

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	18 SEPTEMBER 2012
TITLE OF REPORT:	REVIEW OF PREMISES LICENCE: GWALIA STORES, 27 -29 BROAD STREET, ROSS ON WYE, HR9 7ED – LICENSING ACT 2003
PORTFOLIO AREA:	PUBLIC HEALTH DIRECTORATE

CLASSIFICATION: Open

Wards Affected

Ross on Wye West

Purpose

To consider an application for a review of the premises licence relating to 'Gwalia Stores, 27 -29 Broad Street, Ross on Wye, HR9 7ED' called by Herefordshire Council as the Licensing Authority.

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

- 3 previous Test Purchase Failures
- Called following a further underage sale.
- Three representations received from a responsible authorities.
- Determination of the application was previously adjourned at the Regulatory Committee meeting on 4 September 2012

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 – Licensing Authority	
Premise Licence Holder	Ramanathan RATHEYAN Gwalia Stores, 27 – 29 Broad Street, Ross on Wye, HR9 7ED.	
Solicitor	N/K	
Type of application: Review	Date received: 18/07/12	28 Days consultation 14/08/12

4 Current Licence

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

Sale by retail of alcohol (off sales):

Monday – Saturday	10:00 – 20:00
Sunday	12:00 – 20:00

5 **Summary of Application**

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

- Prevention of Public Nuisance
- Protection of Children from harm

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

The premises is an independent retail shop situated in Ross on Wye.

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.

The premise has been the subject the subject of a test purchase operation which it failed.

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

During the evening of Wednesday 27th June Herefordshire Council trading standards department carried out a test purchase operation at the premise.

A 16 year old male was sold 4 cans of Fosters lager 4.0%

Police records show previous sales of alcohol at the premises on:

13/08/10 - 1920hrs

26/08/08 - 1930hrs

23/12/07 - 1415hrs

The premises licence holder and DPS has remained unchanged since the grant of the licensing 2006.

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

Summary of Representations

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

9 **Responsible Authorities**

Representation have been received from West Mercia Police, Herefordshire Council Trading Standards and the Licensing Authority.

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: -

11.29 There is certain criminal activity that may arise in connection with licensed premises which 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 illegal 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 knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
- for unlawful gambling; and
- for the sale of smuggled tobacco and alcohol.

11.30 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 Community Safety 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

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

Legal Implications

12 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.

- 13 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

- 14 Responsible authorities and persons living or with a business interest within the vicinity of the premises.
- 15 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.
- 16 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

- 17 a. Application Form for Review
- b. Police Representation
- c. Trading Standards Representation
- d. Licensing Authority 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.