

Meeting:	Licensing sub committee
Meeting date:	7 March 2019
Title of report:	Review of a premises licence in respect of: 'S&S News, 55 Broad Street, Hereford. HR4 9AB called by West Mercia Police - Licensing Act 2003
Report by:	Licensing Technical Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Hereford - Central

Purpose

To consider an application for a review of a premises licence in respect of S&S News, 55 Broad Street, Hereford. HR4 9AB called by West Mercia Police.

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 Licensing Authority's application for the review,**
- **The Guidance issued to local authorities under the Licensing Act 2003,**
- **The representations (including supporting information) presented by all parties, and**
- **The Herefordshire Council Licensing Policy.**

Options

1. There are a number of option open to the sub-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.

Reasons for Recommendations

3. Ensures compliance with the Licensing Act 2003.

Key Considerations

4. 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- have not been withdrawn; and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

5. The details of the application are:

Applicant	Police Sergeant 3456 Duncan Reynolds of West Mercia Police	
Agent	Not applicable	
Type of application: Review	Date received: 17 January 2019	28 Days consultation ended 14 February 2019

Summary of Application

6. The application for the review is attached (appendix 1)
7. Copies of the application were sent to the premise licence holder and Responsible Authorities.
8. In brief West Mercia Police's grounds for the review are:

"Hereford Police are currently tackling alcohol related anti-social behaviour in the general area of Broad Street and Eign Gate, Hereford. As part of this process the police have and are engaging with licensed retail premises in the area to get their co-operation with regards to serving those involved in the issues being addressed. This process includes verbally engaging with the owner and staff at S&S News (licensed in the name of 55 Broad Street, Hereford) and sending letters asking for their support.

However despite these visits and interventions, it is the view of West Mercia Police that that these premises continue to sell alcohol to individuals who are involved in alcohol related anti-social behaviour.

This premises is therefore undermining the licensing objective of the prevention of crime and disorder.”

Premises History

9. The premises was first licensed in November 2013 as a newsagents selling alcohol.
10. On 19 November 2018 an application was received to transfer the premise licence and vary the designated premises supervisor (DPS) from Ramesh Sharma to Mr Mohammed Asher Rashid. These applications were incorrect and were accepted on 7 December 2018.
11. The licence was issued on 21 December 2018.
12. A transfer consent form was received from Mr Rashid on 1 February 2019 consenting to transfer the premise licence to Irfan Sagar, we have not receive the transfer application or £23 fee.

Current Licence

13. The current licence (appendix 2) authorises the following licensable activities during the hours shown:

Supply/Sale of Alcohol (for consumption off the premises)

Monday – Saturday 06:00 – 22:00

Sunday – 09:00 – 22:00

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

Circumstances leading to the review

15. For a number of months, the general area of Eign Gate and its surrounding streets have been subject to an on-going policing operation to tackle alcohol related anti-social behaviour. The vast majority of those involved are known individuals who have drug, alcohol and mental health issues. They gather most days from about 1000hrs up to 1800hrs, are known to drink alcohol purchased from local shops and as the day goes on, become involved in ‘disorderly behaviour, which has resulted in arrests, use of Police dispersal powers and other interventions. As part of a process of tackling the supply of alcohol the Police have engaged with local licensed shops to get their co-operation NOT to serve these individuals due to the resulting problems, Visits and letters were delivered to the shop on 30 August 2018 and a further reminder on 30 October 2018. The reminder was sent due to the ongoing problems in the area that could be tracked back to the shop. Further visits to the premises were undertaken on the following dates 1st November 2018, 4th December 2018, 5th December 2018, 20th December 2018, and 15th January 2019. Following the several visits, West Mercia Police’s view is that Mr Rashid is failing to promote the licensing objective of the prevention of crime and disorder and failing to uphold the conditions contained in the premises licence.
16. As a result this review was launched.

Summary of Representations

17. No representations have been received from any of the Responsible Authorities or members of the public.

Community Impact

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

Equality duty

19. 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.
20. 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.
21. There are not considered to be any equalities implications arising from this report.

Financial implications

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

Legal Implications

23. 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.
24. The options available to the licensing authority on considering this application under the Licensing Act 2003 are set out in section 1 of this report.
25. 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.
26. 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.

27. 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. It should be noted that hearsay evidence is admissible in the context of making decisions on licensing matters.
28. 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'.
29. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

30. 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

31. 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

32. All Responsible Authorities and members of the public living within Herefordshire.

Appendices

Appendix 1 - Application for the review of the premises licence
Appendix 2 - Current Premises Licence

Background Papers

None