

<b>Meeting:</b>	<b>Licensing sub committee</b>
<b>Meeting date:</b>	<b>Monday 6 November 2017</b>
<b>Title of report:</b>	<b>Application for a variation of a premises licence in respect of: Munchies, 59 Commercial Road, Hereford. HR1 2BP - Licensing Act 2003</b>
<b>Report by:</b>	<b>Licensing Technical Officer</b>

## **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 Munchies, 59 Commercial Road, Hereford. HR1 2BP.

## **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 times applied for
- (b) to modify the conditions of the licence;

- (c) to reject the whole or part of the application;
- (d) and for this purpose the conditions of the licence are modified if any of them are 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 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	Hereford Munchies Limited – Kamal Ahmed	
Agent	Bahroz Mohammed – Kidwells Solicitors	
Type of application: <b>Variation</b>	Date received: 14 September 2017	28 Days consultation ended 12 October 2017

### Summary of Application

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

Late night refreshment (indoors):  
Monday – Sunday  
23:00-05:00

### Premises History

- 6. On 3 August 2016 the premises licence was varied to allow:

Late Night Refreshment  
Monday–Sunday  
23:00 – 03:30

- 7. On 4 August 2017 an application to transfer the licence into the name of Hereford Munchies Limited was received.

### Current Licence

- 8. The current licence (appendix 2) authorises the following licensable activities during the hours shown:

Late Night Refreshment  
Monday-Sunday  
23:00 – 03:30

### **Summary of Representations**

9. One (1) representation (appendix 3) has been received from the responsible authorities (West Mercia Police). The representation stated they objected to the application.

### **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. This premises is in Commercial Road, Hereford and are therefore subject to the special cumulative impact policy contained in the Herefordshire Council Statement of Licensing Policy 2015-2020 that provides:

**A10** *The effect of the Cumulative Impact Policy is that it creates a rebuttable presumption that application within the cumulative impact area will normally be refused: -*

1. *Where relevant representations are received against any:*

*New applications for Premises Licences, Club Premises Certificates or Provisional Statement, or Variation applications for an existing Premises Licences or Club Premises Certificates*

2. *Where the police have issued an objection notice in respect of a Temporary Event Notice*

**A11** *However, this Policy will not prevent applications in the above areas. Each case will be decided on its own merits, but applicants will have to comprehensively demonstrate in their application that it will not add to existing problems in the area.*

18. The application should be considered in the context of this policy as well as the other matters outlined in this Report in the determination of this application.

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**

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

## **Risk Management**

25. 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**

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

## **Appendices**

Appendix 1 - Application for a variation of a premises licence

Appendix 2 - Current premise licence

Appendix 3 - Police objection

## **Background Papers**

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