

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>16 APRIL 2012</b>
<b>TITLE OF REPORT:</b>	<b>REVIEW OF PREMISES LICENCE: ETNAM NEWS, 35 ETNAM STREET, LEOMINSTER, HR6 8AE. – LICENSING ACT 2003</b>
<b>PORTFOLIO AREA:</b>	<b>HEALTH &amp; WELLBEING</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Leominster

### **Purpose**

To consider an application for a review of the premises licence relating to 'Etnam News, 35 Etnam Street, Leominster, HR6 8AE' 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**

- 1<sup>st</sup> Review of Premises Licence
- Called following a failed underage sale.
- 2<sup>nd</sup> underage sale occurred after review launched.
- Two representations received from a responsible authority.

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	<b>Herefordshire Council – Trading Standards</b>	
Premise Licence Holder	<b>Josie Harrison and Jonathan Keaveney</b> <b>Etnam News, Flat, 35 Etnam Street, Leominster, HR6 8AE</b>	
Solicitor	<b>N/A</b>	
Type of application: <b>Review</b>	Date received: <b>27/02/12</b>	28 Days consultation <b>26/03/12</b>

### 4 Current Licence

The current licence which was first issued on 29<sup>th</sup> April 2010 authorises the following licensable activities during the hours shown: -

#### Supply/Sale of Alcohol

Monday – Sunday from 06:30 until 22:30

## 5 **Summary of Application**

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

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

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

The premises is a newsagent situated on the edge of Leominster Town.

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.

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

During the evening of Saturday 25<sup>th</sup> February Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

Two(2) males aged 15 years and 14 years were served alcohol (4 cans of Carling Lager) without being challenged concerning their age.

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

## 8 **Further Information**

A further incident connected with the premises occurred on the 29 February 2012 which was dealt with by West Mercia Police.

On this occasion it is alleged that a further underage sale of alcohol and tobacco took place at the premises which was to a 14 year old female. This was recorded on the shops CCTV system.

## 9 **Summary of Representations**

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

Both the police and Trading Standards have made representation. In both case both are asking for revocation of the licence, although Trading Standards have a fall back position should the committee decline this and if this was the case ask for certain conditions to be imposed.

## **Key Considerations**

- 10 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.

## Community Impact

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

## Legal Implications

12 The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

13 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.

14 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.

15 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'.

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

## **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. Trading Standard Representation

## **Background Papers**

**Background papers are available for inspection in the Assembly Hall, Town Hall, Hereford, 30 minutes before the start of the hearing.**