

Application for a grant of a premises licence in respect of Wye Lounge, 39 High Street, Ross-on-Wye, HR9 5HD – Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: Tuesday 26 March 2024 at 10:00am

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards Affected

Ross West

Purpose

To consider an application for a grant of a premises licence in respect of Wye Lounge, 39 High Street, Ross-on-Wye, HR9 5HD 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:

Applicant	Mr Baftjar Zhuzhi	
Agent	The Licensing Guys	
Type of application: Grant	Date received: 2 February 2024 28 day consultation started: 3 February 2024	28 Days consultation ended: 1 March 2024

Summary of Application

5. The application can be found at appendix 1 and requests the grant of a premises licence to allow the following licensable activities, during the hours shown;

Live Music (Indoors)

Monday-Thursday 19:00-23:00, Friday – Saturday 19:00 – 02:00, Sunday 14:00 – 22:00

Recorded Music (Indoors)

Sunday-Thursday 09:00-24:00, Friday – Saturday 09:00 – 02:00

Late Night Refreshment (Indoors)

Sunday -Thursday 23:00-24:00, Friday – Saturday 23:00 – 02:00

Sale/Supply of Alcohol (consumption on the premises)

Sunday -Thursday 11:00-23:30, Friday – Saturday 11:00-01:30

Non-Standard Timings

Friday & Saturday hours also applied on Christmas Eve, Christmas Day, Boxing Day, New Year's Eve, New Year's Day, Valentine's Day, Bank Holidays and Sundays before a Bank Holiday Monday

Under the Live Music Act 2012 (as amended), an alcohol licenced premises can have live and/or recorded music from 08:00 – 23:00 for up to 500 people, without the need for these activities to be on a premises licence

A set of conditions offered by the applicant to promote the licensing objectives can be found at Appendix 2

Summary of Representations

6. One (1) representation has been received from the responsible authorities - Trading Standards. The set of conditions proposed have been accepted by the applicant and can be found at Appendix 3.
7. Three (3) relevant representations have been received from members of the public in line with the licensing objective Prevention of Public Nuisance, which the licensing authority have accepted as being relevant. These can be found at Appendix 4

History

8. The premises was first licenced in March 2017 under the premises name Tapas Restaurant & Bar.
9. In May 2022, the Licensing Department received transfer and vary DPS applications along with a change of premises name. The licence was granted in June 2022 in the name of Oliva Ltd and the premises was licenced as Leonards at 39.

10. In July 2022, an application was received to vary the premises licence to extend the terminal hour on Fridays and Saturdays until 02:00hrs for the purposes of alcohol sales, late night refreshment and live & recorded music. The variation was granted in August 2022.
 11. On 16 November 2023, the licensing authority attended the premises (now known locally as Tweet Bar), as part of a MATES (Multi Agency Targeted Enforcement Strategy) operation, involving the Home Office Immigration Enforcement team, West Mercia Police, Herefordshire Council Housing and Hereford & Worcester Fire Authority. The premises was open for licensable activities at the time and one male was arrested for immigration offences and then collected by immigration the following day.
 12. It became apparent after discussion with the manager that the premises licence holder Oliva Ltd had dissolved in April 2023. The law states that the death or insolvency of the premises licence holder has the effect of lapsing the premises licence with immediate effect. Unless action is taken to protect the premises licence within 28 days, the only way of dealing with the matter is by way of an application for a brand new premises licence.
 13. As the director of the company (Oliva Ltd) had not informed the licensing authority that the limited company had dissolved, nor had the licensing authority received a transfer application, the premises was carrying out licensable activities without an authorisation in place.
 14. On 16 November 2023, as a result of the premises undertaking licensable activities without an authorisation in place, the Licensing Authority served a Section 19 Closure Notice on the premises under the Criminal Justice and Police Act 2001. This enables a police constable or a local authority to serve a closure notice where:
 - any premises are being used, or have been used within the last 24 hours, for the sale of alcohol for consumption on or in the vicinity of the premises; and
 - This activity is or was carried on without an authorisation (premises licence, club premises certificate or temporary event notice) or not in accordance with the conditions of an authorisation for the sale of alcohol.
- The Licensing Authority then explained that the premises cannot open for any licensable activity unless there is a premises licence or temporary event notices in place and gave advice on what they should do next. The manager confirmed he understood and that no licensable activity was to take place without a licence. This was followed up with an email – Appendix 6
15. On 20 November 2023, information was received from West Mercia Police, that the premises was open and selling alcohol, despite them being advised on 16 November 2023 and 17 November 2023 that this was not permitted and an employee of Herefordshire Council who's friends had been in the premises on the evening of 17 November 2023 produced till receipts clearly showing alcohol was purchased on that evening.
 16. Following an application made on 2 February 2024, the applicant's agent submitted four (4) Temporary Event Notices (TENs) to allow Sale/Supply of Alcohol (consumption on the premises) and for Late Night Refreshment on the following dates; 10 – 12 February 2024 (11:00 – 02:00),

13 – 18 February 2024, 20 – 25 February 2024 and 27 February to 3 March 2024 (Tuesday – Thursday 11:00 – 24:00, Friday – Saturday 11:00 – 02:00). As regulated entertainment was not applied for on the Temporary Event Notices, this was not permitted.

17. The applicant Mr Zhuzhi was not at the premises nor in charge of the premises when the MATES operation and unlicensable activity took place.

Community impact

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

Environmental Impact

19. 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

20. 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.
21. There are no equality issues in relation to the content of this report.
 22. 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.
 23. 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

24. 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

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

Legal implications

26. 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.
27. 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.
28. 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.
29. 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: -
30. 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.
31. 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.
32. 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'.
33. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

34. Schedule 5, Part 1, Section 1 of the Licensing Act 2003 gives a right of appeal which states:

Rejection of applications relating to premises licences

(1) Where a licensing authority-

(a) Rejects an application for a premises licence under section 18,

The applicant may appeal against the decision.

Schedule 5, Part 1, Section 2 of the Licensing Act give 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).

35. 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

36. 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

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

Appendices

- Appendix 1 – Application form
- Appendix 2 – Proposed conditions offered by the applicant
- Appendix 3 – Trading Standards agreed conditions
- Appendix 4 – Public representations
- Appendix 5 – Section 19 Closure Order
- Appendix 6 – Correspondence

Background papers

None Identified