

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	3 MARCH 2012
TITLE OF REPORT:	REVIEW OF PREMISES LICENCE: MCCOLLS, 7 THE OVAL, HEREFORD. HR2 7HG – LICENSING ACT 2003
PORTFOLIO AREA:	HEALTH AND WELLBEING

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 Herefordshire Council Trading Standards.

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

- Third Review of Premises Licence
- Consideration of the application adjourned on 13 December 2011 after 5 conditions were volunteered by the applicant.
- Called following a further underage sale.
- One representation received from a responsible authority.
- One representation received from interested parties.

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

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;
- (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	Herefordshire Council – Trading Standards	
Premise Licence Holder	Martin McColl Ltd, Martin McColl House, Ashwells Road, Brentwood, Essex, CM15 9ST	
Solicitor	DWF, Liverpool	
Type of application: Review	Date received: 21/10/11	28 Days consultation 18/11/11

4 Previous Committee Hearing

The application for review of the premises licence was first reported to the Regulatory Sub-Committee on 13 December 2011. At that meeting the item was adjourned to enable the applicant a period of time to demonstrate that the conditions that he volunteered to the Committee would address the concerns expressed by the police and trading standards department in respect of the promotion of the licensing objectives of the protection of children from harm and the prevention of crime and disorder. The conditions that were volunteered were as follows:

1. A personal licence holder must be on the premises at all times when alcohol is sold.
2. Only a personal licence holder shall sell alcohol. Each and every sale must be witnessed at the time by another member of staff. That member of staff must be trained to BIIAB Level 1. Both the personal licence holder and the other member of staff, making the sale, must sign the till receipt at the time prior to the alcohol being handed over. Evidence shall be kept on site of the personal Licence and the BIIAB Qualification of the sellers and shall be made immediately available to an authorised officer (as defined by Section 13 Licensing Act 2003) and an authorised trading standards officer.
3. The premises licence holder must conduct monthly Serve Legal Test Purchases. Records of the visit must be supplied to the Local Authority Licensing Officer within 7 days of the test. The record shall show the product attempted to be purchased, the name of the server, the date and time of attempted sale.
4. The premises shall operate a Challenge 30 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) 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 counter advertising the scheme operated.
5. 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 agreed by Herefordshire Council trading standards within one month of commencing employment at the premises. (Where there are existing staff this training shall be completed within one month of this date (13 December 2011). Such training shall be bespoke to McColls, The Oval, Hereford. All staff shall be re-trained six monthly thereafter. Training records shall be kept on the premises and shall be 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.

5 **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.

6 **Previous Review**

This licence was first reviewed by the Regulatory Sub-Committee on 4th 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.

The premises licence was further reviewed on 10th August 2009.

The grounds for that review were:

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.

On that occasion the Committee attached the following condition:

- Two members of staff must endorse each sale of alcohol by signature.

No appeal was lodged with the Magistrates Court in respect of either decision.

7 **Summary of Application**

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

- Prevention of Crime and Disorder
- Protection of Children from harm

8 **The grounds for the review are: -**

The premise is a general store situated on the outskirts of Hereford.

The request for this review is based on the licensing objectives regarding the prevention of crime and disorder and the protection of children from harm.

9 **The information provided to support this application is: -**

At 1900 hours on Saturday 15th October 2011 Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

One(1) 16 year old female, who was 5' 2" tall was sold alcohol (Eight [8] Cans of Blackthorn Cider 4.7% strength) without being challenged concerning her age.

The seller was a personal licence holder who made no challenge regarding the females age.

After the sale when challenged the seller stated that he thought she was over 25.

Herefordshire Council Licensing Policy states that any premises failing a test purchase will be reviewed.

The premises has been the subject of 2 further reviews following test purchases in the past.

On 4th November 2008 the Licensing Committee imposed the following conditions:

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

- 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.

On 10th August 2009 the Licensing Committee imposed the following condition:

- Two members of staff must endorse each sale of alcohol by signature.

They also suspended the licence for a period of 7 days commencing at 0001 on Tuesday 1 September 2009.

At the time of the operation there were numerous notices displayed within the premises advertising that they operated a 'Challenge 30' policy.

The condition imposed on 10th August 2009 that 'Two members of staff must endorse each sale of alcohol by signature' did not take place.

10 **Further Information**

On 8th November officers from Herefordshire Council went to the store where a further test purchase operation was carried out. On this occasion a 23 year old purchased four cans of 'Strongbow Cider. Again no challenge was made regarding his age and again two members of staff did not sign the sale off.

The training records were asked for and whilst records were being kept there was no evidence of the training which had been received by staff.

This incident is now the subject of a criminal investigation.

11 **Summary of Representations**

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

12 **Responsible Authorities**

A representation has been received from the West Mercia Police.

13 **Interested Parties**

One (1) representation has been received from a ward councillor.

Key Considerations

- 14 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: -

- 11.26 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.

11.27 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. **Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.** We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

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

15 It is felt that any decision made will have a minimal impact on the Community.

Legal Implications

16 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.

- 17 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

- 18 Responsible authorities and persons living or with a business interest within the vicinity of the premises.
- 19 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.
- 20 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

- 21 a. Application Form for Review
- b. Police Representation
- c. Interested party 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.