

Title of report: Application to vary designated premises supervisor in respect of: 'Brampton Stores, 25 Springfield Road, Ross-on-Wye. HR9 7EX - Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: Friday 12 August 2022

Report by: Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Ross – North

Purpose

To consider an application to vary designated premises supervisor in respect of Brampton Stores, 25 Springfield Road, Ross-on-Wye. HR9 7EX under the Licensing Act 2003.

Recommendation(s)

That:

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 objective of the prevention of crime & disorder,
- The application for transfer and any further supporting information,
- The Guidance issued to local authorities under the Licensing Act 2003,
- The representation (including supporting information) presented by the police
- The Herefordshire Council Statement of Licensing Policy 2020 - 2025.

Reasons for Recommendations

Ensures compliance with the Licensing Act 2003

Alternative options

1. There are two options open to the committee
 - Grant the application for change of designated premises supervisor
 - Refuse the application

Key considerations

Licence Application

2. The application for the change of designated premises supervisor has received representation from the police and is brought before the committee for determination.

Applicant	Judeamalathas Christian	
Agent	ARKA Licensing Consultants	
Type of application: Vary DPS	Date police notified: 29 June 2022	14 Days consultation ended 13 July 2022

Summary of Application

3. An application to vary the DPS was received by the licensing authority on 27 June 2022 (appendix 1) and West Mercia Police were notified of the application on 29 June 2022.
4. The application to vary the DPS on the premises licence can be allowed to have immediate effect in certain circumstances. In this case as the application was requested to have immediate effect then Mr Judeamalathas Christian is already the designated premises supervisor at the premises.

History of Premises

5. Mrs Rajvinder Kaur has been the premises licence holder and designated premises supervisor (DPS) since November 2005.
6. In November 2020, Mrs Kaur requested a copy of the premises licence to be sent to her and this was actioned.
7. On 4 January 2022, Mr Christian contacted the licensing authority wanting advice on how to change the name on the licence.
8. Mr Christian was contacted on 12 January 2022 to ask what name he wanted to change, however there was no answer and a message was left for him to call back. According to our systems, the call was not returned, therefore the service request was closed down.

9. Mr Christian again contacted the licensing authority on 9 February 2022 about wanting to make changes to the licence in respect of the hours, however as Mr Christian was not the premises licence holder, the licensing authority could not discuss this with him.
10. West Mercia Police attended the premises on 15 June 2022 following intelligence they received about sub-standard living conditions. Mr Christian was present and identified himself as the Manager of the business. A male was found to be living in a room at the rear of the premises that would not be deemed suitable. Whilst at the premises, enquiries identified the male, who confirmed his employment at the premises, as committing offences under the Immigration Act and was subsequently arrested.
11. West Mercia Police once again visited the premises 23 June 2022 to advise Mr Christian that he was not the premises licence holder nor was he the DPS. The officer in attendance also advised;
- That Section 19 of the Licensing Act 2003 sets out the Mandatory condition where a licence authorises the supply of alcohol:
- That no supply of alcohol may be made under the premises licence –
- At a time when there is no designated premises supervisor in respect of the premises licence,
- Or
- At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- Advice was also given that Section 136 of the Licensing Act 2003 makes it an offence for a premise to be used for any licensable activity otherwise than under and in accordance with an authorisation subject to which the licence is held. Any person found guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or an unlimited fine, or both.
12. Mr Christian is now under an investigation with Immigration due to the employment of an individual who did not have the right to be in the UK.

Current Premises Licence

13. The current licence (appendix 2) authorises the following licensable activities during the hours shown:
- Sale/Supply of Alcohol (for consumption off the premises)
- a) On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
 - b) On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
 - c) On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
 - d) On Good Friday, 8 a.m. to 10.30 p.m.

Summary of Representations

14. The police are the only party that can object to the change of designated premises supervisor and have done so (appendix 3).

Community impact

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

Environmental Impact

16. 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 licensing authority.

Equality duty

17. 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.
18. There are no equality issues in relation to the content of this report.
 19. 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.
 20. 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

21. 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 licensing authority.

Financial implications

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

Legal implications

23. 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.
24. 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.
25. 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.
26. 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: -
27. 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.
28. 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.
29. 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:
30. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
31. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.
32. The committee's attention is drawn to the Section 182 Guidance which states:
- Paragraph 11.27
- There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- a. for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
 - b. for the sale and distribution of illegal firearms;
 - c. for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - d. for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;

- e. for prostitution or the sale of unlawful pornography;
- f. by organised groups of paedophiles to groom children; as the base for the organisation of criminal activity, particularly by gangs;
- g. for the organisation of racist activity or the promotion of racist attacks;
- h. for employing a person who is disqualified from that work by reason of their immigration status in the UK;**
- i. for unlawful gambling; and
- j. for the sale or storage of smuggled tobacco and alcohol.

33. Section 37 of the Licensing Act 2003 only permits application for a change of designated premises supervisor to be made by the premises licence holder.

34. Section 39 (3) of the act states that: 'Where a notice is given under section 37(5) (*objection notice*) (and not withdrawn), the authority must—

- (a) hold a hearing to consider it, unless the authority, the applicant and the chief officer of police who gave the notice agree that a hearing is unnecessary, and
- (b) having regard to the notice, reject the application if it considers it appropriate for the promotion of the crime prevention objective to do so.

35. In effect this means that any decision has immediate effect.

Right of Appeal

36. There is a right of appeal to the Magistrates Court within 21 days of being notified in writing of the decision.

37. However as the decision has immediate effect the licence is not re-instated pending an appeal.

Risk management

38. 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

39. The police are the only responsible authorities that can object.

Appendices

- Appendix 1 – Application Form
- Appendix 2 – Current Premises Licence
- Appendix 3 – West Mercia Police Objection

Background papers

None Identified

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

DPS – Designated Premises Supervisor