

Meeting:	Licensing sub-committee
Meeting date:	Thursday 7 March 2019
Title of report:	Application for a review of a premises licence in respect of The Taste of Raj, 67 St Owen Street, Hereford. HR1 2JQ– 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 The Taste of Raj, 67 St Owen Street, Hereford. HR1 2JQ 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.**
- **The application for review**

Options

1. There are a number of option open to the committee in relation to the application:

Further information on the subject of this report is available from
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- modify any of the conditions of the premises licence;
 - exclude any of the licensable activities
 - remove the designated premises supervisor;
 - suspend the licence for a period not exceeding 3 months; and
 - revoke 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 the licensing authority could determine that no action is required to promote the licensing objectives or they could issue an informal warning in writing to the Premises 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 - have not been withdrawn; and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:	Date received:	28 Days consultation ended
Review	11 January 2019	8 February 2019

7. A copy of the application for the review is attached (appendix 1)
8. Copies of the review application were sent to the Premise Licence Holder and responsible authorities.
9. In summary West Mercia Police's grounds for the review are:

The premises were subject to a visit from West Mercia Police and UK Border Agency and two (2) persons were found to be working at the premises who had no right to work or be in the UK.

Premises History

10. The premises was first licensed in July 2005 as a restaurant for Late Night Refreshment. Since it has been licensed, there have been no changes to the licence.

Current Licence

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

Provision of late night refreshment & Sale by retail of alcohol

On weekdays, other than Christmas Day, Good Friday or New Year's Eve from 10 am to 12midnight.

On Sundays, other than Christmas Day or New Year's Eve, and on Good Friday: 12 noon to 11:30pm

On Christmas Day: 12 noon to 11:30pm; for residential licence only from 12 noon to 10.30 with a break of four hours beginning at 3pm.

On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day (or, if there are no permitted hours on the following day, midnight on 31st December).

Circumstances leading to the review

12. As part of a joint partnership, an operation took place on Monday 17 December 2018.
13. At 17:59hrs officers from the UK Border and Immigration Agency, supported by officers from West Mercia Police, attended the premises known as 'The Taste of Raj'. The visit was intelligence lead.
14. The premises were searched and two males were detained as it was established that neither had an entitlement to be in the UK or to work in the UK. Both denied working at the premises, but admitted living above the premises.
15. The employment of illegal immigrants is a serious criminal offence and undermines the licensing objective of the prevention of crime and disorder.
16. As a result, this review was launched.

Summary of Representations

17. Representations have been received from Trading Standards (appendix 3) and West Mercia Police (appendix 4). These have not been agreed and the Premises Licence Holder has failed to engage with the responsible authorities. West Mercia Police have also submitted further information to support their application for review (appendix 5).

Community Impact

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

Equality duty

19. There are no equality issues in relation to the content of this report.
20. 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.
21. 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

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

Legal Implications

23. As an application for a review of the premise licence on grounds relevant to one or more licensing objectives has been received the sub committee must determine this application in accordance with section 3.5.7 (j) of the Herefordshire Council constitution. In determining the application, the sub committee must have regard to the promotion of the licensing objectives
24. The four licensing objectives are 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.
25. 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.
26. 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.
27. 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.

28. 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.
29. 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'.

30. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

31. 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

32. 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

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

Appendices

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| Appendix 1 | Review Application Form |
| Appendix 2 | Current Premise Licence |
| Appendix 3 | Trading Standards Representation |
| Appendix 4 | West Mercia Police Representation |
| Appendix 5 | Further Information received from West Mercia Police |

Background Papers

None.