

Meeting:	Licensing sub committee
Meeting date:	15 March 2019
Title of report:	Application for a variation of a premises licence in respect of: 'MRH Ledbury, The Homend, Ledbury. HR8 1BS'- Licensing Act 2003
Report by:	Licensing Technical Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Ledbury North

Purpose

To consider an application for a variation of a premises licence in respect of 'MRH Ledbury, The Homend, Ledbury. HR8 1BS'.

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

Licence Application

3. The application (appendix 1) for a variation of the premises licence has received relevant representations and is brought before the committee for determination.
4. The details of the application are:

Applicant	Malthurst Retail Limited Vincent House, 4 Grove Lane, Epping. CM16 4LH	
Agent	Winckworth Sherwood LLP, Minerva House, 5 Montague Close, London. SE1 9BB	
Type of application: Variation	Date received: 3 January 2019 Re-start consultation 25 January 2019	28 Days consultation ended 30 January 2019 End of re-started consultation 21 February 2019

Summary of Application

5. The application requests a variation to the premises licence as follows:

To Vary Sale/Supply of Alcohol
Monday – Sunday
24hrs

To add Late Night Refreshment
Monday – Sunday
23:00 – 05:00

6. The application also asked to amend the plan, remove embedded restrictions, remove conditions and replace with conditions that are enforceable and achievable
7. The applicant had to re-start the consultation period on 24th January 2019 (first day for consultation was 25th January 2019) due to not displaying blue notices at the premise which is a requirement under The Licensing Act 2003 (Premises Licenses and Club Premises Certificates) Regulations 2005, Regulation 25.

Current Licence

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

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

Monday – Sunday 06:00 – 23:00

Summary of Representations

9. Two (2) representations have been received from the Responsible Authorities, West Mercia Police – appendix 3 and Trading Standards – appendix 4. These have not been agreed by the applicant. West Mercia Police's current position with regards to their representation can be found at Appendix 5.

Community Impact

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

Equality duty

11. 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.
12. 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.
13. 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. As relevant representations have been received, the sub committee must determine this application in accordance with section 3.5.7 (e) of the Herefordshire Council constitution. The relevant representations are representations which relate to the likely effect of the grant of the application on the promotion of the licensing objectives. In determining the application, the sub committee must consider whether the granting of the variation would have the effect of promoting or damaging the licensing objectives.
17. 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.
18. 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.
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.
20. 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.
21. 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.
22. 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'.
23. In addition to this it was stated that any condition attached to the licence should be an enforceable condition

Right of Appeal

24. 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.

25. The decision of the licensing authority will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

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 for a variation of a premises licence
- Appendix 2 - Current Premises Licence
- Appendix 3 - West Mercia Police Representation
- Appendix 4 - Trading Standards Representation
- Appendix 5 - West Mercia Police's current position with their representation

Background Papers

None