

BROMSGROVE DISTRICT COUNCIL

LICENSING SUB-COMMITTEE

20TH JULY 2007

APPLICATION FOR A VARIATION OF A PREMISES LICENCE - THE WISHING WELL, 16 ST. JOHN STREET, BROMSGROVE

Responsible Head of Service	Head of Planning and Environment Services
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1. SUMMARY

1.1 To consider an application to vary a premises licence in respect of The Wishing Well, 16 St John Street, Bromsgrove.

2. RECOMMENDATION

2.1. That Members determine the variation application taking into account the relevant representations which have been received, and having regard to the licensing objectives and the Council's statement of Licensing Policy.

2.2. The legislation governing the determination of an application to vary a premises licence is set out in section 35 of the Licensing Act 2003. Members are referred to the following provisions:-

2.3. *Section 35(3) Licensing Act 2003*

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 necessary for the promotion of the licensing objectives.

2.4. *Section 35(4) Licensing Act 2003*

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.

2.5. *Section 35(5) Licensing Act 2003*

In this section "relevant representations" means representations which--

- (a) are about the likely effect of the grant of the application on the promotion of the licensing objectives, and
- (b) meet the requirements of subsection (6).

2.6. Section 35(6) Licensing Act 2003

The requirements are--

- (a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5)(c) by virtue of section 34(5),
- (b) that they have not been withdrawn, and
- (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

3. **BACKGROUND**

3.1. The Licensing Authority has received an application to vary the Premises Licence in two aspects as follows:-

- to extend the hours during which the playing of recorded music indoors is permitted and
- to remove a condition on that License with regard to the use of the beer garden

3.2. The existing permitted hours for recorded music (indoors) are as follows:

Monday to Sunday from 11.00a.m. to 11.20 p.m.

The variation sought would have the following effect, namely to extend the playing of recorded music (indoors) as follows:

- Monday to Thursday from 10.00 a.m. until 00.30 a.m.
- Friday and Saturday from 10.00a.m. until 1.30 the following morning
- Sunday from 12.00 until 00.00

3.3 A condition attached to the Licence states the following:

“Customers shall not be allowed to utilize the external patio/rear beer garden after 12 midnight on any evening”.

The variation sought would have the effect of removing this condition, and adding the following condition:

“Staff to regularly patrol outside areas during all hours when the property is open to the public”.

- 3.4 All other hours of operation and the Licensable activities are to remain unchanged.
- 3.5 In accordance with the Licensing Act, anyone residing in the vicinity of a premises for which an application has been made is entitled to make representations. "Vicinity" is not defined in the Licensing Act.
- 3.6. Representations have been made by four residents living near to the premises. A copy of representation is attached as Appendix B. The basis of their representations relate to noise associated with people using the beer garden being exacerbated by the extended hours.
- 3.7. A plan showing the proximity of residential properties is attached at Appendix C.
- 3.8. Representations have also been received from a responsible authority, namely the Council's Environmental Health Officer, who is concerned that the variations sought may lead to further noise nuisance to nearby residential premises. His full views are set out in Appendix B.
- 3.9. No other representations have been received from the other responsible authorities

4. Policy Implications

- 4.1 Paragraph 4.3 of the Council's Statement of Licensing Policy applies to this application. This reads: *"The Licensing hours for each premises will be examined on the individual merits of the application, having regard to the nature of activities taking place in the premises, the amount of disturbance likely to occur, the location of the premises and the day of the week, major sporting events, Bank Holidays and seasonal variations. It is however, acceptable to impose stricter conditions with regard to noise control in areas that are residential, in order to satisfy the licensing objectives"*.

5. Financial Implications

- 5.1 There are no direct financial implications arising from this Report. However, if either party is not satisfied by the decision taken by the Council, they can appeal to the Magistrates' Court and the Council could become liable for costs.

6. Legal implications

- 6.1 Each party is entitled to appeal to the Magistrates' Court if they are dissatisfied with the decision of the Council.
- 6.2 The Sub-Committee must have regard to the Statutory Guidance, issued by the Secretary of State under Section 182 of the Licensing Act 2003.
- 6.3 The Sub-Committee must have regard to the Council's Statement of Licensing Policy.
- 6.4 The conduct of the Sub-Committee is governed by the Licensing Act 2003 (Hearings) Regulations 2005, as amended.

6.5 The Sub-Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights.

Appendices:

- A Application Form
- B Representation from Interested Parties
- C Plan
- D Representations from Environmental Health
- E Mandatory Conditions

Background Papers

Application forms received on 18th May 2007

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