

Gloucester City Council

COMMITTEE	: LICENSING SUB-COMMITTEE
DATE	: 09 NOVEMBER 2010
SUBJECT	: APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 IN RESPECT OF THE LODGE, 19 BRUNSWICK SQUARE, GLOUCESTER GL1 1UG
WARD	: WESTGATE
REPORT BY	: GROUP MANAGER, ENVIRONMENTAL HEALTH & REGULATORY SERVICES
NO. OF APPENDICES	: A: COPY OF APPLICATION FROM MR STUART WILSON AND MS DEBORAH HARRISON B: PLAN SHOWING THE AREA TO BE LICENSED C: PLAN SHOWING LOCATION OF THE LODGE D: LIST OF MANDATORY CONDITIONS E: COPIES OF REPRESENTATIONS FROM RESIDENTS F: SECTIONS 3, 4, 5 AND 6 OF GLOUCESTER CITY COUNCIL'S LICENSING POLICY STATEMENT G: PROCEDURE FOR LICENSING SUB-COMMITTEES
REFERENCE NO.	: ES21018

1.0 PURPOSE OF REPORT

- 1.1 To outline to members an application made under Section 17 of the Licensing Act 2003 received from Stuart Wilson and Deborah Harrison in respect of premises situated at 19 Brunswick Square, Gloucester GL1 1UG. Members are to consider the application which has received representations from two Responsible Authorities and residents. The application is for the retail sale of alcohol, the provision of regulated entertainment, entertainment facilities and late night refreshment.

2.0 RECOMMENDATIONS

- 2.1 Having considered the application, the representations, the legislative provisions, the 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 new premises licence the following options are available to them by virtue of the Licensing Act 2003, Part 3, section 18, 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 grant the licence subject to:-*
 - (i) *The conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives; and*
 - (ii) *Any conditions which must under sections 19, 20 or 21 be included in the licence*
- (b) *To exclude from the scope of the licence any of the licensable activities to which the application relates;*
- (c) *To refuse to specify a person in the licence as the premises supervisor;*
- (d) *To reject 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 new premises licence made in accordance with Section 17 of the Licensing Act 2003 by Stuart Wilson and Deborah Harrison in respect of The Lodge, 19 Brunswick Square, Gloucester (Appendix A – Copy of Application).
- 4.2 Appendix B is a copy of a plan illustrating the proposed licensed area of the premises and Appendix C is a plan showing the location of The Lodge and the location of those residents who have made representations.
- 4.3 The Lodge was formerly the premises of the ‘Gas Club’ a registered members club and more recently has been used as office premises and is situated in a largely residential area. The premises feature two lounges on the ground floor, one with bar and three function rooms on the first floor. The proposal is to use the premises for both public events and private hire. The premises has a car parking area to three sides of the building.
- 4.4 The application concerns proposals to make provision for the following:-

Plays: Indoors/outdoors	Mon - Sat 09.00 - 23.00 Sun 11.00 - 23.00
Films: Indoors	Mon - Sun 09.00 - 00.00
Indoor Sporting Events	Mon - Sun 09.00 - 00.00
Boxing or Wrestling: Indoors/outdoors	Mon - Sun 09.00 - 00.00
Live Music: Indoors	Mon - Sun 09.00 - 00.00
Recorded Music: Indoors	Mon - Wed 09.00 - 00.00 Thur 09.00 - 02.00 Fri and Sat 09.00 - 03.00 Sun 12.00 - 23.00
Performance of Dance: Indoors	Mon - Wed 09.00 - 21.00 Thur - Sat 09.00 - 22.00 Sun 09.00 - 21.00
Provision of Facilities for Dancing: Indoors	Mon - Sun 09.00 - 00.00
Late Night Refreshment: Indoors	Mon - Sun 23.00 - 05.00
Supply of alcohol on the premises	Mon - Sun 24 hrs
Opening Hours of the Premises	Mon – Sun 24 hrs

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

Prevention of Crime and Disorder

- CCTV system to be installed and data retained for 28 days.
- The premises to become a member of the Licensed Victuallers Association.
- A minimum of two door staff shall be employed for any event where there is an occupancy of 100 or more.

Public Safety

- Adequate internal and external lighting to be provided.
- All exit routes to be clearly marked.
- Fire alarm system installed.
- Removal of glasses.

The Prevention of Public Nuisance

- Noise levels will be monitored to ensure no nuisance for local residents.
- Notices shall be displayed advising customers to leave quietly.
- A closed door policy shall operate after midnight for public events.
- Door staff to be provided at a ratio of 1:100 of occupancy subject to a minimum of 2.

The Protection of Children from Harm

- 'Challenge 25' policy to be adopted.
- No unaccompanied children shall be allowed on the premises.

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

- 4.7 The application was received by the Licensing Team on 19 October 2010. In accordance with the Licensing Act Regulations the application was advertised on the premises and in the Citizen Newspaper on 21 October 2010.

- 4.8 A number of residents made a complaint that the blue notice affixed to the front of the premises could not readily be seen as the premises lie behind a wall and the frontage faces the car park which is not normally accessed by passers by.

- 4.9 The Regulations state that the statutory notice shall be displayed for a period of no less than 28 consecutive days prominently at or on the premises to which the application relates where it can be conveniently read from the exterior of the premises.

- 4.10 When the concerns relating to the siting of the notice were reported to the Licensing Team on 09 November 2010 the applicant was immediately notified and a fresh notice was fixed to a gate in the boundary wall of the property fronting Brunswick Square.
- 4.11 It is the view of certain residents that the application for the premises licence was flawed by this situation and that the application should therefore be made invalid.
- 4.12 There followed much discussion between the appropriate Officers of the Council and the view is held that although initially affixing the notice in such a way as to make it difficult for interested parties to ascertain that an application had been made was not the best decision nevertheless the advert in the newspaper had been properly made and following the displaying of the second notice a substantial number of residents had made timely representations and a hearing has been duly called. It is not felt that the licensing process has been prejudiced by this.

5.0 REPRESENTATIONS

- 5.1 Representations were made by two of the Responsible Authorities. The first from Gloucestershire Constabulary concerned issues to do with the promotion of the four licensing objectives. The Applicant has accepted the representation and has agreed that the application may be modified to incorporate a change in the hours originally requested and the addition of conditions to the licence. These are as follows:-

Alcohol Operating Hours:		Non-Alcohol Operating Hours:	
Capacity:		Capacity:	
Mon:	07:00 to 2330	Mon:	07:00 to 0030
Tue:	07:00 to 2330	Tue:	07:00 to 0030
Wed :	07:00 to 2330	Wed:	07:00 to 0030
Thu:	07:00 to 2330	Thu:	07:00 to 0030
Fri:	07:00 to 02:30	Fri:	07:00 to 03:30
Sat:	07:00 to 02:30	Sat:	07:00 to 03:30
Sun :	07:00 to 2330	Sun:	07:00 to 0030

(Times will extend for an extra hour on New Years Eve, and Bank Holidays.)

CONDITIONS:

Membership:

- 1.(a) an 'etiquette book' shall be provided to all members, at point of joining, in which the 'house rules' concerning codes of conduct and behaviour are explained.
- 1.(b) a list of members shall be maintained. This list shall be produced for inspection to the police or authorised officers of the Gloucester council (who will carry id), following any alleged incident of crime or disorder linked to the premises.
- 1.(c) On occasions where venue is open for pre-booked events / private bookings membership rules will not apply.

CCTV

- 2.(a) cctv will be operative at the premises of a standard satisfactory to the police and licensing authority and shall monitor all areas used by patrons, including the outside and designated smoking areas. All cctv equipment shall be maintained in good working order and shall continually record during licensable hours and for a minimum period of two hours afterwards.**
- 2.(b) in the event of any extension or replacement of the cctv equipment any replacement or additional cctv equipment shall be installed to the satisfaction of the police and licensing authority.**
- 2.(c) that tapes, or other recording media relating to cctv equipment be retained for a minimum of 31 days and made available to any authorised officer of the police or licensing authority immediately upon reasonable request.**
- 2.(d) the correct time and date shall be generated onto both the recording and real time image.**
- 2.(e) if the cctv equipment breaks down, the premises management shall ensure that they verbally inform the council's licensing officer and the police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the premises incident report register and shall include the date, time and by what means this notification was achieved and to whom the information was passed. Equipment failures shall be repaired or replaced as soon as is reasonably practicable and without undue delay. The licensing office and the police shall be informed when faults are rectified and the fact recorded in the incident report register.**
- 2.(f) a member of staff technically able to operate the cctv system shall be available during all hours when the premises are open and shall comply with any reasonable request of an authorised officer of the council or police to view any cctv footage that has been recorded. The manager shall ensure that a member of staff shall be technically able to reproduce cctv images into removable format and that such removable format shall be produced within twenty four hours following any request from an authorised officer of the council or police.**
- 2.(g) signage shall be clearly displayed to the effect that closed circuit television equipment is in operation to monitor security and customer safety.**
- 3. 'pint' drinking glasses used within the premises are of polycarbonate type or toughened or safety glass to the appropriate safety standard, in that they shall not produce sharp shards when broken.**
- 4. Doorstaff will be provided at the rate of 1:100 of occupancy subject to a minimum of 2. When in use doorstaff will conduct random searching as a condition of entry.**
- 5. A wind down policy of 60 minutes will be observed.**
- 6. All inclusive or other irresponsible drinks promotions will not be allowed.**
- 7. Telephone numbers of local taxi services / private hire are to be prominently displayed.**

5.2 The second representation from a Responsible Authority came from the Environmental Health Pollution Control Team and concerned issues to do with the prevention of Public Nuisance. The Applicant has accepted the representation and has agreed that the following conditions may be added to the licence. These are as follows:-

1. **All windows and doors to be kept closed when live/recorded music is being played, except to allow persons to enter and leave the building.**
2. **Music and amplified voices shall be inaudible at the external boundary of the nearest noise sensitive premises.**
3. **No rubbish, including bottles shall be moved, removed or placed in outside areas between the hours of 23:00 and 08:00.**

5.3 Representations were also received from a number of residents of the following streets:

Old Tram Road	Spa Road	Montpellier
Chillingworth Mews	Brunswick Square	Albion Street

5.4 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 E - copies of representations)

5.5 In the light of this it might be reasonable to suggest that those persons residing in Spa Road and Montpellier are unlikely to be directly 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.

5.6 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 anti social behaviour from persons passing through the vicinity but this clearly can be nothing to do with a premises which has not yet opened and is therefore not relevant to this application.

5.7 The Guidance also states that a representation would only be relevant if it relates to the likely effect of the grant of the licence on the promotion of at least one of the Licensing Objectives. In the case of a new licence application this is clearly difficult to evidence but as the Guidance states 'there is no requirement for an interested party to produce a recorded history of problems at a premises to support their representations' it would appear from this that an ability by the person making the representation to demonstrate the likelihood of there being an impact on one or more of the Licensing Objectives would be sufficient. The Guidance recommends that in 'borderline cases' the benefit of the doubt should be given to the interested party making the representation.

5.8 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 outline our policy with regard to the licensing objectives referred to in representation (Appendix F). 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 Premises Licence Application in respect of The Lodge 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 17 for a premises licence to be determined under Section 18.

- 9.2 To consider the application, the Sub-Committee must normally 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 4.5 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 G.
- 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
Tel: 396322
E-mail: Anthony.david.moseley@gloucester.gov.uk