Herefordshire Council

# Application for an occasional grant of a premises licence in respect of 'Golden Wake Distillery, St Martin's Avenue, Hereford. HR2 7RQ– Licensing Act 2003

**Meeting: Licensing sub-committee**

**Meeting date: 3 November 2022**

**Report by: Senior Licensing Technical Officer**

## Classification

Open

## Decision type

This is not an executive decision

## Wards affected

Hinton & Hunderton

## Purpose

To consider an application for a grant of an occasional premises licence in respect of Golden Wake Distillery under the Licensing Act 2003.

## 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:

a) The steps that are appropriate to promote the licensing objectives,

b) The representations (including supporting information) presented by all parties,

c) The guidance issued to local authorities under Section 182 of the Licensing Act 2003, and

d) The Herefordshire Council Statement of 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 sub-committee:

   a) Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003,

   b) Grant the licence subject to modified conditions to that of the operating schedule where the sub-committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,

   c) To exclude from the scope of the licence any of the licensable activities to which the application relates

   d) To refuse to specify a person in the licence as the premise supervisor, or

   e) To refuse the application

## Key considerations

**Licence Application**

2. The application for the grant of a premises licence has received relevant representations and is therefore brought before the sub-committee for determination.

3. Herefordshire Council Statement of Licensing Policy 2020 to 2025 states “All representation must be ‘relevant’, for example they must be about the likely effect of the grant of the application”. This followed paragraph 8.57 in the s182 Guidance which uses the same wording.

4. The details of the application are:

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|---|---|
| Applicant | Paul Kenyon |
| Agent | Not Applicable at time of application but subsequently the applicant has enlisted assistance from The Licensing Guys |

| | | |
|---|---|---|
| Type of application:<br><br>Grant | 28 day consultation started:<br><br>22 July 2022<br><br>28 day consultation re-started:<br><br>10 August 2022 | 28 Days consultation ended:<br><br>18 August 2022<br><br>28 Days consultation ended<br><br>6 September 2022 |

**Summary of Application**

5. The application (appendix 1) requests the grant of a premises licence to allow the following licensable activities, during the hours shown, as follows:

   Sale/Supply of Alcohol (consumption on and off the premises)
   Monday – Sunday 10:00 – 22:00

**Summary of Representations**

6. Two (2) representations have been received from responsible authorities, West Mercia Police (appendix 2) and Trading Standards (appendix 3). These conditions have been agreed by the applicant and therefore the representations have been withdrawn.

7. 13 relevant representations have been received from members of the public in line with the licensing objectives that the licensing authority have accepted as being relevant. (Appendix 4).

8. Seven (7) representations received by the licensing authority from members of the public were rejected as not being relevant

9. The Licensing Authority shared with those who have had public representations accepted by the authority as being relevant, a copy of the licence conditions that the applicant has agreed to adhere to (appendix 5). The Licensing Authority have not been notified that these address the concerns of the public that made [relevant] representations.

10. The hearing was due to take place on Monday 19 September 2022 but due to the state funeral, this hearing had to be postponed to today's date.

## Community impact

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

## Environmental Impact

12. 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.

## Equality duty

13. 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.

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

15. 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.

16. 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

17. 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.

## Financial implications

18. There are unlikely to be any financial implications for the council as Licensing Authority at this time.

## Legal implications

19. 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.

20. 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.

21. 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.

22. 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: -

23. 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.

24. 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.

25. 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'.*

26. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## Right of Appeal

27. 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).

28. 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

29. 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

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

## Appendices

Appendix 1 - Application Form
Appendix 2 – West Mercia Police representation
Appendix 3 – Trading Standards representation
Appendix 4 – Public Representations
Appendix 5 – Conditions Agreed

## Background papers

None Identified