

Meeting:	Regulatory Sub-Committee
Meeting date:	1st June 2016
Title of report:	APPLICATION FOR A NEW PREMISES LICENCE IN RESPECT OF 'KUBUS POLSKI SKLEP, 22 EIGN GATE, HEREFORD, HR4 0AB' – LICENSING ACT 2003
Report by:	FRED SPRIGGS - LICENSING OFFICER

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Central

Purpose

To consider an application for a new premises licence in respect of the 'Kubus Polski Sklep, 22 Eign Gate, Hereford, HR4 0AB'.

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 Statement of Licensing Policy 2015 - 2020.

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.

Reasons for Recommendations

- 2. Ensures compliance with the Licensing Act 2003.

Key Considerations

3. Licence Application

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

Summary of Application

- 4. The details of the application are:

Applicant	Agnieszka Gizak 22 Eign Gate, Hereford, HR4 0AB	
Solicitor	N/K	
Type of application: New	Date received: 7th April 2016	28 Days consultation ended 4th May 2016

- 5 The application requests that:
Supply of Alcohol (Off premsies)
0800 – 2200 All days

Non Standard Timings: None

Summary of Representations

- 6. **Two (2)** Representations has been received from the Responsible Authorities (Trading Standards and the Police). The police object to the licence being granted and Trading Standards have requested conditions which have not been agreed. The representations can be found at appendix b & c.

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:

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).

Risk Management

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

Consultees

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

Appendices

- a. Application Form
- b. Police Representation
- c. Trading Standards Representation

Background Papers

None.