

Meeting:	Licensing sub committee
Meeting date:	16 June 2017
Title of report:	Review of a premises licence following an expedited / summary licence review in respect of: Jalsagar Restaurant, 60 St Owens Street, Hereford, HR1 2PU - Licensing Act 2003
Report by:	Licensing officer

Classification

Open

Report and Appendices 1 to 6.

Exempt

Appendices 7 and 8 are exempt by virtue of paragraph 7 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 Ward

Purpose

To consider an application for a review of a premises licence following an expedited / summary licence review in respect of: Jalsagar Restaurant, 60 St Owens Street, Hereford, HR1 2PU.

Recommendation

THAT:

The sub-committee when determining this review must consider:

- **what steps it considers necessary for the promotion of the licensing objectives; and**
- **what steps should be taken to secure the promotion of the licensing objectives including whether the interim steps should be made permanent.**

They should give appropriate weight to:

- **The steps that are appropriate to promote the licensing objectives**
- **The guidance issued to local authorities Section 182 of the Act**
- **The police application made in respect of the expedited review together with the superintendent's certificate (Appendix 1)**
- **The representations (including supporting information) presented by all parties, and**
- **The Herefordshire Council licensing policy.**

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 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
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. There are a number of options open to committee in relation to the review of the interim steps:
 - leave the interim steps in place
 - modify the interim steps
 - amend the interim steps

Reasons for Recommendations

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

Key Considerations

5. The powers to call for an expedited review are contained in Section 53A of the 2003 Act by virtue of the Violent Crime Reduction Act 2006. The powers allow:
 - 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
 - The licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

Applicant	Chief Constable – West Mercia Police Represented by: - Sgt 3456 Duncan Reynolds	
Premise Licence Holder	Mrs Wahida Khatun	
Solicitor	N/K	
Type of application: Expedited Review	Date received: 24/05/2017	End of 10 day period 06/06/2017

4. The application for an expedited review was received on 24 May 2017.
5. A hearing was held on 26 May 2017 within the required 48 hours.
6. At that hearing the committee heard from the police and a barrister representing the premises licence holder.
7. The committee decided to suspend the licence with immediate effect as an interim step (appendix 2).

Current Licence

8. A copy of the current licence is attached (appendix 3).
9. This licence was issued following a review of the licence launched by the police on 30 August 2011. A copy of that application is attached (appendix 4).
10. The licence holder at that time is the same as the current licence holder.
11. The committee reached a decision on that review on 11 October 2011 (appendix 5).
12. The committee added one condition to the licence concerning establishing that an employee had the right to work within the UK.
13. Since that time the Immigration Act 2016 has been introduced and it is now law that such checks shall be carried out prior to a person being employed.

Summary of Representations

14. The review has been advertised as required by the Act and one (1) representation has been received from a member of the public (appendix 6). The police have provided additional information to support their application (appendix 7 and 8).

Community Impact

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

Equality duty

17. 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.
18. 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

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

Legal Implications

- 20 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.
- 21 The options available to the licensing authority on considering this review under Section 53C of the Act are set out in section 1 of this report.
- 22 Further after considering what steps to take, if any, in relation to the substantive review the sub-committee must immediately thereafter review the interim steps imposed at the initial hearing on 26 May 2017 and determine whether to modify, remove or maintain the interim steps until the time for any appeal of the substantive review decision made under Section 53C has expired or the outcome of any appeal. This is required to ensure that the appropriate and proportionate safeguards for the promotion of the licensing objectives remain in place.
- 23 In considering this review and the review of the interim steps 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.
- 24 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.

25 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.

26 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. It should be noted that hearsay evidence is admissible in the context of making decisions on licensing matters.

27 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'.

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

Right of Appeal

27 There is a right of appeal to the Magistrates Court within 21 days of being notified in writing of the decision in relation to both the decision in relation to the review under Section 53C and in relation to review of the interim steps under Section 53D

Risk Management

28 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

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

Appendices

- Appendix 1 - Police application for the expedited review and the superintendent's certificate
- Appendix 2 - Decision notice dated 26 May 2017
- Appendix 3 - Current licence
- Appendix 4 - Review launched on 30 August 2011
- Appendix 5 - Decision notice dated 11 October 2011
- Appendix 6 - Public representation
- Appendix 7 - EXEMPT - additional police evidence
- Appendix 8 - EXEMPT - additional police evidence

Background Papers

Section 12 of the Guidance issued under Section 182 of the Licensing Act 2003.