

Meeting:	Regulatory Sub-Committee
Meeting date:	1st OCTOBER 2015
Title of report:	TO CONSIDER AN APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF 'THE MONUMENT, WHITECROSS ROAD, HEREFORD, HR4 0LT' – LICENSING ACT 2003.
Report by:	LICENSING OFFICER

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Whitecross

Purpose

To consider an application for a new premises licence in respect of 'The Monument, Whitecross Road, Hereford, HR4 0LT.

Recommendation

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.

Options

1. 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,
 - c) 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,
 - d) To exclude from the scope of the licence any of the licensable activities to which the application relates,
 - e) To refuse to specify a person in the licence as the premise supervisor, or
 - f) To reject the application.
 - g) Adjourn the matter, to a set date, if the committee feel that to do so would be in the public interest

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

3. Licence Application

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

4. The details of the application are:

Applicant	Greene King Brewing & Retailing Ltd Westgate Brewery, Bury St Edmunds, Suffolk, IP33 1QT	
Solicitor	N/K	
Type of application: New	Date received: 14th August 2015	28 Days consultation ended 11th September 2015

5. Summary of Application

The application requests a new premises licence to allow the following licensable activities, during the hours shown as follows:

Films, Live Music, Recorded Music, Performance of Dance, Anything of a similar description to Films, Live & Recorded Music (Indoor & Out)

Monday to Tuesday 11:00 – 23:00

Wednesday to Sunday 11:00 – 00:00

Late Night Refreshment (Indoors & Out)

Wednesday to Sunday 23:00 – 00:00

Sale/Supply of alcohol (On & Off Premises)

Monday to Tuesday 11:00 – 23:00

Wednesday to Sunday 11:00 – 00:00

Hours premises open to the public

Monday to Tuesday 11:00 – 23:40

Wednesday to Sunday 11:00 – 00:40

Non Standard Timings:

Christmas Eve, Christmas Day, Boxing Day, New Year's Day, Springs & August Bank Holiday, Good Friday, Easter Saturday, Easter Sunday, St Patrick's Day and St. George's Day. Proceeding and preceding day before a Bank Holiday – one extra hour.

New Year's Eve from the beginning of permitted hours on New Year's Eve to the end of permitted hours on New Year's Day.

The premises is currently licensed under a premises licence as follows:

Films

Monday to Saturday until 23.30

A performance of live music;

Monday - Sunday 1100 - 2300

Any playing of recorded music; Dancing; Other regulated entertainment

Monday - Tuesday 1100-2300

Wednesday - Sunday 1100 – 0000

Provision of late night refreshment

Wednesday-Sunday: 23:00 - 00:00

Sale by retail of alcohol

Monday-Tuesday: 11:00 - 23:00

Wednesday-Sunday: 11:00 - 00:00

Non Standard Timings:

Christmas Eve, Christmas Day, Boxing Day, New Years Day, Spring and August Bank Holidays, Good Friday, Easter Saturday, Easter Sunday, Easter Monday, St. Patricks Day, and St. Georges Day, Proceeding and Preceding Day before a Bank Holiday - One Extra Hour

Any other public declared holiday One Extra Hour

New year's eve from the beginning of permitted hours on new year's eve to the end of permitted hours on new year's day.

6. **Summary of Representations**

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

Representations have been made by:

Three (3) of the Responsible Authorities (**Police, Environmental Health and Trading Standards**)

The representations by the police have been agreed. The trading standard conditions and Environmental Health conditions are still not agreed.

One (1) representation has been made by a member of the public.

7. The matter is therefore brought before Committee for determination.

Community Impact

8. Any decision is unlikely to have any impact on the local community.

Equality duty

9. There are no equality or human rights issues in relation to the content of this report.

Financial implications

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

Legal Implications

11. 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.

Right of Appeal

12. Schedule 5 gives a right of appeal which states:
- 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.

Risk Management

14. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court.

Consultees

13. All responsible authorities and members of the public living within Herefordshire.

Appendices

- a. Application Form
- b. Police Representation
- c. Environmental Health Representation
- d. Representation by a member of the public
- e. Trading Standards Representation
- f. Summary of agreed conditions and outstanding conditions still not agreed.

Background Papers

None.

