

<b>Meeting:</b>	<b>Licensing sub committee</b>
<b>Meeting date:</b>	<b>25 September 2017</b>
<b>Title of report:</b>	<b>Application for a variation of a premises licence in respect of: 'The Ducking Stool, 11 South Street, Leominster, HR6 8JA- Licensing Act 2003</b>
<b>Report by:</b>	<b>Licensing officer</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Leominster East

## **Purpose**

To consider an application for a variation of a premises licence in respect of 'The Ducking Stool, 11 South Street, Leominster, HR6 8JA.

## **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 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;

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

### 3. Licence Application

The application (appendix 1) 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	<b>Sian Rooke-Jenkins</b> <b>11 South Street, Leominster, HR6 8JA.</b>	
Agent	Nick Semper	
Type of application: <b>Variation</b>	Date received: <b>1<sup>st</sup> August 2017</b>	28 Days consultation ended <b>28<sup>th</sup> August 2017</b>

### 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:

#### Live Music (Indoors)

Sunday to Thursday      20:00 – 00:01  
Friday & Saturday      20:00 – 01:00

#### Recorded Music (Indoors)

Sunday to Thursday      19:00 – 00:01  
Friday & Saturday      19:00 – 01:00

#### Late Night Refreshment (Indoors)

Sunday to Thursday      23:00 – 00:01  
Friday & Saturday      23:00 – 01:00

Sale of alcohol (On & Off premises)

Sunday to Thursday	11:00 – 00:00
Friday & Saturday	11:00 – 02:00

Non Standard Timings:

All Bank Holidays except Christmas Day until 0100 hours

From the end of licensable activities on New Year's Eve to the end of licensable activities on New Year's Day

6. In addition to this the application requests to be allowed to remove the following conditions:
- *The main business of the premises shall be the provision of hot food and drink. At least 75% of the floor space shall be set aside for the use of the consumption of hot food.*
  - *No person under the age of 18 shall be permitted on the premises unless dining and accompanied by an adult aged 18 or over.*
7. The applicant has offered a number of conditions within the application.

**Newspaper Advertisement**

8. The newspaper advertisement has been seen by the Licensing Authority and whilst it covers the standard timings and removal of condition no reference is made to the non- standard timings contained within the application.

**Premises History**

9. On 2<sup>nd</sup> August 2013 the premises licence was varied to allow:

Live Music (Indoors)

Sunday – Thursday	20:00 – 23:00
Friday & Saturday	20:00 – 02:00

Recorded Music (Indoors)

Sunday – Thursday	11:00 – 23:30
Friday, Saturday	11:00 – 02:00

Sale by retail of alcohol

Sunday-Thursday	11:00-00:00
Friday, Saturday	11:00-02:30

Non Standard Timings:

On a Sunday before Bank Holiday Monday, Christmas Eve, New Years Eve until 02:00

10. At about 1am on Sunday 1<sup>st</sup> February 2015 a serious assault took place at the premises which resulted in the police launching an expedited review.
11. During the review consultation process the Licensing Authority received at least eight representations from members of the public and one from a local business. A majority

of the issues raised within these representations concerned public nuisance being caused by music from the premises or people leaving the premises.

12. A redacted copy of the representations can be found at Appendix 2.
13. The decision of the Licensing Committee was that the:  
The operating hours for licensable activities on Friday and Saturdays will terminate at 0030 hours
14. In addition to this there was a requirement that on Fridays, Saturdays and Bank Holidays there had to be one (1) Door supervisor from 2100 hours and one(1) further from 2300 hours.
15. About a month after the review hearing, the premises licence holder at the time, contacted the Licensing Authority concerning the conditions attached to the premises licence following the review.
16. She was struggling to comply with these conditions and still make a living.
17. As a result she had decided to change her business model from that of a community premises to a food led premises.
18. As a result of this the Licensing Officer in conjunction with the premises licence holder agreed a set of conditions which would allow the premises to operate without there being an adverse effect on the licensing objects.
19. As a result of this, application was made for a minor variation which resulted in the current licence being issued.

#### **Current Licence**

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

##### Live Music

Sunday – Thursday	20:00 – 23:00
Friday – Saturday	20:00 – 00:00

##### Late Night Refreshment

Friday – Saturday	23:00 – 00:00
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##### Sale/Supply of Alcohol

Sunday – Thursday	11:00 – 23:00
Friday – Saturday	11:00 – 00:00

#### **Summary of Representations**

21. One (1) Representation (appendix 4) has been received from the Responsible Authorities (Trading Standards) which the applicant has agreed.
22. Five (5) Representations have been received from the public, one (1) from a local business (appendix 5).

23. One (1) representation has been received from the Local Councillor containing Five (5) public representations (appendix 6).

## **Community Impact**

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

## **Equality duty**

25. 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.
26. 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.
27. There are not considered to be any equalities implications arising from this report.

## **Financial implications**

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

## **Legal Implications**

29. 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.
30. 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.
31. 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.
32. 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.

33. 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.,
34. 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'.
35. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## **Right of Appeal**

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

## **Risk Management**

37. 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**

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

## **Appendices**

- Appendix 1 - Application for a variation of a premises licence
- Appendix 2 - Copy of representations from previous hearing
- Appendix 3 - Current Premises Licence
- Appendix 4 - Trading Standard Representations
- Appendix 5 - Public representation
- Appendix 6 - Councillor representation

## **Background Papers**

The Section 182 and the Council's statement of licensing policy.

## **Guidance**

### **Licensing Act 2003**

#### **34 Application to vary premises licence**

- (5) The duty to make regulations imposed on the Secretary of State by subsection (5) of section 17 (advertisement etc. of application) applies in relation to applications under this section as it applies in relation to applications under that section.

#### **35 Determination of application under section 34**

- (1) This section applies where the relevant licensing authority—
- (a) receives an application, made in accordance with section 34, to vary a premises licence, and
  - (c) is satisfied that the applicant has complied with any requirement imposed on him by virtue of subsection (5) of that section.

### **The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005**

#### **Advertisement of applications**

26.—(1) In the case of an application for a premises licence or a club premises certificate, the notices referred to in regulation 25 shall contain a statement of the relevant licensable activities or relevant qualifying club activities as the case may require which it is proposed will be carried on or from the premises.

#### **Section 182 Guidance**

11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 14 of this Guidance.

#### **The need for licensed premises**

14.19 There can be confusion about the difference between the “need” for premises and the “cumulative impact” of premises on the licensing objectives, for example, on crime and disorder. “Need” concerns the commercial demand for another pub or restaurant or hotel and

is a matter for the planning authority and for the market. This is not a matter for a licensing authority in discharging its licensing functions or for its statement of licensing policy.

### **What is cumulative impact?**

14.20 “Cumulative impact” is not mentioned specifically in the 2003 Act. In this Guidance, it means the potential impact on the promotion of the licensing objectives of a significant number of licensed premises concentrated in one area. The cumulative impact of licensed premises on the promotion of the licensing objectives is a proper matter for a licensing authority to consider in developing its licensing policy statement. Cumulative impact policies (CIP) may relate to premises licensed to carry on any licensable activity, including the sale of alcohol for consumption on or off the premises, and the provision of late night refreshment. This includes late night fast food outlets which are not licensed to sell alcohol.

14.21 In some areas, where the number, type or density of premises selling alcohol or providing late night refreshment is high or exceptional, serious problems of nuisance and disorder may be arising or have begun to arise outside or some distance from those premises. Such problems generally occur as a result of large numbers of drinkers being concentrated in an area, for example when leaving premises at peak times or when queuing at fast food outlets or for public transport. Licensing authorities should consider whether the number of fast food outlets or off licences in an area contribute to these problems, and may choose to include them in their cumulative impact policy.