

<b>MEETING:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>DATE:</b>	<b>8 JANUARY 2015</b>
<b>TITLE OF REPORT:</b>	<b>APPLICATION FOR GRANT OF A PREMISES LICENCE IN RESPECT OF SUPERSAM, 141-143 EIGN STREET, HEREFORD, HR4 0AJ – LICENSING ACT 2003</b>
<b>REPORT BY:</b>	<b>LICENSING OFFICER</b>

### **1. Classification**

Open

### **2. Key Decision**

This is not an executive decision

### **3. Wards Affected**

St Nicholas Ward

### **4. Purpose**

To consider an application for the grant of a premises licence in respect of SUPERSAM, 141-143 EIGN STREET, HEREFORD, HR4 0AJ

### **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 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.

## **6. Key Points Summary**

- The application requests the granting of a new premises licence for a General Store selling alcohol for consumption off the premises between 8am and 10 pm seven days a week
- Trading Standards have objected outright to the application
- The Police have made representations which have been accepted
- This is the 2nd time that an application has been made for a premises licence, by this applicant trading as Supersam, at these premises. On the previous occasion both the police and trading standards objected to the grant of the licence and the application was withdrawn
- This premises has previously been licensed, however that licence was revoked in 2012 as a result of issues concerning the sale of alcohol to underage persons and supply of illegal (non duty paid) alcohol & tobacco. This matter was appealed to Magistrates court and the decision to revoke the premises licence was upheld.

## **7. Options**

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

- a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003,
- b) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates,
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

## **8. Reasons for Recommendations**

To ensure compliance with the legislation.

## 9. Introduction and Background

### Background Information

Applicant	<b>Heman JAMAL</b> <b>Supersam 141-143 Eign street, Hereford HR4 0AJ</b>	
Solicitor	<b>Patrick Burke</b> <b>PMB Licensing – Agent for the Applicant</b>	
Type of application: <b>New</b>	Date received: <b>12<sup>th</sup> November 2014</b>	28 Days consultation ended <b>10<sup>th</sup> December 2014</b>

## 10. Licence Application

The application for a new premises licence has received representation/objection and is brought before the committee for determination.

## 11. Summary of Application

The application requests the following licensable activities:

Sale/Supply of alcohol 0800 – 2200 daily  
(For consumption off the premises)

## 12. Summary of Representations

A copy of the representations can be found within the background papers.

Representations have been made by:

**Two (2) of the Responsible Authorities (Police, Trading Standards)**

**Trading Standards object to the application.**

**The Police representations have been accepted.**

## 13. Additional Information Requested

In order to clarify certain matters the Licensing Authority in accordance with Regulation 7(1)(d) have requested the following:

The Licensing Authority shall require documentary evidence to show that the applicant is the current owner of the premises OR documentary evidence to show that the applicant currently holds the lease for the premises. The lease shall also show from whom the premises are leased.

## **14. Key Considerations**

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

## **15. Equality and Human Rights**

No implications have been identified.

## **16. Financial Implications**

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

## **17. Community Impact**

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

## **18. Legal Implications**

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.

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'.

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

## **19. Right of Appeal**

Schedule 5 gives a right of appeal which states:

Schedule 5 gives a right of appeal to: -

Rejection of applications relating to premises licences

1 Where a licensing authority—

- (a) rejects an application for a premises licence under section 18,
- (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
- (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
- (d) rejects an application to transfer a premises licence under section 44,  
the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2(1) This paragraph applies where a licensing authority grants a premises licence under section 18.

(2) The holder of the licence may appeal against any decision—

(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or

(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

(3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) “relevant representations” has the meaning given in section 18(6).

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.

## **20. 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. In addition, notice of the application was required to be published in a newspaper which was circulated within the vicinity of the premises.

The applicant has produced a copy of the advertisement which is correct.

## **21. Risk Management**

No risk identified

## **22. Appendices**

- a. Application Form received 12.11.2014
- b. Trading Standards Representation 03.12.14
- c. Police Representation 09.12.2014 and applicant agreement 11.12.14
- d. Application form from June 2014
- e. Trading Standards Representation 23.06.14
- f. Police Representation 20.06.14
- g. European Fresh Foods premises licence
- h. European Fresh Food expedited review Application 06.08.2012
- i. European Fresh Food Review – decision notice 14.08.2012

## **23. Background Papers**

Background papers are available for inspection in Committee Room 1, Shirehall, Hereford, HR1 2HX 30 minutes before the start of the hearing.