

Gloucester City Council

Committee	: LICENSING SUB-COMMITTEE
Date	: 30 AUGUST 2011
Subject	: APPLICATION UNDER SECTION 17 OF THE LICENSING ACT 2003 IN RESPECT OF INSLEY GARDENS CONVENIENCE STORE, 102 INSLEY GARDENS, GLOUCESTER GL3 3BA
Ward	: BARNWOOD
Report By	: GROUP MANAGER, ENVIROMENTAL HEALTH AND REGULATORY SERVICES
No. Of Appendices	: A: COPY OF APPLICATION FOR A PREMISES LICENCE FROM MRS RAJEENADEVI RAVENTHERAKUMAR B: PLAN OF PREMISES C: MAP SHOWING LOCATION OF 102 INSLEY GARDENS AND RESIDENTS PROPERTIES D: COPY OF AGREEMENT TO CONDITIONS MADE WITH GLOUCESTERSHIRE CONSTABULARY LICENSING UNIT E: COPIES OF REPRESENTATIONS MADE BY LOCAL RESIDENTS F: LIST OF MANDATORY CONDITIONS G: PROCEDURE FOR LICENSING SUB COMMITTEES
Reference No.	: ES21119

1.0 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 102 Insley Gardens, Hucclecote, Gloucester GL4 4BS, received from Mrs Rajeenadevi Raventherakumar. The application is for the retail sale of alcohol from a new 'convenience' type store at the above address.

2.0 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.

2.2 The Licensing Objectives are :-

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance;
- (d) the protection of children from harm.

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 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.

4.0 The Application

- 4.1 This is an application for a new premises licence made in accordance with Section 17 of the Licensing Act 2003. The application was received by the Licensing Authority on 7 July 2011 and has been advertised in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. A copy of the application is attached as **Appendix A**.
- 4.2 The premises to which the application relates is a vacant premises in a small parade of retail units comprising two salons and a gym. The premises were formerly a shop and later used as offices. There are no planning issues with the site.
- 4.3 The application (Appendix A) requests the following licensable activities:
- The supply of alcohol (Section M) for consumption **off** the premises from 06:00 to 22:00 hours seven days a week.
 - Opening hours (Section O) are also sought from 06:00 to 22:00 hours seven days a week.
- 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 set out in Section P of the operating schedule the measures proposed to be taken to promote the four licensing objectives if the application is accepted. These measures are:

Prevention of crime and disorder

- Installation of a digital CCTV system with 31 day storage facility
- Install secure doors and windows
- Keep a watchful eye on persons who appear to be loitering
- Train staff to be vigilant with card and cheque payments
- Use an electronic forged note detector
- Avoid creating any displays which will block views
- Have available the contact details of the responsible authorities
- Liaise with C.P.S.O.s and participate in local training initiatives in licensing regulation.

Public safety

- Have regular health and safety checks inside and outside the premises
- Carry out fire risk assessments
- Use adequate and appropriate lighting
- Ensure all areas open to customers are clear and without obstruction
- Be aware of responsible retailing

Prevention of public nuisance

- Liaise with local police and the licensing authority on a regular basis
- Take measures to avoid anti social behaviour
- Put up notices and communicate with customers
- Ensure litter is kept to a minimum
- Refuse to serve disorderly customers

Protection of children from harm

- Promote 'Challenge 21' scheme
- Be aware of fake I.D
- To keep a 'refusals' book

Should the application be accepted the above proposals would, where appropriate, become properly constructed conditions to be applied to the licence.

5.0 Representations

5.1 Gloucestershire Constabulary Licensing Unit has, in agreement with the applicant, proposed that the following conditions should be added to the licence.

1. All spirits to be kept behind the counter.
2. The CCTV system shall be maintained in good working order, shall record at all times the premises are open and recordings shall be kept for a minimum of 14 days and be provided on DVD to officers of the Council, Trading Standards and the police on request.
3. The Challenge 21 (or equivalent scheme) shall be adopted so that any customer attempting to purchase alcoholic liquor who appears to be under the age of 21 shall be asked for an accredited photographic proof of their age (e.g. passport, photo driving licence or a PASS approved card) and that a sale shall not be made unless this evidence is produced. This will only be treated as a breach where the customer subsequently turns out to be under 18 years of age.

The agreement is attached at **Appendix D**.

5.2 There were no representations from the other responsible authorities.

5.3 Representations from a number of residents who have concerns about this application have been received and are attached at **Appendix E**. The representations have come from persons who either reside or who have business interests in the following areas:-

- Insley Gardens, Gatton Way, Duncroft Road, Kennedy Close, Barrington Drive and Kingstone Avenue.

- 5.4 The Licensing Act allows for 'interested parties' to make representations concerning premises licence applications.
- 5.5 Interested parties includes the following:
- persons living in the vicinity of the premises
 - a body representing persons living in that vicinity
 - a person involved in a business in the vicinity of the premises
 - a body representing persons involved in such businesses
 - a member of the relevant licensing authority
- 5.6 There is no legal definition of vicinity within the Act but persons claiming to be interested parties and who make representations against an application would need to demonstrate how they are likely to be adversely affected by the proposed licensable activities to be provided by the premises.
- 5.7 Representations must be relevant and not vexatious or frivolous. In other words they must relate to the proposed licensable activity and it's likely effect on at least one of the licensing objectives. They must not be born out of malice or dispute and they must be serious.
- 5.8 Residents' concerns with regard to the licensing objectives relate, amongst other things, to a perceived propensity for anti social behaviour and under-aged drinking should this licence be issued.
- 5.9 Other issues raised concerning parking and delivery times would occur whether or not the premises has the benefit of an alcohol licence.
- 5.10 Some representations concern themselves with the number of other outlets in the area already selling alcohol by way of a licence. This cannot be a relevant consideration under the Licensing Act.
- 5.11 The applicant and interested parties have been given a Notice of Hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

6.0 The Licensing Policy Statement and Guidance

- 6.1 Sections 3, 5 and 6 of Gloucester City Council's Licensing Policy Statement outline the authority's policy with regard to the licensing objectives. Section 7 refers specifically to licensing hours.
- 6.2 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 9 on determining applications and Chapter 10 conditions attached to premises licences.
- 6.3 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.

6.4 Chapter 10.21 of the Guidance advises that shops should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours

6.5 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.

7.0 Conclusions

7.1 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.

7.2 Members should 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 evidence and by giving their own views excessive weight. The resulting decision to limit the hours of operation without it having 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 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 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.
- 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)-(c).
- 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. “In the vicinity” is essentially the physical/geographical proximity of the premises, in the context of local circumstances.
- 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 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.
- 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 following of its decision, and the reasons for it :
- (a) The applicant .
 - (b) The person who made the relevant representations.
 - (c) The Police.

- 9.11 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.
- 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 a determination based solely on the licensing law, the Guidance and the Council's Licensing Policy Statement.
- 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.
- 9.17 Section 53 of the Act and the Guidance allows for interested parties and responsible authorities to apply to the Council at any time for a review of any licence granted because of a matter arising at the premises in connection with any of the four licensing objectives.

10.0 Risk Management Implications

- 10.1 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.

11.0 People Impact Assessment (PIA):

Is a PIA required?	Yes	No	Explanation: Screening assessment conducted as part of the Council's Licensing Act Policy Statement
		✓	
Has an initial PIA screening been completed?	Yes	No	Explanation: As above
		✓	

Has a full PIA been completed?	Yes	No	Explanation: As above
		✓	
Is the PIA available?	Yes	No	Explanation: As above
		✓	
Has the PIA identified any negative impacts on any protected characteristic or community cohesion?	Yes*	No	As above *Please ensure PIA is available
		✓	

Any Further Relevant Information:

None

12.0 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)

Person to Contact : Philippa Finnegan
Tel: 01452 396028
E-mail: philippa.finnegan@gloucester.gov.uk