

Gloucester City Council

Committee	: LICENSING SUB COMMITTEE
Date	: 13 FEBRUARY 2013
Subject	: APPLICATION UNDER SECTION 34 OF THE LICENSING ACT 2003 IN RESPECT OF THE FOOD JUNCTION, 42 SOUTHGATE STREET, GLOUCESTER, GL1 2DR
Ward	: WESTGATE
Report By	: CORPORATE DIRECTOR OF SERVICES AND NEIGHBOURHOODS
No. Of Appendices	: A: COPY OF APPLICATION TO VARY A PREMISES LICENCE FOR 42 SOUTHGATE STREET BY ZAHID WASEEM B: PLAN OF PREMISES C: LOCATION MAP OF 42 SOUTHGATE STREET D: PLANNING RESTRICTION E: REPRESENTATION FROM GLOUCESTERSHIRE CONSTABULARY F: REPRESENTATION FROM ENVIRONMENTAL PROTECTION G: REPRESENTATION FROM THE NEW COUNTY HOTEL H: PROCEDURE TO BE FOLLOWED AT A HEARING
Reference No.	: ES21148

1.0 Purpose of Report

1.1 To present to members an application to vary a premises licence made under section 34 of the Licensing Act 2003 for 45 Southgate Street, Gloucester, GL1 2DR, received from Mr Zahid Waseem. The application is to extend the hours for the provision 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 to vary a premises licence the following options are available to them by virtue of the Licensing Act 2003, Part 3, section 35, paragraph 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 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 6 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. The Application

4.1 This is an application to vary a premises licence made in accordance with Section 34 of the Licensing Act 2003. The application was received by the Licensing Authority on 19 December 2012 and has been advertised in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. A copy of the application is attached as **Appendix A** together with a copy of the current licence.

- 4.2 The premises to which the application relates is a small cafe/takeaway comprising a kitchen and counter with a customer dining area with four tables and seating for sixteen people. The premises is situated in Southgate Street next to The New County Hotel.
- 4.3 A plan of the premises and its location are attached as **Appendix B and C respectively**. Members are respectfully advised to familiarize themselves with the area concerned.
- 4.4 There are planning restrictions with regard to opening hours in respect of these premises. This is attached as **Appendix D**. Members may care to note that the current licence allows trading hours until 01:00 on Friday and Saturday which exceeds Planning restrictions. The applicant is required to abide by the hours that are the most restrictive. It is understood that Mr. Waseem has applied to have the planning restrictions lifted.
- 4.5 The application requests the following variations to the licensable activities:
- (a) To extend the provision of Late Night Refreshment both on and off the premises between the following times
- 23:00 to 02:00 Monday and Tuesday
23:00 to 03:00 Wednesday and Thursday
23:00 to 05:00 Friday and Saturday
23:00 to 03:00 on Sunday
- 4.6 The applicant has set out additional measures he intends to take to promote any of the licensing objectives. In Section P Mr. Waseem stated that he will

“inform to the Police” and “provide CCTV”

Provision of CCTV is already a condition on the current licence.

5.0 Representations

- 5.1 Representations have been received from two Responsible Authorities, namely, Gloucestershire Constabulary and Gloucester City Council Environmental Protection. These are attached as **Appendices E and F** respectively.
- 5.2 The Constabulary are against the licence being issued on the basis that to do so would compromise the licensing objectives ‘the prevention of crime and disorder’ and ‘the prevention of public nuisance’
- 5.3 Environmental Protection are also minded to oppose the issuing of the licence on the basis that to do so would compromise the objective ‘the prevention of public nuisance’.
- 5.4 A representation from The New County Hotel was emailed within the 28 day consultation period. These concerns relate to ‘the prevention of public nuisance’. This is attached as **APPENDIX G**.

5.5 The Home Office Guidance states at chapter 9.11 that:-

‘Whilst all responsible authorities may make representations regarding applications for licences and club premises certificates and full variation applications, it is the responsibility of each responsible authority to determine when they have appropriate grounds to do so.’

And at 9.12, in relation to representations from the police, the Guidance states:-

‘In their role as a responsible authority, the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and should have good relationships with those operating in their local area. The police should be the licensing authority’s main source of advice on matters relating to the promotion of the crime and disorder licensing objective, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.’

5.6 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, 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 Amended Guidance issued under section 182 of the Licensing Act 2003(April 2012) 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 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.

7.0 Conclusions

- 7.1 Members should consider the relevant facts, Guidance, Licensing Policy Statement 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. 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.

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 to vary an existing Premises Licence granted under Section 34 to be determined under Section 35.
- 9.2 When considering the application, the Sub-Committee must be satisfied that the same requirements as for a new application under Section 17 have been satisfied, that relate to the application contents, notices and advertising.
- 9.3 When considering the application, the Sub-Committee must consider the four licensing objectives set out in paragraph 2.2 and must consider them to be of equal importance
- 9.4 Should the Sub-Committee need additional information, it has powers to adjourn or carry forward the hearing to additional, specified dates. An adjournment would be appropriate if any the parties introduced more information in support of the application or relevant representations shortly before the hearing or at the hearing itself and time was needed for any of the parties and the Sub-Committee to consider such information.
- 9.5 Supporting information provided by parties at the hearing can only be taken into account by the Sub-Committee with the consent of the other parties. It still might be appropriate for the Sub-Committee to adjourn for an appropriate period, so that such information can be properly considered.

- 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 another person within the prescribed period.
 - (c) Has not been withdrawn
 - (d) If having been made by a person (who is not also a Responsible Authority), 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 which the relevant representations identify. Any action should generally be directed to these causes and concerns and should always be no more than is a necessary and proportionate response. This is particularly the case, if there is any detrimental financial impact that would be caused by the decision.
- 9.8 The Sub-Committee is required to have regard to the Home Office Guidance and Council Licensing Policy when making its decision, bearing in mind they do not cover every possible situation. Provided that the Guidance and Policy have been properly and carefully understood, the Sub-Committee may depart from them if they have reasons to do so. The Sub-Committee must give full reasons in its decision for any departure from the Guidance and Policy.
- 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. The Sub-Committee need to assess the evidence submitted and whether evidence or representations amount to evidence on which they can rely
 - (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 Although not referred to in the Act, a concentration of licensed premises in one area may have the potential impact on the promotion of the licensing objectives. When the Council as Licensing Authority develops its Licensing Policy Statement it may include a “special policy” referred to as “cumulative impact” policy. To develop these requires a real concern about crime and disorder or public nuisance, good evidence that crime and disorder or public nuisance are caused by the cumulative impact of customers of licensed premises or there is an imminent risk’ the boundaries of the zone and a statutory consultation must be carried out.

- 9.11 There is no provision for a trial period under the Act, but under Section 51 of the Act, a responsible authority or other person may apply to the Council as Licensing Authority for a review of the licence.
- 9.12 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.
 - (d) Environmental Protection.
- 9.13 It should be noted by the Sub-Committee that in relation to this application, the Council has a number of roles through Council services e.g. Environmental Protection. No response to the application has been received from the Council's Health and Safety or Development Control Departments.
- 9.14 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.
- 9.15 A party may appeal the decision of the Sub-Committee to the Magistrates' Court within 21 days of being notified in writing of the decision. As the appeal is against the Sub-Committee's decision, the City Council will be the Respondent to such proceedings.
- 9.16 Provided the Sub-Committee acts reasonably, basing their decision on proper evidence and information from the applicant, Responsible Authorities and other persons, then on a successful appeal, costs should not be awarded against the Council. Members are referred to the Risk Management Assessment of this report at paragraph 10.
- 9.17 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

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. in reaching its decision. In the case of Birch House4 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)
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