

Title of report: Review of a premises licence in respect of: IRI Ltd T/A Europe, 24 Eign Gate, Hereford. HR4 0AB called by West Mercia Police - Licensing Act 2003

Meeting: Licensing sub-committee

Meeting date: Tuesday 13 September 2022

Report by: Senior Licensing Technical Officer

Classification

Open

Decision type

This is not an executive decision

Wards affected

Central

Purpose

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

Recommendation(s)

That:

The 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,
- West Mercia Police 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 2020 - 2025

Reasons for Recommendations

Ensures compliance with the Licensing Act 2003

Alternative options

1. There are a number of options 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

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

Key considerations

2. 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 - have not been withdrawn; and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
3. The details of the application are:

Applicant	West Mercia Police	
Agent	Not applicable	
Type of application: Review	Date received: 29 July 2022 28 day consultation started: 30 July 2022	28 Days consultation ended: 26 August 2022

Summary of Application

4. The application for the review is attached (appendix 1).
5. Copies of the application were sent to the premises licence holder and Responsible Authorities.
6. In brief the Responsible Authority's grounds for the review are:

West Mercia Police launched the review under the licensing objective, Prevention of Crime & Disorder due to an investigation by Police for the handling and selling of stolen goods.

Premises History

7. The premises was first licensed in November 2016 as an European convenience store selling alcohol. The premises licence holder was IRI Ltd and the designated premises supervisor (DPS) was Ina Turuliene.
8. On 6 March 2018, the licensing authority received an application to Transfer the licence from IRI Ltd to IGLE Ltd with the DPS remaining in the name of Ina Turuliene. This was granted on 13th March 2018.
9. On 30 June 2020, the premises and current DPS was brought before licensing committee. Trading Standards (as a responsibly authority) launched a review on the premises for the sale of illegal tobacco. This resulted in the premises licence being suspended for the maximum 3 months following the 21 day appeal process. The decision was not appealed at magistrates court.
10. An application to transfer the premises licence from IGLE Ltd to MIGLE Ltd was received by the licensing authority on 19 July 2022 and was subsequently granted on 3 August 2022.

Current Licence

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

Sale/Supply of Alcohol (for consumption off the premises)

Monday – Friday 09:30 – 20:00

Saturday 10:00 – 20:00

Sunday 11:00 – 16:00

12. The licence is also subject to a number of conditions. The conditions on the licence must be adhered to whenever the premises is open for licensable activities.

Circumstances leading to the review

13. Known shoplifters were seen entering the store on 11 April 2022 with items of property. Those items were subsequently identified as stolen later the same day
14. Police attended the store on the 16 April 2022 and identified the stolen items on display in the shop. The person in charge of the shop at that time were arrested on suspicion of handling stolen goods.
15. At the time of the arrest a quantity of medical supplies were also seized. It was believed that these medical supplies were being sold without the appropriate license to sell such products.
16. The Designated Premises Supervisor (DPS) has been subsequently interviewed under police caution for the handling of stolen goods and has been reported for summons to court.

Summary of Representations

17. One (1) representation was received from Herefordshire Council Trading Standards (Appendix 3). No representations were received from members of the public.

Community impact

18. Any decision may have an impact on the local community.

Environmental Impact

19. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal environmental impacts for the council, as the licensing authority.

Equality duty

20. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to –

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
21. There are no equality issues in relation to the content of this report.
 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.

Resource implications

24. This report is in relation to a premises license under the Licensing Act 2003 and as such there are minimal resource implications for the council, as the licensing authority.

Financial implications

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

Legal implications

26. 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.
27. 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.
28. 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.
29. 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: -
30. 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.
31. 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.
32. 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:
33. 'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.
34. In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Right of Appeal

33. Schedule 5 of the Licensing Act 2003 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).
34. 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

35. 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

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

Appendices

Appendix 1 - Application Form
Appendix 2 – Current Premises Licence
Appendix 3 – Trading Standards Representation

Background papers

None Identified

Please include a glossary of terms, abbreviations and acronyms used in this report.

DPS – Designated Premises Supervisor