

<b>Meeting:</b>	Licensing sub committee
<b>Meeting date:</b>	30 August 2019
<b>Title of report:</b>	Review of a premises licence in respect of: 'RNCB, The Point 4 and Gardner Hall, Venns Lane, Hereford. HR1 1DT called by Herefordshire Council as the Licensing Authority' - Licensing Act 2003
<b>Report by:</b>	Licensing Technical Officer

## Classification

Open

## Key Decision

This is not an executive decision.

## Wards Affected

Holmer

## Purpose

To consider an application for a review of a premises licence in respect of: 'RNCB, The Point 4 & Gardner Hall, Venns Lane, Hereford. HR1 1DT called by Herefordshire Council as the Licensing Authority.

## 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 Licensing Authority's 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 options 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.

## Reasons for Recommendations

3. Ensures compliance with the Licensing Act 2003.

## Key Considerations

4. The licensing authority must take into account any relevant representations made. Relevant representations are those that:
5.
  - 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  - have not been withdrawn; and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
6. The details of the application are:

Applicant	Herefordshire Council as the Licensing Authority	
Agent	Not applicable	
Type of application: Review	Date received: 12 July 2019	28 Days consultation ended 8 August 2019

## Summary of Application

7. The application for the review is attached (appendix 1)
8. Copies of the application were sent to the premise licence holder and responsible authorities.
9. In brief the Licensing Authority's grounds for the review are:  
On the evening of Saturday 29th June 2019 the Out of Hours Noise team which included the principal licensing officer witnessed noise emanating for the premises [Gardner Hall] which constituted a statutory nuisance".

### **Premises History**

10. The premises licence covers the buildings Point 4 and Gardner Hall and was granted in August 2011.
11. Since being licensed Gardner Hall has been subjected to noise complaints.
12. Within the review consultation period an application for a minor variation was received. The minor variation requests Gardner Hall to be de-licensed. On grant of the minor variation only Point4 will be subject to a premises licence.

### **Current Licence**

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

Plays; Films; Live Music; Recorded Music; Performance of Dance; Activity Like Music or Dance;

Monday - Sunday 09:00-24:00

Indoor Sporting Events

Monday - Sunday 08:30-23:30

Supply/Sale of Alcohol

Monday - Sunday 11:00-24:00

14. The licence is subject to a number of conditions.

### **Circumstances leading to the review**

15. On Saturday 29th June 2019 the Principal Licensing Officer was part of the Out of Hours noise team together with an Environmental Health Officer. They received a number of complaints from residents of Admirals Close, Hereford. Admirals Close is to the south of Gardner Hall and in close proximity to the rear grounds of Gardner Hall.
16. The officers who attended could see that there was a function taking place and that the doors and windows to the rear of Gardner Hall were open. They could hear loud music coming from the premises [Gardner Hall] and also could hear people laughing and shouting. The terminal hour for Licensable Activities was midnight but the music continued to play. At 00:07 the DJ was heard to say OK just one more and proceeded to playing 'Sweet Caroline'. From their investigation both officers were satisfied that a Statutory Noise Nuisance took place and a Notice will be served concerning this in relation to this."
17. As a result this review was launched.

### **Summary of Representations**

18. One (1) representation has been received from the responsible authorities (Trading Standards) and this has been agreed by the premises licence holder. The

representation can be found at Appendix 3.

19. Four (4) public representations have been received and accepted by the Licensing Authority as being relevant (Appendix 4).
20. Two (2) further public representations were also received but deemed irrelevant so therefore were not accepted by the Licensing Authority

## **Community Impact**

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

## **Equality duty**

22. 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.
23. 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.
24. There are not considered to be any equalities implications arising from this report.

## **Financial implications**

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

## **Legal Implications**

26. 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.
27. 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.
28. 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.
29. 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.

30. 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.
31. 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'.
32. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## Right of Appeal

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

*Decision to grant premises licence or impose conditions etc.*

- (1) This paragraph applies where a licensing authority grants a premises licence under section 18.
  - (2) The holder of the licence may appeal against any decision—
    - (a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
    - (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).
  - (3) Where a person who made relevant representations in relation to the application desires to contend—
    - (a) that the licence ought not to have been granted, or
    - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,he may appeal against the decision.
  - (4) In sub-paragraph (3) "relevant representations" has the meaning given in section 18(6).
34. Appeals should be made to the Magistrates Court and must be made within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against.

## Risk Management

35. 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**

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

## **Appendices**

Appendix 1 - Application for the review of the premises licence

Appendix 2 - Current Premises Licence

Appendix 3 - Trading Standards Representations

Appendix 4 - Public representations

## **Background Papers**

None