

<b>MEETING:</b>	<b>REGULATORY SUB COMMITTEE</b>
<b>DATE:</b>	<b>10 AUGUST 2009</b>
<b>TITLE OF REPORT:</b>	<b>REVIEW OF PREMISES LICENCE: MCCOLLS, 7 THE OVAL, HEREFORD. HR2 7HG – LICENSING ACT 2003</b>
<b>PORTFOLIO AREA:</b>	<b>ENVIRONMENT &amp; CULTURE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Belmont

### **Purpose**

To consider an application for a review of the premises licence relating to 'McColls, 7 The Oval, Hereford, HR2 7HG' called by Paul West, Chief Constable of the West Mercia Constabulary.

### **Key Decision**

This is not a Key Decision.

### **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 necessary 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 Licensing Policy.

### **Key Points Summary**

- This the second review of their premises licence
- Called following a further underage sale.
- One representation received from a responsible authority.
- No representations received from interested parties.

### **Options**

- 1 Take no action or take any of the following steps: -
  - (a) to modify the conditions of the licence;
  - (b) to exclude a licensable activity from the scope of the licence;

Further information on the subject of this report is available from  
Fred Spriggs – Licensing Officer 01432 383542

- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

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.

Where the authority takes a step mentioned in subsection (a) or (b), 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

- 2 Ensures compliance with the Licensing Act 2003.

## Introduction and Background

### 3 Background Information

Applicant	<b>Paul West – Chief Constable West Mercia Constabulary</b>	
	<b>Represented by: - Stephen Gomer Thomas Police Constable 697</b>	
Premise Licence Holder	<b>Martin McColl Ltd, Martin McColl House, Ashwells Road, Brentwood, Essex, CM15 9ST</b>	
Solicitor	<b>DWF, Liverpool</b>	
Type of application:	Date received:	28 Days consultation:
<b>Review</b>	<b>16/06/09</b>	<b>14/07/09</b>

### 4 Current Licence

The current licence authorises the following licensable activities during the hours shown: -

Sale by retail of alcohol (off sales):

- On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
- On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
- On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- On Good Friday, 8 a.m. to 10.30 p.m.

### 5 Previous Review

This licence was reviewed by the Regulatory Sub-Committee on 4<sup>th</sup> November 2008.

The grounds for that review were: -

The premise has been the subject of eight separate test purchase operations since the start of the Licensing Act in November 2005. On two of these occasions 3 sales have occurred.

The decision of that Committee was: -

That the following additional condition been imposed upon the licence from 4 February 2009:-

- Personal licence holder to be on site at all times during sales of alcohol.

That the following additional conditions be imposed forthwith upon the licence:-

- That the use of 'Challenge 25' is made a condition of all sales made on the premises.
- Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and trading standards officers.
- Prominent signs publicising the age challenge policy to be displayed at the entrance to the premises, at the tills and in all areas where alcohol is being displayed.

## 6 **Summary of Application**

The application for review relates to the following licensing objectives: -

- Prevention of Public Nuisance
- Protection of Children from harm

## 7 **The grounds for the review are: -**

The premises has been the subject of a number of test purchase operations involving youths aged 15 and 16 years between August 2005 and November 2008.

A total of 9 test purchase operations have been carried out and during those 3 sales were made.

The premise licence was reviewed in November 2008 as a result of these sales and additional conditions were added to the licence, including the use of Challenge 25.

A further test purchase operation was carried out in June 2009 and a sale was made to a 15 year old female.

## 8 **The information provided to support this application is: -**

Full details in support of this application have been provided which are shown at page 4 of the application form. This has been further expanded upon by way of representation dated 11<sup>th</sup> June 2009. Full details of this can be found within the background papers.

## 9 **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

## 10 **Responsible Authorities**

A representation has been received from the Principal Trading Standards Officer.

## 11 **Interested Parties**

No representations have been received from interested parties.

## **Key Considerations**

- 12 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

Guidance issued under Section 182 of the Licensing Act 2003 in respect of Reviews states at paragraph: -

- 11.18 In deciding which of these powers to invoke (*shown within the options*), it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

The attention of the Committee is drawn to the stated 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: -

“Among other things, section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, it is recognised that the Guidance cannot anticipate every possible scenario or set of circumstances that may arise and so long as the Guidance has been properly and carefully understood and considered, licensing authorities may depart from it if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their actions. Departure from the Guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.”

## **Community Impact**

- 13 It is felt that any decision made will have only a minimal impact on the community as a whole.

## **Legal Implications**

- 14 Schedule 5 Section 8(2) gives a right of appeal to: -
- a) the applicant for the review,
  - b) the holder of the premises licence, or
  - c) any person who made relevant representation in relation to the application.
- 15 Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

## **Consultees**

- 16 Responsible authorities and persons living or with a business interest within the vicinity of the premises.
- 17 A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.
- 18 The notice of review was displayed on the premises prior to the start of the consultation period and was displayed for 28 days. In addition the notice was also displayed at the offices of the Licensing Unit at Bath Street, Hereford over the same period.

## **Appendices**

- 19 a. Application Form for Review
- b. Police Representation
- c. Trading Standards Representation

## **Background Papers**

**Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.**

## NOTES

### REVIEWS

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22 'A number of reviews may arise in connection with crime that is not directly connected with licensable activities'. 'Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all'. 'Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them'.

11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52 (11) A determination under this section does not have effect—

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of.

## **Licensing Authority's power to exercise substantive discretionary powers.**

**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3)  
The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; the scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant, who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.