

Meeting:	Licensing sub committee
Meeting date:	2 November 2017
Title of report:	Review of a premises licence in respect of: 'Mila, 102-104 Belmont Road, Hereford, HR2 7JS called by Herefordshire Council as the licensing authority' - Licensing Act 2003
Report by:	Licensing officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Hinton and Hunderton.

Purpose

To consider an application for a review of a premises licence in respect of: 'Mila, 102-104 Belmont Road, Hereford, HR2 7JS called by Herefordshire Council as the licensing authority.

Recommendation

THAT:

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 licensing authority's application for the review,**
- **The guidance issued to local authorities under the Licensing Act 2003,**
- **The representations (including supporting information) presented by all parties, and**
- **The Herefordshire Council licensing policy.**

Options

1. There are a number of option open to the committee in relation to the review:
 - the modification of the conditions of the premises licence;
 - the exclusion of any licensable activities from the scope of the licence;
 - the removal of the designated premises supervisor from the licence;
 - the suspension of the licence for a period not exceeding 3 months; and
 - the revocation of the licence
2. Where the authority takes a step mentioned in bullet point 1 and 2 above it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.
3. Alternatively it is open to the licensing authority to determine that no action is required to promote the licensing objectives or issue an informal warning in writing to the licence holder and/or to recommend improvement within a specified period of time.

Reasons for Recommendations

4. Ensures compliance with the Licensing Act 2003.

Key Considerations

5. The licensing authority must take into account any relevant representations made. Relevant representations are those that:
 - relate to one or more of the licensing objectives;
 - have not been withdrawn; and
 - are made by the premises licence holder, a responsible authority or an interested party
6. The details of the application are:

Applicant	Herefordshire Council as the licensing authority Represented by: Fred Spriggs	
Agent	N/K	
Type of application: Review	Date received: 8 September 2017	28 Days consultation ended 5 October 2017

Summary of Application

7. The application for the review is attached (appendix 1)
8. Copies of the application were sent to the premise licence holder and responsible authorities.

9. In brief the licensing authority's grounds for the review are:

The premises licence was issued following a hearing held by the Licensing Sub-committee on 10 April 2017. The licence issued was subject to a number of conditions. Since the licence has been issued there have been a number of visits to the premises by both the police and the licensing authority. On each of these visits the conditions shown attached to the premises licence have not been complied with. On a visit today they were still not being complied with and as a result this review has been launched.

10. Further additional supporting information has been provided by the licensing authority contained within their application at page 4.

Premises History

11. The premises was first licensed in September 2015 as a Polish convenience store selling alcohol.
12. On 22 November 2016 a joint operation involving West Mercia Police and Herefordshire Council trading standards was undertaken which resulted in a large quantity (approx. quarter of a million) of illegal and non-duty paid cigarettes being seized together with a large quantity of tobacco.
13. Two of the workers at the shop were found to be illegal immigrants and were detained by UK Immigration.
14. As a result the police launched an expedited review on 25 November 2016.
15. The licence was suspended on 29 November 2016 following the expedited review hearing before this committee.
16. A full review hearing was held on 15 December 2016 and this committee revoked the premises licence.
17. A new application was made for a premises licence on 18 February 2017 following the premises having been sold to Hardi Mohammed
18. Representations were received from West Mercia Police and trading standards.
19. Although the representations were agreed the matter was brought before the committee in relation to an issue concerning the lease.
20. The matter appeared before the committee on 10 April 2017 and the matter was withdrawn following production of the lease.
21. As a result the licence was issued.

Current Licence

22. The current licence (appendix 2) authorises the following licensable activities during the hours shown:

Supply/Sale of Alcohol (Off Premise) Monday - Sunday 08:00-24:00

23. The licence is also subject to a number of conditions.

Circumstances leading to the review

24. On 25 April 2017 the licensing officer noticed that condition 6 of the premises licence (unobstructed view into the premises) was not being complied with.

25. As a result he wrote to the premises licence holder to inform him of the breach of the condition (appendix 3).
26. On 12 May West Mercia Police attended the premises and reported to the licensing authority (appendix 4) that condition 6 was not being complied with, with virtually all of the windows and doors still covered. They also handed the person in charge of the premises a copy of the letter sent by the licensing officer on 26 April.
27. The police officer took photographs of the windows at the premises (appendix 5 and 6)
28. On 17 June the police reported to the licensing authority, by telephone, that the windows still remained covered.
29. On 29 June the licensing officer visited the premises and found that conditions 1, 2, 3, 5, 6, 7, 8 and 9 of the licence were not being complied with.
30. The licensing officer took a number of photographs (appendix 7, 8 and 9).
31. He wrote to the premises licence holder to inform him of the breaches of the conditions of the licence (appendix 10).
32. On 30 July the police attended the premises in relation to a crime. The person in charge of the shop was unable to play the CCTV recording to the police. They shared this information with the licensing authority (appendix 11).
33. On 11 August the licensing officer attended the premises again, where the premises licence holder was present. He found that conditions 2, 6 and 7 were still not being complied with.
34. As a result this review was launched.

Summary of Representations

35. One (1) representation (appendix 12) has been received from the responsible authorities (West Mercia Police).
36. No other representations have been received.

Community Impact

37. Any decision is unlikely to have any significant effect of the local community.

Equality duty

38. 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.
39. 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.

40. There are not considered to be any equalities implications arising from this report.

Financial implications

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

Legal Implications

42. 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.
43. The options available to the licensing authority on considering this application under the Licensing Act 2003 are set out in section 1 of this report. Licensing authorities should, so far as possible, seek to establish the cause or causes that the representations identify. It is expected that the remedial action taken should generally be directed at these causes and should always be no more than appropriate and proportionate response to address the causes of concern that instigated the review.
44. 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.
45. 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.
46. 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. It should be noted that hearsay evidence is admissible in the context of making decisions on licensing matters.
47. 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:
48. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
49. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

50. There is a right of appeal to the Magistrates Court within 21 days of being notified in writing of the decision

Risk Management

51. 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

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

Appendices

- Appendix 1 - Application for the review of the premises licence
Appendix 2 - Current premises licence
Appendix 3 - Letter from the licensing authority to the premises licence holder following the visit on 25 April.
Appendix 4 - Emailing concerning police visit on 12 May
Appendix 5 - Photograph of premises on 12 May supplied by the police
Appendix 6 - Photograph of premises on 12 May supplied by the police
Appendix 7 - Photograph of the premises taken by the Licensing Officer on 29 June
Appendix 8 - Photograph of the premises taken by the Licensing Officer on 29 June
Appendix 9 - Photograph of the premises taken by the Licensing Officer on 29 June
Appendix 10 - Warning letter from the licensing authority to premises licence holder following the visit on 29 June
Appendix 11 - Email from the police following their visit on 30 July
Appendix 12 - Police representation

Background Papers

None