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| Meeting: | Licensing sub committee |
| Meeting date: | 28 November 2019 |
| Title of report: | Review of a premises licence in respect of: Razi Mini Market, 100 Widemarsh Street, Hereford. HR4 9HG called by Herefordshire Council as the Licensing Authority - Licensing Act 2003 |
| Report by: | Licensing, Travellers & Technical Support Service Manager |

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Widemarsh.

Purpose

To consider an application for a review of a premises licence in respect of Razi Mini Market, 100 Widemarsh Street, Hereford. HR4 9HG 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:
 - 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 - have not been withdrawn; and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
5. The details of the application are:

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| Applicant | The Licensing Authority as a Responsible Authority | |
| Agent | Not applicable | |
| Type of application: Review | Date received: 15 October 2019 28 day consultation period started 16 October 2019 | 28 Days consultation ended 12 November 2019 |

Summary of Application

5. The application for the review is attached (appendix 1).
6. Copies of the application were sent to the premises licence holder and responsible authorities.
7. In brief the licensing authority's grounds for the review are:

On six (6) separate occasions since September 2019, West Mercia Police had visited the premises and the premises licence holder has failed to comply with the conditions

on the premises licence which falls under the licensing objectives, prevention of crime and disorder and protection of children from harm, despite having been sent three (3) warning letters from the authority.

Premises History

8. The premises was first licensed in August 2019 as a convenience store selling alcohol.
9. On 27 August 2019 a premises licence was granted following the 28 day consultation period without a designated premises supervisor (DPS), therefore the premises were not permitted to sell alcohol at this time (this is a mandatory condition for all premises licences involving the sale of alcohol). A letter was sent to the applicant's agent along with the premises licence, informing that the licence was granted without a current DPS (appendix 2).
10. On 9 September 2019, the licensing authority received an application to vary the premises' DPS. The premises licence holder Randjar Mohammed Ismail became the designated premises supervisor when the licence was granted on 24 September 2019.
11. Since the premises licence has been issued and the review launched, the premises licence holder/DPS has failed to engage with the licensing authority.

Current Licence

12. The current licence (appendix 3) authorises the following licensable activities during the hours shown:

Sale/Supply of Alcohol (For consumption Off the Premises)
Monday - Sunday 09:00-21:00
12. The licence is also subject to a number of conditions which the applicant had agreed to during the 28 day consultation period.

Circumstances leading to the review

13. On 30 August 2019, the licensing authority were informed by an employee of Herefordshire Council that Razi Mini Market were selling alcohol and they had alcohol on display. The authority notified West Mercia Police.
14. As a result West Mercia Police visited the premises on 30 August 2019 and alcohol was on display at the premises and was on offer for sale. Photographs of the alcohol on display were taken (appendix 4). There was also a breach of conditions regarding the window wrap as the window wrap and display covered more of the view into the shop as required on the premises licence. Photographs of this were also taken (appendix 5).
15. The condition on the premises licence under the licensing objective: prevention of crime and disorder states: *The Premises Licence Holder will ensure that there is an unobstructed view at all times into the licensable area of the premises. In respect of the street facing the windows, any obstruction will be restricted to the top 25% of the*

window and the bottom 25% of the window in each case. (Widow refers to the whole of the area covered by glass). This will mean that at least 50% of all windows and 100% of all doors looking into the premises from Widemarsh Street are clear of obstruction. No obstruction includes any permanent or temporary signage placed on glass surfaces of doors and windows, as well as any other item within the shop which obstructs the view through the window.

16. On 3 September 2019, West Mercia Police visited the premises again and even though the premises was closed, it was established all the alcohol on display was covered up and a sign was in place stating they could not sell alcohol at this time. The window wrap condition was still non-compliant as it was the same as the previous visit.
17. On 3 September 2019 the licensing authority sent a warning letter to the premises licence holder in relation to the breach of conditions (appendix 6).
18. On 18 September 2019, West Mercia Police made a further visit to the premises and the premises was found to be in breach of a condition of their premises licence in relation to Challenge 25. There were no age verification/Challenge 25 notices on display at any location as you entered the shop or on the two areas where alcohol is offered for sale.
19. The condition on the premises licence under the licensing objective: protection of children from harm states; *The premises shall operate a Challenge 25 Policy. Such policy shall be written down and kept at the premises. The policy shall be produced on demand of the Police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council. Prominent, clear and legible signage (in not less than 32 font bold) shall also be displayed at all entrances to the premises as well as at, at least one location behind any sale area advertising the scheme operated.*
20. On 19 September 2019, West Mercia Police again visited the premises and the premises was in breach of the conditions relating to the window coverage and Challenge 25 Policy.
21. On 25 September 2019, the Licensing Authority sent a further warning letter to the premises licence holder in relation to the continued breaches of conditions (appendix 7).
22. On 1 October 2019, West Mercia Police once again visited the premises where there were continual breaches of conditions in relation to Challenge 25 and window wrap condition. There were also breaches of conditions in relation to staff training and a refusals register. No Challenge 25 notices visible at any locations, front window wrap still non-compliant, the door into the premises was open and was obstructed by an A3 size poster advertising a circus. A staff member was asked if they had received any training and for the refusals register. She stated that she had received no training and that they did not have a refusals register.
23. The condition on the premises licence under the licensing objectives: protection of children from harm states; *A written or electronic register of refusals will be kept including a description of the people who have been unable to provide required identification to prove their age. Such records shall be kept for a period of 12 months.*

It will be collected and reviewed on a daily basis by the Designated Premises Supervisor and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council on demand.

24. The condition on the premises licence under the licensing objective: prevention of crime and disorder states; *All staff engaged in the sale of alcohol to be trained in responsible alcohol retailing to the minimum standard of BIIAB level 1 or any equivalent training course within 1 month of commencing employment at the premises. Where there are existing staff this training shall be completed within 3 months of the date that this condition first appears on the licence. Refresher training will be conducted at 6 monthly intervals. Training records shall be kept on the premises and produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) or an authorised Trading Standards Officer of Herefordshire Council on demand.*
25. On 3 October 2019, the licensing authority sent a final breach of conditions warning letter and advised the premises licence holder that the authority were considering launching a review of the premises licence or to take more formal enforcement action and pursue the matter of unauthorised licensable activities through the court (appendix 8).
26. On 14 October 2019, West Mercia Police once again visited the premises and the conditions in regards to the window wrap, challenge policy, staff training and refusals register were not being complied with. The window wrap was still as before (more than 25% at the bottom covered). A large poster advertising a circus on the door. No challenge notices up. Neither member of staff said they had received any training. Neither were aware of a refusals register.
27. Due to the constant failures of conditions not being complied with, the licensing authority launched a review of the premise licence on 15 October 2019.
28. On 16 October 2019 the police made a further visit where they found that again there were conditions not being complied with in relation to the refusals register, incident log, training and displaying of the licence.
29. Further visits were made by the police on 23 October, 28 October, 30 October, 4 November and 20 November 2019 and further breaches of the premises licence were witnessed.

Summary of Representations

30. No representations have been received from any of the Responsible Authorities or members of the public, though Trading Standards, West Mercia Police, Herefordshire Safeguarding Adults Board and Hereford & Worcester Fire and Rescue Service have confirmed their support for the review application (appendix 9)
31. West Mercia Police have provided further information in support of their visits (appendix 10)
32. No other representations have been received.

Community Impact

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

Equality duty

34. 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.
35. 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.
36. There are not considered to be any equalities implications arising from this report.

Financial implications

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

Legal Implications

38. 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.
39. 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.
40. 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.
41. 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.
42. 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.

43. 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'.

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

Right of Appeal

45. 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).

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

46. 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

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

Appendices

Appendix 1 - Application for the review of the premises licence

Appendix 2 - Confirmation letter (No DPS on licence)

Appendix 3 - Current premises licence

Appendix 4 – Photographs of alcohol on display
Appendix 5 – Photographs of window display
Appendix 6 - Warning letter - 3 September 2019
Appendix 7 - Warning letter – 25 September 2019
Appendix 8 - Final warning letter – 3 October 2019
Appendix 9 – Responsible authorities emails of support
Appendix 10 - West Mercia Police information

Background Papers

None