

Meeting:	Licensing sub-committee
Meeting date:	2 August 2019
Title of report:	Grant of a premises licence in respect of: Mila, 102-104 Belmont Road, Hereford, HR2 7JS - Licensing Act 2003
Report by:	Principal Licensing Officer

Classification

Open

Key Decision

This is not an executive decision.

Wards Affected

Hinton and Hunderton.

Purpose

To consider an application for a grant of a premises licence in respect of: Mila, 102-104 Belmont Road, Hereford, HR2 7JS.

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 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:
 - 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

- 3. The application for a grant of the premises licence has received relevant representations and is brought before the sub committee for determination.

Licence Application

- 4. The details of the application are:

Applicant	Mr Hersh Mohammad of 102-104 Belmont Road, Hereford. HR2 7JS	
Agent	Anthony Clarke of Secure Licences, 540 Antrim Road, Belfast. BT15 5GJ	
Type of application: Grant	Date received: 17 May 2019	28 Days consultation ended 13 June 2019

Summary of Application

- 4. The application (appendix 1) requests to grant a premises licence to allow the following licensable activities, during the hours shown, as follows;

Sale/Supply of Alcohol (for consumption off the premises)
Monday – Sunday 08:00 – 24:00
- 5. This matter appeared before this committee on 5 July 2019 and was adjourned until today at the request of the applicant's solicitors, who were unable to attend.

Premises History

- 6. The premises was first licensed in September 2015 as a Polish convenience store selling alcohol.

7. 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.
8. Two of the workers at the shop were found to be illegal immigrants and handed over to UK Border Agency.
9. As a result the police launched an expedited review on 25 November 2016.
10. The licence was suspended on 29 November 2016 following the expedited review hearing before the sub committee.
11. A full review hearing was held on 15 December 2016 and the committee revoked the premises licence.
12. A new application was made for a premises licence by Hardi Mohammed on 18 February 2017.
13. Representations were received from West Mercia Police and Trading Standards.
14. Although the representations were agreed the matter was brought before the sub-committee in relation to an issue concerning whether Hardi Mohammed was the leaseholder.
15. The matter appeared before the committee on 10 April 2017 and the matter was withdrawn following production of the lease.
16. As a result the licence was issued.
17. 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 were found not to be being complied with.
18. As the conditions attached to the licence were not being complied with on a regular basis, the Licensing Authority launched a review of the premise licence on 7 September 2017.
19. A full review hearing was held on 2 November 2017. The 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 of the prevention of crime and disorder.
20. On 25 July 2018 the licensing authority received an application to transfer the premises licence and vary the designated premises supervisor (DPS) from Hardi Mohammed to Anita Szporak.
21. On 6 August 2018 the licensing authority received an objection from West Mercia Police in relation to the transfer and vary DPS as they had serious concerns that Ms Szporak as the premises licence holder and DPS would undermine the licensing objectives.

22. A hearing was held on 5 September 2018, where the sub committee's decision was to refuse the application to transfer the premises licence to Ms Szporak as they believed that to do would undermine the crime prevention licensing objective.
23. On the 12 December 2018, a joint Police, HM Revenue and Customs and UK Border Agency operation took place at the premises where a quantity of non-duty paid alcohol was found at the premises.
24. On 11 January 2019 an application to review the premises licence was received from West Mercia Police as a result of the visit on 12 December 2019.
25. Following the application to review, on 5 February 2019 Hardi Mohammed surrendered the premises licence.
26. On 7 February 2019 Hersh Mohammad applied to transfer the premises licence and also to become the DPS. The effect of this was that the premises licence was re-instated.
27. West Mercia Police objected to the transfer and vary DPS as it was their view that to grant the application would undermine the licensing objective of the prevention of crime and disorder.
28. On 7 March 2019 the review of the premises licence was heard by the sub-committee. At that meeting the sub-committee decided to revoke the licence.
29. On 15 March 2019 the licensing sub-committee heard the application for the transfer of the premises licence and the application to vary the DPS. At that meeting the sub-committee decided not to grant the application to transfer the licence, therefore the licence in effect died. They were unable to consider the application for the DPS as the application was not held by the premises licence holder.

Summary of Representations

30. Two (2) representations have been received from the responsible authorities (Trading Standards and West Mercia Police). These representations are outright objections to the application being granted (appendix 2 and 3). West Mercia Police have also supplied further documentation in support of their objection (appendix 4 and appendix 5).

Community Impact

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

Equality duty

32. There are no equality issues in relation to the content of this report.
33. 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.
34. 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

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

Legal Implications

36. 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.
37. 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.
38. 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.
39. 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: -

40. 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.
41. 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.
42. 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'.

43. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

44. Schedule 5 gives 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).
45. 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

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 to grant a premises licence
- Appendix 2 - Trading Standards representation
- Appendix 3 - West Mercia Police representation
- Appendix 4 - West Mercia Police Supporting Documents
- Appendix 5 - West Mercia Police Supporting Documents

Background Papers

None.