

Meeting:	Licensing sub committee
Meeting date:	15 August 2017
Title of report:	Application for a new premises licence in respect of: 'The Treacle Mine, St Martins Street, Hereford, HR2 7RG'. - Licensing Act 2003
Report by:	Licensing officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Hinton and Hunderton.

Purpose

To consider an application for a new premises licence in respect of 'The Treacle Mine, St Martins Street, Hereford, HR2 7RG'.

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) 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 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 or
 - d) To reject the application.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key considerations

Licence application

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

Applicant	JJR Associates	
Agent	Rob Booth	
Type of application: New	Date received: 22 June 2017	28 Days consultation ended 19 July 2017

Summary of application

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

Provision of Late Night Refreshment (Indoors)

All days 23:00 – 05:00

Non Standard Timings: None

Summary of Representations

6. Two (2) representations have been received from the responsible authorities (police and environmental trading standards).
7. Both the police and trading standards have objected outright to the licence being granted.
8. The police representation can be found attached at appendix 3 and the trading standards representation is attached at appendix 4.
9. Two (2) representations have been received from members of the public. (appendices 5 and 6).

Community Impact

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

Equality duty

11. 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.
12. 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.
13. There are not considered to be any equalities implications arising from this report.

Financial implications

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

Legal Implications

15. 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.
16. 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.

17. 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.
18. 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.
19. 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.
20. 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'.
21. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

21. 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

22. 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

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

Appendices

- Appendix 1 - S182 guidance extract
- Appendix 2 - Application for a new premises licence
- Appendix 3 - Police representation
- Appendix 4 - Trading standards representation
- Appendix 5 - Public representation (1)
- Appendix 6 - Public representation (2)

Background Papers

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