

Meeting:	Licensing sub committee
Meeting date:	Friday 16 October 2020
Title of report:	Application for a variation of a premises licence in respect of: Brewery Inn, Bye Street, Ledbury, HR8 2AG - 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 variation of a premises licence in respect of Brewery Inn, Bye Street, Ledbury. HR8 2AG.

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) to modify the conditions of the licence;
- (b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

Licence Application

3. The application (appendix 1) for a variation of the premises licence has received representation and is brought before the committee for determination.
4. The details of the application are:

Applicant	Marstons PLC	
Agent	John Gaunt & Partners	
Type of application: Variation	Date received: 14 August 2020	28 Days consultation ended 10 September 2020

Summary of Application

5. The application (appendix 1) requests a variation to the premises licence as follows:

The application seeks approval for alterations to the approved layout of the premises both internally and externally and to regularise the position in respect of the external beer garden and garage area at the premises.

There will be no change to the Licensable Activities, timings or conditions.

Premises History

6. The premises was first licenced in 2005. Since being licenced the authority has received two (2) transfer premises applications, three (3) vary Designated Premises Supervisor (DPS) applications and one (1) variation application (not including the one put before you today).

Current Licence

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

Live Music / Recorded Music

Sunday – Thursday - from 10:00 until 23:30

Friday – Saturday from 10:00 until 00:30

Sunday and Monday Bank Holiday Weekends, Christmas Eve and Boxing day
10:00 - 00:30

Recorded Music Only

New Years Eve: 10:00 till 1 hour before New years Day Opening hour.

Late Night Refreshment

Sunday – Thursday - from 23:00 until 00:00

Friday – Saturday from 23:00 until 01:00

Sunday and Monday Bank Holiday Weekends, Christmas Eve and Boxing day
23:00 - 01:00

New Years Eve: 10:00 till 1 hour before New years Day Opening hour.

Supply/Sale of Alcohol

Sunday - Thursday - from 10:00 until 00:00

Friday – Saturday from 10:00 until 01:00

Sunday and Monday Bank Holiday Weekends, Christmas Eve and Boxing day
10:00 - 01:00

New Years Eve: 10:00 till 1 hour before New years Day Opening hour.

Summary of Representations

8. Two (2) Objections have been received from the Responsible Authorities, the Local Authority – appendix 3 and Trading Standards – appendix 4.

Community Impact

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

Equality duty

10. 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.
11. Article 8(i) of the European Convention of Human Rights provides that everyone has

Further information on the subject of this report is available from
Licensing Technical Officer 01432 261761

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.

12. There are no equalities implications arising from this report.

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 subcommittee must determine the application under Section 3.5.7 (c) of the Herefordshire Council constitution. The representations must relate to the licensing objectives and the subcommittee must determine the likely effect of the grant of the premises licences on the promotion of the licensing objectives.
15. 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. The options available to the licensing authority are set out in section 1 of this report.
16. The subcommittee 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. 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.
18. 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.
19. 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'.

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

Right of Appeal

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

Decision to grant premises licence or impose conditions etc.

- 2 (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).
22. 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

23. 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

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

Appendices

- Appendix 1 - Application for a variation of a premises licence
- Appendix 2 - Current Premises Licence
- Appendix 3 - Local Authority Representation
- Appendix 4 - Trading Standards Representation

Background Papers

None

