TEWKESBURY BOROUGH COUNCIL

Report to:	Licensing Sub Committee (Licensing Act 2003 and Gambling Act 2005)
Date of Meeting:	8 September 2011
Subject:	Application for the Variation of a Premises Licence for the Cheltenham Regency Hotel, Gloucester Road, Staverton.
Report of:	Colin Hoult, Licensing Officer
Chief Officer:	Mella McMahon, Corporate Head of Borough Development
Lead Member:	Councillor B Whelan
Number of Appendices:	Six

Executive Summary:

An application has been received for Variation of the Premises Licence in respect of Cheltenham Regency Hotel, Gloucester Road, Staverton Cheltenham, GL51 0ST.

Representations have been received from ten interested parties objecting to the application on the grounds of the licensing objective of the prevention of public nuisance.

Recommendation:

That the Sub-Committee determine the application taking such steps (if any) as it considers necessary for the promotion of the licensing objectives.

Reasons for Recommendation:

The Sub-Committee is required, in accordance with Section 35 of the Licensing Act 2003, to determine the application taking such steps (if any) as it considers necessary for the promotion of the licensing objectives.

Resource Implications:

If any party to the Hearing were successful in appealing any decision taken by the Sub-Committee at a Magistrates Court, the Licensing Authority may be liable to having costs awarded against it.

Legal Implications:

<u>Decision making</u>

Members are required to determine the application with a view to promoting the licensing objectives. Members must only impose conditions that are deemed to be necessary and proportionate to promote the licensing objectives.

Rights of Appeal

(i) In accordance with the provisions of Part 1 of Schedule 5 of the Act where a Licensing Authority rejects in whole or in part, an application for Variation of a Premises Licence, the applicant may appeal against the decision to a Magistrates Court within 21 days of being notified of the decision.

(ii) Similarly, where a person who made relevant representations in relation to the application contends that the Variation ought not to have been granted, or that different or additional conditions should have been imposed on the Licence, he may appeal against the decision to the Magistrates Court within 21 days of being notified of the decision.

Human Rights

The Human Rights Act 1998 incorporates the key articles of the European Convention on Human Rights into domestic law. Decisions on licensing matters are actions of a public authority and must be compatible with Convention rights. Consequently Members of the Panel must be aware of the rights contained in the Convention (particularly those set out below) when making licensing decisions. In particular Members should conduct the Hearing in a fair and proper manner (Article 6: Right to a Fair Trial) and in accordance with the relevant Hearing regulations. Members should also consider any decision in Article 8: Right to Respect for Private and Family Life, Article 10: Freedom of Expression, Article 14: Prohibition of Discrimination and Article 1 of the First Protocol: Protection of Property. Rights under the Human Rights convention can only be breached where it is necessary and proportionate to do so.

Risk Management Implications:

None

Performance Management Follow-up:

The decision of the Sub-Committee and details of rights of appeal will need to be notified to all parties. If the application is granted, a Varied Licence will need to be prepared and issued.

Environmental Implications:

None

1.0 INTRODUCTION/BACKGROUND

1.1 An application has been received for Variation of the Premises Licence in respect of Cheltenham Regency Hotel, Gloucester Road, Staverton, Cheltenham, GL51 0ST.

1.2 The applicants have applied for authorisation to be able to provide additional regulated entertainments that the Licence does not currently permit, namely the performance of plays, the exhibition of films and indoor sporting events. Authorisation for these activities is sought between 10:00 and 22:00 every day of the week.

1.3 The applicants have also applied for extensions to the permitted hours for the regulated entertainments currently authorised by the Licence, including live music, recorded music and dancing. This includes a request for a terminal hour for these activities that is one hour later than the current permitted hours on Fridays, Saturdays and Sundays.

1.4 The applicants have also applied for permission to provide some regulated entertainments for a further additional hour at their discretion on Bank Holidays, Christmas Eve, New Years Eve and Premier Horse Racing Days.

1.5 The applicants have also applied for authorisation to provide late night refreshments at the premises between 23:00 and 05:00 every day of the week.

1.6 The applicants have also requested an extension to the hours during which they can sell alcohol at the premises. They have requested permission to sell alcohol to their residents 24 hours of the day every day, and to non-residents between 10:00 and 01:00 the next day (Sunday to Thursday) and between 10:00 and 02:00 (Friday and Saturday).

1.7 The applicant has not asked for any of the Licence conditions attached to the existing Premises Licence to be removed as part of their Variation application. Therefore the existing conditions attached to the Premises Licence would remain on the Licence after the Variation application is determined.

1.8 The existing Licence is attached at **Appendix A**.

1.9 Representations have been received from ten interested parties objecting to the application on the grounds of the licensing objective of the prevention of public nuisance.

The applicants have also agreed with two responsible authorities, to include a number of conditions within the Operating Schedule accompanying the application.

2.0 APPLICATION FOR GRANT OF A PREMISES LICENCE

2.1 The Application

2.1.1

Applicant:	Drew Hotels Limited
Premises:	Cheltenham Regency Hotel, Gloucester Road Staverton, Cheltenham, Gloucestershire, GL51 0ST
Designated Premises Supervisor	Mr Dorian Benjamin Charlton

Relevant licensable activities and (standard) hours applied for:

A Plays	Every Day	10.00 – 22.00
B Films (Indoors Only)	Every Day	10.00 – 22.00
C Indoor Sporting Events	Every Day	10.00 – 22.00
E Live Music (Indoors Only)	Sunday to Thursday Friday and Saturday	10.00 – 01.00 10.00 – 02.00
F Recorded Music (Indoors Only)	Sunday to Thursday Friday and Saturday	10.00 – 01.00 10.00 – 02.00
G Performance of Dance (Indoors Only)	Sunday to Thursday Friday and Saturday	10.00 – 01.00 10.00 – 02.00
H Entertainment. similar to (e) (f) or (g) (Indoors Only)	Sunday to Thursday Friday and Saturday	10.00 – 01.00 10.00 – 02.00

I Provision of facilities for music (Indoors Only)	Sunday to Thursday Friday and Saturday	10.00 – 01.00 10.00 – 02.00
J Provision of facilities for Dancing (Indoors Only)	Sunday to Thursday Friday and Saturday	10.00 – 01.00 10.00 – 02.00
K Provision of facilities. similar to (i) or (j) (Indoors Only)	Sunday to Thursday Friday and Saturday	10.00 – 01.00 10.00 – 02.00
L Late night refreshments	Every Day	23.00 – 05.00
M Supply of Alcohol. (for consumption both **on and off** the premises)	Every Day (24 hour Licence for residents of the Hotel)	00:00 – 24:00 (See conditions relating to sales to non-residents)
O Hours premises are open to the general public	Every Day	00:00 – 24.00

2.1.2 Non-standard hours requested

For the regulated entertainments listed as **E, F, G, H, I, J** and **K** above:

A further additional hour at the applicant's discretion on Bank Holidays, Christmas Eve, New Years Eve and Premier Horse Racing Days

2.2 Conditions Consistent with the Operating Schedule

2.2.1 The Licence conditions below have been drafted by Officers for inclusion on the Licence if the Variation application is granted. The conditions drafted are considered to be consistent with the additional steps the applicant intends to take to promote the licensing objectives, as identified in the Operating Schedule accompanying the Variation application.

2.2.2 The Sub-Committee are reminded that the conditions attached to the existing Licence will also remain on the Licence after the Variation application is determined.

2.2.3 The conditions have been drafted so as to aid the clarity and enforceability of the conditions and to attempt to ensure there is no duplication with other statutory requirements placed on the applicant.

General	All staff will be trained with regards to the licensing objectives and the smooth running of the Hotel. Training records and materials will be maintained and kept up to date. A clear schedule of procedures with regards to closing times will be established and maintained. The sale by retail of alcohol to non-residents may only take place between the following hours: Sunday to Thursday: 10:00 – 01:00 the next day Friday and Saturday: 10:00 – 02:00 the next day

Prevention of Crime and Disorder	**Additional conditions agreed with the Police for inclusion in the Operating Schedule:** The CCTV system shall be maintained in good working order, shall record at all times the premises are open, and recordings shall be kept for a minimum of 14 days and be provided on DVD to Officers of the Council, Trading Standards or Police on request. The Challenge 21 (or equivalent scheme) shall be adopted, so that any customer attempting to purchase alcoholic liquor who appears to be under the age of 21 shall be asked for an accredited photographic proof of their age (e.g. passport, photo driving Licence or a Pass approved card) and that a sale shall not be made unless this evidence is produced. This will only be treated as a breach where the customer subsequently turns out to be under 18 years of age. The Bar shall incorporate a display headed 'Driver's Drinks' that includes Alcohol-free Beer(s) and/or Alcohol-free Cider(s) and/or Alcohol-free Wine(s) and/or soft drinks.
Public Safety	No additional conditions
Prevention of Public Nuisance	**Conditions agreed with the Environmental Health Officer (Noise Pollution) for inclusion in the Operating Schedule:** All external doors and windows must be kept closed, other than for access and egress, in all rooms when events involving amplified music or speech are taking place. Prominent, clear notices shall be displayed at all exits requesting that customers respect the needs of local residents and leave the premises and the area quietly.
Protection of Children from Harm	No additional conditions

2.3 The Variation application is shown in full at **Appendix B**.

3.0 OTHER OPTIONS CONSIDERED

3.1 None

4.0 CONSULTATION

4.1 Responsible Authorities

4.1.1	Police	Gloucestershire Constabulary has agreed a number of conditions with the applicants, which have been incorporated within the applicants' Operating Schedule. These agreed conditions are shown above. In light of these agreed conditions, the Constabulary has not made a representation in respect of the application (**See Appendix C**).

Fire Officer	No representations received
Health and Safety	No representations received
Environmental Health	The Environmental Health Officer has agreed a number of conditions with the applicants, which have been incorporated within the applicants' Operating Schedule. These agreed conditions are shown above. The Environmental Health Officer has made a representation in respect of the application stating that, subject to the inclusion on the Licence of the agreed conditions, she does not oppose the granting of a Licence as applied for. **(See Appendix D)**
Child Protection Agency	No representations received
Trading Standards	No representations received
Planning Officer	No representations received

4.2 Interested Parties

4.2.1 Ten representations have been received from interested parties. All of the interested parties live on Haydn Court Park, the Mobile Home Park located behind the Hotel. These representations have been made by:

Mrs Ginger	1 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mr & Mrs Sharpe	2 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mrs Nines	3 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mr. Nelmes	5 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mrs Bliss	6 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.

Mr P Miles	14 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mr & Mrs Sims	16 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mrs O'Neill	17 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mr &Mrs Gutsell	22 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.
Mr & Mrs Burge	25 Hayden Court Park, Gloucester Road Cheltenham, GL51 0ST.

4.2.2 All of the representations focus on the licensing objective of the prevention of public nuisance. There are concerns raised on the basis of the close proximity to the Hotel of neighbouring residential properties.

4.2.3 The concerns raised include the potential disturbance that could be caused by music from functions taking place at the Hotel.

4.2.4 Concerns have also been raised about noise from people and vehicles arriving at and leaving functions.

4.2.5 Many of the interested parties have stated that they believe the hours being applied for are excessive.

4.2.6 The noise from fireworks has also been mentioned, although the Sub-Committee is reminded that this is not regulated entertainment and is therefore not regulated by the Licensing Act 2003.

4.2.7 The interested party living at 3 Hayden Court Park has expressed her objection to the application without identifying a specific reason for her objection that is based on any of the licensing objectives. The Sub-Committee may therefore decide that this letter is not a “relevant representation” and should be disregarded. However, if the Sub-Committee decides the representation is relevant and that it will have regard to it, Members should consider what weight to attach to it, in light of the fact that no specific reasons have been given for the objection that relate to one or more of the four licensing objectives.

4.2.8 The Sub-Committee needs to be aware that the assertion from some of the interested parties that the Hotel has a poor record in relation to noise complaints is not consistent with the representation submitted by the Environmental Health Officer. The Environmental Health Officer has indicated that there have been no noise complaints made to the Council regarding licensable activities in the last ten years.

4.2.9 The Licensing Authority has been contacted by Mr Thomas O'Neill who advised Officers that he wished to withdraw his personal objection to the application. Mr O'Neill was named as an objector in a letter submitted by his wife. His wife has not withdrawn her own personal objections.

4.2.10 Full copies of all of the representations received can be seen at **Appendix E.**

5.0 RELEVANT COUNCIL POLICIES/STRATEGIES

5.1 The Council's most recent Statement of Licensing Policy took effect on 7 January 2011.

5.2 The Council's Statement of Licensing Policy states that every application will be considered by the Licensing Authority on its own merits. The Licensing Authority will seek to balance the needs of the wider community, local community and commercial premises and activities, against the needs of those who may be adversely affected by the activities. The views of vocal minorities will not usually predominate over the general interests of the community.

5.3 The Policy also states that the Licensing Authority is keen to protect the amenity of residents and businesses in the vicinity of licensed premises, but also recognises the importance of the licensed trade to the local economy and its culture and leisure aspirations. The Licensing Authority will, therefore, try and work together with all interested parties, statutory agencies and licensed businesses to ensure a mutual co-existence.

5.4 The Licensing Authority will only apply terms and conditions to Licences that act to promote and support the licensing objectives and are relevant to the individual circumstances of the case.

5.5 The Licensing Authority will always seek to ensure that any conditions applied to a Licence are necessary, proportionate and reasonable. Conditions will not be used that duplicate any other legal requirements falling on an employer or Operator of premises.

6.0 RELEVANT GOVERNMENT POLICIES

Below are extracts from the latest edition of the guidance issued to Licensing Authorities by the Secretary of State under Section 182 of the Licensing Act 2003. This edition of the guidance was published in October 2010 by the Home Secretary.

6.1 Imposed Conditions

6.1.1 The Licensing Authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a Hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

6.1.2 It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

6.2 Proportionality

6.2.1 The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned. This rules out standardised conditions which ignore these individual aspects. It is important that conditions are proportionate and properly recognise significant differences between venues.

6.3 Licensing Hours

6.3.1 The Government also wants to ensure that licensing hours should not inhibit the development of thriving and safe evening and night-time local economies which are important for investment and employment locally and attractive to domestic and international tourists.

6.3.2 Providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet.

6.3.3 Where the 2003 Act provides for a mandatory condition to be included in a Premises Licence, it is the duty of the Licensing Authority issuing the Licence to include those conditions on the Premises Licence. See **Appendix F.**

7.0 OBSERVATIONS

7.1 The Sub-Committee is obliged to determine this application with a view to promoting the licensing objectives which are:

(a) the prevention of crime and disorder;

(b) public safety;

(c) the prevention of public nuisance; and

(d) the protection of children from harm.

7.2 In making its decision, the Sub-Committee is obliged to have regard to National Guidance and the Council's own Licensing Policy. The Sub-Committee must also have regard, and give appropriate weight to, all of the representations made and the evidence it hears.

7.3 The Sub-Committee must take such of the following steps, if any, as it considers necessary for the promotion of the licensing objectives:

(a) grant the application as requested;

(b) modify the conditions of the Licence, by altering or omitting or adding to them; or

(c) reject the whole, or part, of the application.

7.4 The Sub-Committee is reminded that it cannot modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so: It must actually be necessary in order to promote the licensing objectives.

7.5 As to the objections raised, the representations received relate to one or more of the four licensing objectives and therefore are a proper consideration for the Sub-Committee in determining the application under the Licensing Act 2003.

7.6 The Sub-Committee is reminded that a Premises Licence can at any time be called in for review by any responsible authority or interested party if it is considered that the licensing objectives are not being satisfactorily promoted at the premises concerned.

8.0 RESOURCE IMPLICATIONS (Human/Property)

8.1 None

9.0 SUSTAINABILITY IMPLICATIONS (Social/Community Safety/Cultural/ Economic/ Environment)

9.1 None

10.0 IMPACT UPON (Value For Money/Equalities/E-Government/Human Rights/Health And Safety)

10.1 No adverse equality impacts identified.

The Legal Implications section refers to Human Rights implications.

11.0 RELATED DECISIONS AND ANY OTHER RELEVANT FACTS

11.1 None

Background Papers: Guidance Issued Under Section 182 of the Licensing Act 2003 by the Home Secretary (October 2010)

Statement of Licensing Policy - Tewkesbury Borough Council (January 2011)

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Appendices:
Appendix A – Existing Licence for Hotel
Appendix B – Application Form
Appendix C – Email from Gloucestershire Constabulary
Appendix D – Representation from Environmental Health Officer
Appendix E – Representations Received from Interested Parties
Appendix F – Mandatory Conditions