

Meeting:	Licensing sub committee
Meeting date:	11 September 2017
Title of report:	Review of a premises licence in respect of: 'The Horse & Jockey, 9-10 New Street, Ross On Wye, HR9 7DA' made by Herefordshire Council: Environmental Health - Licensing Act 2003
Report by:	Licensing officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Ross West

Purpose

To consider an application for a review of a premises licence in respect of: The Horse & Jockey, 9-10 New Street, Ross on Wye, HR9 7DA, made by Herefordshire Council: environmental health (appendix 1).

Recommendation

That:

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 environmental health application for the review,**
- **The representations (including supporting information) presented by all parties,**
- **The guidance issued to local authorities under the Licensing Act 2003, and**
- **The Herefordshire Council licensing policy.**

Options

1. There are a number of option open to the committee in relation to the Review:
 - the modification of the conditions of the premises licence;
 - the exclusion of any 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. Alternatively the committee can determine to take no action or issue an informal warning and/or recommendations in writing should it consider appropriate.

Reasons for Recommendations

4. Ensures compliance with the Licensing Act 2003.

Key Considerations

5. The licensing authority must take into account any relevant representations made. Relevant representations are those that:
 - relate to one or more of the licensing objectives;
 - have not been withdrawn; and
 - are made by the premises licence holder, a responsible authority or an interested party

Applicant	Herefordshire Council Environmental Health Represented by: - Elizabeth Laughland	
Premise Licence Holder	NewRiver Retail (Mantle) Limited 37 Maddox Street, London, W1S 2PP	
Solicitor	David Crank – DWF LLP	
Type of application: Review	Date received: 22/07/2017	End of 10 day period 18/08/2017

6. Copies of the application were sent to the premise licence holder and responsible authorities.
7. In brief the environmental health grounds for the review are:

Since Mar 2016 Environmental Protection has received a total of 9 complaints from 3 separate households and 9 referrals from the police. Within the 9 complaint records there were multiple reports of noisy events made over this time.

Mr Hudson (the DPS) and NewRiver Retail Limited have been give noise control advice over this time. The advice included that the Horse and Jockey premises has a history of being a poor sound insulator and is therefore a noise sensitive premises. As such it was advised that amplified music needed to be careful managed within the premises to ensure the volume was kept down to a reasonable level and music with a dominant bass sound should be avoided

Following this advice two more loud music events with dominant bass sound were held at the premises over three nights and two separate weekends; 16 June 2017 and 7 & 8th July 2017. This was a breach of their licence condition which states that 'The licensee shall ensure that noise and vibration does not emanate from the premises so as to cause a public nuisance.'

On the 7th July officers from Environmental Health witnessed the music to be causing a statutory noise nuisance in the neighbouring property. Noise abatement notices were served on Mr Hudson and NewRiver on the 11 July 2017.

The Environmental Health Department is satisfied that that the premises licence holder and the DPS are breaching the condition on the licence which states "The licensee shall ensure that noise and vibration does not emanate from the premises so as to cause a public nuisance' on a regular basis and therefore are not promoting the licensing objective of the prevention of public nuisance.

8. Further additional supporting information has been provided by environmental health within their application at page 4.
9. The application for review has received representation from the police, trading standards and public.
10. The police representation can be found at appendix 2 and the trading standards application at appendix 3.
11. Six representations have been received from the public (appendix 4). Five supporting the review and one supporting the premises.
12. This premises licence was reviewed on 4 July 2008 under the public nuisance licensing objectives concerning noise coming from the premises.
13. Environmental health and the premises licence holder's solicitor is trying to arrive at an agreed set of hours and conditions.

Current Licence

14. The current licence (appendix 5) authorises the following licensable activities during the hours shown: -

A performance of live music, Any playing of recorded music, Facilities for similar entertainment, Dancing (All indoors) and Sale by retail of alcohol (Indoors and Outdoors)

Monday-Wednesday: 11:00 - 23:00

Thursday-Saturday: 11:00 - 00:00

Sunday: 12:00 - 22:30

Non standard timings apply to all licensable activities listed above:-

Friday, Saturday, Sunday and Monday of all Bank Holiday weekends, Thursday preceding Easter weekend, Christmas Eve, Boxing Day: An additional hour permitted at the end of normal licensing hours.

On New Year's Eve the permitted hours shall extend through from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day.

Community Impact

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

Equality duty

16. 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.
17. 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.
18. There are not considered to be any equalities implications arising from this report.

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 are set out in section 1 of this report.
22. Following amendments made by the Live Music Act 2012 and the Deregulation Act 2015 any condition attached to a premises licence which relates to live music or recorded music does not have effect in relation to the live music or recorded music unless the suspension has been lifted in accordance with Section 177A (3) of the Act on a review or such conditions have been attached by the Licensing Authority through a review of the premises licence. Condition includes the times which the premises is authorised for the licensable activities.

23. In considering this review 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

29. An appeal may be made within 21 days to the Magistrates Court by the police or any person who has made a relevant representation and also by the premises licence holder once notified of the licensing authority's decision.
30. The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

Risk Management

31. There is little risk associated with the decision at this time as the legislation allows for a right of appeal.

Consultees

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

Appendices

- Appendix 1 - environmental health application for the review
- Appendix 2 - police representation
- Appendix 3 - trading standards representation
- Appendix 4 - Six public representations
- Appendix 5 – Current licence

Background Papers

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