

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	19 FEBRUARY 2010
TITLE OF REPORT:	FULL REVIEW FOLLOWING AN EXPEDITED/SUMMARY REVIEW OF PREMISES LICENCE: BOOTH HALL, EAST STREET, HEREFORD, HR2 2LW – LICENSING ACT 2003
PORTFOLIO AREA:	HEAD OF ENVIRONMENTAL HEALTH & TRADING STANDARDS ENVIRONMENT & CULTURE

CLASSIFICATION: Open

Wards Affected

Central

Purpose

To consider a full review of the premises licence relating to the Booth Hall, Hereford, following the Initial Expedited Review Hearing called by Kevin Purcell, Superintendent of the West Mercia Constabulary and represented by PC Stephen Gomer Thomas.

Key Decision

This is not a Key Decision.

Recommendation

THAT 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 necessary 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 Licensing Policy.

And should also:

- consider what steps should be taken to secure the promotion of the licensing objectives including whether the interim steps should be made permanent

Further information on the subject of this report is available from
Fred Spriggs – Licensing Officer 01432 383542

Key Points Summary

- Application received for an Expedited Review on 26 January 2010.
- Copies of application and certificate sent to the premise licence holder and responsible authorities on 26 January 2010.
- Initial Interim Steps Hearing held on 28 January 2010.
- Premises Licence suspended at Interim Steps Hearing.
- No application received to date for a hearing to make representation against the interim steps.
- Further representation received from the Police.
- Application received to transfer of premises licence.

Options

- the modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail (or other 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.

Reasons for Recommendations

Ensures compliance with the Licensing Act 2003 and the Crime & Disorder Act 2006.

Introduction and Background

- 1 The powers to call for an Expedited Review are contained in S.53A of the Licensing Act 2003 by virtue of the Violent Crime Reduction Act 2006. The powers allow:
 - i. The police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and
 - ii. The licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.
- 2 The full review hearing must be concluded within 28 days from the date the review was launched.

Applicant	Kevin Purcell – Superintendent West Mercia Constabulary	
	Represented by: - Stephen Gomer Thomas Police Constable 697	
Premise Licence Holder	Enterprise Inns Plc, 3 Monkspath Hall Road, Solihull, West Midlands, B90 4SJ	
Solicitor	Gosschalks, Hull	
Type of application: Expedited Review	Date received: 26/1/2010	Interim Steps hearing 48 hours 28/1/2010

Full Review	Consultation period concluded on 11 February 2010	
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3 **Current Licence**

The current licence authorises the following licensable activities during the hours shown: -

An exhibition of a film; An indoor sporting event

Monday-Thursday: 07:00 - 23:30

Friday-Saturday: 07:00 - 01:30

Sunday: 12:00 - 22:30

Any playing of recorded music; other regulated entertainment

Monday-Thursday: 10:00 - 23:30

Friday-Saturday: 10:00 - 01:30

Sunday: 12:00 - 22:30

Sale by retail of alcohol

Monday-Thursday: 10:00 - 23:00

Friday-Saturday: 10:00 - 01:00

Sunday: 12:00 - 22:30

4 **Grounds for Review and Interim Steps**

The grounds for the review are contained in Appendices (a) and (b) of the background papers.

The Interim Steps Hearing was held on 28 January 2010. The decision of that Committee was:

- That persons named by the West Mercia Police in their application for a summary licence review be prohibited from taking part in the management, control or operations of public house premises namely the Booth Hall, East Street, Hereford, until a further decision of the committee be made, as a result of alleged serious offences being committed on the premises.
- The licence for the said public house premises be suspended forthwith subject to further review.

5 **Consultation**

Copies of the application and certificate were sent to the responsible authorities.

A notice was displayed at the premises and also at the office of the Licensing Authority at Bath Street.

6 **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

7 **Responsible Authorities**

Further representation has been received from the West Mercia Police.

8 **Interested Parties**

A representation was received from an interested party, namely Enterprise Inns, which the Licensing Authority has decided is not a relevant representation as it does not address one of the four licensing objectives.

9 **Updated Situation**

On Monday 15 February 2010, application was received by the Licensing Authority for the application for the transfer of the premises licence from Mr Crown to Enterprise Inns PLC. The application was for immediate effect and will be granted subject to there being no police representation.

10 Gosschalks Solicitors are representing Enterprise Inns and therefore all the hearing papers and evidence has been served on them.

Key Considerations

11 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

Guidance issued under Section 182 of the Licensing Act 2003 in respect of reviews states at paragraph: -

11.18 In deciding which of these powers to invoke (*shown within the options*), it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

The attention of the Committee is drawn to the stated 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.

In this case it was summed up that: -

"Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken."

The Committee's attention is also drawn to the following stated case:-

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:

'that the licensing authority: Must render what the applicant says into enforceable conditions'

The Committee will therefore have to decide if the condition requested by the police is an enforceable condition which promotes the licensing objectives.

Community Impact

12 It is felt that any decision made will have a minimal impact on the Community as a whole.

Legal Implications

13 Right of Appeal

An appeal may be made within 21 days of the licence holder being notified of the licensing authority's decision to a magistrates' court. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.

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. Any interim steps taken will remain in force over these periods.

Appendices

- 14 a. Application form for an Expedited Review
- b. Superintendent's Certification
- c. Police Representation

Background Papers

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.