

Title of report: Application for a variation of a premises licence in respect of Nisa, 38 High Street, Kington, HR5 3BJ – Licensing Act 2003.

Meeting: Licensing sub-committee

Meeting date: Monday 13 November 2023 at 14:00hrs

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Kington

Purpose

To consider an application for a variation for a premises licence in respect of Nisa, 38 High Street, Kington. HR5 3BJ 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 variation of a premises licence has received relevant representation and is therefore brought before the sub-committee for determination.
3. Herefordshire Council's Statement of Licensing Policy 2020 to 2025 states "All representations 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:

Applicant	Samy Limited	
Agent	Winckworth Sherwood LLP	
Type of application: Grant	Date received: 20 September 2023 28 day consultation started: 21 September 2023	28 Days consultation ended: 18 October 2023

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Summary of Application

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

To extend the hours for the sale of alcohol to 24hrs daily.

To allow for the provision of late night refreshment between the hours of 2300 and 0500 daily.

To remove the conditions listed in Annex 3.

To include in Annex 2 the conditions in Section 16 of the application (appendix 2).

To remove the restriction to licensable activities on Christmas Day and Good Friday.

Current Licence

A copy of the current licence is attached at Appendix 3. It authorises

Sale/Supply of Alcohol (consumption off the premises)

On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.

On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.

On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.

On Good Friday, 8 a.m. to 10.30 p.m

Summary of Representations

6. No objections/representations were received from any of the responsible authorities.
7. Four (4) relevant representations have been received from members of the public that the licensing authority have accepted as being relevant and can be found at Appendix 4.
8. A named and signed petition opposing the variation application, signed by 77 residents of Kington, was also received by the licensing authority.

Premises History

9. The premises was first licenced in 2005
10. On 9 May 2008, the premises was brought before regulatory subcommittee as the premises had been the subject of two (2) separate test purchase operations in three (3) months and had sold on both occasions to those that were under age of 18. A 16 year old male was served alcohol without being challenged concerning his age. A 15 year old female was served alcohol without being challenged concerning her age

11. The decision of the regulatory sub-committee was

That the License be suspended in respect of all licensable activity for a period of 7 days, such suspension not to take effect until 00:01hrs on 31st May 2008.

That the following additional conditions be imposed forthwith* upon the licence:-

- That all sales made on the premises are supervised by a personal licence holder
- That the use of 'Challenge 25' is made a condition of all sales made on the premises
- That the premise employs proven training method for all staff, in age restricted sales, and that written records of the training are kept and made available for inspection by the Licensing Authority and Police.
- That the premise has till prompts for all age restricted items to ensure staff enforce the 'Challenge 25' rule and request identification when necessary.

** Subject to Section 52(11) which states that a determination under this section does not have effect:*

(a) until the end of the period given for appealing against the decision, or

(b) if the decision is appealed against, until the appeal is disposed of.

12. Since first being licenced, the licensing authority has received five (5) applications to vary the designated premises supervisor (DPS), which have all been granted, with the latest one being granted on 19 September 2023 along with two (2) applications to transfer the premises licence, which have also been granted, with the latest one being granted on 19 September 2023.

Community impact

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

Environmental Impact

14. 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

15. 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.
16. There are no equality issues in relation to the content of this report.
17. 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.
18. 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

19. 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

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

Legal implications

21. 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.
22. 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.
23. 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.

24. 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: -
25. 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.
26. 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.
27. 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:

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

Right of Appeal

29. Schedule 5 Part 1 of the Licensing Act 2003 gives a right of appeal which states:
Variation of licence under section 35.
 - (1) This paragraph applies where an application to vary a premises licence is (in whole or in part) under section 35.
 - (2) The applicant may appeal against any decision to modify the conditions of the licence under subsection (4)(a) of that section. —
 - (3) Where a person who made relevant representations in relation to the application desires to contend—
 - (a) that any variation made ought not to have been made, or
 - (b) that, when varying the licence, the licensing authority ought not to have modified the conditions of the licence, or ought to have modified them in a different way, under subsection (4)(a) of that section he may appeal against the decision
 - (4) In sub-paragraph (3) "relevant representations" has the meaning given in section 35(5).
30. 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

31. 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

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

Appendices

Appendix 1 – Application Form

Appendix 2 – Proposed Conditions

Appendix 3 – Current Premises Licence

Appendix 4 – Public Representations

Background papers

None Identified

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

DPS: Designated Premises Supervisor