

Title of report: Review of a premises licence in respect of: The Live Inn, Whitbourne, Worcestershire. WR6 5SP called by West Mercia Police- Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: Monday 12 July 2021

Report by: Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Bromyard Bringsty

Purpose

To consider an application for a review of a premise licence in respect of The Live Inn, Whitbourne, Worcestershire. WR6 5SP.

Recommendation(s)

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,
- West Mercia Police 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 2020 - 2025

Reasons for Recommendations

Ensures compliance with the Licensing Act 2003

Alternative options

1. There are a number of options open to the 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

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

Key considerations

2. 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 - have not been withdrawn; and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
3. The details of the application are:

Applicant	West Mercia Police as a Responsible Authority	
Agent	Not applicable	
Type of application: Review	Date received: 1 April 2021 28 day consultation started: 2 April 2021	28 Days consultation ended: 29 April 2021

Summary of Application

4. The application for the review is attached (appendix 1).
5. Copies of the application were sent to the premises licence holder and responsible authorities.
6. In brief the Responsible Authority's grounds for the review are:

On 24 December 2020 an assault by the premises licence holder and designated premises supervisor (DPS) (being one and the same) occurred at the premises (when the premises was

open for licensable activities). The review is launched under the licensing objective Prevention of Crime & Disorder

Premises History

7. The premises was first licensed in January 2015 to Richard Keith Hill under the premises name Live & Let Live.
8. The application received relevant representation during the 28 day consultation period and the matter was brought before regulatory sub-committee for determination.
9. The decision of the Sub-Committee was to grant the licence subject to conditions to promote the licensing objectives.
10. On 16 August 2019, the licensing authority granted an application to transfer the premises licence, vary DPS at the premises and change the premises name. The premises is now licenced under The Live Inn Whitbourne with Nicholas Emile John Western-Kaye as the premises licence holder and DPS

Current Licence

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

12. Live Music (Indoors) Recorded Music (Indoors)

Monday – Sunday 12:00 – 24:00

Non Standard Timings Christmas Eve, New Years Eve 12:00 – 01:00

Sale/Supply of Alcohol (consumption on and off the premises)

Monday – Sunday 10:30 – 24:00

Non Standard Timings Christmas Eve, New Years Eve 10:30 – 01:00.

13. The licence is also subject to a number of conditions which were added by the sub-committee in December 2014 , one of which is in regards to CCTV. The conditions on the licence must be adhered to whenever the premises is open for licensable activities.

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

Circumstances leading to the review

14. On 24 December 2020 Mr Western-Kaye was working as the Landlord at The Live Inn in Whitbourne. There were several regular customers at the location at the time. During the evening Mr Western-Kaye had engaged in a verbal altercation with a customer that led him to take hold of a baseball bat and assault the customer

15. CCTV footage was obtained by West Mercia Police of the incident.
16. The police officer in the case, investigating the matter has concerns as to the future conduct of the Premises License Holder/Designated Premises Supervisor (Mr WESTERN-KAYE) and is not satisfied that this type of incident will not be repeated.
17. This incident occurred on the 24 December 2020 with the investigation being concluded March 2021.

Summary of Representations

18. No representations have been received from any of the Responsible Authorities or members of the public, though Hereford & Worcester Fire and Rescue Service have confirmed their support for the review application (appendix 3).
19. The applicant's solicitor produced a timeline of incidents leading up to the incident (appendix 4).

Community impact

20. Any decision may have an impact on the local community.

Environmental Impact

21. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal environmental impacts for the council, as the licensing authority.

Equality duty

22. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

23. There are no equality issues in relation to the content of this report.
24. 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.

25. Article 8(j) 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.

Resource implications

26. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal resource implications for the council, as the licensing authority.

Financial implications

27. There are unlikely to be any financial implications for the council as licensing authority at this time.

Legal implications

28. As relevant representations have been received, the sub committee must determine the application under Section 3.5.7 (c) of the Herefordshire Council constitution. The representations must relate to the licensing objectives and the sub committee must determine the likely effect of the grant of the premises licences on the promotion of the licensing objectives.
29. 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. The options available to the licensing authority are set out in section 1 of this report.
30. The sub committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.
31. 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. In this case it was summed up that: -
32. 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.
33. 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.
34. 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:

35. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
36. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

37. Schedule 5 of the Licensing Act 2003 gives a right of appeal which states:
Decision to grant premises licence or impose conditions etc.
 - (1) This paragraph applies where a licensing authority grants a premises licence under section 18.
 - (2) The holder of the licence may appeal against any decision—
 - (a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or
 - (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).
 - (3) Where a person who made relevant representations in relation to the application desires to contend—
 - (a) that the licence ought not to have been granted, or
 - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section, he may appeal against the decision.
 - (4) In sub-paragraph (3) "relevant representations" has the meaning given in section 18(6).
38. Appeals should be made to the Magistrates Court and must be made within 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision appealed against

Risk management

39. 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

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

Appendices

- Appendix 1 - Application Form
- Appendix 2 – Current Premises Licence
- Appendix 3 – Fire Authority Support Letter
- Appendix 4 – Timeline received from Premises Licence Holder Solicitor

Background papers

None Identified

Please include a glossary of terms, abbreviations and acronyms used in this report.

DPS – Designated Premises Supervisor