

Meeting:	Regulatory Sub-Committee
Meeting date:	21st APRIL 2015
Title of report:	APPLICATION FOR THE GRANT OF A TIME LIMITED PREMISES LICENCE IN RESPECT OF MANNINGS FRUIT Ltd T/A SHACK REVOLUTION, UNIT 16 & 17, BASTION MEWS, UNION STREET, HEREFORD. HR1 2BT – 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 time limited premises licence in respect of Mannings Fruit Ltd t/a Shack Revolution, Unit 16 & 17, Bastion Mews, Union Street, Hereford. HR1 2BT application for the variation of a premises licence in respect of 'Yates, 58 Commercial Road, Hereford, HR1 2BP.

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 variation to the premises licence has received representation and is brought before the committee for determination.
4. The details of the application are:

Applicant	Mannings Fruit Ltd t/a Shack Revolution	
	New Cross Farm, Edwyn Ralph, Bromyard, HR7 4NF	
Solicitor	N/K	
Type of application: New	Date received: 6th March 2015	28 Days consultation ended 3rd April 2015

5. **Summary of Application**

The application requests the granting of a time limited premises licence (valid 13th April 2105 until 31st December 2015). The licensable activities:

Sale/Supply of alcohol and recorded music

Wednesday to Saturday	1200 – 2300
Sunday	1200 – 2100

6. **Summary of Representations**

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

Representations have been made by:

Three (3) of the Responsible Authorities (Police, Environmental Health and Trading Standards) – have made representation.

The Trading Standards conditions as requested in their representation have been agreed by the applicant.

The police and environmental health conditions still await agreement.

Community Impact

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

Equality duty

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

Financial implications

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

Legal Implications

10. 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

11. 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

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

Consultees

13. Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.
14. A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.
15. The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days.
16. The notice was also displayed within a newspaper which when checked was found to be correct.

Appendices

- a. Application Form
- b. Police Representation
- c. Trading Standards Representation
- d. Environmental Health Representation

Background Papers

None.