

Meeting:	Licensing sub-committee
Meeting date:	Friday 18 October 2019
Title of report:	Application for a review of a premises licence in respect of St Katherine's Barn, St Katherine's, Ledbury, HR8 1AQ– Licensing Act 2003
Report by:	Licensing Technical Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Ledbury North

Purpose

To consider an application for a review of a premises licence in respect of St Katherine's Barn, St Katherine's, Ledbury. HR8 1AQ called by David Thomas as a member of the public.

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.**
- **The review application**

Options

1. There are a number of option open to the sub-committee:
 - modify any of the conditions of the premises licence;
 - exclude any of the licensable activities
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding 3 months; and
 - revoke 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.
3. Alternatively the licensing authority could determine that no action is required to promote the licensing objectives or they could issue a warning in writing to the licence holder and/or recommend improvement within a specified period of time.

Reasons for Recommendations

4. Ensures compliance with the Licensing Act 2003.

Key Considerations

5. The licensing authority must take into account any relevant representations made. Relevant representations are those that:
 - 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 - have not been withdrawn; and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	David Thomas (member of the public)	
Solicitor	Not applicable	
Type of application: Review	Date received: 23 August 2019	28 Days consultation ended 20 September 2019

7. A copy of the application for the review is attached (appendix 1).
8. Copies of the review application were sent to the premise licence holder and responsible authorities, as well as being published on the licensing authority's website.
9. Notice were displayed at the premises as well as at the offices of the licensing authority.

9. In brief the grounds for the review relate to the licensing objective: Prevention of Public Nuisance with excessive loud music/disturbance on numerous occasions along with breach of conditions and breach of permitted licensable timings.

Premises History

10. The premises known as St Katherine's Barn submitted an application for a grant of a premises licence on 26 February 2019 for Plays, Films, Live Music, Recorded Music, Performances of Dance, Anything of a Similar Description Monday-Sunday 10:00-24:00 and Late Night Refreshment Monday-Sunday 23:00-24:00.
11. The application received relevant representation from a member of the public and responsible authorities during the consultation period. It was brought before the licensing sub-committee for determination on 11 April 2019.
12. The licence was granted with a number of conditions. Of particular note is the condition which states:
 - Noise or vibration shall not emanate from the premises so as to cause a nuisance.

Current Licence

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

Plays / Films / Live Music / Recorded Music / Performances of Dance / Anything Similar to Regulated Entertainment (Indoors/Outdoors)
Monday – Sunday 10:00-24:00

Late Night Refreshment (Indoors/Outdoors)
Monday – Sunday 23:00-24:00

Sale/Supply of Alcohol (Consumption on and off the premises)
Monday-Sunday 12:00-24:00

14. The licence is subject to a number of conditions in addition to that outlined in paragraph 12.

List of events leading to the review and after launch of review

15. On 27 May 2019 Mr Thomas contacted the licensing authority by email (appendix 3) to complain about the noise from the premises.
16. On 31 May 2019 the licensing authority sent the premises licence holder a warning letter regarding the noise (appendix 4).
17. On 14 June 2019 the licensing authority received a response from the premises licence holder (appendix 5).
18. On 19 June 2019 the environmental protection team sent the premises licence holder a warning letter (appendix 6).
19. On 21 June 2019 the premises licence holder contacted the licensing authority to request details of the conditions shown on their premises licence (appendix 7).

20. On 24 June 2019 a further email of complaint was received from Mr Thomas (appendix 8).
21. On 26 June 2019 in response to the premises licence holder's request of 21 June the licensing authority supplied details of the conditions (appendix 9).
22. On 26 June 2019 a response was received from the premises licence holder (appendix 10).
23. On 26 June 2019 the licensing authority sent a warning letter to the premises licence holder regarding breaching the conditions on the licence on the night of 21 June (appendix 11)
24. On 16 July 2019 Mr Thomas sent the licensing authority a further letter of complaint (appendix 12).
25. On 1 August 2019 Mr Thomas sent a further email of complaint concerning the noise (appendix 13).
26. On 12 August 2019 Mr Thomas sent a further email of complaint concerning the noise (appendix 14).
27. On 19 August 2019 Mr Thomas sent a further email of complaint concerning the noise (appendix 15).
28. On 23 August 2019 the review was launched (appendix 1).
29. On Friday 23 August 2019 Herefordshire Council's out of hours service attended the premises following a call made by Mr Thomas. The out of hours noise team parked about 20 yards away from the barn and it was the officer's opinion the noise was excessively loud for the area.
31. On 29 August 2019 a further email was received from Mr Thomas concerning noise disturbance from the premises (appendix 16).
30. On 2 September 2019 the licensing authority received a further complaint from Mr Thomas concerning excessive noise (appendix 17).
31. On 9 September 2019 a further email of complaint was received from Mr Thomas (appendix 18).
32. On 23 September 2019 a further email of complaint was received from Mr Thomas concerning the noise from the premises (appendix 19).

Summary of Representations

33. Representations have been received from:

Responsible Authorities - local authority (appendix 20) and environmental protection (appendix 21).

Three (3) representations have been received from members of the public which have been accepted as relevant (appendix 22)

Twenty two (22) letters of support from members of the public were received during

the consultation period and a further letter of support was received outside the consultation period. However these were not considered to be relevant representations under the Licensing Act 2003.

Community Impact

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

Equality duty

35. There are no equality issues in relation to the content of this report.
36. 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.
37. 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

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

Legal Implications

39. As an application for a review of the premises licence on grounds relevant to one or more licensing objectives has been received, the sub committee must determine this application in accordance with section 3.5.7 (e) of the Herefordshire Council constitution. In determining the application, the sub committee must consider the promotion of the licensing objectives.
40. 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.
41. 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.
42. 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.

43. 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.

44. 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.

45. 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'.

46. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

47. A further case which is relevant in this matter is that of *R (on application of Hope and Glory Public House Ltd) v City of Westminster Magistrates' Court and Others* (2011) EWCA Civ 312

48. The decision is important because it:

- illustrates that licensed premises, and the activities that take place in those premises, exist in a dynamic environment and should not be looked at entirely in isolation
- confirms that this can include the impact that licensable activities have on a range of factors such as crime, the quality of life for residents and visitors to the area, and demand for licensed premises
- sets out the approach that should be taken when making licensing decisions

49. Lord Justice Toulson said:

Licensing decisions often involve weighing a variety of competing considerations: the demand for licensed establishments, the economic benefit to the proprietor and to the locality by drawing in visitors and stimulating the demand, the effect on law and order, the impact on the lives of those who live and work in the vicinity, and so on. Sometimes a licensing decision may involve narrower questions, such as whether noise, noxious smells or litter coming from premises amount to a public nuisance.

Although such questions are in a sense questions of fact, they are not questions of the 'heads or tails' variety. They involve an evaluation of what is to be regarded as reasonably acceptable in the particular location. In any case, deciding what (if any) conditions should be attached to a licence as necessary and proportionate to the promotion of the statutory licensing objectives is essentially a matter of judgment rather than a matter of pure fact.

Responsible Authorities should be encouraged by this decision to make representations so that their information can be taken into account, and appropriate measures put in place for the licensing objectives to be promoted.

Right of Appeal

50. 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

51. 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

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

Appendices

Appendix 1 Review Application Form
Appendix 2 Premises Licence
Appendix 3 Email complaint from Mr Thomas dated 27th May 2019
Appendix 4 Warning letter to the premises licence holder date 31st May 2019
Appendix 5 Email response from the premises licence holder dated 14th June 2019
Appendix 6 Warning letter to the premises licence holder from Environmental Protection dated 19 June 2019
Appendix 7 Service request from the premises licence holder dated 21st June 2019
Appendix 8 Email from Mr Thomas dated 24th June 2019
Appendix 9 Email to the premises licence holder dated 26th June 2019
Appendix 10 Email response from the premises licence holder dated 26th June 2019
Appendix 11 Warning letter to the premises licence holder dated 26th June 2019
Appendix 12 Email complaint from Mr Thomas dated 16th July 2019
Appendix 13 Email complaint from Mr Thomas dated 1st August 2019
Appendix 14 Email complaint from Mr Thomas dated 12th August 2019
Appendix 15 Email complaint from Mr Thomas dated 19th August 2019
Appendix 16 Email complaint from Mr Thomas dated 29th August 2019
Appendix 17 Email complaint from Mr Thomas dated 2nd September 2019
Appendix 18 Email complaint from Mr Thomas dated 9th September 2019
Appendix 19 Email complaint from Mr Thomas dated 23 September 2019
Appendix 20 Licensing Authority Representation
Appendix 21 Environmental Protection representation
Appendix 22 Public representations

Background Papers

None.