

Meeting:	Licensing sub committee
Meeting date:	7 March 2019
Title of report:	Review of a premises licence in respect of: Mila, 102-104 Belmont Road, Hereford, HR2 7JS called by West Mercia Police - Licensing Act 2003
Report by:	Licensing Technical Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Belmont

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 West Mercia Police.

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 options open to the sub-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.

Reasons for Recommendations

3. Ensures compliance with the Licensing Act 2003.

Key Considerations

4. 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 - have not been withdrawn; and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
5. The details of the application are:

Applicant	Police Sergeant 3456 Duncan Reynolds of West Mercia Police	
Agent	Not applicable	
Type of application: Review	Date received: 11 January 2019	28 Days consultation ended 8 February 2019

Summary of Application

6. The application for the review is attached (appendix 1).
7. Copies of the application were sent to the premise licence holder and Responsible Authorities.
8. In brief West Mercia Police's grounds for the review are:
9. On the 12 December 2018, a joint Police, HM Revenue and Customs and operation took place at Mila, 102 Belmont Road, Hereford. A quantity of non-duty paid alcohol was found at the premises.

Premises History

10. The premises was first licensed in September 2015 as a Polish convenience store selling alcohol.
11. 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. ¼ of a million) of illegal and non-duty paid cigarettes being seized together with a large quantity of tobacco.
12. Two of the workers at the shop were found to be illegal immigrants and were detained by UK Immigration.
13. As a result the police launched an expedited review on 25 November 2016.
14. The licence was suspended on 29 November 2016 following the expedited review hearing before the committee.
15. A full review hearing was held on 15 December 2016 and the committee revoked the premises licence.
16. A new application was made for a premises licence on 18 February 2017 following the premises having been sold to Hardi Mohammed
17. Representations were received from West Mercia Police and Trading Standards.
18. Although the representations were agreed the matter was brought before the sub-committee in relation to an issue concerning the lease.
19. The matter appeared before the sub-committee on 10 April 2017 and the matter was withdrawn following production of the lease.
20. As a result the licence was issued.
21. Since that licence was issued, a number of visits to the premises were carried out by both the police and the licensing authority. These were carried out during 2017. On each of the visits the conditions shown attached to the premises licence had not been complied with.
22. Due to the constant failures of conditions not being complied with, the Licensing Authority launched a review of the premise licence on 7 September 2017.
23. A full review hearing was held on 2 November 2017. The sub-committee removed an existing condition relating to obstruction of windows and replaced it with a condition relating to window coverage that was more achievable for promoting the licensing objective Prevention of Crime and Disorder.
24. On 25 July 2018 the Licensing Authority received an application to transfer the premises licence and vary designated premises supervisor (DPS) from Hardi Mohammed to Anita Szporak.
25. On 6 August 2018 the Licensing Authority received an objection from West Mercia Police in relation to the transfer and vary the DPS citing that they had serious concerns about Ms Szporak being the holder of the premises licence and being specified as the DPS will undermine the licensing objectives.

26. A hearing was held on 5 September 2018, where the sub committee's decision was to refuse the request to transfer the premises licence to Ms Szporak.

Current Licence

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

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

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

Circumstances leading to the review

29. At 1245hrs on Wednesday 12 December 2018 a joint Police and HM Revenue and Customs operation took place at the premises. This was intelligence led. The premises was searched and a total of 32 bottles of non-duty paid vodka of various brands were found on display for sale. The volume of the items amounted to 23 litres and the amount of duty evaded amounted to £307.
30. As a result this review was launched.

Summary of Representations

31. No representations have been received from any of the Responsible Authorities or members of the public, though West Mercia Police have submitted additional information in support of their application (appendix 3)
32. No other representations have been received.

Community Impact

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

Equality duty

34. 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.
35. 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.

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

Financial implications

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

Legal Implications

38. 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.
39. 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.
40. 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.
41. 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.
42. 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.
43. 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'.
44. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

45. Schedule 5 gives a right of appeal which states:

An appeal may be made within 21 days to the Magistrates Court by the police or any person who has made a relevant representation and also by the premises licence holder once notified of the licensing authority's decision.

The decision of the licensing authority, following the review hearing, will not have effect until the end of the period allowed for appeal, or until the appeal is disposed of.

Risk Management

46. 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

47. 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 - Additional papers from West Mercia Police

Background Papers

None