

Meeting:	Regulatory sub-committee
Meeting date:	23 January 2016
Title of report:	Review of a premises licence in respect of: Hereford Express, 54 Folly Lane, Hereford, HR1 1LX - Licensing Act 2003
Report by:	Licensing officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Tupsley

Purpose

To consider an application for review of a premises licence in respect of: 'Hereford Express, 54 Folly Lane, Hereford, HR1 1LX' called by Herefordshire Council trading standards (appendix A).

Recommendation

THAT:

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 police application for the review,
- The guidance issued to local authorities under the Licensing Act 2003, and
- The Herefordshire Council licensing policy.

Options

1. There are a number of options open to the 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; and
 - the revocation of the licence.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

3. The licensing authority must take into account any relevant representations made. 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 - have not been withdrawn; and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

Applicant	Herefordshire Council – Trading Standards	
	Represented by: - Leah Wilson	
Premise Licence Holder	Sivatharsini Somasundaram	
	54 Folly Lane, Hereford, HR1 1LX	
Solicitor	N/K	
Type of application:	Date received:	End of 28 day period
Review	25/11/2016	22/12/2016

4. The application for the review has received representation from West Mercia Police (appendix B) and trading standards (appendix C).
5. Copies of the application were sent to the premise licence holder and responsible authorities.
6. The trading standards grounds for the review are:

Sale of age restricted goods to children.
7. The supporting information states:

“During the course of an operation run by trading standards on 25th October 2016, XXXXXXXXXXXXXXXXXXXXXXXXXXXX did sell age restricted products to two underage volunteers who were in fact sixteen years old. Namely one pouch of Cutter’s Choice hand rolled tobacco, a can of Scrumpy Jacks and a bottle of Blossom Hill Wine. This

contravenes the Licensing Act 2003 and also the The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015.

The seller mentioned above was interviewed at the time of sale and evidence gathered showed that XXXXXXXX had no regard to the challenge 25 policy that he was aware of. He hadn't received adequate training from the DPS nor was he aware of the condition regarding a refusals register.

We had received complaints regarding this premises that they were selling age restricted products to children. When interviewed under caution, XXXXXX told me that he had been visited (that same week) by a college lecturer and advised that college student were being sold tobacco and alcohol products. But Mr XXXXX did not ID either of the volunteers.

Giving the location of the premises being in close proximity to the college, it is the opinion of the service area that the licence to sell alcohol be revoked to prevent further sales in order to protect children from harm.

The sales show the DPS does not have control of the premises.

Herefordshire Council Licensing Policy states that any premises failing a test purchase will be reviewed."

Current Licence

8. The current licence authorises the following licensable activities during the hours shown: -

Sale/Supply of Alcohol On weekdays, other than Christmas Day, 8am to 11pm
 On Sundays, other than Christmas Day, 10am. to 10.30 pm
 On Christmas Day, 12 noon to 3pm and 7pm to 10.30pm
 On Good Friday, 8am to 10.30pm

Community Impact

9. Any decision is unlikely to have any significant effect of the local community.

Equality duty

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

Financial implications

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

Legal Implications

12. An appeal may be made within 21 days to the Magistrates Court by the police or the licence holder once notified of the licensing authority's decision.
13. The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

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.
15. 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.
16. 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.
17. 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.
18. 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'.
19. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Risk Management

15. There is little risk associated with the decision at this time as the legislation allows representation to be made against the interim steps.

Consultees

16. Copies of the application and certificate have been sent to the responsible authorities. A notice has been displayed at the premises, at the offices of the licensing authority and details have been shown on the council website.

Appendices

Appendix A - Application for review
Appendix B - West Mercia police representation
Appendix C - Trading standards representation

Background Papers

None