

<b>Meeting:</b>	<b>Licensing sub committee</b>
<b>Meeting date:</b>	<b>Tuesday 30 June 2020</b>
<b>Title of report:</b>	<b>Review of a premises licence in respect of: I.R.I Ltd t/a Europe, 24 Eign Gate, Hereford. HR4 0AB' launched by Herefordshire Council Trading Standards - Licensing Act 2003</b>
<b>Report by:</b>	<b>Licensing Technical Officer</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Central

## **Purpose**

To consider an application for a review of a premises licence in respect of: I.R.I Ltd, T/A Europe, 24 Eign Gate, Hereford. HR4 0AB.

## **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 Trading Standards Service 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:
  - a) the modification of the conditions of the premises licence;
  - b) the exclusion of any licensable activities from the scope of the licence;
  - c) the removal of the designated premises supervisor from the licence;
  - d) the suspension of the licence for a period not exceeding 3 months; and
  - e) the revocation of the licence
2. Where the authority takes a step mentioned in bullet point a and b 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  - have not been withdrawn; and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	Herefordshire Council Trading Standards Service	
Agent	Not applicable	
Type of application: Review	Date received: 5 May 2020  28 day consultation started 6 May 2020	28 Days consultation ended  2 June 2020

## Summary of Application

5. The application for the review is attached (appendix 1)
6. Copies of the application were sent to the premises licence holder and responsible authorities.
7. In brief the Trading Standards Service grounds for the review are:
8. On the 8 April 2020 Trading Standards Officers from Herefordshire Council attended Europe, 24 Eign Gate Hereford, HR4 0AB and seized a quantity of illegal foreign cigarettes being sold from the premises.

The sale of illicit tobacco is a criminal offence and creates a serious problem. Its sale undermines the licensing objectives that specifically relate to the prevention of crime and disorder.

### **Premises History**

9. The premises was first licensed in November 2016 as an European convenience store selling alcohol. The premises licence holder was I.R.I Limited and the designated premises supervisor (DPS) was Ina Turuliene. The name of the premises was licensed as I.R.I Limited.
10. On 6 March 2018, the licensing authority received an application to transfer the licence from I.R.I Ltd to IGLE Ltd with the DPS remaining in the name of Ina Turuliene. This was granted on 13 March 2018. However, the licensing authority did not receive any notification of change of premises name.
11. It has been brought to the licensing authority's attention that when the review was launched that the premises is known as Europe. To date, the authority has not received notification of a change of name to the premises.

### **Current Licence**

12. 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 09:30 – 21:00
13. The licence is also subject to a number of conditions.

### **Circumstances leading to the review**

14. On the 6 February 2020 Trading Standards received intelligence from a member of the public that her 15 year old son had purchased two packets of illegal Marlboro foreign labelled cigarettes from Europe, 24 Eign Gate, Hereford, HR4 0AB. One of the packets was given to Trading Standards who confirmed the cigarettes as being illegal.
15. On 8 April 2020 Trading Standards attended Europe to conduct a routine inspection of medicines on sale in the shop as a response to COVID-19. During the inspection, officers found three (3) packets of illegal Marlboro cigarettes (consistent with the intelligence received on the 6 February 2020) and eight (8) packets of illegal New Zealand cigarettes located underneath the till behind the counter.
16. Further inspection of the counter area revealed a number of large shopping bags full of illegal cigarettes being stored in a cupboard next to the till area – there were 220 packets found in the bags, all of which were illegal foreign labelled.
17. The black market street value of the cigarettes is approximately £808.50. The duty evasion figure is however much higher at approximately £1848.00
18. As a result this review was launched.

## **Summary of Representations**

19. Representations have been received from West Mercia Police, Trading Standards and Public Health in support of the review and can be found at appendices 3 to 5.
20. No other representations have been received.

## **Community Impact**

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

## **Equality duty**

22. 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.
23. 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.
24. There are not considered to be any equalities implications arising from this report.

## **Financial implications**

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

## **Legal Implications**

26. 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.
27. 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.
28. 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.
29. 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.

30. 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.
31. 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'.
32. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

## **Right of Appeal**

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

## **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 for the review of the premises licence
- Appendix 2 - Current Premises Licence
- Appendix 3 - West Mercia Police representation
- Appendix 4 - Trading Standards representation
- Appendix 5 - Public Health representation

## **Background Papers**

None