

Gloucester City Council

Meeting:	Licensing Sub Committee	Date:	15 May 2013
Subject:	Application Under Section 17 of the Licensing Act 2003 by Mohammed Alif in respect of Kingsholm Store, 55 Worcester Street, Gloucester, GL1 3AW		
Report Of:	Corporate Director of Services and Neighbourhoods		
Wards Affected:	Kingsholm & Wotton		
Contact Officer:	Rebecca Tuck – Licensing and Enforcement Officer		
	Email: Rebecca.Tuck@gloucester.gov.uk	Tel: 396678	
Appendices:	1. Copy of application from Mr Mohammed Alif		
	2. Plan showing layout of premises		
	3. Map showing location of premises		
	4. Copy of representation from responsible authority (EP)		
	5. Lockett & Co's response to EP representation		
	6. Copy of representations from "other persons" under the Act		
	7. Lockett & Co's response to "other persons"		
	8. Procedure for Licensing Sub Committee		
	9. List of mandatory conditions		
Reference No.	ES21157		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 To outline to Members an application made by Mr Mohammed Alif in respect of Kingsholm Store, 55 Worcester Street, Gloucester GL1 3AW under Section 17 of the Licensing Act 2003. The application is for the retail sale of alcohol (off sales only) Monday to Sunday (inc) from 06:00 to 23:00.

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 in accordance with section 17 of the Licensing Act 2003. The application was received by the licensing team on 25th March 2013, from Lockett & Co, Lockett House 13 Church Street, Kidderminster, Worcestershire DY10 2AH acting as an agent for Mr Alif. The application was advertised on the premises in accordance with the regulations. The newspaper advert was published in the Gloucester Citizen on 28th March 2013. A copy of the application is attached as **Appendix 1**.
- 4.2 A plan showing the layout of the premises is attached at **Appendix 2**. **Appendix 3** is a plan showing the location of Kingsholm Store. Members are respectfully advised to familiarise themselves with the area concerned.
- 4.3 There are no planning restrictions in relation to this application.
- 4.4 The application concerns the proposal to make provision for the retail sale of alcohol off sales only Monday to Sunday (inc) from 06:00 to 23:00.
- 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 the measures are:-

The prevention of crime and disorder

A suitable and sufficient CCTV system with recording facilities will be in place at site and will operate at all times the premise is open for licensable activities. Images can be made available upon reasonable request by the Police or other relevant officers of a responsible authority.

Spirits will be located behind the counter.

Staff will be trained with regard to their responsibilities in the retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the Police or other relevant officers of a responsible authority,

Public safety

A suitable and sufficient CCTV system with recording facilities will be in place at site and will operate at all times the premise is open for licensable activities. Images can be made available upon reasonable request by the Police or other relevant officers of a responsible authority.

The prevention of public nuisance

Staff will be trained with regard to their responsibilities in the retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the Police or other relevant officers of a responsible authority.

The protection of children from harm

Staff will be trained with regard to their responsibilities in the retail sale of alcohol and regular refresher training will also be undertaken. Training records can be made available for inspection upon reasonable request by the Police or other relevant officers of a responsible authority.

A refusals book will be operated and maintained and will be produced to a relevant office of the Police or other relevant officers of a responsible authority upon request.

A Challenge 25 policy will be operated at the premise, acceptable forms of identification are a passport, photocard driving licence and PASS accredited identification card.

Spirits will be located behind the counter.

- 4.6 The proposed Designated Premises Supervisor for the premises is Sivakaran Somanathan who holds a personal licence number SGC\047656 issued by South Gloucestershire Council.

5.0 Representations

- 5.1 One representation has been received by a responsible authority under the Act namely, Environmental Protection. This is attached as **Appendix 4** of this report. Members should be aware that prior to the end of the representation period Environmental Protection and the applicant's agent were in discussions with regard to suitable conditions to be added to the licence, should a licence be granted in respect of the Prevention of Public Nuisance licensing objective. Unfortunately an agreement could not be reached.
- 5.2 The Environmental Protection representation seeks the following conditions should a licence be granted:-
- The movement of bins and waste outside the premises will not take place between the hours of 23:00 and 08:00.
 - All rubbish produced by the premises will be stored securely in a designated area or in a bin with a tight fitting and lockable lid.
 - The delivery of goods will not take place between the hours of 23:00 and 08:00.
 - The Licence Holder will arrange for litter dropped in the vicinity of the premises to be collected and removed at the Licence Holders expense at a frequency of not less than sixty minute intervals during opening hours.
 - The 'collection and removal' of litter should be taken to include the satisfactory disposal of spilled food and similar materials so as to leave the footway in a clean, safe and wholesome condition.
- 5.3 Lockett & Co on behalf of the applicant have responded to Environmental Protection in an attempt to address their concerns. Their response is attached as

Appendix 5 of this report. Environmental Protection have not withdrawn their representation in response to this.

5.4 No other representations have been received from responsible authorities, however, Gloucestershire Constabulary Licensing Unit has, in agreement with the applicant, proposed that should a licence be granted the following conditions should be added to the licence:-

1. A CCTV system with minimum 4 colour-cameras recording at a frame-rate of not less than 15 frames-per-second shall be maintained in good working order at the premises. One of these cameras shall provide a “head & shoulders” picture (I.D shot) of all customers entering the premises. One camera shall be situated behind the Serving Counter so as to capture the faces and activities of customers at the point of sale. One camera shall overlook the alcohol-display area. The other camera shall be mounted externally so as to cover the area immediately outside the store. The system shall record at all times the premises are open. Recordings shall be kept for a minimum of 14 days and shall be produced promptly on DVD (preferred) or CD and, in any event within 3 days, at the request of Police, Trading Standards or Council Officers. The system shall be checked daily and, should the system fail to operate on any occasion, the DPS (or representative) shall promptly notify the Licensing Authority Licensing department and Police Licensing department and shall take prompt steps to repair or replace the system.
2. With the exception of alcohol displayed behind the Counter, alcohol shall not be displayed within 5 metres of the customer entrance/exit door.
3. Spirits shall only be displayed behind the Counter. (as volunteered in the schedule)
4. Challenge 25 shall be in operation. (as volunteered in the schedule)

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

5.5 Chapter 8, paragraph 8.12 of the Home Office Guidance, amongst other things states:-

“As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises”.

5.6 Representations have been received from four local residents as other persons under the Licensing Act 2003. Copies of these are attached as **Appendix 6** of this report.

5.7 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 on

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 an increase in public nuisance and anti-social behaviour should this licence be granted.
- 5.9 Three of the four representations also concern themselves with the number of outlets in the area already selling alcohol by way of a licence. This cannot be a relevant consideration under the Licensing Act 2003.
- 5.10 Lockett & Co on behalf of the applicant have responded to residents in an attempt to address their concerns. Their response is attached as **Appendix 7** of this report. The residents have not withdrawn their representations in response to this.
- 5.11 The applicant, responsible authority 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 October 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 Paragraph 9.11 deals with the role of responsible authorities and states that "Responsible authorities under the 2003 Act are automatically notified of all new applications. 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.
- 6.4 Paragraphs 10.1 to 10.13 deal with the attaching of conditions to licences and states 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.
- 6.5 Paragraph 10.13 of the Guidance states that "Shops, stores and supermarkets 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.
- 6.6 Paragraph 10.2 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.”

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.

(Financial Services have been consulted in the preparation 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 There will inevitably be speculation as to whether or not the licensing objectives will be met by the licence conditions. Continued monitoring and the gathering of evidence allows for response planning and presents an opportunity for responsible authorities or other persons to make representations that could lead to a Premises Licence Review under section 51 of the Act.

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 Police, having made relevant representations

9.10 The Sub-Committee has its own procedure for determining applications that are attached to the report as Appendix 8.

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 If the Sub-Committee was to grant the licence it would be subject to mandatory conditions required by the act. A copy of the mandatory conditions are attached at Appendix 9.
- 9.16 The Responsible Authority, the applicant and other persons (residents) 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.

(Legal Services have been consulted in the preparation this report.)

10.0 Risk & Opportunity 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):

- 11.1 The application was advertised in accordance with the regulations allowing for any concerns to be registered by interested parties.
- 11.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact, therefore a full PIA was not required.

12.0 Other Corporate Implications

Community Safety

- 12.1 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.

Sustainability

- 12.2 As above – dealt with in the body of the report.

Staffing & Trade Union

12.3 No comments.

Background Documents: 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)