

Application for a grant of a premises licence in respect of Flames, 59a Commercial Road, Hereford, HR1 2BP – Licensing Act 2003

Meeting: Licensing Sub-Committee

Meeting date: Thursday 19 September 2023 at 10am

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Hereford Central

Purpose

To consider an application for a grant of a premises licence in respect of Flames, 59a Commercial Road, Hereford. HR1 2BP 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 a relevant representation and is therefore brought before the Sub-Committee for determination.
3. Herefordshire Council 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	Flames Hereford Ltd	
Agent	The Licensing Guys	
Type of application: Grant	Date received: 30 July 2024 28 day consultation started: 31 July 2024	28 Days consultation ended: 27 August 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;

Late Night Refreshment (Indoors/Outdoors)

Monday – Sunday 23:00 - 03:30

The applicant has also offered a set of conditions to promote the four (4) licensing objectives. These can be found at Appendix 2.

Summary of Representations

6. One (1) objection was received from West Mercia Police as a responsible authority. West Mercia Police are willing to negotiate with the applicant over an earlier terminal hour (appendix 3). An agreement has not taken place at the time of the report being published.

History of Premises

7. The previous premises licence (under the premises name Munchies), was revoked by the Licensing Sub-Committee on 21 February 2024 following an application to review a premises licence received from West Mercia Police on 5 January 2024 on the grounds of crime and disorder.
8. The application put before you today states; this is an entirely new operator, in possession of a new lease drafted by MFG Solicitors of Telford, signed and dated 1st July 2024. There is no connection between the previous operator and the new business and the application mirrors the Operating Schedule to that which applied before, and operated between May 2013 and Feb 2024. A copy of the revoked licence can be found at Appendix 4 for information purposes.

Community impact

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

Environmental Impact

10. 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

11. 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.
12. There are no equality issues in relation to the content of this report.
13. 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.
14. 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

15. 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

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

Legal implications

17. 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.
18. 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.

19. 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.
20. 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: -
21. 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.
22. 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.
23. 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'.
24. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

25. 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).
26. 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

27. 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

28. 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 – West Mercia Police objection
- Appendix 4 – Copy of revoked premises licence (info only)

Background papers

None Identified

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