

Meeting:	Regulatory Sub-Committee
Meeting date:	26th MARCH 2015
Title of report:	APPLICATION FOR GRANT OF A PREMISES LICENCE IN RESPECT OF ZABKA, 16 EIGN GATE, HEREFORD, HR4 0AB – LICENSING ACT 2003
Report by:	LICENSING OFFICER

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Central Ward

Purpose

To consider an application for the grant of a premises licence in respect of 'Zabka, 16 Eign Gate, Hereford, HR4 0AB.

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 Licensing Policy.

Options

1. There are a number of options open to the Sub-Committee:
 - a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003,
 - c) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
 - d) To exclude from the scope of the licence any of the licensable activities to which the application relates,
 - e) To refuse to specify a person in the licence as the premise supervisor, or
 - f) To reject the application.
 - g) Adjourn the matter, to a set date, if the committee feel that to do so would be in the public interest

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

3. Licence Application

The application for a new premises licence has received representation and is brought before the committee for determination.

4. The details of the application are:

Applicant	Zardashit Karem Salh 6 Wycliffe Grove, Walsall, West Midlands, WS2 9BF	
Solicitor	Neil Coulson, Coulson Reid, Hereford	
Type of application: New	Date received: 30th September 2014	28 Days consultation ended 28th October 2014

5. Summary of Application

The application requests the granting of a new premises licence for a Convenience Store selling alcohol for consumption off the premises. The licensable activities:
Sale/Supply of alcohol 0800 – 2000 daily

6. Summary of Representations

A copy of the representations can be found within the background papers.

Representations have been made by:

Two (2) of the Responsible Authorities (Police, Trading Standards) - both object to the application.

7. This is the 3rd time that application has been made for a premises licence at these premises. On the 2 previous occasions both the police and trading standards have objected to the grant of the licence and the application has been withdrawn.
8. This matter appeared before this committee on 20th November when it was adjourned until 8th December following application from Mr Coulson who was required at the Crown Court.
9. On 8th December 2014 the matter again appeared before this committee.
10. At that hearing the committee made the following statement:
*'The Licensing Panel of the Council's Regulatory Sub-Committee are mindful to approve the application subject to the following:
All conditions to be reserved until a copy of the lease for the premises' has been seen and approved by the Licensing Authority.
After a period of six weeks from the date of the completion of the lease the Sub-Committee will deliberate on conditions'*
11. The matter appeared before the Committee on 17th March 2015 where it was adjourned as the lease was still not available.
12. To date no lease has been produced.
13. The matter is now brought back before the committee for determination.
13. **Additional Information Requested**
In order to clarify certain matters the Licensing Authority in accordance with Regulation 7(1)(d) have requested the following:

The Licensing Authority shall require documentary evidence to show that the applicant is the current owner of the premises OR documentary evidence to show that the applicant currently holds the lease for the premises. The lease shall also show from whom the premises are leased.

Community Impact

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

Equality duty

15. There are no equality or human rights issues in relation to the content of this report.

Financial implications

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

Legal Implications

17. 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.

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.

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.

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.

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'.

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

Right of Appeal

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

Schedule 5 gives a right of appeal to: -

Rejection of applications relating to premises licences

1 Where a licensing authority—

- (a) rejects an application for a premises licence under section 18,
 - (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
 - (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
 - (d) rejects an application to transfer a premises licence under section 44,
- the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2(1) This paragraph applies where a licensing authority grants a premises licence under section 18.

(2) The holder of the licence may appeal against any decision—

- (a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
- (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

(3) Where a person who made relevant representations in relation to the application desires to contend—

- (a) that the licence ought not to have been granted, or
 - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,
- he may appeal against the decision.
- (4) In sub-paragraph (3) “relevant representations” has the meaning given in section 18(6).

Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

Risk Management

- 19. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court.

Consultees

- 20. The Police or an Environmental Health Officer are the only responsible authorities who are able to issue an objection notice under the act.

Appendices

- a. Application Form
- b. Application form from March 2013
- c. Application form from January 2014
- d. Police Representation
- e. Trading Standards Representation
- f. Decision Notice of 8th December 2014

Background Papers

None.