

Gloucester City Council

COMMITTEE	: LICENSING SUB-COMMITTEE
DATE	: 14 FEBRUARY 2011
SUBJECT	: APPLICATION FOR A NEW PREMISES LICENCE FOR 36A BISHOPSTONE ROAD, GLOUCESTER, GL1 4BZ
WARD	: BARTON AND TREDWORTH
REPORT BY	: GROUP MANAGER, ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	: A: APPLICATION FOR A PREMISES LICENCE FOR 36A BISHOPSTONE ROAD BY MR JOSHUA MILLS & JASON SMITH B: PLAN OF PREMISES C: LOCATION MAP OF 36A BISHOPSTONE ROAD D: REPRESENTATION FROM GLOUCESTERSHIRE POLICE E: REPRESENTATIONS FROM INTERESTED PARTIES F: PETITION G: LIST OF MANDATORY CONDITIONS
REFERENCE NO.	: ES21107

1. PURPOSE OF REPORT

- 1.1 To present to members an application for a new premises licence made under section 17 of the Licensing Act 2003 for 36A Bishopstone Road, Gloucester GL1 4BZ, received from Mr Joshua Mills and Mr Jason Smith.

2. RECOMMENDATIONS

- 2.1 Having considered the application, any relevant representations, the legislative provisions, the Council's Statement of Licensing Policy and the Home Secretary's Guidance, Members have the following options as considered necessary to promote the Licensing Objectives:
- (a) To accept the application and attach conditions as consistent with the operating schedule.
 - (b) To accept the application and modify the conditions of the licence which includes altering, omitting or adding new conditions.
 - (c) To reject the whole, or part of the application.

3. 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 5 of this report.

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

4. APPLICATION

4.1 This is an application for a new premises licence made in accordance with Section 17 of the Licensing Act 2003. The application was received by the Licensing Authority on 23 December 2010 and has been advertised in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

- 4.2 The application, which is attached as **Appendix A**, requests the following licensable activities:
- (a) The supply of alcohol (Section M) for consumption off the premises only 24 hours a day, seven days a week.
- 4.3 No opening hours (Section O) have been requested. The applicant has indicated that they do not wish the premises to be open to members of the public at any time, and that the premises are a domestic address where alcohol will be stored for the purposes of an alcohol home delivery service.
- 4.4 A plan of the premises and map of the location of the premises are attached as **Appendix B** and **Appendix C** respectively.
- 4.5 The applicant has not listed (at Section P) any steps to be taken to promote the licensing objectives.
- 4.6 One representation was received from Gloucestershire Police concerning the potential negative impact the grant of the licence would have on the licensing objectives. The representation can be seen at **Appendix D**.
- 4.7 The Police and applicant have since reached agreement subject to the following conditions being imposed on the premises licence if granted:

“Conditions

Proof of Age

i) Orders for alcohol, when delivered, will only be handed to persons who are Over 18 and a recognised proof of age scheme such as ‘Challenge 25’ shall be adopted and implemented. The Designated Premises Supervisor shall ensure that all staff permitted to sell alcohol will be appropriately trained on the scheme and its requirements.

ii) A refusals book shall be kept and maintained detailing all refusals and their locations. This book shall be available for inspection by an authorised officer of the Police or council upon request.

CCTV

iii) CCTV will be operative at the premises of a standard satisfactory to the Police and Licensing Authority. All CCTV equipment shall be maintained in good working order and shall continually record.

iv) 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.

v) That tapes, or other recording media relating to CCTV equipment (including any mobile devices) be retained for a minimum of 31 days and made available to an authorised officer of the Police or Licensing Authority immediately upon request.

vi) *The correct time and date shall be generated onto both the recording and real time image.*

vii) *If the CCTV equipment breaks down the Premises Licence Holder shall ensure that the Designated Premises Supervisor, or in their absence other responsible person, verbally inform the Council's Licensing Office and the Police as soon as is reasonably practicable. This information shall be contemporaneously recorded in the 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.*

viii) *A member of staff technically able to operate the CCTV system shall comply with any reasonable request of an authorised officer of the Council or Police to view any CCTV that has been recorded. The Premises Licence Holder 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 the Police.*

Premises Security

ix) *The premises shall be fitted with an audible alarm system which will adequately ensure the security of the premises and stock.*

x) *All alcohol will be secured in a locked and secure unit within the premises.*

Other

xi) *All orders shall be recorded and detailed in an order book. A copy of the order will remain with the order/driver during transit and delivery. The order book shall detail, exact items and quantities ordered, the time and date the order was placed and the name and location of the person placing the order. When delivered the order form will be marked accordingly. All records shall be kept for a minimum of 6 months and be available for inspection by an authorised officer of the Police or council upon request.*

xii) *The Designated Premises Supervisor shall ensure that all staff are appropriately informed on keeping disruption and noise to residents to a minimum, particularly when loading and unloading.*

xiii) *No door-step sales will be made from the premises, all orders will be delivered."*

4.8 12 further representations were received contained within 11 letters and emails. All are attached at **Appendix E**.

4.9 One petition was also received from Mr Steve Cornock, Mr Saji Thomas and Mr Shajee Kurian. The petition was signed by 84 residents and can be seen at **Appendix F**.

- 4.10 The applicant, Police and interested parties have been given a Notice of Hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

5. THE LICENSING POLICY STATEMENT AND GUIDANCE

- 5.1 Sections 3, 4, 5 and 6 of Gloucester City Council's Licensing Policy Statement outlines the authority's policy with regard to the licensing objectives. Section 7 refers specifically to licensing hours.
- 5.2 The relevant parts of the Amended Guidance issued under section 182 of the Licensing Act 2003 (October 2010) by the Home Secretary are Chapter 2, on the four licensing objectives, Chapter 8 on Applications for premises licences, Chapter 10 conditions attached to premises licence and Chapter 13, paragraphs 13.64-13.68 as detailed below.
- 5.3 Paragraphs 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 Equality Act 2010.
- 5.4 Paragraphs 13.64 to 13.68 in Chapter 13 of the Guidance cover Planning and Building Control and their interaction with the Licensing Act 2003. Whilst the guidance states that applications for permanent commercial premises should normally be from businesses with planning consent it also clarifies that this need not be the case and a premises licence may be sought prior to planning permission.
- 5.5 Para 13.65 of the Guidance advises that the planning and licensing regimes involve the consideration of different (albeit related) matters. For instance, whereas licensing considers public nuisance, planning considers amenity. Licensing applications should not therefore be a re-run a planning application. A Licensing Sub-Committee is not bound by a decision of a planning committee.
- 5.6 A premises licence does not relieve the holder from any requirements under planning law. In cases where a planning restriction imposing a terminal hour for a premises has been set and this differs from the hours permitted by a premises licence, the licence holder must observe the earlier time.
- 5.7 Paragraph 2.10 of the authority's Licensing Policy Statement states *"Where relevant representations are received applications will be considered on their individual merits and decisions made in relation to licensing applications will be made entirely separately from any decision in relation to planning."*

6. CONCLUSIONS

- 6.1 Members should consider the relevant facts, guidance and representations and make a decision in accordance with the options outlined in paragraph 2.1 of this report.
- 6.2 Members should also be aware of a 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.

7. FINANCIAL IMPLICATIONS

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

8. LEGAL IMPLICATIONS

- 8.1 The Licensing Sub-Committee is asked to consider an application made under Section 17 for a premises licence to be determined under Section 18.
- 8.2 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.
- 8.3 The four licensing objectives must be considered of equal importance and are:
 - a) The prevention of crime and disorder
 - b) Public safety
 - c) The prevention of public nuisance, and
 - d) The protection of children from harm.
- 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 powers to adjourn or 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 is not also a responsible authority), that they are not in the opinion of the Licensing Authority frivolous or vexatious.

- 8.7 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.
- 8.8 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-Committees decision must be necessary and proportionate. The Sub- Committee is required to have regard to the DCMS 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 for any departure from the DCMS Guidance..
- 8.9 Following the case of Daniel Thwaites v Wirral Borough Magistrates’ Court 2008, referred to in paragraph 6.2 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.
- 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 It should be noted by the Sub-Committee that in relation to this application, the Council has a number of roles through Council services. No response to the application has been received from the Environmental Health Pollution Control and Health and Safety Teams, or Development Control.
- 8.12 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.
- 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 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.

9. RISK MANAGEMENT IMPLICATIONS

- 9.1 There is a right of appeal to the Magistrates' Court for both the applicant and all interested parties. Costs may be awarded against the Council on successful appeal if the Council has not acted reasonably.

10. PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

- 10.1 None.

11. OTHER CORPORATE IMPLICATIONS

- 1. Community Safety

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

- 2. Environmental

As above – dealt with in 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

Gloucester City Council Licensing Policy Statement
Home Secretary (Home Office) Guidance issued under section
182 of the Licensing Act 2003 (Oct 2010)

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