

Meeting:	Regulatory sub-committee
Meeting date:	10 April 2017
Title of report:	To consider an application for a new premises licence in respect of 'Mila, 102-104 Belmont Road, Hereford, HR2 7JS' – Licensing Act 2003.
Report by:	Licensing officer

Classification

Open – Report and appendices A to D

Exempt – Appendix E is exempt by virtue of paragraph 3 “Information relating to the financial or business affairs of any particular person (including the authority holding that information) of the access to information procedure rules set out in the constitution pursuant to Schedule 12a Local Government Act 1972, as amended.

Key Decision

This is not an executive decision.

Wards Affected

Hinton & Hunderton

Purpose

To consider an application for a new premises licence (Appendix A) in of 'Mila, 102-104 Belmont Road, Hereford, HR2 7JS'.

Recommendation

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:

- **The steps that are appropriate to promote the licensing objectives,**
- **The representations (including supporting information) presented by all parties,**
- **The guidance issued to local authorities under Section 182 of the Licensing Act 2003, and**

- **The Herefordshire Council statement of licensing policy 2015 - 2020.**

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 reject the application.

Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

Key Considerations

Licence Application

3. The application for a new premises licence has received representation and is brought before the committee for determination.
4. The details of the application are:

Applicant	Hardi Mohammed	
Agent	Patrick Burke	
Type of application: New	Date received: 18 February 2017	28 days consultation ended 17 March 2017

Summary of Application

5. The application requests a new premises licence to allow the following licensable activities, during the hours shown as follows:

Sale of Alcohol (Off Premises)

All days 08:00 – 00:00

Non Standard Timings: None

Previous Licence

6. The premises was previously licensed for the sale of alcohol between 0800 to 0000 on all days of the week.
7. The licence was issued on 16 September 2015 and was revoked following an expedited review of the licence on 15 December 2016 as a result of the premises being involved in the sale of non-duty paid and smuggled tobacco.

Summary of Representations

8. Two (2) representations have been received from the responsible authorities (police (Appendix B) and trading standards (Appendix D)).
9. The police objected to the licence but have now agreed a set of conditions (Appendix C).
10. Trading Standards requested a set of conditions which have been agreed.
11. The matter was listed for hearing prior to the representations being withdrawn and therefore in accordance with Regulation 9 (2) of The Licensing Act 2003 (Hearings) Regulations 2005 and the Herefordshire Council licensing policy paragraph 5.2, it requires the consent of the licensing authority for the hearing to be cancelled which has not been given at this time.
12. The authority is seeking further information in relation to the lease covering the premises and seeks that information in accordance with Regulation 7(1)(d) of The Licensing Act 2003 (Hearings) Regulations 2005.
13. The authority has requested the following:
 - The deed of assignment in respect of the lease for the premises
 - Proof that the lessor has given consent to the transfer of the lease
 - Proof that the previous tenants name has now been removed from the lease.

Community Impact

14. Any decision is unlikely to have any impact on the local community.

Equality duty

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

Financial implications

17. There are unlikely to be any financial implications for the authority at this time.

Legal Implications

- 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. Further applications should be determined in accordance with the provisions of Section 18 of this report. 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.
- 21 In this case it was summed up that: -

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 gives a right of appeal which states:

Decision to grant premises licence or impose conditions etc.

- 2 (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 A - application form
Appendix B - police representation
Appendix C - police agreed conditions
Appendix D - trading standards representation
Appendix E - lease agreement – *exempt from publication*

Background Papers

None.