

# Gloucester City Council

<b>Committee</b>	<b>: LICENSING SUB-COMMITTEE</b>
<b>Date</b>	<b>: 8 NOVEMBER 2011</b>
<b>Subject</b>	<b>: APPLICATION UNDER SECTION 34 OF THE LICENSING ACT 2003 IN RESPECT OF LIBERTYS SPORTS BAR AND HI JINKS SOFT PLAY CENTRE, 114 – 118 EASTGATE STREET, GLOUCESTER GL1 1QT</b>
<b>Ward</b>	<b>: WESTGATE</b>
<b>Report By</b>	<b>: GROUP MANAGER, ENVIROMENTAL HEALTH AND REGULATORY SERVICES</b>
<b>No. Of Appendices</b>	<b>: A: COPY OF APPLICATION FOR A VARIATION OF A PREMISES LICENCE FROM MR STEPHEN MICHAEL TURLEY AND MRS CHRISTINE JOANNE TURLEY B: PLAN OF PREMISES C: MAP SHOWING LOCATION OF 114 – 118 EASTGATE STREET, GLOUCESTER D: COPY OF EXISTING LICENCE E: COPY OF REPRESENTATION MADE BY GLOUCESTERSHIRE CONSTABULARY LICENSING UNIT F: EXTRACT FROM LICENSING POLICY STATEMENT G: PROCEDURE FOR LICENSING SUB-COMMITTEES</b>
<b>Reference No.</b>	<b>: ES21124</b>

## 1.0 Purpose of Report

- 1.1 To present to Members an application for a variation of a premises licence made under section 34 of the Licensing Act 2003 for 114 – 118 Eastgate Street, Gloucester GL1 1QT received from Mr Stephen Michael Turley and Mrs Christine Joanne Turley. The application is to extend the hours for the provision of regulated entertainment, the retail sale of alcohol and the provision of late night refreshment in respect of Libertys Sports Bar and Hi Jinks Soft Play Area.

## 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 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 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 variation of a premises licence made in accordance with Section 34 of the Licensing Act 2003. The application was received by the Licensing Authority on 13 September 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 an American style sports bar/diner featuring a bar, a separate hot food servery and fixed seating. Connected to the bar/diner is a large soft play area for children with a small refreshment counter. Plans of the premises and its location in Eastgate Street are attached at **Appendices B and C** respectively.

The existing licence is attached at **Appendix D**.

- 4.3 The application (Appendix A) requests the following variations to the licensable activities:

**The Provision of regulated entertainment**

- Films – a new terminal hour of 04.00 everyday
- Live Music from 10.00 until 04.00 everyday
- Recorded Music - a new start time of 09.00 and a new terminal hour of 04.00 everyday.
- Performance of Dance – a new terminal hour of 04.00 everyday
- Anything of a Similar Description (to music or dance above) – a new terminal hour of 04.00 everyday
- Provision of Facilities for Dancing – a new terminal hour of 04.00 everyday.

**The Provision of Late Night Refreshment**

- 23.00 until 05.00 everyday

**Sale by Retail of Alcohol**

- A new terminal hour of 04.00 everyday

The Applicant has also requested that the condition referring to a closed door policy on New Years Eve be removed.

- 4.4 The Applicant has completed Box 'K' of the application form which refers to the provision of entertainment facilities of a similar description to dancing from 10.00 until 21.00 everyday. However the existing licence already includes this provision between these hours and so may be disregarded for the purposes of this variation.
- 4.5 The applicant has set out in Section 'P' of the operating schedule measures which are already in operation to promote the four licensing objectives and which form part of the comprehensive set of conditions attached to the existing licence.

**5.0 Representations**

- 5.1 Gloucestershire Constabulary Licensing Unit has made a representation against this application the details of which may be found in **Appendix E**. No representations from the other Responsible Authorities or from interested parties have been received.
- 5.2 The Police representations refer to three of the licensing objectives, namely the Prevention of Crime and Disorder, Public Safety and the Prevention of Public Nuisance. The Police also make particular reference to the 'Special Policy' for the Eastgate Street area contained within the Council's current Licensing Policy Statement (7 January 2011). This is expanded upon in paragraph 6.1 below.

- 5.3 The view of the Police would appear to be that although it is accepted that the applicant is a responsible proprietor there is a likelihood that if this variation were allowed that the 'unrestricted sale' of alcohol until 04.00 in the morning could only have a detrimental effect on an area already suffering from alcohol related crime and disorder and public nuisance and therefore they recommend refusal of the application.
- 5.4 The Police and the applicant have held a meeting to discuss this variation and the details of this meeting are included in the Police representations. No agreement could be reached at this time although the police suggest that should Members be minded to grant the application then they would be seeking conditions in the following terms to be added to the licence:-
- 'Alcohol only to be served with substantial food beyond midnight'; and
  - 'Customers only to be served alcohol after midnight if they have booked a Taxi/Private Hire and paid £5 deposit (non Refundable) towards their fare'.
- 5.5 The applicant and Gloucestershire Constabulary have been given a Notice of Hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

## **6.0 The Licensing Policy Statement and Home Secretary's Guidance**

- 6.1 Members attention is especially drawn to pages 10 to 13 of the Council's Licensing Policy Statement which deal with the issue of cumulative impact and the Special Policy in respect of the Eastgate Street area (**Appendix F**).
- 6.2 The effect of this Policy is to create a rebuttable presumption that applications for new premises licences, club premises certificates or material variations will normally be refused if relevant representations are received. In essence the thrust of this Special Policy is to ensure that premises licences are not issued to premises within the prescribed area which by their scope and nature could only serve to increase the problems already being experienced within that area,. If, on the other hand, the applicant is able to demonstrate that the licence would not or is unlikely to add to the cumulative impact either by the nature of the premises or by the conditions placed upon the licence then the licence should be granted.
- 6.3 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.
- 6.4 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.
- 6.5 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.

- 6.6 Chapter 10.19 and 10.20 of the Guidance refer to 'Hours of trading' and provide the following advice:-

#### *Hours of trading*

*10.19 In some town and city centre areas where the number, type and density of premises selling alcohol for consumption on the premises are unusual, serious problems of nuisance and disorder may arise outside or some distance from licensed premises. For example, concentrations of young drinkers can result in queues at fast food outlets and for public transport, which may in turn lead to conflict, disorder and anti-social behaviour. In some circumstances, flexible licensing hours may reduce this impact by allowing a more gradual dispersal of customers from premises.*

*10.20 However, there is no general presumption in favour of lengthening licensing hours and the four licensing objectives should be paramount considerations at all times. Where there are objections to an application and the committee believes that changing the licensing hours would undermine the licensing objectives, they may reject the application or grant it with appropriate conditions and/or different hours from those requested.*

- 6.7 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 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 in accordance with S34
- (b) The applicant has given proper notice under the Hearings Regulations
- (c) The applicant has satisfied the advertising requirements under the Hearings Regulations

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.

The Police representations refer to objectives (a), (b) and (c), only.

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. This would be required, for example, if a hearing went part heard or more information needed to be gathered.

9.6 For the purposes of determining this 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 (not applicable in this case as no residents or businesses in the vicinity have made representations) within the prescribed period. In this case, only the Police have made representations.
- (c) Has not been withdrawn by the Police

9.7 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 and 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.

- 9.8 If the Sub-Committee are minded to impose conditions, these should be necessary for the promotion of the licensing objectives, as well as being proportionate to the intended objectives. Care must be exercised in ensuring the wording of any conditions are clear, to make them enforceable.
- 9.9 It is recognised in the Guidance that the concentration of premises in a particular area may be such that they have a “cumulative impact” on crime and disorder and/or public nuisance in the area and policy restrictions on the number and type of premises there may be considered necessary to promote those licensing objectives. These premises are situated in such an area. The effect of a “cumulative impact” policy is the creation of a rebuttable presumption that new applications or applications to vary are likely to add to the “cumulative impact”, will normally be refused. The applicants need to show that there will be no negative “cumulative impact” on one or more of the licensing objectives.
- 9.10 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.
- 9.11 Where the Sub-Committee determines an application it must notify the following of its decision, and the reasons for it:
- (a) The applicants.
  - (b) The Police.
- 9.12 It should be noted by the Sub-Committee that in relation to this application, the Council has a number of roles through Council Services as responsible authorities. No response to the application has been received from the Environmental Health Pollution Control and Health and Safety Teams.
- 9.13 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.
- 9.14 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.

- 9.15 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.
- 9.16 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.
- 9.17 The Police as a responsible authority and the applicants 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.
- 9.18 Section 53 of the Act and the Guidance allows for the Police as a responsible authority to apply to the Council at any time for a review of any licence granted or varied 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)

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