

Meeting:	Licensing sub-committee
Meeting date:	Wednesday 30 May 2018
Title of report:	Review of a premise licence in respect of Sweet Chilli, 16-17 Bridge Street, Hereford. HR4 9DF – Licensing Act 2003
Report by:	Licensing technical officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Central

Purpose

To consider an application for a review of a premise licence in respect of Sweet Chilli, 16-17 Bridge Street, Hereford. HR4 9DF called by Herefordshire Council as the Licensing Authority.

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 committee in relation to the review:
 - The modification of the conditions of the premises licence;
 - The exclusion of any licensable activities 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
2. Where the authority takes a step mentioned in bullet point 1 and 2 above it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.
3. Alternatively it is open to the licensing authority to determine that no action is required to promote the licensing objectives or issue an informal warning in writing to the licence holder and/or to recommend improvement within a specified period of time.

Reasons for Recommendations

4. Ensures compliance with the Licensing Act 2003.

Key Considerations

5. 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 - have not been withdrawn; and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
6. The details of the application are:

Applicant	Herefordshire Council as the Licensing Authority Fred Spriggs – Licensing Officer	
Solicitor	Not applicable	
Type of application: Review	Date received: 6 April 2018	28 Days consultation ended 4 May 2018

7. The application for the review is attached (appendix 1)
8. Copies of the application were sent to the premise licence holder and responsible authorities.

9. In brief the licensing authority's grounds for the review are:

The premises continues to operate without a Designated Premises Supervisor and despite intervention from the Licensing Authority and Police continued to do so. Further additional supporting information has been provided by the licensing authority contained within their application at page 4 and 5.

Premises History

10. The premises was first licensed in September 2009 as an Indian Restaurant called Cinnamon Club for late night refreshment and sale/supply of alcohol
11. An application was received to transfer the licence and vary the designated supervisor at the premises into the name of Abtal Hussain in August 2013. This was granted on 21 August 2013 with a new premise name of Sweet Chilli.
12. On 14 July 2017 a joint enforcement operation involving West Mercia Police was undertaken.
13. One of the workers at the restaurant was found to be an illegal immigrant and was detained.
14. As a result the police launched a review on 21 July 2017 (Appendix 2)
15. A review hearing was heard on 11 September 2017 and the decision of the licensing sub-committee was to impose an added condition to the licence.
16. The condition reads: The premises licence holder shall engage the services of an immigration advisor, as agreed in writing with the licensing authority, who shall undertake a review of all existing employees at the premises to check entitlement to live and work in the UK and thereafter independently verify prospective employees' right to live and work in the UK prior to the employee being engaged to work at the premises.

Current Licence

17. The current licence (appendix 3) authorises the following licensable activities during the hours shown:

Late Night Refreshment:
Monday to Sunday: 23:00-01:00

Sale by retail of alcohol:
Monday to Sunday: 12:00-01:00

Non- Standard Timings: None, Seasonal variations: None

18. The licence is also subject to a number of conditions.

Circumstances leading to the review

19. The Licensing Authority were made aware on 12 January 2018 that the premises known as Sweet Chilli had changed hands and that Mr Abtal Hussain ceased to be the licence holder.

20. As a result the Licensing Authority contacted the premises by email advising of the need to transfer.
21. West Mercia police were made aware that the premises no longer had a designated premises supervisor.
22. As a result the police visited the premises and gave a gentleman known as Mr Ahmed the necessary papers for transfer.
23. The police went back to the premises at 1845 hrs on 18 February and served a Section 19 Closure Notice on Mr Ahmed as the premises were open and serving alcohol (appendix 4)
24. The Licensing Authority contacted Mr Ahmed and advised him that he needed to submit an application for transfer and change of DPS.
25. He informed us on 22 February that he had done this.
26. Upon checking it was found that he had submitted an application for a personal licence. We were unable to accept this application as he does not live in Herefordshire.
27. On 24 March West Mercia Police again attend the premises where they found that alcohol was still being sold. As a result they served a further Section 19 Closure Notice on Mr Ahmed (appendix 5)
28. As a result of the second closure notice, on 28 March the Licensing Authority emailed Mr Ahmed to advise him that we on 4 separate occasions we had sent him the forms to complete in respect of the transfer and change of DPS and still no application had been received. He was advised that if no application to transfer and change of DPS was received by 4th April the Licensing Authority would launch a review of the licence.
29. On 28 March the Licensing Authority received an application for the grant of a new premises licence from Mr Ahmed. The application was rejected as it failed to comply with legislation. The applicant and West Mercia Police were advised that the application was rejected.
30. West Mercia Police made a further visit to the premises on 30 March at 2015 hrs and the premises appeared to be selling alcohol. Alcohol menus were displayed and two glasses containing what is believed to be wine was on the tables. Male was advised to stop selling alcohol immediately.
31. On 4 April the Licensing Authority rejected a further application to grant a premises licence from Mr Ahmed as it still failed to comply with legislation. Mr Ahmed was again notified by email and advised of the steps needed to complete the forms correctly.
32. In total the applicant (Mr Ahmed) has been given help and advice on 8 (eight) occasions.
33. As a result, this review was launched.

Summary of Representations

34. Two (2) representations have been received from the responsible authorities from West Mercia Police (Appendix 6) and Trading Standards (Appendix 7).

35. No other representations have been received.

Community Impact

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

Equality duty

37. There are no equality issues in relation to the content of this report.
38. This report has human rights implications for both the premises licence holder and the residents from the local neighbourhood. Any of the steps outlined in section 1 of this report may have financial implications for a licensee's business and livelihood and/or may have impact upon the day to day lives of residents living in close proximity to the premises.
39. Article 8(i) of the European Convention of Human Rights provides that everyone has the right to respect for his/her private and family life and his/her home (which includes business premises). This right may be interfered with by the council on a number of grounds including the protection of rights and freedoms of others. The First Protocol – Article 1 – also provides that every person is entitled to the peaceful enjoyment of his possessions and shall not be deprived of his possessions except in the public interest and conditions provided for by law. Members must accordingly make a decision which is proportionate to the hearing and endeavour to find a balance between the rights of the applicant, residents and the community as a whole.

Financial implications

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

Legal Implications

41. The licensing authority must have regard to the promotion of the four licensing objectives namely; the prevention of crime and disorder; public safety; the prevention of public nuisance; and the protection of children from harm in exercising its functions under the Licensing Act 2003. Further regard should be had to the statutory guidance under Section 182 of the Act and the Council's own statement of licensing policy. The options available to the licensing authority are set out in section 1 of this report.
42. 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.
43. 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.

44. 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

45. Schedule 5 gives a right of appeal which states:

An appeal may be made within 21 days to the Magistrates Court by the police or any person who has made a relevant representation and also by the premises licence holder once notified of the licensing authority's decision.

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.

Risk Management

46. There is little risk associated with the decision at this time as the legislation allows a right of appeal to the Magistrates Court within a period of 21 days of being notified of the decision in writing.

Consultees

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

Appendices

- Appendix 1 Review Application Form
- Appendix 2 Previous Review Application submitted by West Mercia Police
- Appendix 3 Current Premise Licence
- Appendix 4 Section 19 served by West Mercia Police on 18.02.18
- Appendix 5 Section 19 served by West Mercia Police on 24.03.18
- Appendix 6 West Mercia Police Representation
- Appendix 7 Trading Standards Representation

Background Papers

None.