

<b>Meeting:</b>	<b>Licensing sub committee</b>
<b>Meeting date:</b>	<b>Friday 15 March 2019</b>
<b>Title of report:</b>	<b>Application to be the Designated Premises Supervisor on the premises licence in respect of: 'Mila, 102-104 Belmont Road, Hereford, HR2 7JS' - Licensing Act 2003</b>
<b>Report by:</b>	<b>Licensing officer</b>

## **Classification**

Open

## **Key Decision**

This is not an executive decision.

## **Wards Affected**

Belmont

## **Purpose**

To consider an application to be the Designated Premises Supervisor (DPS) on the 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 objective of the prevention of crime & disorder,**
- **The application for transfer and any further supporting information,**
- **The guidance issued to local authorities under the Licensing Act 2003,**
- **The representation (including supporting information) presented by the police**
- **The Herefordshire Council Statement of Licensing Policy 2015 - 2020.**

## Options

1. There are two options open to the committee
  - Grant the application for transfer or
  - Refuse the application

## Reasons for Recommendations

2. Ensures compliance with the Licensing Act 2003.

## Key Considerations

3. The application for the change of designated premises supervisor has received a relevant representation from the police and is brought before the committee for determination.

Applicant	Hersh Omar Mohammad	
Agent	June Clarke of JMC Licensing Consultants	
Type of application: Vary DPS	Date police notified: 6 February 2019	14 Days consultation ended 20 February 2019

## Summary of Application

4. The application for the change of designated premises supervisor and the consent form are attached at appendix 1.
5. The change of designated premises supervisor can be allowed to have immediate effect in certain circumstances. In this case as the application was requested to have immediate effect then Hersh Omar Mohammad is already performing that role.

## 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 were detained by UK Immigration.
9. As a result the police launched an expedited review on 25 November 2016.
10. The licence was suspended on 29 November following the expedited review hearing before this sub-committee.

11. A full review hearing was held on 15<sup>th</sup> December and this sub-committee revoked the premises licence.
12. A new application was made for a premises licence on 18 February 2017 following the premises having been sold to Hardi Mohammed
13. Representations were received from West Mercia Police and Trading Standards.
14. The representations were agreed and as a result the licence was issued.
15. On the 12 December 2018, a joint Police, HM Revenue and Customs and UK Border. Agency operation took place at Mila, 102 Belmont Road, Hereford. A quantity of non-duty paid alcohol was found at the premises.
16. On 11 January 2019 an application to review the premise licence was received from West Mercia Police

### **Current Licence**

17. The current licence (appendix 2) authorises the following licensable activities during the hours shown:
18. Supply/Sale of Alcohol (Off Premise)  
Monday - Sunday 08:00-24:00
19. The licence is also subject to a number of conditions.

### **Summary of Representations**

20. The police are the only party that can object to the change of designated premises supervisor and have done so (appendix 3).

## **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

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

## Legal Implications

24. 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.
25. 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.
26. 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.
27. 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.
28. 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.
29. 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'.
30. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.
31. The committee's attention is drawn to the Section 182 Guidance which states:
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- a. for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
  - b. for the sale and distribution of illegal firearms;
  - c. for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
  - d. for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
  - e. for prostitution or the sale of unlawful pornography;

- f. by organised groups of paedophiles to groom children; as the base for the organisation of criminal activity, particularly by gangs;
- g. for the organisation of racist activity or the promotion of racist attacks;
- h. for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- i. for unlawful gambling; and
- j. for the sale or storage of smuggled tobacco and alcohol.

32. Section 37 of the Licensing Act 2003 only permits application for a change of designated premises supervisor to be made by the premises licence holder.

## **Right of Appeal**

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

An appeal may be made within 21 days to the Magistrates Court by the police and also by the premises licence holder once notified in writing of the licensing authority's 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. The police are the only responsible authority that can object.

## **Appendices**

Appendix 1 - Application for change of designated premises supervisor and consent

Appendix 2 - Current Premises Licence

Appendix 3 – Police representation

## **Background Papers**

None