

Meeting:	Licensing sub committee
Meeting date:	11 September 2017
Title of report:	Review of a premises licence in respect of: Sweet Chilli, 16/17 Bridge Street, Hereford, HR4 9DF made by West Mercia Police - 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 review of a premises licence in respect of: Sweet Chilli, 16/17 Bridge Street, Hereford, HR4 9DF made by West Mercia Police (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 police application for the review,**
- **The guidance issued to local authorities under the Licensing Act 2003,**
- **The representations (including supporting information) presented by all parties, 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 - have not been withdrawn; and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	Chief Constable – West Mercia Police Represented by: - Sgt 3456 Duncan Reynolds	
Premise Licence Holder	Abtal Hussain Sweet Chilli (Hereford) Ltd, 16-17 Bridge Street, Hereford, HR4 9DF	
Solicitor	N/K	
Type of application:	Date received:	End of 10 day period
Review	22/07/2017	18/08/2017

6. The application for the review has received representation from trading standards (appendix 2).
7. Copies of the application were sent to the premise licence holder and responsible authorities.
8. In brief the police grounds for the review are:

That following a joint enforcement operation a male who was working at the premises was detained as he had no right to work within the UK

9. Further additional supporting information has been provided by the police contained within their application at page 4.

Current Licence

10. The current licence (appendix 3) authorises the following licensable activities during the hours shown: -

Late Night Refreshment:	Monday to Sunday: 23:00-01:00
Sale by retail of alcohol:	Monday to Sunday: 12:00-01:00
Non- Standard Timings:	None

Community Impact

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

Equality duty

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

Financial implications

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

Legal Implications

16. 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.
17. The options available to the licensing authority on considering this review are set out in section 1 of this report.

- 18 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.
- 19 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.
- 20 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.
- 21 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.
- 22 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'.
- 23 In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

- 22 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.
- 23 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

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

Consultees

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

Appendices

- Appendix 1 - police application for the review
Appendix 2 - trading standards representation
Appendix 3 - current licence

Background Papers

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