

Gloucester City Council

COMMITTEE	: LICENSING SUB-COMMITTEE
DATE	: 11 NOVEMBER 2010
SUBJECT	: APPLICATION TO VARY A PREMISES LICENCE UNDER SECTION 34 OF THE LICENSING ACT 2003 IN RESPECT OF THE OLD PELICAN INN, 4 ST MARY'S STREET, GLOUCESTER GL1 2QR
WARD	: WESTGATE
REPORT BY	: GROUP MANAGER, ENVIRONMENTAL HEALTH & REGULATORY SERVICES
NO. OF APPENDICES	: A: COPY OF APPLICATION FROM MRS DEBORAH CLEMMINGS B: PLAN SHOWING THE LICENSED AREA C: PLAN SHOWING LOCATION OF THE OLD PELICAN INN D: LIST OF MANDATORY CONDITIONS E: COPY OF REPRESENTATIONS FROM GLOUCESTER CITY COUNCIL, POLLUTION CONTROL TEAM, ENVIRONMENTAL HEALTH F: COPY OF REPRESENTATION FROM GLOUCESTERSHIRE CONSTABULARY G: COPIES OF REPRESENTATIONS FROM RESIDENTS H: SECTIONS 3, 4, 5 AND 6 OF GLOUCESTER CITY COUNCIL'S LICENSING POLICY STATEMENT I: PROCEDURE FOR LICENSING SUB-COMMITTEES
REFERENCE NO.	: ES21014

1.0 PURPOSE OF REPORT

- 1.1 To outline to members an application to vary a premises licence made under Section 34 of the Licensing Act 2003 received from Mrs Deborah Clemmings in respect of The Old Pelican Inn, 4 St Mary's Street, Gloucester GL1 2QR. Members are to consider the application which has received representations from two Responsible Authorities and nineteen residents. The application is for an extension of the times during which alcohol may be sold and the provision of regulated entertainment, entertainment facilities and late night refreshment.

2.0 RECOMMENDATIONS

- 2.1 Having considered the application, the representations received, the legislative provisions, the Council's Statement of Licensing Policy and the Guidance issued by the Home Secretary, Members have the following options:
- (a) If members find that crime and disorder, risks to public safety, public nuisance and the risk of harm to children are likely but are satisfied with the steps proposed by the applicant, they can grant the licence and impose conditions on the licence that are consistent with the operating schedule.

- (b) If members find that crime and disorder, risks to public safety, public nuisance and the risk of harm to children are likely but determine that the steps needed to promote the licensing objectives proposed by the applicant should be modified, they can grant the licence subject to revised conditions that they consider necessary to promote the licensing objectives.
- (c) If members find that crime and disorder, risks to public safety, public nuisance and the risk of harm to children are likely but determine that the promotion of the licensing objectives cannot be met through the imposition of conditions on the licence, they can reject the whole or part of the application.
- (d) If members find that crime and disorder, risks to public safety, public nuisance and the risk of harm to children are not likely, the application must be granted.

3.0 BACKGROUND

3.1 Members are advised that when considering an application for a variation of a premises licence the following options are available to them by virtue of the Licensing Act 2003, Part 3, section 35, 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 licence;*
 - (b) *To reject the whole or part of the application*

and for this purpose the conditions of the licence 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 6 of this report.
- 3.3 Members are reminded that all applications must be considered on their own merits, and that findings on any issues of fact should be on the balance of probability.

4.0 THE APPLICATION

- 4.1 This is an application for a variation of a premises licence made in accordance with Section 34 of the Licensing Act 2003 by Mrs Deborah Clemmings in respect of The Old Pelican Inn (Appendix A – Copy of Application).
- 4.2 Appendix B is a copy of a plan illustrating the licensed area of the premises. Appendix C is a plan showing the location of The Old Pelican Inn and the location of those residents who have made representations.
- 4.3 The Old Pelican Inn was formerly known as the College Arms and is situated on the corner of St Mary’s Street and Pitt Street in a largely residential area. It is a typical small ‘local’ with two downstairs rooms served by one bar area and a small beer garden to the rear accessed via Pitt Street. There is also an upstairs function room which does not have the benefit of a licence and therefore does not form part of this application.
- 4.4 The current premises licence for The Old Pelican Inn is a replication of the previous Magistrates licence issued under the Licensing Act 1964. At the time the Licensing Act 2003 came in premises were allowed to apply to vary their old licences in order to extend hours and add licensable activities such as music and dancing. The majority of public houses in Gloucester took advantage of this opportunity and did just that. No such application was made on behalf of The Old Pelican Inn and the licence therefore only covers the sale of alcohol for times consistent with the 1964 Act. The conditions on the current licence, apart from the mandatory one, are simply inherited conditions from that Act.
- 4.5 This application is an attempt to redress the situation and to make the business a more viable proposition by extending hours and adding regulated entertainment and late night refreshment.
- 4.6. The application concerns proposals to make provision for the following:-

Plays: Indoors	}	
Films: Indoors	}	
Indoor Sporting Events	}	
Live Music: Indoors	}	
Recorded Music: Indoors	}	
Performance of Dance: Indoors	}	10.00 - 02.00 Sun to Wed
Anything Similar (to live/recorded music or performance of dance): Indoors	}	10.00 - 03.00 Thur to Sat
Provision of Facilities for Making Music: Indoors	}	
Provision of Facilities for Dancing: Indoors	}	
Provision of Facilities for Entertainment of a Similar Description (to making music and dancing)	}	

Late Night Refreshment: Indoors and Outdoors	23.00 - 02.00 23.00 - 03.00	Sun to Wed Thur to Sat
Supply of Alcohol: On and Off the Premises	10.00 - 02.00 10.00 - 03.00	Sun to Wed Thur to Sat
Opening Hours of the Premises	10.00 - 03.00 10.00 - 04.00	Sun to Wed Thur to Sun

4.7 The Applicant has set out in the operating schedule the measures proposed to be taken to promote the four Licensing Objectives. These measures are:-

Prevention of Crime and Disorder

- CCTV system in operation.

Public Safety

- Outside external lighting
- Smokers to use the beer garden and not the highway at the front of the premises.

The Prevention of Public Nuisance

- Noise reduction measures to be taken.

The Protection of Children from Harm

- Measures to prevent underage sales to include posters on walls and the checking of ID.

4.8 In addition the Mandatory Conditions in respect of alcohol sales, and the classification of films would be added to the licence (Appendix D - Mandatory Conditions).

4.9 The application was received by the Licensing Team on 16 September 2010. In accordance with the Regulations the application was advertised on the premises and in the Citizen Newspaper on 24 September 2010.

5.0 REPRESENTATIONS

5.1 Two Responsible Authorities have made representations namely from Environmental Health, Noise Pollution Team (Appendix E) and Gloucestershire Constabulary (Appendix F).

5.2 The Noise Pollution representation is concerned with the public nuisance objective and the effect the noise from music and persons using the beer garden will have on the residents. No conditions have been suggested and the view is simply that the application should be refused. It is interesting to note that, according to service records, no noise complaints involving these premises have been received since 2006.

- 5.3 The representation from Gloucestershire Constabulary is concerned with all four licensing objectives however it should be noted that the fact that the City Centre CCTV system does not extend to St Mary Street would not be a valid reason to refuse an application and also the Kings School have confirmed that they actually no longer have boarders at the school. No conditions have been suggested but the Constabulary make the suggestion that a terminal hour of midnight for licensable activities would be more appropriate for this type of area.
- 5.4 The nineteen representations from residents of the following streets :-
Pitt Street, St Mary's Street, St Mary's Close, Millers Green and Priory Road
- 5.5 In order for a representation to be considered relevant it must, in the first instance, have been made by an interested party i.e. a person who either resides or is involved in business 'in the vicinity' of the premises in question. Chapter 9 of the Home Secretary's Guidance to the Licensing Act makes it clear that to be considered an interested party in this context would require the person making the representation to demonstrate how they could be directly affected by any disturbance or disorder occurring on or immediately outside the premises. (Appendix G - copies of representations)
- 5.6 In the light of this it might be reasonable to suggest that only those persons residing in St Mary's Street and Pitt Street are likely to be affected. Members may, however, consider representations from persons who reside outside a defined vicinity if these persons can demonstrate that they are likely to be affected by disturbance or disorder potentially occurring on those premises.
- 5.7 The main thrust of the representations would appear to be the potential for anti social behaviour and noise nuisance emanating from the premises and continuing into the early hours. There is also the suggestion that the area is already suffering from such although there has, as yet, been no evidence provided to substantiate this.
- 5.8 There is some reference to the area already being served by premises with late licences but this is not a relevant consideration as it does not relate to any of the licensing objectives.
- 5.9 The applicant and those who have made representations listed above have been given Notice of this hearing in accordance with The Licensing Act (Hearings) Regulations 2005.

6.0 THE LICENSING POLICY STATEMENT AND GUIDANCE

- 6.1 Sections 3, 4, 5 and 6 of Gloucester City Council's Licensing Policy Statement outlines our policy with regard to the licensing objectives referred to in representation(s). (Appendix H). Member's attention is drawn to these sections.
- 6.2 The relevant parts of the Home Secretary's Guidance for this application are Chapter 8 – Applications for Premises Licenses, Chapter 9 – Determining Applications and Chapter 10 – Conditions Attached to Premises Licenses.

6.3 Chapters 10.1 to 10.18 deal with the attaching of conditions to licences and state that only necessary, proportionate conditions, which promote the licensing objectives, should be attached to the licence 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 Home Secretary 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 sees fit to attach to the licence should not replicate any other legislation, such as the Licensing Act 2003 itself, or the Disability Discrimination Act 1995.

7.0 CONCLUSIONS

7.1 Members should consider the facts regarding the application and the representations regarding the Application to vary the Premises Licence in respect of The Old Pelican Inn and make a decision in accordance with the options outlined in paragraph 2.1 of this report.

7.2 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.

8.0 FINANCIAL IMPLICATIONS

8.1 There are no financial implications relating to this report.

9.0 LEGAL IMPLICATIONS

9.1 The Licensing Sub-Committee is asked to consider an application made under Section 34 for a variation to a premises licence to be determined under Section 35.

9.2 To consider the application, the Sub-Committee must be satisfied:

- a) the application is properly made.
- b) the applicant has given proper notice.
- c) the applicant has satisfied the advertising requirements.

9.3 The four licensing objectives are set out in paragraph 4.7 of the report and each must be considered of equal importance.

9.4 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)-(d).

- 9.5 The Sub-Committee has powers to adjourn or carry forward the hearing to additional specified dates.
- 9.6 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 is not also a responsible authority), that they are not in the opinion of the Licensing Authority frivolous or vexatious.
- 9.7 For these purposes an "interested party" are those who are living in the vicinity of the application premises and those involved in a business in the vicinity of the application premises.
- 9.8 In deciding what action, if any, it should take, the Sub-Committee Members must direct their minds to the causes and concerns which 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-Committee's decision must be necessary and proportionate. The Sub-Committee is required to have regard to the Home Secretary's 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.
- 9.9 Following the case of *Daniel Thwaites v Wirral Borough Magistrates' Court* 2008, referred to in paragraph 7.2 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.
- 9.10 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.
- 9.11 The Sub-Committee has its own procedure for determining applications which is attached to the report as Appendix I.

- 9.12 In considering the 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 the Council's Statement of Licensing Policy.
- 9.13 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.
- 9.14 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.
- 9.15 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.
- 9.16 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 4 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 licences and club premises certificates) Regulations 2005
Gloucester City Council Licensing Policy Statement
Home Secretary's Guidance issued under Section 182 of the Licensing Act 2003
- Person to Contact** : Anthony D Moseley, Licensing Enforcement Officer
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