

Meeting:	Licensing sub-committee
Meeting date:	Wednesday 5 December 2018
Title of report:	Application for a variation of a premises licence in respect of 'Drovers Rest, Llanerch-y-Coed, Dorstone , HR3 6AG' – Licensing Act 2003.
Report by:	Licensing officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Golden Valley North

Purpose

To consider an application for a variation of a premises licence for in respect of Drovers Rest, Llanerch-y-Coed, Dorstone, HR3 6AG'

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 sub 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 variation to a premises licence has received relevant representation and is brought before the sub committee for determination.
- 4. The details of the application are:

Applicant	Paul & Kesri Smolas Drovers Rest, Llanerch-y-Coed, Dorstone, HR3 6AG	
Solicitor	N/A	
Type of application: Variation	Date received: 25 May 2018	28 Days consultation ended 22 June 2018

Summary of Application

- 5. The application (appendix 1) requests to vary premise to include:

Live & Recorded Music and Sale/Supply of Alcohol
All days Midday – 0100

Late Night refreshment
All days 2300 – 0100

Remove the existing seasonal restriction

Current Licence

6. A copy of the current licence is attached at Appendix 2. It authorises:

Recorded Music

Monday – Sunday 18:30 – 23:30

Sale/Supply of Alcohol

Monday – Sunday 12:00 – 23:30

Which only has effect between Easter to End of October annually

Summary of Representations

7. One (1) representation has been received from the responsible authorities (environmental health) which has been agreed and can be found at Appendix 3.
8. Four (4) further representations have been received. Two (2) from parish councils and two (2) from residents and can be found at appendices 4, 5, 6 and 7). The representations made are relevant to prevent public nuisance and protect children from harm.

Community Impact

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

Equality duty

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

Financial implications

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

Legal Implications

14. As relevant representations have been received, the sub committee must determine this application in accordance with section 3.5.7 (e) of the Herefordshire Council constitution. The relevant representations are representations which relate to the likely effect of the grant of the application on the promotion of the licensing objectives. In determining the application, the sub committee must consider whether the granting of the variation would have the effect of promoting or damaging the licensing objectives.
15. The four licensing objectives are 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 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.
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'.
21. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

22. 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.

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

Consultees

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

Appendices

- Appendix 1 - Application Form
- Appendix 2 - Current Licence
- Appendix 3 - Representation from Environmental Health
- Appendix 4 - Parish council representation
- Appendix 5 - Parish council representation
- Appendix 6 - Public representation
- Appendix 7 - Public representation

Background Papers

None.

