

<b>Meeting:</b>	<b>Licensing sub-committee</b>
<b>Meeting date:</b>	<b>Thursday 7 March 2019</b>
<b>Title of report:</b>	<b>Application for a review of a premises licence in respect of 'The Ducker, 11 South Street, Leominster. HR6 8JA– Licensing Act 2003</b>
<b>Report by:</b>	<b>Licensing Officer</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Leominster - South

## **Purpose**

To consider an application for a review of a premises licence in respect of The Ducker, 11 South Street, Leominster. HR6 8JA called by Emma Bowell on behalf of 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.**
- **The review application**

## Options

1. There are a number of option open to the committee:
  - 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 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  - have not been withdrawn; and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	Emma Bowell on behalf of the Licensing Authority	
Solicitor	Not applicable	
Type of application:  Review	Date received:  4 January 2019	28 Days consultation ended  1 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, as well as being published on the authority's website and displayed at its offices.

9. In brief the Licensing Authority's grounds for the review are:

On three (3) separate occasions since June 2018, the premise licence holder has failed to comply with the CCTV condition attached to the premises licence despite two (2) warning letters.

### **Premises History**

10. The premises known as 'The Ducker' has been licensed for many years and was also known as 'The Ducking Stool' previously to July 2017.
11. On 25 July 2017 Sian Dale Rooke-Jenkins made application for transfer of the premises licence and change of designated premises supervisor into her name, which was granted.
12. On 26 July 2017 an application was received for a variation of the premises licence.
13. The application received representation and was brought before this committee on 25 September 2017.
14. The variation licence was granted with a number of conditions (see appendix 2). Of particular note is the condition which states:

*CCTV will be provided in the form of a recordable system, capable of providing pictures of EVIDENTIAL QUALITY in all lighting conditions particularly facial recognition. Cameras shall encompass all ingress and egress to the premises, fire exits, outside areas, and all areas where the sale/ supply of alcohol occurs. Equipment MUST be maintained in good working order, be correctly time and date stamped, recordings MUST be kept in date order, numbered sequentially and kept for a period of 31 days and handed to Police on demand. The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format EITHER DISC or VHS to the Police/Local Authority on demand. The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded. In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Police on contact number 101 immediately*

15. Between June and the end of December 2018 West Mercia Police attended the premises on three separate occasions in connection with incidents at the premises and on each occasion they were unable to obtain the CCTV.
16. After the first two incidents the Licensing Authority sent warning letters to the Premises Licence Holder.
17. Following the last breach reported by the police the Licensing Authority launched the review.

### **Current Licence**

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

#### Live Music

Sunday – Thursday 20:00 – 23:00

Friday – Saturday 20:00 – 00:00

#### Recorded Music

Sunday – Thursday 19:00 – 23:00

Friday – Saturday 19:00 – 00:00

#### Late Night Refreshment

Friday – Saturday 23:00 – 00:00

#### Sale/Supply of Alcohol

Sunday – Thursday 11:00 – 00:00

Friday – Saturday 11:00 – 01:00

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

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

20. On 8 June 2018, West Mercia Police attended the premises in connection with an incident that occurred at the premises. The attended on 20 June 2018 to find that the CCTV they required had been recorded over.
21. On 3 July 2018, the Licensing Authority wrote to the Premise Licence Holder, Sian Dale Rooke-Jenkins, regarding the breach of condition with regards to the CCTV (appendix 4).
22. She responded by email on 3 July 2018 apologising for not having an up to date CCTV system and advised that she would be updating the system immediately to one that does provide one (1) months recordings (appendix 5).
23. On 27 July 2018 the Licensing Authority sent a message to members of the HAND Scheme concerning premises not complying with the CCTV condition (appendix 6).
24. The Ducker is a member of the Leominster HAND scheme.
25. Following contact with West Mercia Police on 6 August 2018 they advised that an incident had occurred at about 0050hrs on 29 July 2018. On the night the premises licence holder 'declined' (refused) to allow CCTV to be viewed and/or downloaded, although this was obtained a few days later. It did not show the incident as the camera that would have recorded it was damaged.
26. On 24 August 2018 a further letter was sent to the Premises Licence Holder by the Licensing Authority advising that the police had informed them of the further breach of the CCTV condition. (Appendix 7)

27. The Premises Licence Holder responded by email on 30th August 2018 advising that a £500.00, 8 Camera channel CCTV Swann System with a 355 day recording, had been being installed on 7th August 2018 and was always available to the police. (Appendix 8).
28. On 2 January 2019 West Mercia Police contacted the Licensing Authority with regards to an incident on 30 December 2018 at the premises and the breach of CCTV condition once again.
29. As a result, this review was launched.

### **Summary of Representations**

31. Representations have been received from:

Responsible Authorities - Local Authority (appendix 9) and West Mercia Police (appendix 10).

Other Parties - One (1) accepted representation has been received from the local ward member (appendix 11).

The Local Authority representation has not been agreed. The applicant has also failed to engage with The Licensing Authority during or after the consultation period.

### **Community Impact**

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

### **Equality duty**

33. There are no equality issues in relation to the content of this report.
34. 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.
35. 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**

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

## Legal Implications

37. 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**
38. 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.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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'.
44. 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 Variation to premises licence agreed at licensing sub committee meeting held on 25 September 2017
- Appendix 3 Current Premise Licence
- Appendix 4 Breach of Conditions Letter 03.07.2018
- Appendix 5 Licence Holder Response 03.07.2018
- Appendix 6 Letter to HAND Scheme
- Appendix 7 Breach of Conditions Letter 24.08.2018
- Appendix 8 Licence Holder Response 30.08.2018
- Appendix 9 Local Authority Representation
- Appendix 10. West Mercia Police Representation
- Appendix 11 Other parties representation - Ward Councillor

## **Background Papers**

None.