

<b>Meeting:</b>	<b>Licensing sub-committee</b>
<b>Meeting date:</b>	<b>21 January 2019</b>
<b>Title of report:</b>	<b>Application for a new premises licence in respect of 'Forge Filling Station, Wormbridge, Hereford. HR2 9DH' – Licensing Act 2003</b>
<b>Report by:</b>	<b>Licensing Technical Officer</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Wormside

## **Purpose**

To consider an application for a new premises licence in respect of 'Forge Filling Station, Wormbridge, Hereford. HR2 9DH'.

## **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,

- b) Grant the licence subject to modified conditions to that of the operating schedule where the sub-committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

## Reasons for Recommendations

- 2. Ensures compliance with the Licensing Act 2003.

## Key Considerations

### Licence Application

- 3. The application for a grant of the premises licence has received representation and is brought before the sub committee for determination.
- 4. The details of the application are:

Applicant	Karl Hawkins Forge Filling Station, Wormbridge, Hereford. HR2 9DH	
Solicitor	Not applicable	
Type of application: New	Date received: 27 November 2018	28 Days consultation ended 24 December 2018

### 5. Summary of Application

The application (appendix 1) requests a new premises licence to allow the following licensable activities, during the hours shown as follows:

Sale/Supply of Alcohol (consumption off the premises)  
Monday – Saturday 08:00 – 21:30  
Sunday 10:00 – 21:30

### Summary of Representations

- 7. Two (2) representations have been received from the responsible authorities (local authority and trading standards).

8. The local authority has objected (appendix 2) to the licence.
9. Trading standards have made representations that have not been agreed by the applicant (appendix 3).
10. Goods vs Fuel sales from May 2018 – November 2018 has been submitted by the applicant (appendix 4) along with a petition of support (appendix 5).

## **Community Impact**

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

## **Equality duty**

12. There are no equality issues in relation to the content of this report.
13. 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.
14. 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**

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

## **Legal Implications**

16. As relevant representations have been received, the sub committee must determine the application under Section 3.5.7 (c) of the Herefordshire Council constitution. The representations must relate to the licensing objectives and the sub committee must determine the likely effect of the grant of the premises licences on the promotion of the licensing objectives.
17. 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.
18. The sub committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

19. 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.

20. 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.
21. 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'.

22. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.
23. The sub committee should also be aware of the stated case of R (on application of Murco Petroleum Ltd) v Bristol City Council [2010] EWHC 1992 (Admin). In this case it was summed up that:
- Responsible Authorities should be encouraged by this case to ask applicants to provide further information they believe will help them understand the application more fully. If that information is not provided by the applicant, Responsible Authorities can make representations to licensing committees who have the power to require that the request is met.
- Mr Justice Cranston said:
- The sub-committee [has the power] to ask a question of a party, where the question is calculated to elicit an answer which will facilitate the function of considering and adjudicating upon the relevant question ..... so as to promote the licensing objectives.

## Right of Appeal

24. 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).

25. Appeals should be made to the Magistrates Court and must be made within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

## **Risk Management**

26. 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**

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

## **Appendices**

Appendix 1 - Application Form  
Appendix 2 - Local Authority Objection  
Appendix 3 - Trading Standards Representation  
Appendix 4 - Goods vs Fuel Sales  
Appendix 5 - Petition of Support

## **Background Papers**

None.