

Review of a premises licence following an expedited/summary licence review in respect of: Razbari, 156 Eign Street, Hereford, HR4 0AP called by West Mercia Police- Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: Thursday 14 December 2023 @ 10:00hrs

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Hereford - Widemarsh

Purpose

To consider an application for a review, following an expedited/summary licence review, of a premise licence in respect of Razbari, 156 Eign Street, Hereford, HR4 0AP called by West Mercia Police under the Licensing Act 2003

Recommendation(s)

That:

The Sub-Committee when determining this review must consider:

- what steps it considers necessary for the promotion of the licensing objectives; and
- what steps should be taken to secure the promotion of the licensing objectives including whether the interim steps should be made permanent.

They should give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives
- The Guidance issued to local authorities under Section 53A of the Licensing Act 2003 by the Violent Crime Reduction Act 2006 (Appendix 8)
- The Police application made in respect of the expedited review together with the Superintendent's Certificate (Appendix 1)
- 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 and the Crime & Disorder Act 2006.

Alternative options

1. There are a number of options open to the committee:
 - a) the modification of the conditions of the premises licence;
 - b) the exclusion of the sale of alcohol by retail (or other licensable activities) from the scope of the licence;
 - c) the removal of the designated premises supervisor from the licence;
 - d) the suspension of the licence for a period not exceeding 3 months; and
 - e) the revocation of the licence

Where the authority takes a step mentioned in subsection (a) or (b), 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 powers to call for an expedited review are contained in Section 53A of the 2003 Act by virtue of the Violent Crime Reduction Act 2006. The powers allow:
 - The police to trigger a fast track process to review a premises licence where the police consider that the premises are associated with serious crime or serious disorder (or both); and
 - The licensing authority to respond by taking interim steps quickly, where appropriate, pending a full review.

Applicant	West Mercia Police's Licensing and MATES Officer for Herefordshire.
Premise Licence Holder	CT INDIAN RESTAURANT LIMITED
Solicitor	Not known
Type of application:	Date received: 20.11.2023

Summary of Application

3. The application for an expedited review was received on 20 November 2023
4. This matter was brought before licensing sub-committee on 22 November 2023 (within the required 48 hours).
5. At that hearing the committee heard from West Mercia Police and a representative for the premises licence holder.
6. The Licensing sub-committee decided to suspend the licence with immediate effect until the date of the full hearing which was set for 14 December 2023 at 10:00hrs (appendix 2).
7. The Licensing Authority received written representation against the interim steps from a solicitor authorised to act on behalf of the premises licence holder on 29 November 2023 (appendix 3).
8. The matter was therefore brought once again before licensing sub-committee on 1 December 2023 (within the required 48 hours).
9. In response to the written representation, West Mercia Police served on the Licensing sub-committee information received from Immigration regarding the interview carried with the gentleman subject to the immigration offences (appendix 4).
10. At that hearing the committee heard from the solicitor acting on behalf of the premises licence holder, a representative for the premises licence holder and West Mercia Police.
11. The Licensing sub-committee decided to uphold their decision of 22 November 2023 to suspend the licence with immediate effect until the date of the full hearing which was set for 14 December 2023 at 10:00hrs (appendix 5).

Current Licence

12. The current licence (appendix 6) authorises the following licensable activities during the hours shown: -

Late Night Refreshment (Indoors/Outdoors)

Monday – Thursday 23:00 – 23:30

Friday & Saturday 23:00 – 24:00

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

Monday – Thursday 17:00 – 23:00

Friday & Saturday 17:00 – 23:30

Sunday 12:00 – 22:00

NB: Late Night Refreshment is only a licensable activity between the hours of Monday – Sunday 23:00 – 05:00

Summary of Representations

13. One (1) representation has been received from the Licensing Authority as a responsible authority (appendix 7).

Community impact

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

Environmental Impact

15. 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

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

19. 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

20. 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

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

Legal implications

22. 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.
23. 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.
24. 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.
25. 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: -
26. 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.
27. 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.
28. 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:

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

Right of Appeal

31. 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).
32. 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

33. 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

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

Appendices

- Appendix 1 – Application Form for Expedited Review
- Appendix 2 – Hearing Decision Notice from 22 November 2023
- Appendix 3 – Written Representation against the interim steps (**EXEMPT** – paragraph 1, schedule 12A of the Local Government Act 1972: Information relating to any individual).
- Appendix 4 – Information submitted by West Mercia Police (**EXEMPT** – paragraph 1, schedule 12A of the Local Government Act 1972: Information relating to any individual).
- Appendix 5 – Hearing Decision Notice 1 December 2023
- Appendix 6 – Current Premises Licence
- Appendix 7 – Local Authority Representation (**EXEMPT** – paragraph 1, schedule 12A of the Local Government Act 1972: Information relating to any individual).
- Appendix 8 – Relevant pages of the Section 182 Guidance Background papers

Background papers

None identified.

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

Designated Premises Supervisor - DPS