

Title of report: Review of a premises licence in respect of: Ledbury Mini Market, 10 New Street, Ledbury, HR8 2DX called by Herefordshire Council Trading Standards - Licensing Act 2003.

Meeting: Licensing sub-committee

Meeting date: Monday 10 January 2022 at 12:30pm

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Ledbury South

Purpose

To consider an application for a review of a premises licence in respect of Ledbury Mini Market, 10 New Street, Ledbury, HR8 2DX

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,
- Herefordshire Trading Standards 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 - have not been withdrawn; and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	Herefordshire Council Trading Standards as a Responsible Authority
Agent	Not applicable

Type of application: Review	Date received: 17 November 2021 28 day consultation started: 18 November 2021	28 Days consultation ended: 15 December 2021
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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:

Since August 2021, Herefordshire Trading Standards have made three separate test purchases of illegal cigarettes from Ledbury Mini Market, twice sold by Mr Aziz and once by an employee. The sale of illegal tobacco is a serious problem and undermines the licensing objectives that specifically relate to the prevention of crime and disorder.

Premises History

7. The premises was first licensed in August 2017 under the premises name Maya .
8. On 1 March 2021, 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 Ledbury Mini Market with Dler Mohammed Amin Aziz as the premises licence holder and DPS

Current Licence

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

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

Monday – Friday 09:30 – 20:00

Saturday 10:00 – 20:00

Sunday 11:00 – 16:00

10. The licence is also subject to a number of conditions. The conditions on the licence must be adhered to whenever the premises is open for licensable activities.

Circumstances leading to the review

11. All three separate test purchases of illegal cigarettes from Ledbury Mini-Market are counterfeit products.
12. They were sold purporting to be genuine Benson and Hedges, but smuggled from Europe with no duty paid - Each packet was sold at £5.50. In total 6 packets of counterfeit Benson and Hedges were purchased over a 2 month period.
13. On the 2nd October 2021, Trading Standards led an operation at the above premises, along with West-Mercia Police, where a substantial quantity of illegal tobacco was located in an employee's vehicle – consistent with the illegal cigarettes being sold from the premises. All items were seized by Trading Standards and the matter is subject to an ongoing criminal investigation.
14. The sale of illegal cigarettes is viewed as a serious offence under Section 182 of the Licensing Act 2003. The guidance states that where certain criminal activity, such as the sale of illegal tobacco occurs in connection with licensed premises, it should be treated particularly seriously

Summary of Representations

15. No representations have been received from any of the other Responsible Authorities or members of the public.

Community impact

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

Environmental Impact

17. 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

18. 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.

- 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.

Resource implications

- 22. 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

- 23. There are unlikely to be any financial implications for the Council as licensing authority at this time.

Legal implications

- 24. 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.
- 25. 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.
- 26. 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.

27. 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: -
28. 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.
29. 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.
30. 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:
31. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
32. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

33. 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).
34. 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

35. 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

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

Appendices

Appendix 1 - Application Form
Appendix 2 – Current Premises Licence

Background papers

None Identified

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

DPS – Designated Premises Supervisor