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| MEETING: | REGULATORY SUB-COMMITTEE |
| DATE: | 29 APRIL 2014 |
| TITLE OF REPORT: | APPLICATION FOR A REVIEW OF THE PREMISES LICENCE IN RESPECT OF 'THE YEW TREE INN, PRESTON ON WYE, HR2 9JT' – LICENSING ACT 2003 |
| REPORT BY: | LICENSING OFFICER |

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

Golden Valley North

4. Purpose

To consider an application for a review of the premises licence in respect of 'The Yew Tree, Inn, Preston on Wye, HR2 9JT'.

5. Recommendation(s)

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 Guidance issued to local authorities under the Licensing Act 2003, and**
- **The Herefordshire Council Licensing Policy.**
- **The Licensing Authority's review application**
- **Any other evidence produced in relation to the review**

6. Key Points Summary

- The application requests a review (appendix 1) of the premises licence in order to promote the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.
- The premises received a number of warning letters offering advice in relation to non-compliance with the law. These letters were sent on 28th September 2012 (appendix 2), 21st November 2012 (appendix 3), 31st May 2013 (appendix 4), 13th June (appendix 5) and the 18th December (appendix 6).
- On 4th June the premises licence holder wrote to the Licensing Authority in response to the letter of 31st May (appendix 7)
- On 18th June the premises licence holder again wrote to the Licensing Authority following their letter of 13th June (appendix 8)
- On 13th - 14th July the premises had a Late Temporary Event Notice (LTEN) (appendix 9).
- On 19th July a LTEN was submitted. The Environmental Health Officer objected to the LTEN and as a result it was refused (appendix 10)
- On 24th August a Temporary Event Notice (appendix 11) was allowed following a committee hearing.
- On the evening of 20th December the Environmental Health Department installed a noise monitoring unit in a premise close to the pub. This showed that on that night music was played until 11.40 pm.
- Representations have been received from the Police (appendix 12) and EHO (appendix 13) supporting the review.
- Representations have been received from the premises licence holder (appendix 14)
- Representations have been received from the public both for and against the application (appendix 15)
- A statement has been obtained from a witness (appendix 16) who produces a log of events (appendix 17)
- The Licensing Authority attended the vicinity of the premises and logged events (appendix 18)
- A noise monitoring recording was obtained (appendix 21 - see also reports at appendix 19 and 20)
- An activity timeline has been produced to show events at the premises set against complaints received (appendix 22)
- Herefordshire Council Planning Department have made comment in relation to the marquee at the premises (appendix 23).
- A complaint was received by email from a member of the public (appendix 24) and

from the Parish Council (appendix 25)

7. Options

There are a number of options open to the Sub-Committee:

- the modification of the conditions of the premises licence;
- to exclude a licensable activity from the scope of the licence;
- the removal of the designated premises supervisor from the licence;
- the suspension of the licence for a period not exceeding 3 months;
- the revocation of the licence;
- the modification of the conditions of the premises licence to add a statement that S177A Licensing Act 2003 does not apply to it and
- add conditions relating to live music as if —
 - (a) the live music were regulated entertainment, and
 - (b) the licence or certificate licensed the live music.
- to take no action

8. Reasons for Recommendations

To ensure compliance with the legislation.

9. Introduction and Background

Background Information

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|---------------------------------------|--|--|
| Applicant | Herefordshire Council as the Licensing Authority represented by Mr F Spriggs | |
| Premise Licence Holder | Phillip Pugh and Theresa Brandeberry Yew Tree Inn, Preston on Wye, Herefordshire, HR2 9JT | |
| Designated Premises Supervisor | Theresa Brandeberry | |
| Solicitor | Not known | |
| Type of application: Review | Date received: 5th March 2014 | 28 Days consultation 2nd April 2014 |

The grounds for the review are:

The request for this review is based on the licensing objectives regarding the prevention of Crime and disorder and the Prevention of public nuisance.

The premises is licensed only for the sale of alcohol, although live music may be played up to 11 pm without licence.

Between 15th November 2012 and 8th February 2014 there have been 24 events where the music has allegedly gone on past 11 pm.

The Licensing Authority has sent the premises licence holder 5 warning letters in respect of the breaches and advising them of the breaches of the law.

There are 2 members of the public who have complained about the noise.

The Licensing Authority is satisfied that as the law continues to be broken that the premises licence holders are committing criminal offences and therefore are not promoting the licensing objective of the prevention of crime.

Furthermore as disturbance is being caused to neighbours the premises licence holders are failing to prevent public nuisance.

The information submitted to support the grounds stated:

The premises came under new ownership in Autumn 2012.

The premises is licensed only for the sale of alcohol, although from the 1st October 2012 the Live Music Act 2012 allowed for live music to be played without a licence up to 11 pm.

A local resident has kept a log of the events held at the premises, between 15th November 2012 and 8th February 2014. There have been 24 events where the music has allegedly gone on past 11 pm. Some of these events have involved recorded music which is not licensed to be played at any time at the premises.

On 28th September 2012 the Licensing Section wrote to the premises licence holder advising them that it was alleged that an unlicensed music event took place on 14th September and informing them of the law.

On 21st November 2012 the Licensing Section again wrote to the premises licence holder advising them that they understood that music was being played at the premises without a licence and inviting application to vary the licence.

On 31st May 2013 the Licensing Section again wrote to the premises licence holder advising them that they understood that a beer festival with live music, which was played until at least half past midnight, had taken place on the previous weekend. They informed them that the authority had a number of options available to them including the launching of a review against the premises. They were also informed the Licensing Authority may make unannounced visits to the premises.

On 4th June the premises licence holder wrote to the Licensing Authority and part of that letter stated that in their opinion the plans they had for the premises did not fall outside the terms of their licence.

On 8th June a member of the Licensing Team visited the premises and witnessed live music being played which concluded at 12.05 am.

On 13th June the Licensing Authority wrote to the Premises Licence Holder and advised them of the visit and requested a response to that letter.

On 18th June the premises licence holder again wrote to the Licensing Authority and admitted that the music had been played past 11 pm.

On 4th July a Late Temporary Event Notice (LTEN) was received to allow regulated entertainment until 1 am on 14 July. This was allowed.

On 19th July a Late TEN was submitted to allow licence music at the premises until 1 am on 28th July. The Environmental Health Officer objected to the LTEN and as a result it was refused.

On 8th August a Temporary Event Notice was submitted for Regulated Entertainment for the 24th August until Midnight. This was allowed.

On 18th December the Licensing Authority again wrote to Phillip Pugh and Theresa Brandeberry, the Premises Licence holders, to inform them that music had been witnessed being played on 14th December until 0020 hours.

On the evening of 20th December the Environmental Health Department installed a noise monitoring unit in premises close to the pub. This showed that on that night music was played until 11.40 pm.

Since that time a witness statement has been obtained from a member of the public to support these events.

Despite offering advice to the premises licence holders, Phillip Pugh and Theresa Brandeberry, they continue to breach the law by either playing recorded music or live music after 11 pm.

The Licensing Authority therefore now seeks a review of the licence.

10. Summary of Application

The current licence (appendix 26 and 27 plan) authorises:

Sale of Alcohol Monday-Thursday: 12:00 - 00:00
 Friday-Saturday: 12:00 - 01:00
 Sunday: 12:00 - 23:00

Non standard Timings
 Christmas Eve: 12:00-01:00
 New Year's Eve: 12:00-02:00

Summary of Representations

- Two (2) Representations received from other Responsible Authorities (the Police and Environmental Health). (Appendix 12 & 13)
- Five (5) Representations received from Interested Parties (Appendix 15)

Whilst a number of letters of support have been received in relation to the premises they failed to meet the criteria to form a representation. Relevant representations are those that: relate to one or more of the licensing objectives; have not been withdrawn; and are made by the premises licence holder, a responsible authority or an interested party (who is not also a responsible authority).

11. Key Considerations

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

The licensing objectives are:

- The prevention of crime and disorder,
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

12. Community Impact

The granting of the licence as applied for may have an impact on the Community.

13. Equality and Human Rights

No implications have been identified.

14. Financial Implications

There are unlikely to be any financial implications at this time to the authority.

15. Legal Implications

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

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.

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.

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'. (Since the stated case, amendments have been enacted to the Licensing Act which replace the word necessary with appropriate. Members will need to give due consideration to the intended meaning of this change and give weight to the difference as they see fit. Whilst the wording of the judge cannot be altered, it may be useful for Members to read the advice by replacing the words necessary and proportionate with appropriate).

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

The Decision

The Act states that:

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

Right of Appeal

Schedule 5 gives a right of appeal which states:

Review of premises licence

- 8 (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.
- (2) An appeal may be made against that decision by—
 - (a) the applicant for the review,
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in relation to the application.
- (3) In sub-paragraph (2) "relevant representations" has the meaning given in section 52(7).

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.

16. Risk Management

No risks have been identified

17. Consultees

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

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.

The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days.

The notice was also displayed at the offices of the Licensing Authority at Blueschool House, Hereford.

A copy of the Review Application was also available to be viewed on the Herefordshire Council Website.

18. Appendices

1. Review Application Form (p21)
2. Warning letter from the authority dated 28th September 2012 (p27)
3. Warning letter from the authority dated 21st November 2012 (p28)
4. Warning letter from the authority dated 31st May 2013 (p29)
5. Warning letter from the authority dated 13th June 2013 (p31)
6. Warning letter from the authority dated 18th December 2013 (p33)
7. Letter from premises licence holder dated 04th June 2013 (p35)
8. Letter from the premises licence holder dated 18th June 2013 (p37)
9. Copy of Temporary Event Notice (TEN) for 13th - 14th July 2013 (p39)
10. Copy of refused Late Temporary Event Notice of 19th July 2013 (p45)
11. Copy of TEN for 24th August a Temporary Event Notice 2013 (p53)
12. Copy of Police Representation (p63)
13. Copy of Environmental Health Representation (p67)
14. Copy of Licence Holder Representation (p71)
15. Copy of Interested Parties Representations (p73)
16. Copy of Civil Statement (p83)
17. Copy of Live Music Log for Yew Tree Inn exhibit (p86)
18. Copy of log of visits on 08.06.13 and 29.03.14 (p87)
19. EHO Report 1 and log (p89)
20. EHO Report 2 and log (p93)
21. Noise Monitoring Recording (To be played at hearing)
22. Activity Comparison timeline (p97)
23. Copy of Planning Dept. comment and letter re use of marquee (p101)
24. Copy of e-mailed complaint 22.06.2013 (p103)
25. Copy of complaint from Parish Council (p105)
26. Copy of current Premises Licence (p107)
27. Location and premises plans (p113)
28. Live Music Act 2012 and guidance (p116)

19. 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.

Background Information

HEREFORDSHIRE COUNCIL LICENSING POLICY states;

Section 18: Summary

This section explains who can call for a review of a premises licence and that The Licensing Authority will have expected the premises licence holder to have been consulted prior to the review being called. This section also deals with the action that the authority will take in respect of test purchases.

18 REVIEWS AND COMPLAINTS ABOUT LICENSED PREMISES.

- 18.1** Reviews represent a key protection for the community. Where the licensing authority considers action necessary under its statutory powers it will take necessary steps to support the licensing objectives.
- 18.2** If a premise has an existing licence, a responsible authority or an interested party may apply to the Licensing Authority for a review of a Premises Licence or Club Premises Certificate. Once a review application has been lodged with the Licensing Authority any other responsible authority or interested party may make representations (within the legal deadline) to the Licensing Authority in relation to the premises. The licence holder of the premises may make representations against the review application. Review applications and subsequent representations can only be made on the grounds of one or more of the licensing objectives.
- 18.3** Review applications will be heard by the Licensing Authority's Licensing Committee or Licensing Sub-Committee, who will determine the outcome of the Licence/Certificate after hearing and considering the application and the representations for and against it. Each case will be decided on its own merits, and the Licensing Authority may take several courses of action (e.g. take no action, revoke the licence, reduce the licensed hours etc) in accordance with the Act.

Guidance issued under Section 182 of The Licensing Act 2003 (relevant Sections)

11. Reviews

The review process

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.
- 11.9 Representations must be made 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. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.
- 11.10 Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply

for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.18 However, where responsible authorities such as the police or environmental health Officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 11.19 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
 - suspend the licence for a period not exceeding three months;
 - revoke the licence.
- 11.20 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.
- 11.21 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.
- 11.22 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to

three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.