

Meeting:	Licensing sub committee
Meeting date:	15 August 2017
Title of report:	Application for a variation of a premises licence in respect of: St Owens News, 53a St Owen Street, Hereford, HR1 2QW - 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 a variation of a premises licence in respect of 'St Owen's News, 53a St Owen Street, Hereford, HR1 2QW'.

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 (paragraphs 8.38 to 8.46 attached at appendix 1) 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) To modify the conditions of the licence;
 - b) To reject the whole or part of the application;
 - c) and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

Licence Application

3. The application (appendix 2) for a variation of the premises licence has received representation and is brought before the committee for determination.
4. The details of the application are:

Applicant	Anton Jeniwerd Nelson Jesurasan	
Agent	N/K	
Type of application: Variation	Date received: 21 June 2017	28 Days consultation ended 18 July 2017

5. Summary of Application

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

Sale of alcohol (Off premises)

Monday to Saturday 07:00 – 21:00

Sunday 08:00 – 21:00

Non Standard Timings: None

6. In addition to this the application requests to be allowed to do the following:

Sale of single can of beer

Strong Beers (Drink above 6.5 ABV)
3 Litres Cider

7. There is no application to remove any of the conditions.
8. The applicant has failed to contact the licensing section since being notified of the representation.

Current Licence

9. The current licence (appendix 3) authorises the following:

Supply/Sale of Alcohol

Monday to Sunday 09:00 – 21:00

10. In addition there are the following conditions attached to the licence:
 - The responsible person will not supply whether by sale or otherwise any container of alcoholic drink above 6.5 ABV – with the exception of craft or specialist beers that are labelled as such.
 - The responsible person will not supply whether by sale or otherwise any container of alcoholic drink in single container of less than 500 ml.
 - The responsible person will not supply whether by sale or otherwise any alcoholic drink in a container of 3 litres or more – with the exception of craft or specialist beers that are labelled as such.
11. The above conditions shown on the licence were attached following a review (appendix 4) launched by the police on 1 July 2014.
12. The review was resolved when the applicant offered the conditions shown at 10 above by way of minor variation.

Summary of Representations

13. One (1) representation has been received from the responsible authorities (police).
14. The police have objected outright to the licence being granted.
15. The police representation can be found attached (appendix 5).

Community Impact

16. 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.
19. There are not considered to be any equalities implications arising from this report.

Financial implications

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

Legal Implications

21. 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.
22. The options available to the licensing authority on considering this application under the Licensing Act 2003 are set out in section 1 of this report.
23. 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.
24. 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.
25. 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.
26. 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'.
27. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

28. There is a right of appeal to the Magistrates Court within 21 days of being notified in writing of the decision.

Risk Management

29. 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

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

Appendices

- Appendix 1 - S182 guidance extract
- Appendix 2 - application for a variation of a premises licence
- Appendix 3 - current premises licence
- Appendix 4 - application for review
- Appendix 5 - police representation

Background Papers

The Section 182 guidance and the council's statement of licensing policy 2015-2020.