

Application for a variation of a premises licence in respect of Trilogy, 51-55 Blue School Street, Hereford, HR1 2AR– Licensing Act 2003.

Meeting: Licensing sub-committee

Meeting date: Tuesday 1 October 2024, 10:00 a.m.

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 variation for a premises licence in respect of Trilogy, 51-55 Blue School Street, Hereford, HR1 2AR 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	Epic Bars (Hereford) Limited	
Agent	Woods Whur 2014 Limited	
Type of application: Grant	Date received: 29 July 2024 28 day consultation started: 30 July 2024	28 Days consultation ended: 26 August 2024

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 vary the start time of all licensable activities and opening hours to start at midday.
(Films, Live Music, Recorded Music, Performance of Dance, Anything Similar to Live, Recorded Music & Performance of Dance, Sale/Supply of Alcohol)

To vary the current condition which reads 'The premises use pet glassware for wines, spirits and draught beer throughout except the Botanic bar where toughened glass will be used'

To the new condition 'The premises use pet glassware for wines, spirits and draught beer throughout except the Botanic bar where glass vessels can be used up to 0100'.

Current Licence

A copy of the current licence is attached at Appendix 2. It authorises

Films

Tuesday 19:00 – 03:30

Wednesday - Monday 20:30 – 03:30

Live Music, Recorded Music, Performance of Dance, Anything Similar to Live, Recorded Music & Performance of Dance, Sale/Supply of Alcohol

Monday – Sunday 18:30 – 03:30

Late Night Refreshment

Monday – Sunday 23:00 – 03:30

Non-standard timings:

additional hour to the terminal hour of licensable activities on Fridays, Saturdays and Sundays preceding all Bank Holidays and the Saturday before Christmas. An additional hour to the standard and non-standard timings on the day when BST commences. From the end of permitted hours on New Year's Eve to the start of permitted hours on New Year's Day

The licence is also subject to a set of conditions that promote the licensing objectives.

Summary of Representations

6. A representation was received from West Mercia Police as a responsible authority. The condition requested has been agreed by the applicant and their agent. (Appendix 3).
7. An objection was received from the Local Authority as a responsible authority and can be found at Appendix 4. The basis of the objection was that over past weekends, the Principal Licensing Officer observed that the main entry at Trilogy was not used and the only entrance point was Botanic. Trilogy is a late-night venue and operates as a night club and therefore is a higher risk premises than Botanic which is more of a cocktail bar.
8. The Principal Licensing Officer attended a site visit on Thursday 5 September 2024. From that

site visit a further condition was agreed regarding the use of glass at the premises and their objection was withdrawn. (Appendix 5).

9. One (1) relevant representation was received from a member of the public on behalf of residents in Catherine Street & Catherine Court (which is in the vicinity of the premises) that the licensing authority accepted as being relevant and can be found at Appendix 6. The representation is in relation to noise nuisance at the premises. The Licensing Authority accepted the representation as being relevant due to the fact Botanic and Trilogy come under one premises licence and not separate ones.

Premises History

10. The premises were licenced until 17 December 2020 when the premises licence holder, became insolvent, therefore the premises licence lapsed immediately
11. The premises was first licenced as Play Nightclub in 2021 on this premises licence before you today.
12. In August 2023, the premises licence was transferred to Epic Bars (Hereford) Ltd, the current premises licence holder.
13. In October 2023, the premises changed its name to Trilogy.
14. Since being licensed as Trilogy, the Licensing Authority has received two (2) variations (not including the application before you today. One in October 2023 which was not granted as it did not comply with the advertising regulations and one in November 2023 which was granted on 22 December 2023 with some added conditions of Environmental Protection.
15. Since December 2023, the Authority has also granted one (1) minor variation and three (3) applications to Vary the Designated Premises Supervisor (DPS).

Community impact

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

Environmental Impact

17. 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

18. 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.

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

22. 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

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

Legal implications

24. 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.
25. 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.

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

Right of Appeal

32. 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).
33. 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

34. 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

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

Appendices

- Appendix 1 – Application Form
- Appendix 2 – Current Premises Licence
- Appendix 3 – West Mercia Police Representation
- Appendix 4 – Local Authority Representation
- Appendix 5 – Agreed condition with Local Authority
- Appendix 6 – Public Representations

Background papers

None Identified

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

DPS: Designated Premises Supervisor