

<b>Meeting:</b>	<b>Licensing sub committee</b>
<b>Meeting date:</b>	<b>Friday 4 September 2020</b>
<b>Title of report:</b>	<b>Review of a premises licence in respect of: Oval Wines and Spirits, 14 The Oval, Hereford. HR2 7HG called by West Mercia Police - 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**

Newton Farm

## **Purpose**

To consider an application for a review of a premises licence in respect of Oval Wines and Spirits, 14 The Oval, Hereford. HR2 7HG called by West Mercia Police as a responsible authority.

## **Recommendation**

**That:**

**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 2015 - 2020.**

## Options

1. There are a number of options open to the sub-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  - have not been withdrawn; and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:

Applicant	West Mercia Police as a Responsible Authority	
Agent	Not applicable	
Type of application: Review	Date received: 13 July 2020  28 day consultation period started 14 July 2020	28 Days consultation ended  10 August 2020

## Summary of Application

6. The application for the review is attached (appendix 1).
7. Copies of the application were sent to the premises licence holder and responsible authorities.

8. In brief West Mercia Police's grounds for the review are:

On Tuesday 19th May at 13:20 hours a male entered a premises known as Oval Wines & Sprints, 14 The Oval, Hereford. HR2 7HG and purchased four (4) cans of lager using a bank card.

The bank card was later reported to have been stolen.

Subsequent enquires undertaken by West Mercia Police established that the alcohol was purchased by a 17 year old using a stolen bank card.

CCTV footage, which was provided by the premises, established the crime and further evidenced that when the purchase was made, the staff member processing the sale of alcohol did not request to see any proof of age identification nor was any produced by the male purchasing the cans.

The transaction is captured on the premises' CCTV and was obtained by West Mercia Police for evidential purposes

### **Premises History**

9. The premises was first licensed in June 2016 as a general convenience store selling alcohol.
10. Since the licence was first issued, there has been three (3) transfer and vary designated premises supervisor (DPS) applications. These were in October 2016, December 2019 and February 2020.

### **Current Licence**

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

Sale/Supply of Alcohol (For consumption Off the Premises)

Monday - Sunday 07:00 – 23:00

12. The licence is also subject to a number of conditions which the applicant had agreed to during the 28 day consultation period of the granting the premises licence.

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

13. Subsequent enquiries undertaken by West Mercia Police showed CCTV footage of a 17 year old male purchasing alcohol. The CCTV established the crime and further evidenced that when the purchase was made, the staff member processing the sale of alcohol did not request to see any proof of age identification nor was any produced by the male purchasing the cans.
14. The condition on the premises licence under Annexe 1 (Mandatory conditions) state:

Annex 1 - Mandatory conditions

Age verification

(1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—  
(a) a holographic mark, or  
(b) an ultraviolet feature.

15. The condition under the Licensing Objective, Protection of Children from Harm in Annex 2 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 an authorised person' (as defined by Section 13 of the Licensing Act 2003), an authorised Herefordshire Trading Standards Officer or the police. 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 customer service counter advertising the scheme operated.

15. Due to evidence gathered that the underage sale took place and there being no attempt to challenge the male for identification for proof of age, West Mercia Police launched the review.

### **Summary of Representations**

16. A representation has been received from Trading Standards which supports the review due to intelligence they have received and their representation can be found at Appendix 3.
17. No other representations were received.

### **Community Impact**

18. Any decision is unlikely to have any significant effect on the local community.

### **Equality duty**

19. 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.
20. 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.
21. There are not considered to be any equalities implications arising from this report.

## Financial implications

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

## Legal Implications

23. 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.
24. 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.
25. 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.
26. 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.
27. 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.
28. 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'
29. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## Right of Appeal

30. 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**

31. 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**

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

## **Appendices**

Appendix 1 - Application for the review of the premises licence

Appendix 2 – Copy of current premises licence

Appendix 3 – Trading Standards representation

## **Background Papers**

None