

Title of report: Review of a premises licence in respect of: The Ducker, 11 South Street, Leominster. HR6 8JA called by West Mercia Police - Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: 1 March 2023 at 10:30am

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Leominster - South

Purpose

To consider an application for a review of a premise licence in respect of The Ducker, 11 South Street, Leominster. HR6 8JA

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 - have not been withdrawn; and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 | |
| Agent | The Licensing Guys | |
| Type of application: Review | Date received: 20 December 2022 28 day consultation started: 21 December 2022 | 28 Days consultation ended: 17 January 2023 |

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 all Responsible Authorities.
6. In brief the Responsible Authority's grounds for the review are:

West Mercia Police launched the review under the licensing objective, Prevention of Crime & Disorder due to an investigation by Police for a serious incident that happened on the premises on 11 August 2022 involving the partner of the licensee of the premises.

Premises History

7. The premises known as 'The Ducker' has been licensed for many years and was also known as 'The Ducking Stool' previously to July 2017.
8. On 25 July 2017 Sian Rooke-Jenkins made an application for transfer of the premises licence and change of designated premises supervisor into her name, which was granted.
9. On 26 July 2017 an application was received for a variation of the premises licence.
10. The application received representation and was brought before this committee on 25 September 2017.
11. The variation licence was granted with a number of conditions. Of particular note is the condition which states:

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. The Premises Licence Holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format EITHER DISC or VHS to the Police/Local Authority on demand. The Recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or other responsible named individual. An operational daily log report must be maintained endorsed by signature, indicating the system has been checked and is compliant, in the event of any failings actions taken are to be recorded. In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS MUST report the failure to the Police on contact number 101 immediately

12. Between June and the end of December 2018 West Mercia Police attended the premises on three separate occasions in connection with incidents at the premises and on each occasion they were unable to obtain the CCTV.
13. After the first two incidents the Licensing Authority sent warning letters to Sian Rooke-Jenkins.
14. Following the last breach in December 2018, reported by the police, the Licensing Authority launched a review of the premises licence on 4 January 2019.
15. The decision of the licensing sub-committee on 7 March 2019 was:

To allow the licence to remain in place with the following additional conditions:

- The premises shall have a written log which deals purely with checks made to ensure the CCTV system is operating correctly. This log shall be completed prior to the premises opening for Licensable Activities and will have the following information written down in the log:-

1. The date and time checked
2. Name of person checking the system (In block capitals)
3. The persons signature
4. Whether the system is working correctly or not
5. Where the system is not working correctly the details of the defect including the action taken to rectify the defect and the time frame for doing so.
6. Prior to the premises opening any defect shall be reported to the police via email to licensing.herefordshire@westmercia.pnn.police.uk

The CCTV log shall be kept on the premises and shall be produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) on demand.

- All staff, prior to selling alcohol at the premises, must be trained in the use of the CCTV to a standard which ensures they can comply with the CCTV condition as shown on the licence. The training must be carried out by a professional company approved by the Licensing Authority. Training records shall be kept on the premises and shall be produced to the police or an 'authorised person' (as defined by Section 13 of the Licensing Act 2003) on demand.

Current Licence

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

Live Music (Indoors)

Sunday – Thursday 20:00 – 23:00

Friday – Saturday 20:00 – 00:00

Recorded Music (Indoors)

Sunday – Thursday 19:00 – 23:00

Friday – Saturday 19:00 – 00:00

Late Night Refreshment (Indoors)

Friday – Saturday 23:00 – 00:00

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

Sunday – Thursday 11:00 – 00:00

Friday – Saturday 11:00 – 01:00

15. 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

16. The incident of 11 August 2022, took place on a licenced premises known as The Ducker, 11 South Street, Leominster. HR6 8JA, whilst licensable activities were being undertaken.
17. The partner of the licensee and designated premises supervisor (DPS) was at the time of the offence on the premises behind the bar (though it is not known whether he was working or there in a personal capacity).
18. West Mercia Police have concerns as to the future conduct of the partner to the licensee and DPS and are not satisfied that this type of incident will not be repeated.

19. The incident has been investigated by West Mercia Police and referred to the Crown Prosecution Service (CPS) who have considered all the facts of the case and have made the decision that the suspect is to be charged with offences in connection with the incident.

Summary of Representations

20. No representations have been received from any of the responsible authorities or members of the public.
21. West Mercia Police wished to submit evidence relating to a live court case and clearance from the Crown Prosecution Service (CPS) was required. Approval to release this evidence had not yet been received. An adjournment was requested to allow time for this evidence to be disclosed and for all parties to have time to consider it fully.
22. The sub committee's decision was to allow the adjournment until 1 March 2023 as this was the earliest date allowing for publishing of papers.

Community impact

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

Environmental Impact

24. 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

25. 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.
26. There are no equality issues in relation to the content of this report.
 27. 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.

28. 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

29. 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

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

Legal implications

31. 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.
32. 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.
33. 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.
34. 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: -
35. 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.
36. 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.

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

Right of Appeal

40. Schedule 5 Part 1 Paragraph 8 of the Licensing Act 2003 gives a right of appeal which states:
Review of premises licence.
 - (1) This paragraph applies where an application for a review of a premises licence is decided under section 52.
 - (2) An appeal may be made against that decision by
 - (a) the applicant for the review
 - (b) the holder of the premises licence, or
 - (c) any other person who made relevant representations in relation to the application
 - (3) In sub paragraph (2) "relevant representations" has the meaning given in section 52(7).
41. 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

42. 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

43. 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

CPS – Crown Prosecution Service