

Agenda

Licensing sub-committee

Date: **Monday 25 June 2018**

Time: **10.00 am**

Place: **Committee Room 1, The Shire Hall, St Peter's Square,
Hereford, HR1 2HX**

Notes: Please note the time, date and venue of the meeting.

For any further information please contact:

Caroline Marshall, Governance Services

Tel: 01432 260249

Email: caroline.marshall3@herefordshire.gov.uk

If you would like help to understand this document, or would like it in another format, please call Caroline Marshall, Governance Services on 01432 260249 or e-mail caroline.marshall3@herefordshire.gov.uk in advance of the meeting.

Agenda for the Meeting of the Licensing sub-committee

Membership

Councillor DW Greenow (Chairperson)
Councillor PGH Cutter
Councillor AJW Powers

Agenda

	Pages
1. APOLOGIES FOR ABSENCE To receive apologies for absence.	
2. NAMED SUBSTITUTES (IF ANY) To receive any details of Members nominated to attend the meeting in place of a Member of the committee.	
3. DECLARATIONS OF INTEREST To receive any declarations of interest by Members in respect of items on the agenda.	
4. REVIEW OF A PREMISE LICENCE IN RESPECT OF RUBY CHINESE TAKEAWAY, 23 UNION STREET, HEREFORD. HR1 2BT- LICENSING ACT 2003 To consider an application for a review of a premise licence in respect of Ruby Chinese Takeaway, 23 Union Street, Hereford. HR1 2BT called by Police Sergeant 3456 Reynolds of West Mercia Police.	11 - 32
5. REVIEW OF A PREMISE LICENCE IN RESPECT OF 'MUNCHIES, 59 COMMERCIAL ROAD, HEREFORD. HR1 2BD- LICENSING ACT 2003 To consider an application for a review of a premise licence in respect of Munchies, 59 Commercial Road, Hereford. HR1 2BD called by Police Sergeant 3456 Reynolds of West Mercia Police.	33 - 52

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- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
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- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
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HEREFORDSHIRE COUNCIL

SHIRE HALL, ST PETERS SQUARE, HEREFORD HR1 2HX.

FIRE AND EMERGENCY EVACUATION PROCEDURE

In the event of a fire or emergency the alarm bell will ring continuously.

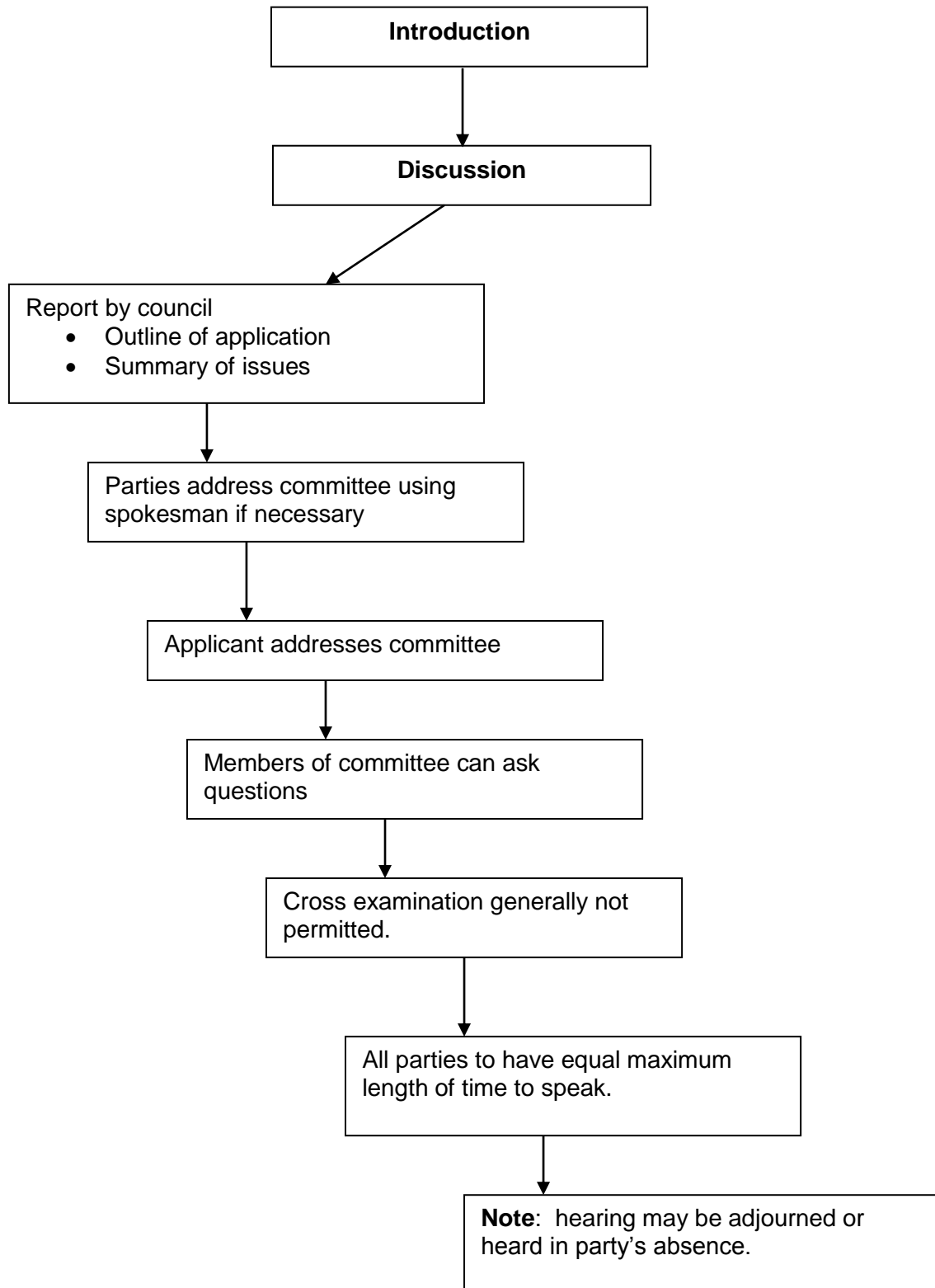
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You should then proceed to the Fire Assembly Point which is located in the Shire Hall Side Car Park. A check will be undertaken to ensure that those recorded as present have vacated the building following which further instructions will be given.

Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

Licensing Hearing Flowchart





Meeting:	Licensing sub-committee
Meeting date:	Monday 25 June 2018
Title of report:	Review of a premise licence in respect of Ruby Chinese Takeaway, 23 Union Street, Hereford. HR1 2BT– Licensing Act 2003
Report by:	Licensing technical officer

Classification

Open

Report and Appendices 1 to 3.

Exempt

Appendix 4 is exempt following the principles in paragraphs 1 and 2 of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A Local Government Act 1972, as amended.

Key Decision

This is not an executive decision.

Wards Affected

Central

Purpose

To consider an application for a review of a premise licence in respect of Ruby Chinese Takeaway, 23 Union Street, Hereford. HR1 2BT called by Police Sergeant 3456 Reynolds of West Mercia Police.

Recommendation

THAT:

The sub-committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- **the steps that are appropriate to promote the licensing objectives,**
- **the representations (including supporting information) presented by all parties,**
- **the guidance issued to local authorities under Section 182 of the Licensing Act 2003, and**
- **the Herefordshire Council Statement of Licensing Policy 2015 - 2020.**

Options

1. There are a number of option open to the committee in relation to the review:
 - The modification of the conditions of the premises licence;
 - The exclusion of any licensable activities from the scope of the licence;
 - The removal of the designated premises supervisor from the licence;
 - The suspension of the licence for a period not exceeding 3 months; and
 - The revocation of the licence
2. Where the authority takes a step mentioned in bullet point 1 and 2 above it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.
3. Alternatively it is open to the licensing authority to determine that no action is required to promote the licensing objectives or issue an informal warning in writing to the licence holder and/or to recommend improvement within a specified period of time.

Reasons for Recommendations

4. Ensures compliance with the Licensing Act 2003.

Key Considerations

5. The licensing authority must take into account any relevant representations made. Relevant representations are those that:
 - relate to one or more of the licensing objectives;
 - have not been withdrawn; and
 - are made by the premises licence holder, a responsible authority or an interested party
6. The details of the application are:

Applicant	Police Sergeant 3456 Reynolds of West Mercia Police	
Solicitor	Not applicable	
Type of application: Review	Date received: 18 April 2018	28 Days consultation ended 15 May 2018

7. The application for the review is attached (appendix 1)
8. Copies of the application were sent to the premise licence holder and responsible authorities.
9. In brief West Mercia Police's grounds for the review are:

The premises were subject to a visit from multiple agencies and four (4) persons were found to be working at the premises were in the UK with no right to stay or work.

10. This matter is being heard beyond the normal 20 working days due to an adjournment from 30 May 2018 to allow an interpreter for the applicant.

Premises History

11. The premises was first licensed in February 2006 as a Chinese takeaway for late night refreshment. Since it has been licensed, there have been no changes.

Current Licence

12. The current licence (appendix 2) authorises the following licensable activities during the hours shown:

Late Night Refreshment:

Monday – Wednesday; 23:00- 00:00

Thursday – Sunday; 23:00- 01:30

Non Standard Hours: None

13. The licence is also subject to a number of conditions.

Circumstances leading to the review

14. As part of a pre-planned operation a joint Multi Agency Targeted Enforcement (MATE) took place on Saturday 07 April 2018.
15. At 1910 hrs West Mercia Police in partnership with officers from the UK Border and Immigration Agency, Hereford & Worcester Fire Service, Herefordshire Environmental Health (Food) and Herefordshire Council Houses of Multi-Occupancy attended the Ruby Chinese Takeaway.
16. The premises were open to the public. Four members of staff working in the kitchens were detained as individuals who had no right to be in the UK and no right to work in the UK. All those detained are Chinese nationals (Three males and one female) The employment of illegal immigrants is a serious criminal offence and undermines the licensing objective of the prevention of crime and disorder.
17. As a result, this review was launched.

Summary of Representations

18. No accepted representations have been received from other responsible authorities or members of the public.
19. One comment was received from Hereford Town Council (Appendix 3).
20. A statement from the UK Border Agency in connection with the enforcement visit is attached at Appendix 4

Community Impact

21. Any decision is unlikely to have any impact on the local community.

Equality duty

22. There are no equality issues in relation to the content of this report.
23. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.
24. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Financial implications

25. There are unlikely to be any financial implications for the council at this time.

Legal Implications

26. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm in exercising its functions under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy. The options available to the licensing authority are set out in section 1 of this report.
27. The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
28. The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.
29. In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.
30. Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.
31. This judgement is further supported in the case of The Queen on the Application of Bristol Council v Bristol Magistrates' Court, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

32. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
33. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

34. Schedule 5 gives a right of appeal which states:

An appeal may be made within 21 days to the Magistrates Court by the police or any person who has made a relevant representation and also by the premises licence holder once notified of the licensing authority's decision.

35. The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

Risk Management

36. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

Consultees

37. All responsible authorities and members of the public living within Herefordshire.

Appendices

- Appendix 1 Review Application Form
- Appendix 2 Current Premise Licence
- Appendix 3 Hereford Town Council Comment
- Appendix 4 Exempt Statement from UK Border Agency

Background Papers

None.

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Police Sergeant 3456 REYNOLDS

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Ruby Chinese Takeaway 23 Union Street	
Post town Hereford	Post code (if known) HR1 2BT

Name of premises licence holder or club holding club premises certificate (if known) Sinh Quang TRAN
--

Number of premises licence or club premises certificate (if known) PRO1014
--

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

a) a person living in the vicinity of the premises

b) a body representing persons living in the vicinity of the premises

c) a person involved in business in the vicinity of the premises



- d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below) X
- 3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr Mrs Miss Ms Other title (for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address
Telephone number (if any)
E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Police Sergeant 3456 REYNOLDS Harm Reduction Dept., Hereford Police Station Bath Street Hereford HR1 2HT
Telephone number (if any) 01432 347102
E-mail address (optional) licensing.herefordshire@westmercia.pnn.police.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 1)

West Mercia Police in partnership with officers from the UK Border and Immigration Agency, Hereford & Worcester Fire Service, Herefordshire Environmental Health (Food) and Herefordshire Council Houses of Multi-Occupancy attended the premises on Saturday 07 April 2018 and detained 4 persons who it was established were working at the premises and were in the UK illegally with no right to stay or work.

This is a serious criminal offence and undermines the licensing objective of the prevention of crime and disorder.

Please provide as much information as possible to support the application
(please read guidance note 2)

As part of a pre planned operation a joint Multi Agency Targeted Enforcement (MATE) took place on Saturday 07 April 2018.

At 1910hrs West Mercia Police in partnership with officers from the UK Border and Immigration Agency, Hereford & Worcester Fire Service, Herefordshire Environmental Health (Food) and Herefordshire Council Houses of Multi-Occupancy attended the Ruby Chinese Takeaway.

The premises was open to the public. Four members of staff working in the kitchens were detained as individuals who had no right to be in the UK and not right to work in the UK. All those detained are Chinese nationals (Three males and one female)

The employment of illegal immigrants is a serious criminal offence and undermines the licensing objective of the prevention of crime and disorder.

Additionally it was established that these same persons were living on the premises in rooms which were deemed unsafe and failing to meet required standards. This resulted in an enforcement notice being issued by the Fire Service and a prohibition notice issued by the council HMO to prevent individuals living in the first floor accommodation and under a staircase at the rear of the premises near to food preparation areas.

The owner of the premises a Mr TRAN who is also the premises licence holder was working at the public counter of the premises. All four detained were staff members working in the kitchen area.

This premises is a well established business and is licensed to provide late night refreshment 7 days a week – some until midnight and at weekends until 0130hrs.

The view of West Mercia Police is that the premises licence for the Ruby Chinese Takeaway should be revoked.

Further information will be provided to support this application prior to any hearing.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

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If you have made representations before relating to this premises please state what they were and when you made them

Please tick yes

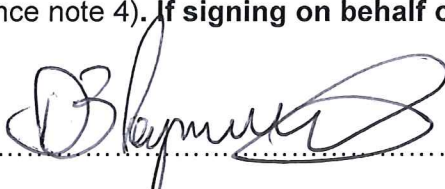
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant’s solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature



Date

11 April 2018

Capacity

Herefordshire Police Harm Reduction Supervisor

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)	
Post town	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)	

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

LICENSING ACT 2003
Part A - Premises Licence

Premises licence number PR01014 (Conversion)

Part 1 - Premises details

Postal address of premises, or if none, ordnance survey map reference or description RUBY CHINESE TAKE AWAY 23 UNION STREET	
Post town HEREFORD	Postcode HR1 2BT
Telephone number 01432 277086	

Where the licence is time limited the dates Not applicable
--

Licensable activities authorised by the licence Provision of refreshment or alcohol 1. Provision of late night refreshment
--

The times the licence authorises the carrying out of licensable activities Monday – Wednesday; 23:00- 00:00 Thursday – Sunday; 23:00- 01:30 Non Standard Hours: None
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The opening hours of the premises Monday – Wednesday; 16:30 - 00:00 Thursday – Sunday; 16:30 - 01:30 Non Standard Hours: None

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies Not applicable

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Mr Sinh Quang Tran
RUBY CHINESE TAKE AWAY
23 UNION STREET
HEREFORD
HR1 2BT
Telephone: (Day-time) 01432 277086

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Mr Sinh Quang Tran
RUBY CHINESE TAKE AWAY
23 UNION STREET
HEREFORD
HR1 2BT

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Not applicable

Annex 1 - Mandatory conditions – Not applicable

Annex 2 - Conditions consistent with the operating Schedule

Licensing conditions / objectives

General: Not applicable

Prevention of Crime:

CCTV in operation. Police will be informed.

The provision of CCTV which meets the requirements and expectations of the Licensing Authority and the Police

The provision of a terminal hour for all licensable activities of 0130 hours.

Public Safety:

Mark/highlight any hazards.

No serviettes, straws, cutlery or other eating utensils shall be stored in the customer area after 11pm.

No glass bottles or glass containers shall be supplied at the premises after 20.00 hours on any day.

Adequate systems shall be in place to effectively control the number of persons entering the premises and effectively deal with any altercations, aggressive behaviour or crowd control issues

that may arise at the premises.

Prevention of Public Nuisance:

Police would be informed if any drunk or disorderly behaviour arises.

The licensee shall ensure that noise and vibration does not emanate from the premises so as to cause a public nuisance.

All chiller units/extraction units/ ventilation systems/ air conditioning systems shall be maintained in good working order and cleaned as per the manufacturers instructions. All securing bolts and fastenings shall be maintained in a good state of repair without slackening to minimise noise and vibration.

No noxious smells shall be emitted from the premises at any time so as to cause a nuisance.

A grease trap shall be fitted to the foul drainage pipe work serving the cooking area/kitchen to prevent grease accessing the pipe work that could cause a blockage. The grease trap shall be maintained in good working order and regularly cleaned.

Receptacles of sufficient capacity shall be provided for the deposit of litter in the shop front area at all times.

Receptacles of sufficient capacity with close fitting lids shall be provided at the premises for adequate storage of refuse and a regular waste collection contract in place to prevent accumulations and minimise the likelihood of nuisance.

Prominent, clear and legible notices shall be displayed at all exits requesting the public to respect the needs of local residents and to leave the premises and the area quietly

The premises shall not be open to the general public after 01.30.

Protection of Children:

Children should be accompanied by an adult.

Children under sixteen are not permitted to be on the fruit machine.

Annex 3 - Conditions attached after a hearing by the licensing authority

Not applicable

Annex 4 - Plans

As attached

LICENSING ACT 2003
Part B - Premises licence summary

Premises licence number PR01014 (Conversion)

Premises details

Postal address of premises, or if none, ordnance survey map reference or description RUBY CHINESE TAKE AWAY 23 UNION STREET	
Post town HEREFORD	Post code HR1 2BT
Telephone number 01432 277086	

Where the licence is time limited the dates Not applicable
--

Licensable activities authorised by the licence Provision of refreshment or alcohol 1. Provision of late night refreshment
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The times the licence authorises the carrying out of licensable activities Monday – Wednesday; 23:00- 00:00 Thursday – Sunday; 23:00- 01:30 Non Standard Hours: None
--

The opening hours of the premises Monday – Wednesday; 16:30 - 00:00 Thursday – Sunday; 16:30 - 01:30 Non Standard Hours: None

Name, (registered) address of holder of premises licence Mr Sinh Quang Tran RUBY CHINESE TAKE AWAY 23 UNION STREET HEREFORD HR1 2BT Telephone: (Day-time) 01432 277086
--

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies Not applicable

Registered number of holder, for example company number, charity number (where applicable)

Not applicable

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Mr Sinh Quang Tran

State whether access to the premises by children is restricted or prohibited

Restricted

Licensing Objectives:

Children should be accompanied by an adult.

Children under sixteen are not permitted to be on the fruit machine.

From: Connor Powell [mailto:cpowell@herefordcitycouncil.gov.uk]
Sent: 02 May 2018 10:41
To: Bush, Anthony <abush@herefordshire.gov.uk>
Cc: Licensing <licensing@herefordshire.gov.uk>
Subject: FW: Memo to RA's, App to Review Premise Licence - Ruby Chinese

Dear those responsible,

Hereford City Council Planning Committee commented that the license in question (Ruby Chinese Takeaway) should be revoked as Councillors believe that the grounds for review constitute a breach in the terms of licensing. Councillors felt that this would serve as a message for other businesses in the area.

Kind regards,

Connor Powell
Administration, Finance and Information Officer
Hereford City Council
Town Hall, St Owens Street
Hereford
HR1 1PJ
Tel: 01432 260527
Website: www.herefordcitycouncil.gov.uk

Document is Restricted



Meeting:	Licensing sub-committee
Meeting date:	Monday 25 June 2018
Title of report:	Review of a premise licence in respect of 'Munchies, 59 Commercial Road, Hereford. HR1 2BD– Licensing Act 2003.
Report by:	Licensing technical officer

Classification

Open

Report and Appendices 1 to 2.

Exempt

Appendix 3 is exempt following the principles in paragraphs 1 and 2 of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A Local Government Act 1972, as amended.

Key Decision

This is not an executive decision.

Wards Affected

Central.

Purpose

To consider an application for a review of a premise licence in respect of Munchies, 59 Commercial Road, Hereford. HR1 2BD called by Police Sergeant 3456 Reynolds of West Mercia Police

Recommendation

THAT:

The sub committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- **The steps that are appropriate to promote the licensing objectives,**
- **The representations (including supporting information) presented by all parties,**
- **The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and**
- **The Herefordshire Council Statement of Licensing Policy 2015 - 2020.**

Options

1. There are a number of options open to the committee in relation to the review:
 - The modification of the conditions of the premises licence;
 - The exclusion of any licensable activities from the scope of the licence;
 - The removal of the designated premises supervisor from the licence;
 - The suspension of the licence for a period not exceeding 3 months; and
 - The revocation of the licence
2. Where the authority takes a step mentioned in bullet point 1 and 2 above it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.
3. Alternatively it is open to the licensing authority to determine that no action is required to promote the licensing objectives or issue an informal warning in writing to the licence holder and/or to recommend improvement within a specified period of time.

Reasons for Recommendations

4. Ensures compliance with the Licensing Act 2003.

Key Considerations

5. The licensing authority must take into account any relevant representations made. Relevant representations are those that:
 - relate to one or more of the licensing objectives;
 - have not been withdrawn; and
 - are made by the premises licence holder, a responsible authority or an interested party

The details of the application are.

6. The details of the application are:

Applicant	Police Sergeant 3456 Reynolds of West Mercia Police	
Solicitor	Not applicable	
Type of application: Review	Date received: 3 May 2018	28 Days consultation ended 31 May 2018

7. The application for the review is attached (appendix 1).
8. Copies of the application were sent to the premise licence holder and responsible authorities.
9. In brief West Mercia Police's grounds for the review are:

The premises were subject to a visit from multiple agencies and one (1) persons were found to be working at the premises are were in the UK illegally.

Premises History

10. The premises were first licensed in June 2013 as a takeaway for late night refreshment. Since it has been licensed, there have been the following changes:
11. 11 September 2015 - a transfer application was submitted to change the licence holder from Khalid Faisal to Ardalan Ghafour.
12. 26 September 2015 - a variation was submitted to remove both (or at least one) of the two door staff between 22:30 – 01:30 Friday & Saturday nights, this application was later withdrawn by the applicant.
13. 5 July 2016 - a variation was submitted to extend late night refreshment Monday-Sunday: 23:00 - 03:30 and to amend the conditions relating to door staff from 22:00 start time to 01:00 start time which was granted.
14. 31 July 2017 - the licensing authority wrote to the licence holder with regards to breach of conditions of their licence.
15. 4 August 2017 - a transfer application was submitted to change the licence holder from Ardalan Ghafour to Hereford Munchies Limited.
16. 14 September 2017 - a variation was submitted for late night refreshment (indoors): Monday-Sunday 23:00-05:00. During the consultation period this was amended to Friday, Saturday and Sunday before bank holidays until 0430 hrs only. Objections were received from responsible authorities and the matter was brought to committee. The decision of the committee was that the application was to be refused.

Current Licence

17. The current licence (appendix 2) authorises the following licensable activities during the hours shown:

Late Night Refreshment:

Monday-Sunday: 23:00 - 03:30

Non Standard Hours: None

18. The licence is also subject to a number of conditions.

Circumstances leading to the review

19. As part of a joint partnership an operation took place on Saturday 28 April 2018.
20. At 21:55 hrs officers from the UK Border and Immigration Agency, supported by officers from West Mercia Police, attended the premises known as Munchies as a result of intelligence that a person with no right to be in the UK or to work in the UK was employed at the premises.
21. One male was working in the premises behind the service counter, he was detained at the premises as it was established that he was in the country illegally. The employment of illegal immigrants is a serious criminal offence and undermines the licensing objective of the prevention of crime and disorder.

22. A statement from the UK Border Agency in connection with the enforcement visit is attached at appendix 3.
23. As a result, this review was launched.

Summary of Representations

24. No representations have been received from other responsible authorities or members of the public.

Community Impact

25. Any decision is unlikely to have any impact on the local community.

Equality duty

26. There are no equality issues in relation to the content of this report.
27. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.
28. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Financial implications

29. There are unlikely to be any financial implications for the authority at this time.

Legal Implications

30. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm in exercising its functions under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy. The options available to the licensing authority are set out in section 1 of this report.
31. The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
32. The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

33. In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

34. Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

35. This judgement is further supported in the case of *The Queen on the Application of Bristol Council v Bristol Magistrates' Court*, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

36. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

37. Schedule 5 gives a right of appeal which states:

An appeal may be made within 21 days to the Magistrates Court by the police or any person who has made a relevant representation and also by the premises licence holder once notified of the licensing authority's decision.

38. The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

Risk Management

39. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

Consultees

40. All responsible authorities and members of the public living within Herefordshire.

Appendices

Appendix 1 - Review Application Form

Appendix 2 - Current Premise Licence

Appendix 3 - Exempt Statement from UK Border Agency

Background Papers

None.

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Police Sergeant 3456 Duncan REYNOLDS

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Muchies, 59 Commercial Road	
Post town Hereford	Post code (if known) HR1 2BD
Name of premises licence holder or club holding club premises certificate (if known) Hereford Munchies Ltd.	
Number of premises licence or club premises certificate (if known) PRO01581	

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises

- d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below) X
- 3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr Mrs Miss Ms Other title (for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Police Sergeant 3456 Duncan REYNOLDS Harm Reduction Dept., Hereford Police Station, Bath Street, Hereford. HR1 2HT
Telephone number (if any) 01432 347102
E-mail address (optional) licensing.herefordshire@westmercia.pnn.police.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 1)

As part of a joint partnership operation, officers from the UK Border and Immigration Agency and West Mercia Police attended the premises on 28 April 2018.

A male member of staff was detained working in the premises. This male was found to be in the country illegally.

The employment of a person with no right to remain in the country is a criminal offence and undermines the licensing objectives of the prevention of crime and disorder.

Please provide as much information as possible to support the application

(please read guidance note 2)

Munchies, 59 Commercial Road, Hereford is a fast food take-away located within the city centre area of Hereford and within an area covered by the special cumulative impact policy of Herefordshire Council Licensing Authority.

Munchies is licensed to provide hot food until 0330hrs.

The premises is licensed in the name of Hereford Munchies Ltd., with a postal address of 59A Commercial Road, Hereford – a slight difference to the address of the premises as stated on the premises licence.

At 2155hrs on Saturday 28 April 2018, officers from the UK Border and Immigration Agency supported by officers from West Mercia Police attended the premises as a result of intelligence that a person with right to be in the UK or to work in the UK was actually working at the premises.

One male was detained at the premises – this male aged 27 was from Afghanistan – was working in the premises behind the service counter. It was established that the male was in the country illegally and was classed as a Port Absconder. At the time of being detained the male had a large amount of cash - £1240 – in his possession. This was seized by the Immigration officers as the male was unable to account for it.

A civil penalty notice was issued on the manager of the premises – a Hiwa KARIM. Mr KARIM stated that the owner of the premises was a Rahroz AMIN.

The employment of illegal immigrants is a criminal offence. Guidance issued under the Licensing Act 2003 states that is a criminal activity which should be treated particularly seriously and that even in the first instance consideration should be given to revoke the premises licence.

West Mercia Police are of the view that the premises licence holder has failed to undertake all necessary legal checks to ensure that this employee – and others – have a legal right to be in the UK and/or be employed in the UK. This undermines the licensing objective of the prevention of crime and disorder.

Based on this significant failure by the premises licence holder, West Mercia Police feel that this matter is so serious that the premises licence for Munchies should be REVOKED.

Additional information to support this application will be provided if this matter progresses to a licensing sub-committee regulatory hearing.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

--	--	--	--	--	--	--	--

If you have made representations before relating to this premises please state what they were and when you made them

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Date 2nd May 2018

Capacity Applicant – Police Sergeant

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.



**LICENSING ACT 2003
Part A - Premises Licence**

Premises licence number PR01581 (App to Transfer Premise Licence)

Part 1 - Premises details

Postal address of premises, or if none, ordnance survey map reference or description Munchies 59 Commercial Road	
Post town HEREFORD	Postcode HR1 2BD
Telephone number 01432 341341	

Where the licence is time limited the dates Not applicable
--

Licensable activities authorised by the licence (All indoors unless otherwise stated) Provision of late night refreshment

The times the licence authorises the carrying out of licensable activities Monday-Sunday: 23:00 - 03:30

The opening hours of the premises Monday-Sunday: 10:00 - 03:30
--

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies Not applicable

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Hereford Munchies Limited 59a Commercial Road Hereford HR1 2BP <div style="background-color: black; width: 100px; height: 20px; margin-top: 10px;"></div> <div style="background-color: black; width: 200px; height: 20px; margin-top: 10px;"></div>
--

Registered number of holder, for example company number, charity number (where applicable)

10353474

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Not applicable

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Not applicable

Annex 1 - Mandatory conditions

Mandatory condition: door supervision

Each individual required to carry out a security activity must be licensed by the Security Industry Authority

Annex 2 - Conditions consistent with the operating Schedule

Licensing objectives

General: Not applicable

Prevention of Crime & Disorder

The premises licence holder will ensure that a minimum of 2 (two) SIA registered door supervisors will be employed at the premises on Friday and Saturday from midnight until the end of licensable activities. Where the premises is licensed until 0430hrs, the same principle will apply (2 x door supervisors employed from midnight to the end of licensable activities).

At all other times SIA registered door supervisors will be employed on a risk assessed basis

Annex 3 - Conditions attached after a hearing by the licensing authority on 21 May 2013

NON STANDARD TIMINGS

An application for non-standard times was refused.

CONDITIONS

The application was granted in respect of the hours of operation of the licensable activities described in the box above together with the following conditions

1. CCTV will be provided in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition. Cameras shall encompass all ingress and egress to the premises. Equipment MUST be maintained in good working order, be correctly time and date stamped, recordings MUST be kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on demand (provided that the police will allow reasonable time for the recording to be obtained in the event that the request for recordings is made at a time when the premises are closed. The Recording

Licensing Section, Herefordshire Council

PO Box 233, Hereford, HR1 2ZF

equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Police on contact number **0300 333 3000** immediately.

2. The Premises Licence Holder shall maintain a register of Door Supervisors which will be kept on the premises showing the names and addresses of the Door Supervisors, their badge numbers and shall be signed by the Door Supervisors as they commence and conclude duty. The register shall be made available on demand for inspection by an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or the police or an authority Officer of the SIA.

3. An incident log must be kept at the premises, and made immediately available on request to an 'authorised person' (as defined by Section 13 of the Licensing Act 2003), an authorised Herefordshire Trading Standards Officer or the Police, which must record the following:

- (a) all crimes reported to the venue
- (b) all ejections of patrons
- (c) any complaints received
- (d) any incidents of disorder
- (e) seizures of drugs or offensive weapons
- (f) any faults in the CCTV system
- (g) any visit by a relevant authority or emergency service

4. Prominent, clear and legible signage (in not less than 32 font bold) shall be displayed at all exists to the premises requesting the public to respect the needs of local residents and to leave the premises quietly.

5. Adequate refuse containers shall be located in the premises. Prominent, clear and legible signage (in not less than 32 font bold) shall be displayed at all exists to the premises requesting the public to respect the area and ensure that litter is disposed of properly and in appropriate litter bins.

6. The Premises Licence holder will ensure that the area immediately outside the premises is regularly checked for litter during operating hours and that any litter found is disposed of appropriately

7. All staff shall wear clothing which identifies them as members of staff of the premises.

8. The Premises Licence Holder and staff will not permit alcohol to be consumed on the premises.

9. The premises will be served by no less than three tills with staff to operate same at peak times (11:00 pm – 1:30 am Friday, Saturday and Sunday before Bank Holiday Monday) of service to ensure a fast throughput of customers.

Annex 4 - Plans

As attached

**LICENSING ACT 2003
Part B - Premises licence summary**

Premises licence number PR01581 (App to Transfer Premise Licence)

Premises details

Postal address of premises, or if none, ordnance survey map reference or description Munchies 59 Commercial Road	
Post town HEREFORD	Post code HR1 2BP
Telephone number 01432 341341	

Where the licence is time limited the dates Not applicable
--

Licensable activities authorised by the licence Provision of late night refreshment

The times the licence authorises the carrying out of licensable activities Monday-Sunday: 23:00 - 03:30

The opening hours of the premises Monday-Sunday: 10:00 - 03:30
--

Name, (registered) address of holder of premises licence Hereford Munchies Limited 59a Commercial Road Hereford HR1 2BP

Registered number of holder, for example company number, charity number (where applicable) 10353474

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies Not applicable

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Not applicable

State whether access to the premises by children is restricted or prohibited

Protection of Children:

Restricted access to hazardous areas including the kitchen

Document is Restricted

