

<b>Meeting:</b>	<b>Licensing sub-committee</b>
<b>Meeting date:</b>	<b>Wednesday 30 May 2018</b>
<b>Title of report:</b>	<b>Review of a premise licence in respect of 9+9 Cantonese Takeaway (also known as Spice Minster), 102 Widemarsh Street, Hereford. HR4 9HG– Licensing Act 2003</b>
<b>Report by:</b>	<b>Licensing technical officer</b>

## Classification

### Open

Report and Appendices 1 to 5.

### Exempt

Appendix 6 is exempt by virtue of paragraphs 1 and 2 of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A Local Government Act 1972, as amended

## Key Decision

This is not an executive decision.

## Wards Affected

Widemarsh

## Purpose

To consider an application for a review of a premise licence in respect of 9+9 Cantonese Takeaway (also known as Spice Minster), 102 Widemarsh Street, Hereford. HR4 9HG called by Police Sergeant 3456 Reynolds of West Mercia Police

## 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	Police Sergeant 3456 Reynolds of West Mercia Police	
Solicitor	Not applicable	
Type of application: <b>Review</b>	Date received: 18 April 2018	28 Days consultation ended 15 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 West Mercia Police's grounds for the review are:

The premises were subject to a visit from multiple agencies and one (1) person was found to be working at the premises and were in the UK with no right to stay or work.

#### Premises History

10. The premises were first licensed in January 2006 as a Cantonese takeaway for late night refreshment. Since it has been licensed, there have been no changes.
11. The Licensing Authority were made aware in June 2010 that the premises may have changed hands and that Mrs YUEH HWA LEE ceased to be the licence holder. As a result, the Licensing Authority sent a letter to Mrs Lee (appendix 2).
12. An application to transfer the premise licence was not received.
13. The Licensing Authority were made aware in February 2016 that the premises may have changed hands and premise name and that Mrs YUEH HWA LEE ceased to be the licence holder. As a result, the Licensing Authority sent a letter to Spice Minister (appendix 3).
14. An application to transfer the premise licence was not received.
15. The premises is now known as Spice Minister and it is believed to have a new owner.
16. The premise licence is has been suspended since February 2014 due to non-payment of annual fees.

#### Current Licence

17. The current licence (appendix 4) authorises the following licensable activities during the hours shown:

##### Late Night Refreshment:

Monday-Thursday, Sunday: 16:00 - 01:00

Friday-Saturday: 16:00 – 01:30

Non Standard Hours

Non standard timings: None

Seasonal variations: None

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

### **Circumstances leading to the review**

19. As part of a pre-planned intelligence lead operation a joint Multi Agency Targeted Enforcement day of action took place on Saturday 07 April 2018.
20. At 1716hrs the group visited 9 + 9 Cantonese Takeaway in Widemarsh Street, Hereford. This premises is licensed in this name for late night refreshment, however it is commonly known as Spice Minister.
21. The premises were open to the public. On entering and making their way to the kitchen area, two males were seen to run out of the rear. After a short chase both were detained. Both are Bangladeshi nationals and both admitted to working at the premises. One of the

males detained was arrested as he had no right to be in the country. He is an illegal immigrant - it was further established that he had been detained at the premises in October 2017 in similar circumstances. At that time the detained male appealed the decision - however this appeal was refused. The second male who ran away is subject to an ongoing asylum claim.

22. As a result, this review was launched.

## **Summary of Representations**

23. No accepted representations have been received from other responsible authorities or members of the public.
24. One comment was received from Hereford Town Council (Appendix 5).
25. A statement from the UK Border Agency in connection with the enforcement visit is attached at Appendix 6.

## **Community Impact**

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

## **Equality duty**

27. There are no equality issues in relation to the content of this report.
28. 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.
29. 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**

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

## **Legal Implications**

31. 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.

32. 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.
33. 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.
34. 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.
35. 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'.
36. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## **Right of Appeal**

37. 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**

38. 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**

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

## **Appendices**

- Appendix 1 Application for Review  
Appendix 2 Need to Transfer Letter 02.06.2010  
Appendix 3. Need to Transfer Letter 17.02.2016  
Appendix 4. Current premises licence

- Appendix 5. Hereford Town Council Comment  
Appendix 6. Exempt – Statement from UK Border Agency

## **Background Papers**

None.