

Gloucester City Council

COMMITTEE	: LICENSING SUB-COMMITTEE
DATE	: 01 NOVEMBER 2010
SUBJECT	: APPLICATION TO VARY CLUB PREMISES CERTIFICATE UNDER SECTION 84 OF THE LICENSING ACT 2003 IN RESPECT OF QUEDGELEY SOCIAL CLUB, SCHOOL LANE, QUEDGELEY, GLOUCESTER GL2 4PJ
WARD	: QUEDGELEY FIELDCOURT
REPORT BY	: GROUP MANAGER ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	: A: COPY OF APPLICATION AND PLAN ILLUSTRATING THE LAYOUT OF THE PREMISES AND THE AREA TO BE LICENSED B: AGREED CONDITIONS – GLOUCESTERSHIRE CONSTABULARY C: AGREED CONDITIONS – ENVIRONMENTAL PROTECTION TEAM D: REPRESENTATIONS RECEIVED FROM LOCAL RESIDENTS E: MAP SHOWING LOCATION OF PREMISES IN RELATION TO PROPERTIES OF RESIDENTS F: EXISTING CLUB PREMISES CERTIFICATE G: AMENDED CLUB RULES H: PROCEDURE FOR LICENSING SUB-COMMITTEES I: MANDATORY CONDITIONS
REFERENCE NO.	: ES21013

1.0 PURPOSE OF REPORT

- 1.1 To outline to Members an application to vary a club premises certificate under Section 84 of the Licensing Act 2003 received from Quedgeley Social Club in respect of Quedgeley Community Centre, School Lane, Quedgeley, Gloucester GL2 4PJ.

2.0 RECOMMENDATIONS

- 2.1 Having considered the application, any relevant representations, the legislative provisions, the Council's Statement of Licensing Policy and the Secretary of State's Guidance, Members have the following options as considered necessary to promote the Licensing Objectives:
- a) To grant the application as submitted.
 - b) To modify the conditions of the certificate.
 - c) To reject the whole or part of the application.

3.0 BACKGROUND

3.1 Members are advised that when considering an application to vary a club premises certificate the following options are available to them by virtue of the Licensing Act 2003, Part 4, section 85, paragraphs 3 and 4:

(3) *'Where relevant representations are made, the authority must –*

(a) *Hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and*

(b) *Having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.*

(4) *The steps are –*

(a) *to modify the conditions of the certificate;*

(b) *to reject the whole or part of the application;*

and for this purpose the conditions of the certificate are modified if any of them is altered or omitted or any new condition is added.'

If none of these steps are required the application must be granted.

3.2 Members should note that this application has policy implications as detailed in section 5 of this report.

3.3 Members are reminded that all applications must be considered on their own merits and that findings on issues of fact should be on the balance of probability.

4.0 THE APPLICATION AND REPRESENTATIONS

4.1 This is an application to vary an existing club premises certificate in accordance with Section 84 of the Licensing Act 2003. The variation relates to the extension of the licensed area to include the amenity land enclosed on three sides by the Community Centre buildings (with the introduction of polycarbonate screening parallel to the clubhouse doors and a brick boundary wall incorporating timber panels), a variation of the licensed hours and the removal of out of date conditions carried across from the 1964 Act. The application and a plan illustrating the layout of the premises and the area to be licensed is attached as Appendix A.

4.2 The application was received by the licensing team on 9 September 2010 from the Berkeley Domecq Consultancy on behalf of Quedgeley Social Club Limited of Quedgeley Community Centre, School Lane, Quedgeley, Gloucester GL2 4PJ. The application was advertised in accordance with the regulations and a public notice was published in the Citizen newspaper on 9 September 2010.

- 4.3 During the 28 day representation period Gloucestershire Constabulary made a representation proposing conditions to be attached to the certificate. These conditions were agreed by the applicant and the representation was subsequently withdrawn. The agreed conditions are attached at Appendix B.
- 4.4 Representations were also received from the Environmental Protection Team proposing conditions to be attached to the certificate. These conditions were agreed by the applicant and the representation was subsequently withdrawn. The agreed conditions are attached at Appendix C.
- 4.5 No other representations were received from Responsible Authorities.
- 4.6 Two representations have been received from local residents and refer to public nuisance. These representations are attached as Appendix D.
- 4.7 The map attached as Appendix E shows the location of the premises in relation to the properties of residents who submitted representations.
- 4.8 The existing club premises certificate permits:

Sale of Alcohol	Monday to Saturday (inc)	11:00 – 23:00
Sale of Alcohol	Sunday	11:00 – 22:30
Live Music	Monday to Saturday (inc)	11:00 – 23:00
Live Music	Sunday	12:00 – 22:30
Recorded Music	Monday to Saturday (inc)	11:00 – 23:00
Recorded Music	Sunday	12:00 – 22:30

Sale of alcohol on New Year’s Eve from the start of permitted hours on New Year’s Eve to the end of permitted hours on New Year’s Day.

Alcohol is supplied for consumption on the premise.

- 4.9 A copy of the existing club premises certificate is attached as Appendix F.
- 4.10 The variation application is for:

Supply of alcohol	Monday to Sunday (inc)	11:00 – 23:30
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Seasonal variations

Christmas Eve	11:00 – 00:30
Boxing Day	11:00 – 00:30
New Year’s Eve	11:00 – 02:00

To incorporate the courtyard within the licensed area as shown on the map attached with the application as Appendix A.

- 4.11 The applicant has identified that those conditions relating to licensing hours currently imposed on their club premises certificate could be removed as a consequence of the proposed variation they are seeking.

- 4.12 The applicant has set out in the operating schedule the measures proposed to be taken to promote the four licensing objectives:

General

No glasses or glass bottles to be permitted in the open courtyard.

The prevention of crime and disorder

The club has a CCTV system in operation. The club committee and bar staff are aware of and vigilant in respect of alcohol and drug abuse, and regular inspection of the buildings and outside areas are maintained during opening hours.

Public Safety

The club committee and staff are aware of health and safety issues and no activities are undertaken at the club that would be likely to affect public safety.

The prevention of public nuisance

The club committee and staff advise members to respect that the premises are near to residential properties and to avoid making undue noise, particularly in the late hours. Screens are to be constructed to tenor noise levels generally.

The protection of children from harm

Children are to be accompanied by an adult at all times and the club has adopted the Community Premises – Alcohol and Children Policy and Challenge 21.

- 4.13 Members are advised that the rules of the club have been amended to reflect the Licensing Act 2003 and have been included with the application and are attached as Appendix G.
- 4.14 The applicant and those that have made representations have been given Notice of this hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

5.0 THE LICENSING POLICY STATEMENT AND GUIDANCE

- 5.1 Section 5 of Gloucester City Council's Licensing Policy Statement outlines the policy with regard to Prevention of Nuisance referred to in the representations. Section 7 refers specifically to licensing hours. Members attention is drawn to these sections.
- 5.2 The relevant parts of the Secretary of State's Guidance for this application are Chapter 6 Club Premises Certificates and Chapter 10 Conditions attached to Premises Licences and Club Premises Certificates.

- 5.3 Chapter 10 states that only conditions which are necessary and proportionate for the promotion of the licensing objectives should be attached to a premises licence or club premises certificate if it is granted. The licensing authority may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. It also states that the pools of conditions that are supplied by the Secretary of State should not be applied universally, irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations. It is also advised that any conditions the Licensing Authority see fit to attach to the licence/certificate should not replicate any other legislation, such as the Licensing act 2003 itself or the Disability Discrimination Act 1995.
- 5.4 Members are referred to section 3,4,5 and 6 of the Licensing Policy Statement for Factors for Consideration relating to the four licensing objective(s) referred to in section 4.12 of this report.

6.0 CONCLUSIONS

- 6.1 Members should also be aware of a recently decided case heard in the Court of Appeal. Daniel Thwaites v Wirral Borough Magistrates Court [2008] EWHC 838 (Admin) concerned an appeal against a decision by the Magistrates to impose restrictions on the hours of operation of a licensed premises without proper evidence and by giving their own views excessive weight. The resulting decision to limit the hours of operation without it having been established that it was necessary to do so in order to promote the licensing objectives was ruled unlawful and the decision was quashed.
- 6.2 Members should consider the facts regarding the application and the representations received to vary a club premises certificate in respect of Quedgeley Social Club Limited, Quedgeley Community Centre, School Lane, Quedgeley, Gloucester GL2 4PJ and make a decision in accordance with the options outlined in paragraph 2.1 of this report.

7.0 FINANCIAL IMPLICATIONS

- 7.1 There are no financial implications relating to this report.

8.0 LEGAL IMPLICATIONS

- 8.1 The Licensing Sub Committee is asked to consider an application made under Section 84 to vary a club premises certificate to be determined under Section 85.
- 8.2 To consider the application, the Sub-Committee must be satisfied:
- The application is properly made.
 - The applicant has given proper notice.
 - The applicant has satisfied the advertising requirements.
- 8.3 The four licensing objectives are set out in paragraphs 4.12 of the report and each should be considered of equal importance.

- 8.4 The Sub-Committee must, having regard to the application and any relevant representations, decide on any of the options set out in the report at paragraph 2.1 (a) – (c).
- 8.5 The Sub-Committee has the powers to adjourn and carry forward the hearing to additional specified dates.
- 8.6 For the purposes of determining an application, a “ relevant representation” means a representation which:
- a) Is relevant to one or more of the licensing objectives.
 - b) Is made by a responsible authority or an interested party within the prescribed period.
 - c) Has not been withdrawn
 - d) If having been made by an interested party (who are not a responsible authority), that they are not in the opinion of the Licensing Authority frivolous or vexatious.
- 8.7 For those purposes an “interested party” are those who are living in the vicinity of the premises that have made application and those involved in a business in the vicinity of the premises that have made application as outlined in paragraph 4.6 of this report.
- 8.8 In deciding what action, if any, it should take, the Sub-Committee members must direct their minds to the causes and concerns the relevant representations identify. Any action should generally be directed to these causes and should always be no more than is a necessary and proportionate response. In particular, any detrimental financial impact of the Sub-Committees decision must be necessary and proportionate. The Sub-Committee is required to have regard to the Home Office guidance when making its decision. However, the guidance does not cover every possible situation, so long as the Guidance has been properly and carefully understood, the Sub-Committee may depart from it if they have reasons to do so. Full reasons must be given if this is the case.
- 8.9 Following the case of Daniel Thwaites v Wirral Borough Magistrates’ Court 2008, referred to in paragraph 6.1 of the report the Sub-Committee needs to avoid:
- a) Speculating of what might happen in the absence of evidence that harm would or could happen.
 - b) Not paying attention to Government Guidance where failing to follow it requires good reasons to be given.
 - c) Imposing conditions that do not promote the licensing objectives.
- 8.10 Where the Sub-Committee determines an application it must notify the determination and reasons for making it to:
- a) the applicant
 - b) the person who made the relevant representations
 - c) the Police

- 8.11 The Sub-Committee has its own procedure for determining applications that are attached to the report as Appendix H.
- 8.12 In considering this application, the Sub-Committee is solely performing the role of Licensing Authority. The Sub-Committee sits in a quasi-judicial capacity and must act impartially. It must offer a fair and unbiased hearing of the application. The Sub-Committee needs to disregard the wider Council objectives and other statutory roles and must direct themselves to making a determination solely based on the licensing law, Guidance and Council's Statement of Licensing Policy.
- 8.13 As a quasi-judicial body, the Sub-Committee is required to consider the application on its merits. It must take into account only relevant factors and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant.
- 8.14 Under the Human Rights Act 1998, the Sub-Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision.
- 8.15 The Sub-Committee has a duty under Section 17 of the Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the City.
- 8.16 If the Sub-Committee was to grant the licence it would be subject to mandatory conditions required by the act. A copy of the mandatory conditions are attached at Appendix I.
- 8.17 Interested Parties, Responsible Authorities and the applicant have the right to appeal the Sub-Committee's decision to the Magistrates' Court within a period of 21 days beginning with the day on which they were notified of the decision to be appealed against.

10.0 RISK MANAGEMENT IMPLICATIONS

- 10.1 The risk of an appeal to Magistrates should an inappropriate decision be made.

11.1 PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

- 11.1 None.

12.0 OTHER CORPORATE IMPLICATIONS

1. Community Safety

The four objectives of the Licensing Act 2003 are designed to support the community safety aspects and are dealt with within the body of the report.

2. Environmental

As above – dealt with within the body of the report.

3. Staffing

None

4. Trade Union

No Comments

Background Papers : Gloucester City Council Licensing Hearing Procedure

Published Papers : Licensing Act 2003
Licensing Act 2003 (Hearings) Regulations 2005
Licensing Act 2003 (Premises licenses and club premises certificates) Regulations 2005
Gloucester City Council Licensing Policy Statement
Home Office Guidance issued under section 182 of the Licensing Act 2003 Amended October 2010

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