

<b>Meeting:</b>	<b>REGULATORY SUB-COMMITTEE</b>
<b>Meeting date:</b>	<b>25<sup>th</sup> January 2016</b>
<b>Title of report:</b>	<b>TO CONSIDER AN APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF: THE ROYAL OAK HOTEL, SOUTH STREET, LEOMINSTER. HR6 8JA - LICENSING ACT 2003</b>
<b>Report by:</b>	<b>LICENSING OFFICER</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Leominster

## **Purpose**

To consider an application for a new premises licence in respect of The Royal Oak Hotel, South Street, Leominster, HR6 8JA.

## **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,



Performance of Dance (Indoors) (Further details ~ Bar 44, Main Bar, Function Room)	All days	09.00 – 00.00
Late Night Refreshment (In & Outdoors) (Further details ~ Outdoor Smoke Area : Drink will be served from the main bar, Bar 44, Function Room, Restaurant)	All days	23.00 – 00.00
Supply of alcohol (On & Off premises)	All days	09.00 – 00.00
Non Standard Timings: Live Music – Bank Holidays, Christmas Eve, Boxing Day, New Year’s Eve 09.00 – 01.00		

6. **Additional Information**

The premises have previously been licensed but had its licence revoked on 13<sup>th</sup> August 2015 following an expedited review of the premises licence. The old licence authorised the following:

A performance of live music; Any playing of recorded music;; Other entertainment facilities; Sale by retail of alcohol

Monday-Thursday: 09:00 - 23:30  
Friday-Saturday: 09:00 - 01:00  
Sunday: 09:00 - 00:00

Provision of facilities for Dancing; Making music

Monday-Thursday: 09:00 - 23:30  
Friday-Saturday: 09:00 – 01:00  
Sunday: 09:00 - 00:00

Provision of late night refreshment

Monday-Thursday: 23:00 - 23:30  
Friday-Saturday: 23:00 - 01:00  
Sunday: 23:00 - 00:00

Non standard timings: All of the above  
On the Sunday before a Bank Holiday Monday until 01.00.

Non Standard Timings:  
From the beginning of permitted hours on New Year’s Eve to the end of permitted hours on New Year’s Day.

7. This matter appeared before this Committee on 30<sup>th</sup> October 2015 when the matter was adjourned until today. (A copy of the Decision Notice is attached).

8. **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 [EHO] and the Licensing Authority)**

The representations made by the EHO and the Licensing Authority requested various conditions be placed on the licence which the applicant has agreed to. The

representations have now been withdrawn.

The representation made by the police requested a number of conditions be attached to the licence which was agreed by the applicant. The police also objected to the proposed designated premises supervisor (DPS) who is the applicant Charmain Brooke.

Following correspondence received from the applicant and the owner of the premises Russell Stevens the police have objected to the licence in its entirety.

There has been One (1) representation made by a Residents Association and One(1) representation was received from a member of the public which was out of time.

9. The matter appeared before this committee on 30<sup>th</sup> November when it was adjourned in the public interest, until 14<sup>th</sup> December, to address issues in respect of fire safety and the CCTV system.
10. The matter came before the Committee again on 14<sup>th</sup> December for determination. However the matter was further adjourned until today to address the previous issues in respect of fire safety and CCTV

## **Community Impact**

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

## **Equality duty**

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

## **Financial implications**

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

## **Legal Implications**

14. 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

15. 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

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

## Consultees

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

## Appendices

- a. Application Form
- b. Police Representation
- c. Amended Police Representation
- d. Responsible Authority Representation
- e. Fire Safety Enforcement Notice
- f. Representation from the residents association
- g. Evidence from the residents association
- g. Correspondence from the premises owner

- h. Correspondence from applicant
- j. Decision Notice (30<sup>th</sup> October 2015)
- k. Decision Notice (14<sup>th</sup> December 2015)

## **Background Papers**

None.