

Gloucester City Council

Committee	: LICENSING SUB COMMITTEE
Date	: 17 DECEMBER 2012
Subject	: APPLICATION UNDER SECTION 17 OF THE LICENSING ACT 2003 IN RESPECT OF HEMPSTED MEADOW, SECUNDA WAY, HEMPSTED, GLOUCESTER, GL2 5GA
Ward	: WESTGATE
Report By	: CORPORATE DIRECTOR OF SERVICES AND NEIGHBOURHOODS
No. Of Appendices	: A: COPY OF APPLICATION FROM GLOUCESTER CITY COUNCIL B: PLAN SHOWING LAYOUT AND LOCATION OF PREMISES C: COPY OF PLANNING RESTRICTIONS D: COPY OF REPRESENTATIONS FROM RESIDENTS E: PROCEDURE TO BE FOLLOWED AT A HEARING
Reference No.	: ES21147

1.0 Purpose of Report

1.1 To outline to Members an application made by Gloucester City Council in respect of Hempsted Meadow, Secunda Way, Hempsted, Gloucester GL2 5GA under Section 17 of the Licensing Act 2003 to which representations have been made. The application is for the provision of regulated entertainment and late night refreshment.

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 appropriate 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 appropriate 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 appropriate 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 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 under Section 17 of the Licensing Act 2003. The application was received by the licensing team on 22nd October 2012, from Gloucester City Council and has been advertised in accordance with the Licensing Act 2003 (Premises Licence) Regulations 2005. A copy of the application is attached as **Appendix A**

4.2 A plan showing the layout of the premises and its location is attached at **Appendix B**. Members are respectfully advised to familiarise themselves with the area concerned.

4.3 There are planning restrictions relating to this site. They are attached as **Appendix C**

4.4 The application concerns the proposal for the following licensable activities / times:-

Live music
Recorded music
Performances of dance
Anything of a similar nature
Sunday to Thursday 12:00 – 22:00
and Friday and Saturday 12:00 – 23:00

Plays
Films
Indoor sporting events
Boxing or wrestling entertainments
Sunday to Thursday 10:00 – 22:00
and Friday and Saturday from 10:00 to 23:00
and late night refreshment on New Years Eve only from 23:00 to 01:30.

- 4.5 The applicant has set out in the operating schedule the measures proposed to be taken to promote the four licensing objectives if the application is granted these measures are:-

The prevention of crime and disorder

Any event that is proposed to take place will be assessed by the City Council in terms of the type of event, audience profile and proposed security arrangements; and the Police will be consulted. No contract will be entered into or permission given unless prevention of crime and disorder is being handled satisfactorily.

Public Safety

All events that are proposed for this site will be assessed by the City Council in liaison with the Police. All Health And Safety aspects of the event will be identified in a risk register and any mitigating measures agreed before any contract is entered into or permission for an event is given.

The prevention of public nuisance

All events proposed will be assessed for potential noise impacts and advice will be sought from the Noise Control Officer at the City Council.

The protection of children from harm

Family events will be encouraged on this site. All events will include the involvement of the Police and "lost children" posts will be encouraged. Any promoters of events that will involve children will be required only to employ staff which have been CRB checked.

These proposals would be made into workable, enforceable conditions should the licence be issued.

5.0 Representations

- 5.1 Representations have been received from 2 responsible authorities, namely Gloucestershire Constabulary and Gloucester City Council Environmental Protection. Both representations have been withdrawn with the applicants agreement to having the following conditions attached to the licence.

Gloucestershire Constabulary Conditions

1. A minimum of 12 weeks prior to any major event (a major event being defined as an event that has a capacity over 499 persons within the venue at one time) the Constabulary's Licensing Manager shall be notified of the event in writing (or by e-mail) and be provided with an Event Safety Plan detailing risk assessments, security measures, crowd management plans, and traffic management plans. (The organiser should note that Gloucestershire

Constabulary will not assume responsibility for security arrangements or traffic management of the event unless prior arrangements have been made with the Chief Officer of Police and that such provision may incur costs to the organisers.)

2. For every major event (being over 499 persons) the risk assessment shall be conducted in consultation with the Safety Advisory Group (SAG). If a traffic regulation order is considered necessary by the events co-ordinator, Police or SAG for the safe movement of public to and from the venue, then an application will be submitted within the time limits.

Where this licence is used in conjunction with a Temporary Event Notice in order to permit the sale or supply of alcohol at the event, the following conditions shall also apply:

1. Where any event extends beyond 2300hours, Registered Doorstaff shall be provided from the time that the Bar opens until the last customer has dispersed. Doorstaff shall be supplied at a ratio of 1:100 customers and be subject to a minimum of two. Doorstaff shall wear an item of high-visibility clothing in order to facilitate their rapid identification.
2. CCTV shall be provided by means of at least two body-worn cameras (worn by Doorstaff) and one of these shall operate predominantly in the Bar Area. Footage from these cameras shall be retained for a minimum of 14 days and be made available to any authorised officer of the Police or Licensing Authority within three days upon reasonable request. Signage shall be clearly displayed to the effect that CCTV equipment is in operation to promote security and customer safety.
3. Access to the Bar Area that is licensed by the Temporary Event Notice shall be controlled by doorstaff, and alcohol shall be consumed in the area covered by the TEN except that, in addition, it may be provided by waiter/waitress service to customers who are seated at tables for the purpose of dining.
4. Only Polycarbonate, disposable plastic or toughened glass drinking vessels are to be used for the supply of alcohol.
5. Customers shall not be permitted to bring their own alcohol to any event.

The proposed conditions above agreed between the applicant and the Police prior to the end of the period for receiving representations will replace any similar steps intended to promote the four licensing objectives as set out in the operating schedule.

Environmental Protection Conditions

1. Where any event covered by this Premises License involves the amplification of sound or the generation of any other type of sound that is audible off the site for extended periods then the following information is to be submitted at least 12 weeks prior to the event taking place: -

- Description of event
 - Date and duration of event
 - List of identified noise sources
 - Location of noise/sound making equipment
 - Noise management strategy (including noise mapping of event if deemed relevant by Environmental Health)
 - Event organizers contact details including site details for event day (including addresses)
 - Sound engineers / sound company contact details (including addresses)
 - Details of how complaints will be dealt with from members of public during the event
2. For live and amplified outdoor music events of 5 hours duration or more (advertised start – finish time) or for any other event as it is deemed necessary by Environmental Health, a competent and professional noise consultant (Member of the Institute of Acoustics) shall be employed by the licensee or event organizer in order to oversee noise monitoring and noise management at the event to the satisfaction of Environmental Health.
 3. Music noise level shall not exceed 65dB(A) over a 15 minute period as measured 1 metre from the façade of any noise sensitive premises.
 4. The music noise level shall not exceed 75dB(a) in either 63Hz or 125Hz octave frequency band at the façade of any noise sensitive premises.
 5. On Sundays through to Thursday all outdoor regulated entertainment shall not start before 12:00 midday and finish by 22:00hrs. On Fridays and Saturdays all outdoor regulated entertainment shall not start before 12:00 midday and finish by 23:00hrs.
 6. There shall be no more than 12 events (consisting wholly or partly of a licensable activity) held on this premises each year and none within 10 days of each other. Furthermore there will be no more than 2 events held in any calendar month.
 7. The licensee or event organizer shall advertise and operate an attended complaint telephone number (where deemed necessary by Environmental Health) through which noise complaints can be channeled and responded to. All complaints received through this channel shall be dealt with immediately. Should the music noise level found to be breaching Conditions 2 and or Condition 3 the level shall be reduced accordingly. A written record of all complaints shall be kept and be made available for inspection by an authorised officer of the Local Authority.
 8. The licensee or event organizer shall provide written notification to all noise sensitive dwellings in the locality (as specified by Environmental

Health) not less than 14 days before a planned event involving amplified music is scheduled to take place.

9. The licensee shall ensure that the promoter, sound system supplier and all individual sound engineers are informed of the maximum permissible music noise levels and that they are correctly adhered to. Confirmation and a record of notifications shall be forwarded onto Environmental Health 12 weeks prior to the event.
10. All litter and waste resulting from any licensable activity shall be cleared from the site within 12 hours of the event closing to the satisfaction of this Council.
11. Litter patrols within and around the boundary of the site shall be carried out hourly during licensable activity and litter cleared as and when found.

Representations from Residents

Representations have been received from 9 residents, Copies of these are attached as **APPENDIX D** of this report.

- 5.2 Residents' concerns with regard to the licensing objectives relate mainly to a perceived propensity for an increase in public nuisance should this licence be granted.
- 5.3 Representations must be relevant and not vexatious or frivolous. In other words they must relate to the proposed licensable activity and its 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.
- 5.5 The applicant, responsible authorities and other persons 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 3,4,5 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 Home Office guidance (amended April 2012) for this application 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 licence.
- 6.3 Paragraphs 10.1 to 10.19 deal with the attaching of conditions to licences and state that only appropriate, 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 appropriate

to promote the licensing objectives arising out of the consideration of the representations. If other existing law already places certain statutory responsibilities on an operator of a premises it cannot be appropriate to impose the same or similar duties as conditions.

- 6.4 Paragraph 10.4 states that “The courts have made it clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided. Failure to comply with any conditions attached to a licence or certificate is a criminal offence, which on conviction would be punishable by a fine of up to £20,000 or up to six months imprisonment or both.”
- 6.5 Additionally, at 10.38 of the guidance, it states that “In the context of festivals and carnivals, local authorities should bear in mind their ability to seek premises licences from the licensing authority for land or buildings under public ownership within the community in their own name. This could include, for example, village greens, market squares, promenades, community halls, local authority owned art centres and similar public areas where festivals and carnivals might take place. Performers and entertainers would then have no need to obtain a licence or give a temporary event notice themselves to enable them to give performances in these places, although they would need permission of the local authority to put on the event”.

7.0 Conclusions

- 7.1 Members should be aware of a case decided 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 that it was necessary to do so in order to promote the licensing objectives was ruled unlawful and the decision was quashed. The wording of the Licensing Act 2003 has since been amended as set out at paragraph 3.1 above so that Members must now decide the steps to be taken that are “appropriate” for the promotion of the licensing objectives but the courts have not yet been called upon to explain the implications of substituting the word “appropriate” for “necessary” in the legislation.
- 7.2 Members should consider the relevant facts regarding the application, the guidance and representations received and make a decision in accordance with the options outlined in paragraph 2.1 of this report.

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:
- The application is properly made.
 - The applicant has given proper notice.
 - The applicant has satisfied the advertising requirements.
- 9.3 The four licensing objectives are set out in paragraph 2.2 of the report and each should 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) – (c).
- 9.5 The Sub-Committee has the power to adjourn and 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 other person within the prescribed period.
 - c) Has not been withdrawn
 - d) If having been made by an other person (who is not a responsible authority), that they are not in the opinion of the Licensing Authority frivolous or vexatious.
- 9.7 In deciding what action, if any, it should take, the Sub-Committee members must direct their minds to the causes and concerns the relevant representations identify. Any action should generally be directed to these causes and should always be no more than is an appropriate and proportionate response based on the evidence produced to the Sub-Committee. Any detrimental financial impact on the applicant of the Sub-Committee's decision must be appropriate and proportionate. The Sub-Committee is required to have regard to the Home Office guidance when making its decision. However, the guidance is not legally binding and it 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.
- 9.8 Following the case of Daniel Thwaites v Wirral Borough Magistrates' Court 2008, referred to in paragraph 7.1 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 Home Office guidance where failing to follow it requires good reasons to be given.
 - c) Imposing conditions that do not promote the licensing objectives.
- 9.9 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
- 9.10 The Sub-Committee has its own procedure for determining applications that are attached to the report as **Appendix E**.
- 9.11 In considering this 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, Home Office guidance and Council's Statement of Licensing Policy.
- 9.12 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.
- 9.13 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.
- 9.14 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.
- 9.15 Other persons, Responsible Authorities and the applicant have the right to appeal the Sub-Committee's decision 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 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 Sub Committee has not acted reasonably in reaching its decision. In the case of Birch House Business Centre Ltd v Denbighshire County Council (8th December 2010) District Judge Shaw awarded costs in excess of £20,000 against the local authority for not scrutinising with greater care evidence presented to it.

11.0 People Impact Assessment (PIA):

Please ensure you complete this section even if a PIA is not required.

Is a PIA required?	Yes	No	Explanation: Screening assessment conducted as part of the Council's Licensing Act Policy Statement.
		X	
Has an initial PIA screening been completed?	Yes	No	Explanation: As above
		X	
Has a full PIA been completed?	Yes	No	Explanation: As above
		X	
Is the PIA available?	Yes	No	Explanation: As above
		X	
Has the PIA identified any negative impacts on any protected characteristic or community cohesion?	Yes*	No	As above *Please ensure PIA is available
		X	

12.0 Other Corporate Implications (this may include Community Safety, Environmental, Staffing, Trade Union)

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 (April 2012)
Daniel Thwaites v Wirral Borough Magistrates Court (2008) EWHC 838 (Admin)
- Person to Contact** : Richard Barnett
Tel: 01452 396311
E-mail: Richard.Barnett@gloucester.gov.uk