard Timings

11:00hrs - 00:00hrs - Valentine's Day, Christmas Eve, New Year's Eve, Bank Holidays and Sundays preceding Bank Holidays.

6. The proposed Designated Premises Supervisor (DPS), Diane Elizabeth Thomas, has not been granted a personal licence by her local authority at the time this report was produced.

Summary of Representations

7. One (1) representation has been received from Environmental Protection (appendix 2) and they have objected outright to the application.
8. Twenty (20) relevant representation have been received from members of the public in line with the licensing objective Prevention of Public Nuisance that the licensing authority have accepted as being relevant. (Appendix 3).
9. A number of relevant public representations highlighted concerns about the increased traffic and even though this cannot be considered under the Licensing Act 2003, the applicant's agent produced a crash data document to address this issue. (Appendix 4).
10. Following the end of the consultation period and in support of their objection, Environmental Protection produced an aerial map of the area for the committee. The red outlined area on the

map highlights the proposed licenced area and the yellow circled areas highlights private dwellings. (Appendix 5).

11. Following discussions with Environmental Protection following the end of the consultation, the applicant's agent produced an updated plan of the premises to support the application. The agent advised during the previous committee meeting that all live & recorded music was to be removed from the outside area. (appendix 6).
12. The application was first brought to committee on 21 April 2021 for determination. The decision of that committee was to adjourn the meeting until 17 May 2021 at 14:30pm which would allow for a site visit on 7 May at 10.30 am. The reason for the site visit was due to the number of changes to the application made during the meeting and the need to understand the location of the premises to fully consider the points made by environmental protection, the public representations and the applicant's agent.

Community impact

13. Any decision may have an impact on the local community.

Environmental Impact

14. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal environmental impacts for the Council.

Equality duty

15. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
16. There are no equality issues in relation to the content of this report.
 17. 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.
 18. 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.

Resource implications

19. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal resource implications for the Council.

Financial implications

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

Legal implications

21. As relevant representations have been received, the sub committee must determine the application under Section 3.5.7 (c) of the Herefordshire Council constitution. The representations must relate to the licensing objectives and the sub committee must determine the likely effect of the grant of the premises licences on the promotion of the licensing objectives.
22. 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.
23. 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.
24. 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: -
25. 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.
26. 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.
27. 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:
28. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

29. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

30. Schedule 5 of the Licensing Act 2003 gives a right of appeal which states:
Decision to grant premises licence or impose conditions etc.
- (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).
31. 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

32. 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

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

Appendices

Appendix 1 - Application Form
Appendix 2 – Environmental Protection Objection
Appendix 3 – Public Representations
Appendix 4 – Crash Data
Appendix 5 – Aerial Map Produced by Environmental Protection
Appendix 6 - Updated plan of the premises

Background papers

None Identified