

Licensing and Safety Sub-Committee 3 - 11th October 2011

Report of the Director of Corporate Resources

Application for Variation of a Premises Licence

Purpose of Report

1. To consider the application for the variation of the premises licence in respect of the Painters Arms, Avenue Road, Coseley, West Midlands.

Background

2. On the 15th July 2005, an application was received from Holden's Brewery, in respect of the Painters Arms, Avenue Road, Coseley, West Midlands, to convert an existing licence into a premises licence and to vary the premises licence simultaneously.
3. Representations were received from local residents and brought to the attention of the Committee.
4. This matter was considered by the Licensing Sub-Committee on the 9th September 2005. The Committee resolved that the licence be issued as follows:-

Sale of Alcohol

Monday – Sunday 10.00 – 00.00

Recorded Music

Monday – Sunday 10.00 – 23.00

Conditions

All conditions set out as in the operating schedule.

- All regulated entertainments, recorded music only 10.00 – 23.00 Monday – Sunday
- No live music to be held on these premises

- No consumption of alcohol to take place at the front or side of the premises
 - All doors and windows to the front and side of the premises shall be kept closed during regulated entertainment, save for access and egress
 - Indoor sporting events to be permitted on these premises
 - All exit doors within the premises to have signs asking customers to leave the premises quietly and respect local residents and their premises
 - Signs in the car park to state – No ball games, no sounding of horns and to leave the car park quietly
 - Angle of deflection of external lighting to be reviewed to ensure coverage only of footway to the front of the premises and no consequent nuisance to local residents
5. That licence was subsequently transferred on the 12th December 2007 and again on the 10th September 2009.
 6. On the 7th July 2010, an application for the grant of a minor variation was received but was rejected and the applicant informed that a full application for variation must be submitted.
 7. On the 8th April 2011, Grewty96 Ltd, Licensed Trade Consultants made application on behalf of Graham Roy Watkins for the variation of the premises licence. A copy of that application has been forwarded to the Committee Members and interested parties in accordance with the Licensing Act 2003.
 8. The application had the following requisite certified copies of documents enclosed:-
 - 1) Correct fee (£190.00)
 - 2) Plan of the premises
 - 3) Current licence
 9. The application to vary the premises licence was as follows:-

Sale of Alcohol and Regulated Entertainment (films/indoor sporting events/live music/recorded music/anything of a similar description to live music and recorded music/provision of facilities for making music and dance)

Monday – Sunday 10.00 – 02.00

Late Night Refreshment

Monday – Sunday 23.00 – 02.00

The removal of various conditions of licence

10. Confirmation that copies of the application form and supporting documentation had been served on the relevant authorities was received.
11. Representations were received from local residents and circulated to the applicant, Committee Members and interested parties in accordance with the Licensing Act 2003.
12. On the 4th May 2011, representations were received from Environmental Health (Food & Occupational Safety). A copy of that report was also circulated to the applicant, Committee Members and interested parties in accordance with the Licensing Act 2003.
13. The current premises licence holder is Mr G R Watkins.
14. Mediation took place between the West Midlands Police and the Applicant who agreed the following additional conditions.

The premises has CCTV covering the entrance/exit door, bar, lounge and car park area.

The recording will be kept for 30 days secure as per the provisions of the Data Protection Act and will be handed to the Police or authorised authorities on demand.

Ongoing risk assessments will be made by the management and any door staff used will be SIA registered door staff.

The details of the doorstaff will be kept showing name, address, badge number, hours and days worked and handed to the Police or authorised responsible authorities on demand.

15. This matter was considered by the Licensing Sub-Committee on the 7th June 2011. The Committee resolved that the matter be adjourned for the following reason:-

The Committee was aware that a premises licence review would be bought within 7 days and that also, a prosecution was being considered. Therefore, the Committee understood that significant information regarding this premises would be put before the Licensing Committee in the very near future.

It was therefore, not in the public interest to consider the variation application at that point when a review will be considered at which all relevant evidence and representations will be available to the Committee and all parties.

The application for variation was therefore adjourned until after the hearing of the premises review.

16. On the 15th June 2011, an application for the review of the premises licence was received from Food and Occupational Safety Manager. A copy of that application was circulated to Committee Members and interested parties in accordance with the Licensing Act 2003.

17. The Council advertised the application for review of the premises licence in accordance with the Licensing Regulation S1, 2004, No 42, Section 38.
18. Confirmation that the application had been served on the relevant authorities was received.
19. Representations were received from the West Midlands Police and were circulated to the applicant, Committee Members and interested parties in accordance with the Licensing Act 2003. Included in those documents was a statement from the Licensing Enforcement Officer outlining his findings.
20. Letters were also received from local residents who previously objected to the variation of the premises licence. Those letters requested that their previous comments be taken into consideration at the review of the premises licence. Copies of those letters were also forwarded to the Committee Members, the applicant and interested parties in accordance with the Licensing Act 2003.
21. This matter was considered by the Sub-Committee on the 10th August 2011. The Committee resolved that the premises licence be suspended for a period of 3 months.
 - The Committee further resolved that the following conditions be attached to the premises licence.
 - All conditions as set out in the operating schedule.
 - All regulated entertainments, recorded music only 10.00 – 23.00 Monday to Sunday
 - No live music to be held on the premises
 - No consumption of alcohol to take place at the front or side of the premises.
 - All doors and windows to the front and side of the premises shall be kept closed during regulated entertainment, save for access and egress.
 - Indoor sporting events to be permitted on these premises.
 - All exit doors within the premises to have signs asking customers to leave the premises quietly and respect local residents and their premises.
 - Signs in the car park to state – No ball games, no sounding of horns and to leave the car park quietly.
 - Angle of deflection of external lighting to be reviewed to ensure coverage only of footway to the front of the premises and no consequent nuisance to local residents.

22. The reason for the Committee decision was as follows:-

The Sub-Committee heard evidence from the applicant, representations from local residents and the police and a Council Licensing Enforcement Officer and evidence on behalf of the Painters Arms.

The Sub-Committee accepted the evidence, particularly that of PC Smith, that conditions of licence had been breached specifically in relation to the playing of recorded music beyond 11.00pm and the taking of alcohol outside the premises, for consumption, as recently as June and July 2011. This is in spite of lengthy and considerable correspondence with Environmental Health and Police over many months. The Committee also found that the premises licence was not always displayed appropriately and that bar staff were not aware of its contents or whereabouts at all times.

The Committee accepted the complaints from local people as being valid in so far as they corroborate the breach of licence conditions.

The Committee therefore, decided to suspend the premises licence for a period of 3 months.

Before the premises re-opens, the noise limiter already fitted to the premises must be linked to any juke box and must be calibrated in accordance with the Council's Department of Environmental Health Guidance.

The Sub-Committee also recommended that consideration be given to either double-glazing or secondary unit wherever appropriate, including skylights, to be advised on by Environmental Health.

The Sub-Committee noted that Mr Watkins will no longer use the premises for disco's or karaoke. This may well alleviate many of the problems associated with the premises.

23. On the 12th September 2011 following the review of the premises licence, a letter was received from Mr Graham Watkins asking for an amendment to the original application for variation of the premises licence to be considered by the Sub-Committee. The amendment is as follows:-

The only area of the original application for variation of the premises licence dated the 8th April 2011 that Mr Watkins wishes to retain is the removal of the condition that prevents customers being allowed to consume alcohol at the side of the building nearest to the car park. All other aspects of the application for variation have been withdrawn. A copy of that letter has been circulated to Committee members and interested parties in accordance with the Licensing Act 2003.

24. This application falls within the Council's recent responsibility for liquor licensing which has a direct link to the Council's key corporate priority that safety matters.

Finance

25. There are no financial implications.

Law

26. The law relating to the granting of applications to vary premises licences is governed by the Licensing Act 2003, part 3, section 34.
27. Pursuant to section 35(3)(a) of the Licensing Act 2003, where a relevant authority has made representations, the Licensing Authority must:-
- Hold a hearing to consider item, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and,
 - Having regard to the representations, take such of steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.
 - The steps are:-
 - To modify the conditions of licence;
 - To reject the whole or part of the application.
28. Pursuant to Section 36(1) and (4) of the Licensing Act 2003 where an application (or any part of an application) is granted or rejected under Section 35 of the Licensing Act 2003, the Licensing Authority must immediately give notice to that effect to :-
- the applicant;
 - any person who made relevant representations in respect of the application and
 - the Chief Officer of Police for the police area in which the premises are situated.
29. In pursuance of regulation 26(1) of the Licensing Act 2003 (Hearing Regulations 2005), the licensing authority must make its determination at the conclusion of the hearing.
30. In pursuance of schedule 5, section 4 if the Licensing Authority refuse to grant the application vary the premises licence, there is a right of appeal to the Magistrates' Court.
31. In pursuance of schedule 5, section 4(2) where the Licensing Authority grant an application to vary a premises licence in whole or in part. The applicant may appeal against any decision to modify the conditions of the licence under subsection 4(a) of section 35 of the Licensing Act 2003.

32. In pursuance of schedule 5 section 4(3) where a person who made relevant representations to the application desires to contend:-
- a) that any variation made ought not to have been made, or
 - b) that, when varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified item in a different way, under subsection 4(a) of section 35 of the Licensing Act.


They have the right of appeal to the Magistrates' Court.

Equality Impact

33. This report takes into account the Council's policy on equal opportunities.
34. The licensing of premises and individuals will impact on children and young people through their attendance at licensed premises.
35. There has been no consultation or involvement of children and young people in developing these proposals.

Recommendation

36. That the Sub-Committee determine the variation of the premises licence in respect of the Painters Arms.



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List of Background Papers