

Gloucester City Council

Meeting	: Licensing Sub-Committee
Date	: 19 May 2014
Subject	: Application under Section 34 of the Licensing Act 2003 by Gloucester City Council to vary the Premises licence for Plock Court Playing Fields, Longford Lane, Gloucester, GL2 9DW
Ward Affected	: Longlevens
Report of	: Corporate Director of Services and Neighbourhoods
Appendices	1. Copy of application from Gloucester City Council 2. Plan showing layout of premises 3. Copy of the representation from a local resident 4. Extracts the Licensing Policy Statement and Guidance 5. Procedure for Licensing Sub Committee
Contact Officer	Philippa J. Golden-Licensing Enforcement Officer Philippa.golden@gloucester.gov.uk
Reference No.	: ES21179

1.0 Purpose of Report

- 1.1 To present to members an application to vary the premises licence made under Section 34 of the Licensing Act 2003 for Plock Court Playing Field, Longford Lane, Gloucester GL2 9DW by Gloucester City Council. Members are to consider the application which has received a relevant representation from a local resident and for it to be determined under Section 35. The proposals include amendments to the existing conditions and to include Late Night refreshment and extend the finishing time of licensable activities.

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 modify the conditions of the licence which includes altering, omitting or adding new conditions.

- (b) To reject the whole, or part of the application

3.0 Background

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

3.1 Members are advised that when considering an application for the variation to 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 condition is added.

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 finding on any issues of fact should be on the balance of probability

4.0 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 March 2014 from Gloucestershire City Council and was advertised in accordance with the Licensing Act 2003 (Hearings) Regulations 2005. A copy of the application is attached as **Appendix 1**

4.2 A plan showing the layout of the premises is attached in **Appendix 2**

- 4.3 The proposed variation has been applied for by Gloucester City council to include late night refreshment everyday from 23:00 – 00:00, to extend the finishing time of the existing licensable activities every day to 23:30 and for the sale of alcohol everyday from 09:00- 22:30

The Council have also applied for the removal from their existing premises licence the following conditions;

1, 2, 5, 7, 8, 11 (shown below)

1. On Sunday to Thursday all outdoor regulated entertainment on site shall not start before 10.00 and finish at 22:00
2. On Friday and Saturday all outdoor regulated entertainment on site shall not start before 10:00 and finish at 22:30
5. The music noise level shall not exceed 71db in either 63Hz or 125Hz octave frequency band.
7. The music noise level shall be measured using a UKAS calibrated type II integrating averaging sound level meter or better.
8. All measurements shall be undertaken by a competent person
11. Written notice of all outdoor licensable activities shall be given to the licensing authority at least 28 days prior to the event date.

- 4.4 The applicant has set out in the operating schedule the measures proposed to be taken to promote One of the four Licensing Objectives. This measure is:-

The Protection of Children from Harm

The Challenge 25 Scheme shall be adopted.

4.5 REPRESENTATIONS

A representation was received from the Environmental Protection Service (Responsible Authority) who have liaised with the applicant (Gloucester City Council) to ensure that new conditions regarding amplified sound measurements have been included so that to ensure that that any music events using amplified sound do not cause unreasonable disturbance to residents living nearby

Where any event covered by this Premises Licence involves the amplification of sound, at least 8 weeks prior to the event taking place the following information is to be submitted to the Environmental Protection Department:

- I. Date and duration of event
- II. Description of event

- III. List of identified noise sources
- IV. Noise management strategy

- Event Organisers contact details including on site details for event day (including postal addresses and mobile and land line telephone numbers)
- Location of noise / sound making equipment
- All outdoor amplified sound will finish at 22:30hrs
- For Events including amplified sound taking place on more than 1 day duration, a wind down period shall cease at 22:00hrs.
- The control limits set at the mixing desk shall be adequate to ensure that the music noise level shall not exceed 75dB (15 minute LA eq) when measured at a distance of 1 metre from the façade of any noise sensitive premises. In an absence of a mixing desk at a location to be agreed by a Noise Pollution Officer
- The control limits set at the mixing desk shall be adequate to ensure that the music noise level in the 63Hz and 125Hz first octave bands do not exceed 75dB (15 minute LA eq) when measured at a distance of 1 metre from the façade of any noise sensitive premises.
- The music noise level shall be measured using a suitable UKAS calibrated class 1 integrating averaging sound level meter.
- All noise measurements shall be undertaken by a person competent to undertake environmental noise measurements at regular intervals during the event in line with the Noise Management Strategy.
- A written record of noise monitoring shall be available for inspection by an authorised officer of Gloucester City Council. The records to be kept shall include: date, time, position of monitoring, length of measurement and weather conditions.
- Access should be provided to authorised officers of Gloucester City Council to enable them to monitor music noise levels at the sound mixer position through use of its own fixed noise monitoring equipment.
- Written notice of all licensable activities shall be submitted to Gloucester City Council as the Licensing Authority at least 3 months prior to an event of up to 499 persons and 6 months for events over 500 persons.

- The Event Organiser shall advertise and operate an attended complaint telephone number through which noise complaints can be channelled by local residents. All noise complaints received shall be investigated and should the noise level be found to be excessive the music noise level shall be reduced by the Event Organiser so as not to cause annoyance to the complainant.
- The Event Organiser shall provide written notification to all local residents in the locality not less than 14 days before a planned event taking place providing a description of the event, timings of the event and advertising the noise complaint telephone number.

- 4.6 One relevant representation was received by email from a local resident ('other persons') within The meaning of the Act) on 01 April 2014 who objected to the application to lengthen the hours of business for the sale of refreshment, including alcoholic drinks and noise and congestion lengthening the finishing times of licensable activities and to proposal for the sale of alcohol.
(Appendix 3)

The resident was invited to attend a meeting on April 6th at the City Council Offices. The purpose of the meeting was to alleviate concerns and to discuss the impact on the local residents during the 2013 'Sports beat' Festival, held over 3 days during July last year.

The Licensing Authority considered that this representation was deemed as relevant within the meaning of Section 35 (5) 18 of the Act as being about the likely effect of the granting of the application on the licensing objectives, which in this case focus on one of the licensing objectives;

- *Prevention of Public Nuisance.*

- 4.7 The applicant and those who have made the representation have been given Notice of Hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

5.0 THE LICENSING POLICY STATEMENT AND GUIDANCE

- 5.1 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 7.2 refers specifically to the licensing hours.**(Appendix 4)**

(Section 7.2 of the Policy statement)

The Licensing Authority will have a flexible approach to opening hours and will generally deal with the issue of licensing hours having due regard to the individual merits of each application in the light of relevant representations received. The Licensing Authority will take into account requests for terminal hours in the light of the:

1. environmental quality;
2. residential amenity;
3. character or function of a particular area; and
4. nature of the proposed activities to be provided at the premises.

Where relevant representations have been received and upheld consideration may, however, be given to imposing stricter controls on noise and disturbance from particular licensed premises, such as those in mainly residential areas.

- 5.2 The relevant parts of the Amended Guidance issued under section 182 of the Licensing Act 2003 June 2013 by the Home Secretary are Chapter 2, on the four licensing objectives, Chapter 8 on Applications for premises licences and Chapter 10 conditions attached to premises licence.
- 5.3 Paragraphs 10.1 to 10.13 of the Guidance 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 appropriate to promote the licensing objectives arising out of the consideration of the representations.
- 5.3 Paragraph 10.10 states that Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

6.0 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 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 in 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.

7.0 Financial Implications

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

8.0 Legal Implications

8.1 The Licensing Sub-Committee is asked to consider an application to vary a premises licence made under Section 34 to be determined under Section 35 (5) of the Licensing Act 2003.

8.2 To consider the application, the Sub-Committee must be satisfied:

- (a) the application is properly made
- (b) the application has given proper notice.
- (c) The applicant has satisfied the advertising requirements.

8.3 The four licensing objectives are set out in paragraph 2.2 of this report and must be considered of equal importance:

8.4 The Sub-Committee has powers to decide on either of the options set out in Section 35 (4) of the act:

- (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.

8.5 The Sub-Committee has powers 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:

Is relevant to one or more of the licensing objectives.

- (a) Is made by a responsible authority or other persons within the prescribed period.
- (b) Has not been withdrawn
- (c) If having been made by a person who is not a responsible authority, that they are not in the opinion of the Licensing Authority frivolous or vexatious.

8.7 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 be 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.

8.8 The Sub-Committee is required to have regard to the most up to date version of the Home Secretary’s Guidance when making its decision. However the Guidance does not cover every possible situation, so long as Guidance has been properly and reason carefully understood, the Sub-Committee may depart from it if they have to do so. Full reasons must be given for any departure from the Home Secretary’s Guidance.

- 8.9 Following the case of Daniel Thwaites v Wirral Borough Magistrates Court 2008 referred to in Section 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) Modifying Imposing conditions that do not promote the licensing objectives.
- 8.10 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 'other person' who made the relevant representations.
- 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, including land owner and applicant. No response to the application has been received from the Licensing Authority, Development Control and Health and Safety Team. There has been considerable advice on the application by the Environmental Protection team. The Sub- committee has its own procedure for determining applications which are attached to the report as (**Appendix 5**)
- 8.12 In considering the application, the Sub-Committee is solely performing the role 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
- 8.13 There is a right of appeal to the Magistrates Court.

9.0 Risk Management Implications

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

10.0 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 was 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	Yes	No	Explanation: As above

completed?		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	

11.0 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 (Oct 2010) and Daniel Thwaites v Wirral Borough Magistrates Court (2008)

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