

<b>Meeting:</b>	<b>Licensing sub-committee</b>
<b>Meeting date:</b>	<b>21 August 2018</b>
<b>Title of report:</b>	<b>Application for a new premises licence in respect of 'The Den, 16-17 Bridge Street, Hereford. HR4 9DF' – 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

## **Purpose**

To consider an application for a new premises licence in of 'The Den, 16-17 Bridge Street, Hereford. HR4 9DF.

## **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) 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
  - d) To refuse to specify a person in the licence as the premise supervisor, or
  - e) To reject the application.

## Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

## Key Considerations

### Licence Application

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

Applicant	The Den Hereford Limited	
Solicitor	N/A	
Type of application: <b>New</b>	Date received: 7 June 2018 Re-start consultation 6 July 2018	28 Days consultation ended 5 July 2018 End of re-started consultation 2 August 2018

### Summary of Application

5. The application (appendix 1) requests a new premises licence to allow the following licensable activities, during the hours shown as follows:

Live Music, Recorded Music (Indoors/Outdoors)  
Monday – Sunday 09:00 – 23:00

Sale/Supply of Alcohol (consumption on and off the premises)  
Monday – Sunday 09:00 – 24:00

Late Night Refreshment  
Monday – Sunday 23:00 – 24:00

Non-Standard Times  
From start of licensable hours NYE until 02:00 NYD

6. The consultation period had to re-start, as the applicant failed to advertise in a local newspaper which is a requirement under Section 25 (b) of The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

### **Summary of Representations**

7. One (1) Representation has been received from the Responsible Authorities (Environmental Protection) which has been agreed by the applicant and can be found at Appendix 2.
8. Two public representations have been received and accepted by the Licensing Authority as being relevant (Appendix 3 & 4)
9. Five (5) further public representations were also received but deemed irrelevant so therefore were not accepted by the Licensing Authority.

### **Community Impact**

10. Any decision is unlikely to have any impact on the local community.

### **Equality duty**

11. There are no equality issues in relation to the content of this report.
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.

### **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. The options available to the licensing authority are set out in section 1 of this report.
16. The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
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.
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'.  
In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## Right of Appeal

21. Schedule 5 gives a right of appeal which states:  
  
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.  
  
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

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 - Application Form

Appendix 2 - Environmental Protection Representation

Appendix 3 - Public Representation

Appendix 4 - Public Representation

## **Background Papers**

None.