

Meeting:	Licensing sub committee
Meeting date:	7 June 2017
Title of report:	Application for a variation of a premises licence: Hereford Fish & Chips, 60 Commercial Road, Hereford, HR1 2BP - Licensing Act 2003
Report by:	Licensing, traveller and technical support service manager

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Central Ward

Purpose

To consider an application for a variation of a premises licence (appendix A): Hereford Fish & Chips, 60 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 statement of licensing policy 2015 - 2020.**

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,
 - b) Grant the licence subject to modified conditions to that of the operating schedule where the sub-committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
 - c) To exclude from the scope of the licence any of the licensable activities to which the application relates
 - d) To refuse to specify a person in the licence as the premise supervisor, or
 - e) To reject the application.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

Licence Application

3. 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	Varinderjit Singh	
Solicitor	Not known	
Type of application: Variation	Date received: 19.04.2017	End of Consultation 16.05.2017

Summary of Application

5. The application requests a new premises licence to allow the following licensable activities, during the hours shown as follows:

Late Night Refreshment (indoors)

Monday – Wednesday	23:00 – 00:30
Thursday & Friday	23:00 – 04:00
Saturday	23:00 – 04:30
Sunday	23:00 – 04:00

Non- Standard Timings
Sunday before Bank Holiday Monday, Christmas Eve, New Year's Eve
23:00 – 04:30

Current Licence

6. On 30 July 2014 an application was heard by this committee in relation to these premises when the applicant applied for a change of use from that of an off licence to a take away.
7. That application was granted with the following hours:

Monday to Wednesday	23:00 to 00:30
Thursday to Sunday	23:00 to 01:30
8. Since the licence was granted the premises has not opened.
9. A copy of the licence is attached at appendix B.

Summary of Representations

10. Two (2) representations have been received from the responsible authorities: police (appendix C) and the local authority (appendix D). Both have objected to the licence being granted.
11. One (1) representation has been received from a member of the public (appendix E).

Community Impact

12. Any decision is unlikely to have any significant effect of the local community.

Equality duty

13. There are no equality or human rights issues in relation to the content of this report.
14. 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.
15. 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

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

Legal Implications

- 13 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. Further applications should be determined in accordance with the provisions of Section 18 of this report. The options available to the licensing authority are set out in section 1 of this report.
- 14 The sub-committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the licensing authority.
- 15 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.
- 16 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.
- 17 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.
- 18 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'.
- 19 In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

- 20 Schedule 5 gives a right of appeal which states:

Variation of licence under section 35

- 4 (1) This paragraph applies where an application to vary a premises licence is granted (in whole or in part) under section 35.
- (2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section.
- (3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that any variation made ought not to have been made, or
(b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section,
he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 35(5).

Risk Management

21 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

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

Appendices

Appendix A - Application form
Appendix B - Current licence
Appendix C – Police representation
Appendix D – Local authority representation
Appendix E – Public representation

Background Papers

None.