



Herefordshire Council

Meeting:	Licensing sub committee
Meeting date:	15 March 2019
Title of report:	Application for a variation of a premises licence in respect of: Rubix, 32 Union Street, Hereford. HR1 2BT- Licensing Act 2003
Report by:	Licensing Technical Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Central Ward

Purpose

To consider an application for a variation of a premises licence in respect of Rubix, 32 Union Street, Hereford. HR1 2BT.

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) to modify the conditions of the licence;

(b) to reject the whole or part of the application;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

3. Licence Application

The application (appendix 1) for a variation of the premises licence has received representation and is brought before the sub-committee for determination.

4. The details of the application are:

Applicant	James Smith	
Agent	Not Known	
Type of application: Variation	Date received: 22 January 2019	28 Days consultation ended 18 February 2019

Summary of Application

5. The application (appendix 1) requests a variation to the premises licence as follows:
 - To add an outside bar in the “smoking area” as indicated on the amended plan
 - To vary the last entry time from 01:00 as it is currently to 02:30
6. In addition to this, the application requests to be allowed to remove a condition relating to SIA door staff and replace with a SIA condition that is more flexible.

Premises History

7. Previously the premises has been licensed as Bar Spirit, Shake & Stir and since 20 October 2017 the premises has been known as Rubix:

A variation was received on 8 May 2018 to vary licensable activity timings.

The licence was granted on 14 June 2018 and reads as shown below for the current licence.

Current Licence

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

Live Music, Recorded Music, Sale/Supply of Alcohol

Sunday – Wednesday 11:00 – 01:00

Thursday 11:00 – 02:00

Friday – Saturday 11:00 – 03:45

Late Night Refreshment

Sunday – Wednesday 23:00 – 01:00

Thursday 23:00 – 02:00

Friday – Saturday 23:00 – 03:45

Non Standard Timings

10:00 New Years Eve to the start of permitted hours on the following day.

11:00-03:45 on Friday, Saturday, Sunday and Monday on Easter weekend, Whitson weekend, spring bank holiday, August bank holiday, Christmas Eve, Christmas Day and Boxing Day.

Summary of Representations

9. Two (2) Objections have been received from the Responsible Authorities, West Mercia Police – appendix 3 and Environmental Protection – appendix 4. The applicant has engaged with both responsible authorities and has agreed additional conditions with West Mercia Police (appendix 5).

Community Impact

10. The premises falls within the heart of the Herefordshire Council Cumulative Impact Policy as shown within paragraph A7 of the Special Policy.
11. The cumulative impact policy creates a rebuttal presumption that all applications will be refused unless it can be shown that by granting the licence there will be no adverse effect on the promotion of the licensing objectives.

Equality duty

12. 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.
13. 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.
14. There are not considered to be any equalities implications arising from this report.

Financial implications

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

Legal Implications

16. 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.
17. 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.
18. 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.
19. 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. It should be noted that hearsay evidence is admissible in the context of making decisions on licensing matters.
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 case of Luminar Leisure Ltd v Wakefield Magistrates' Court, Brooke Leisure Limited, Classic Properties Limited, Wakefield Metropolitan District Council, heard before the High Court of Justice, Queen's Bench Division The Administrative Court, 18 April 2008, [2008] EWHC 1002 (Admin) would appear to be relative in this matter.
24. This matter involved an application by Luminar for a nightclub which was located just outside the Wakefield Cumulative Impact Area. The application was granted by the Local Authority and that decision was subsequently appealed.
25. The judge allowed the appeal on the grounds 'because of the effect which the increase in the number of people attending such a venue in Westgate would have, generally, on crime and disorder in the area'.

26. The matter was further appealed to the High Court by way of case stated.
27. Three questions were posed for the Judge to address. The last question asked was 'Was it a proportionate response to refuse the licence rather than to impose conditions on any licence?'
28. In respect of this it was stated 'To put a limit on the extent to which cumulative impact is legally relevant is something which seems to me not to be permitted by the statute. But with all that this condition was not sought. So the answer to question 3 is "yes"'.

Right of Appeal

29. 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

Risk Management

30. 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

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

Appendices

- Appendix 1 - Application for a variation of a premises licence
- Appendix 2 - Current Premises Licence
- Appendix 3 - West Mercia Police Objection
- Appendix 4 - Environmental Protection Objection
- Appendix 5 - Agreed additional West Mercia Police conditions

Background Papers

None