

## LICENSING SUB-COMMITTEE

**Venue:** Town Hall, Moorgate  
Street, Rotherham. S60  
2TH

**Date:** Monday, 8 July 2019

**Time:** 2.00 p.m.

### A G E N D A

1. To determine whether the following items should be considered under the categories suggested in accordance with Part 1 of Schedule 12A (as amended March 2006) of the Local Government Act 1972.
2. To determine any item(s) which the Chairman is of the opinion should be considered later in the agenda as a matter of urgency.
3. Licensing Act 2003 - Licence - Review of the Premises Licence - Ferham Supermarket, 192 Ferham Road, Holmes, Rotherham (Pages 1 - 31)

### **Committee Name and Date of Committee Meeting**

Licensing Sub-Committee – 8<sup>th</sup> July 2019 (2:00pm)

### **Report Title**

Consideration of an application (made in accordance with s.51 of the Licensing Act 2003) to review the Premises Licence in place at Ferham Supermarket, 192 Ferham Road, Holmes, Rotherham, S61 1DZ.

### **Report Author(s)**

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene  
01709 254955

### **Report Summary**

On the 17<sup>th</sup> May 2019, Rotherham MBC Licensing Service (in its role as a Responsible Authority) submitted an application for the review of the Premises Licence in place at Ferham Supermarket, 192 Ferham Road, Holmes, Rotherham. The premises is a general store / off licence predominantly attracting a local trade but with elements of passing trade.

The review application was submitted following an unannounced visit to the premises which revealed that a quantity of illicit tobacco and cigarettes were being stored and / or sold from the premises.

Following the submission of the review paperwork, two other responses were received in support of the review. Further detail on these is provided within the main body of the report.

## **Recommendations**

1. That the Licensing Sub-Committee considers the information contained within this report (and associated appendices) along with any additional information presented at the hearing and subsequently determines the application that has been made.
2. The Licensing Sub-Committee should inform the Licensing Manager of the decision in accordance with the requirements of the Licensing Act 2003 and Regulations made thereunder.

## **List of Appendices Included**

- Appendix 1 Location details
- Appendix 2 Ferham Supermarket Premises Licence
- Appendix 3 Review Application form submitted on 17<sup>th</sup> May 2019
- Appendix 4 Additional representations received (redacted where appropriate)

## **Background Papers**

Revised guidance issued under section 182 of the Licensing Act 2003 (April 2018)

## **Council Approval Required**

No

## **Exempt from the Press and Public**

No

**Consideration of an application (made in accordance with s.51 of the Licensing Act 2003) to review the Premises Licence in place at Ferham Supermarket, 192 Ferham Road, Holmes, Rotherham, S61 1DZ.**

**1. Background**

- 1.1 Ferham Supermarket, 192 Ferham Road, Holmes, Rotherham is a general store / off licence predominantly attracting a local trade but with elements of passing trade. Further details on the location of the premises can be found at Appendix 1.
- 1.2 The premises currently has the benefit of a Premises Licence issued under the Licensing Act 2003. A copy of this licence can be found at Appendix 2. An application to transfer this licence was received by the Council on 24<sup>th</sup> June 2019, this application transferred the premises licence to Mr Hallo Omid with immediate effect. Mr Omid is also the Designated Premises Supervisor at the premises. Although the licence has been transferred, the review remains “live” as the premises licence remains in place. It should be noted that the names on the premises licence have not yet been amended as the Council’s system does not allow this whilst a review is active.
- 1.3 Rotherham MBC (in the role of a Responsible Authority under the Licensing Act 2003) has submitted an application to review the Premises Licence in place at Ferham Supermarket.
- 1.4 There is a prescribed period of 28 days following the submission of a review application during which time interested parties / responsible authorities may submit representations in relation to the application.
- 1.5 At the end of the prescribed period, a total of 2 additional representations had been received. Appropriately redacted copies of the representations can be found at Appendix 4.

**2. Key Issues**

The application

- 2.1 The application for the review was submitted by Rotherham MBC Licensing Service on 17<sup>th</sup> May 2019, a copy of the application is attached to this report as Appendix 3. The trigger for the application is the discovery of a quantity of illicit tobacco and cigarettes on the premises, and the previous sale of these products to a test purchaser.
- 2.2 The application outlines concerns regarding the sale or storage of smuggled tobacco and inadequate levels of management control / presence. In addition, the review application cites concerns in relation to staff training, age verification, incident / refusals registers and CCTV usage. The applicant has

stated that additional supporting information will be presented at the hearing that will develop these points further.

- 2.3 The applicant for the review is seeking the revocation of the premises licence, and has referred to paragraphs 11.27 and 11.28 of the statutory guidance (issued under s182 of the Licensing Act 2003) which makes it clear that in cases where the premises are used “for the sale or storage of smuggled tobacco and alcohol”...”it is expected that revocation of a licence – even in the first instance – should seriously be considered”.

### Representations received

- 2.4 Two additional representations were received - one from Rotherham MBC Public Health team, and the other from South Yorkshire Police. Details of these can be found at Appendix 4.

- 2.5 Rotherham MBC Public Health team have made the following comments:

- The illicit tobacco trade is often part of organised criminal activity.
- Criminal gangs use the proceeds of such crime to fund the smuggling of drugs, weapons and human beings.
- The selling of illicit tobacco exposes individuals to increased risks to their health.
- The low price of illicit tobacco makes it more available to children and exposes them to criminal activity at an early age.
- The price and lack of standard warnings displayed on packs may encourage individuals to take up smoking when they may not otherwise have done so.

This is a summary only – full details are available at Appendix 4.

- 2.6 The representation submitted by South Yorkshire Police cited the following:

- Links to organised crime.
- Increase in levels of crime and disorder.

This is a summary only – full details are available at Appendix 4.

- 2.7 Those that have made representations have been invited to the hearing today and if attending will be given the opportunity to address the Sub-Committee in relation to the matters of concern.

- 2.8 Members of the Sub-Committee should give full consideration of the issues raised by interested party and Responsible Authorities when determining the application.

2.9 The process to be adopted at the hearing is outlined at the end of this report.

### **3. Options available to the Licensing Sub-Committee**

3.1 A licensing authority must carry out its functions under the Licensing Act with a view to promoting the licensing objectives:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

3.2 In considering this matter, the Committee should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be. In reaching the decision, regard must also be had to relevant provisions of the national guidance and the Council's licensing policy statement.

3.3 The Sub-Committee must take steps that it considers appropriate for the promotion of the licensing objectives.

3.4 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

3.5 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

3.6 However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

3.7 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption)<sup>10</sup>;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

3.8 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.

3.9 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

3.10 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

3.11 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of

detering the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

- 3.12 All licensing determinations should be considered on the individual merits of the application. The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve. Findings on any issues of fact should be on the balance of probability.
- 3.13 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal.

#### **4. Consultation**

- 4.1 The application has been subject to the statutory consultation process involving a newspaper advertisement and display of public notices in the vicinity of the site for 28 days.
- 4.2 The public consultation period ran from the 18<sup>th</sup> May 2019 to the 14<sup>th</sup> June 2019.
- 4.3 Relevant ward members have been notified of the application and all statutory requirements in relation to notification requirements have been complied with.

#### **5. Timetable and Accountability for Implementing this Decision**

- 5.1 Any decision made by the Licensing Sub-Committee does not have effect until:
- the end of the period given for appealing against the decision; or
  - if the decision is appealed, until the appeal is disposed of.
- 5.2 An appeal may be lodged by either the applicant or a party to the hearing that has made a relevant representation.



- 5.3 Parties to the hearing must be informed of the decision within 5 working days of the hearing (or within 5 working days from the last day of the hearing if it takes place over multiple days).

## **6. Financial Implications**

- 6.1 There are no specific financial implications arising from this application.
- 6.2 However, additional costs may be incurred should the matter go to appeal. In such an eventuality it may not be possible to recover all of the costs incurred. The impact of these additional costs (if any) will therefore need to be met from within existing revenue budgets.

## **7. Legal Advice and Implications**

- 7.1 A Council Solicitor will be in attendance at the hearing to provide appropriate legal advice to the Licensing Sub-Committee in relation to specific aspects of the application / hearing, however the advice below is generally applicable to all applications.
- 7.2 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005.
- 7.3 In accordance with Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005, the authority may take into account documentary or other information produced by a party in support of their application, representations or notice either before the hearing or, with the consent of all parties, at the hearing.
- 7.4 The Panel may accept hearsay evidence and it will be a matter for the Licensing Sub-Committee to attach what weight to it that they consider appropriate. Hearsay evidence is evidence of something that a witness neither saw nor heard, but has heard or read about.
- 7.5 The Secretary of State's guidance to the Licensing Act 2003 is provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of those who run licensed premises, their legal advisers and the general public. It is a key medium for promoting best practice, ensuring consistent application of licensing powers across England and Wales and for promoting fairness, equal treatment and proportionality.

- 7.6 Section 4 of the 2003 Act provides that, in carrying out its functions, a licensing authority must 'have regard to' guidance issued by the Secretary of State under section 182. The guidance is therefore binding on all licensing authorities to that extent. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and, as long as licensing authorities have properly understood this guidance, they may depart from it if they have good reason to do so and can provide full reasons.
- 7.7 Departure from the guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

### **8. Risks and Mitigation**

- 8.1 The statutory requirements in relation to the consideration of this application are detailed in this report. It is essential that the Sub-Committee act in accordance with these statutory provisions and take account of statutory guidance.
- 8.2 Failure to do this exposes the Council to significant risk of legal challenge, the consequences of which could result in financial and / or reputational damage to the Council.
- 8.3 Members are therefore urged to fully consider the information in this report when making a decision regarding this application, and to ensure that any decision made is justifiable, proportionate and based on the promotion of one or more of the Licensing Objectives.
- 8.4 Council officers are present at the meeting today and can provide additional advice to members of the Sub-Committee should this be required. In addition, a copy of the statutory guidance is available for members to review should they wish to do so.

### **9. Accountable Officer(s)**

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene

This report is published on the Council's [website](#).

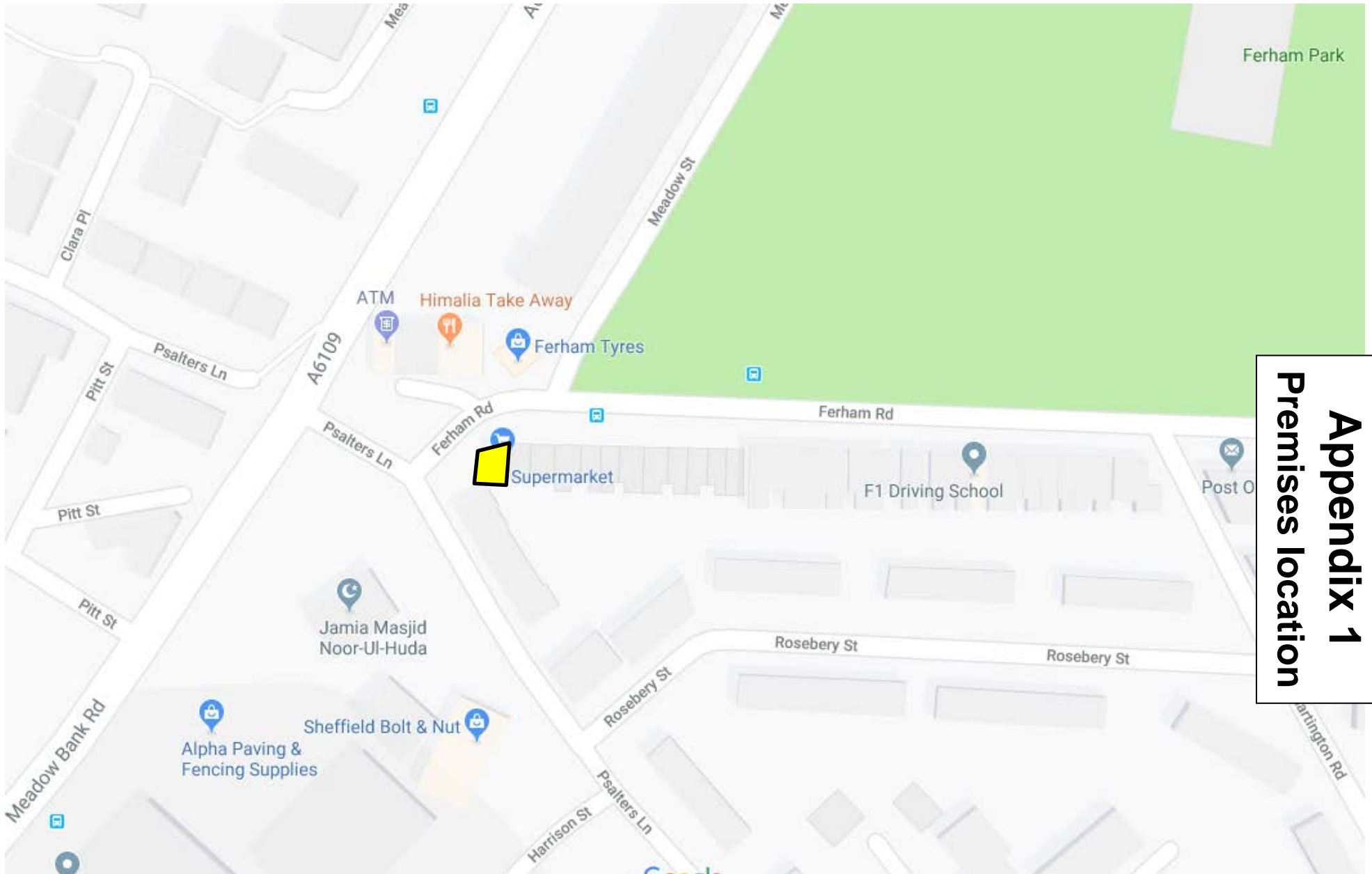
**Hearing Procedure – Review of Premises Licence**

- 1 The Chair of the Licensing Committee will introduce the Committee and ask officers to introduce themselves.
- 2 The Chair will ask the applicants to formally introduce themselves.
- 3 The Licensing Officer will outline the procedure to be followed at the hearing.
- 4 Hearing Procedure:-
  - i. The Licensing Officer will introduce the report.
  - ii. Questions concerning the report can be asked both by Members and the applicant.
  - iii. The Licensing Officer will introduce the applicant for the review (or the nominated representative) and invite them to detail the application and provide them with the opportunity to develop / clarify any of the matters raised as part of their application.
  - iv. The applicant for the review (or the nominated representative) may then be asked questions by members and, if agreed by the Chair, the licence holder and any other parties present.
  - v. The Licensing Officer will then introduce representatives for any Responsible Authorities that are a party to the hearing along with other Interested Parties in turn and each will be asked to detail their relevant representations. Following each submission, Committee members may ask questions of the Responsible Authority / Interested Party. If it is agreed by the Chair, the licence holder may also ask questions of those parties.
  - vi. The Premises Licence Holder (or their nominated representative) will then have the opportunity to make their submission in response to the matters raised by the other parties to the hearing. The licence holder may seek to provide further information / clarification to the Committee that will provide assurance that the licensing objectives are being adequately promoted, or may propose additional measures that will provide this assurance.
  - vii. Following this submission, Committee members may ask questions of the licence holder. If it is agreed by the Chair, the other parties to the hearing may also ask questions of the licence holder in relation to their submission.
  - viii. The applicant for the review will then be given the opportunity to sum up the application.

- ix. The licence holder will then be given the opportunity to sum up their submission in response to the review application.
  - x. The Licensing Officer will then detail the options.
  - xi. There will then be a private session for members to take legal advice and consider the application.
- 5 The decision of the Licensing Committee will be given in accordance with the requirements of the Licensing Act 2003 and regulations made there under.

**Notes:**

- At any time in the Licensing Process Members of the Committee may request legal advice from the Solicitor to the Committee. This advice may be given in open session or in private.
- The Committee Hearing will be held in public unless and in accordance with the Regulations the Committee determine that the public should be excluded.



**Appendix 1**  
**Premises location**





# Licensing Act 2003 Premises Licence

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## Part 1 - Premises Details

## POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

**Ferham Road Supermarket**

192 Ferham Road, Ferham, Rotherham, South Yorkshire, S61 1DZ.

## WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

## LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- the sale by retail of alcohol

## THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
The sale by retail of alcohol for consumption OFF the premises only	Monday to Sunday	8:00am	11:00pm

## THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	8:00am	11:00pm

## WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- The sale by retail of alcohol for consumption OFF the premises only

## Part 2

## NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Ilyas Gun

## REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

## NAME, ADDRESS AND TELEPHONE NUMBER OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

Ilyas GUN

## PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OF PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES FOR THE SUPPLY OF ALCOHOL

Licence No. SY06116

Issued by Sheffield





# Licensing Act 2003 Premises Licence

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## ANNEXES

**Mandatory Conditions****All Premises Licence authorising supply of alcohol**

The licence is granted subject to the Mandatory conditions for sale of alcohol as set out in the Licensing Act 2003 as amended by the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 and Order 2014.

1. No supply of alcohol may be made under the Premises Licence -
  - (a) At a time when there is no Designated Premises Supervisor in respect of the Premises Licence; or
  - (b) At a time when the Designated Premises Supervisor does not hold a Personal Licence or his Personal Licence is suspended.
2. Every supply of alcohol under the Premises Licence must be made, or authorised by a person who holds a Personal Licence.
3. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises.
    - a) games or other activities which require or encourage, or are designed to require or encourage, individuals to -
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;
    - d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or



## Licensing Act 2003 Premises Licence

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## ANNEXES continued ...

glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

4. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
5.
  - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
  - (2) The designated premises supervisor in relation to the premises licences must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
  - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:-
    - (a) a holographic mark or
    - (b) an ultraviolet feature.
6. The responsible person shall ensure that -
  - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -
    - (i) beer or cider: ½ pint;
    - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
    - (iii) still wine in a glass: 125 ml; and
  - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
  - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

### Minimum Drinks Pricing

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the



## Licensing Act 2003 Premises Licence

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## ANNEXES continued ...

premises for a price which is less than the permitted price.

2. For the purposes of the condition set out in paragraph 1 -

(a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979

(b) “permitted price” is the price found by applying the formula -

$$P = D + (D \times V)$$

Where -

(i) P is the permitted price

(ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and

(iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;

(c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence -

(i) The holder of the premises licence

(ii) The designated premises supervisor (if any) in respect of such a licence, or

(iii) The personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.

4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(2) The permitted price which would apply on the first day applies to sales or supplies of



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## ANNEXES continued ...

alcohol which take place before the expiry of the period of 14 days beginning on the second day.

## If the Premises Licence has conditions in respect of Door Supervision [except theatres, cinemas, bingo halls and casinos]

1. Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, each such individual must:
  - (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
  - (b) be entitled to carry out that activity by virtue of section 4 of the Act.
2. But nothing in subsection (1) requires such a condition to be imposed:
  - (a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c12) (premises with premises licences authorising plays or films); or
  - (b) in respect of premises in relation to:
    - (i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or
    - (ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that Act).
3. For the purposes of this section:
  - (a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and, which is licensable conduct for the purposes of that Act, (see Section 3(2) of that Act) and
  - (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

## Annex 2                      Conditions consistent with operating schedule Prevention of Crime and Disorder

1. The licence holder shall ensure that a tamper-proof digital CCTV system must be installed and maintained at the premises to the satisfaction of South Yorkshire Police. The system shall run and record continuously for 24 hours a day, 7 days a week and recorded footage must be stored for a minimum of 28 days. The system shall provide a clear head and shoulders view to an evidential



## Licensing Act 2003 Premises Licence

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## ANNEXES continued ...

- quality on every entry/exit route and within any other vulnerable areas as identified by South Yorkshire Police.
2. The licence holder shall ensure that recorded footage must be provided to a representative of any responsible authority on request. Such footage must be provided to in a viewable format within a reasonable time and must include any software etc. which is required to view the footage. Any discs, portable drives or other storage media onto which footage is transferred must be provided by the premises and sufficient stock of such storage media must be kept on the premises at all times.
  3. The licence holder shall ensure that the Designated Premises Supervisor must ensure that the CCTV system is checked at least once every week by a suitably trained member of staff. This check must include the operation of the cameras, the recording facilities, the facilities for providing footage and the accuracy of the time and date. A written record of these checks must be kept, including a signature of the person carrying out the check. This written record must be kept on the premises at all times and made available to a representative of any responsible authority on request.
  4. The licence holder shall ensure that the premises are secured with roller shutters at the front when closed.
  5. The licence holder shall ensure that all purchases of alcohol and tobacco products must be made from reputable wholesalers and all purchases must be recorded. These records must be made available on request to the police or authorised officer.
  6. The licence holder shall ensure that all spirits of high ABV will be sold from behind the counter.
  7. The licence holder shall ensure that when the DPS is not on duty a contact number will be available at all times.
  8. The licence holder shall ensure that an incident book (with pages numbered sequentially) must be kept on the premises and be made available for inspection by responsible authorities. The incident book shall be used to record the following:
    - (i) An incident of violence or disorder on or immediately outside the premises
    - (ii) Any other crime or criminal activity on the premises.
  9. The licence holder shall ensure that a refusals book is kept at the premises to record all refusals to sell alcohol for any reason. Where other age restricted products are sold at the premises any refusals to sell such items to underage persons or persons who appear underage must be recorded. The details must be recorded as:
    - (i) Time, day & date of refusal
    - (ii) Description of customer
    - (iii) Details of identification offered (if shown)
 The refusals book must be made available for inspection by responsible authorities on request.

### Public Safety



# Licensing Act 2003 Premises Licence

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## ANNEXES continued ...

None

**Prevention of Public Nuisance**

10. The licence holder shall ensure that the management will monitor the exterior of the premises with the CCTV and use their best endeavours to disperse any persons who appear to be congregating outside the premises.

**Protection of Children from Harm**

11. The licence holder shall operate a Challenge 25 policy at the premises. The only acceptable forms of ID (at the discretion of the management) are a valid passport, a valid photographic driving licence, a PASS approved proof of age card, HM Services Warrant Card or other reliable photo ID that is approved for acceptance within the Home Office guidelines. Signage for Challenge 25 scheme shall be displayed at the premises. A documented training programme shall be introduced for all staff in a position to sell and serve alcohol. The programme shall be made available for inspection at the request of Trading Standards, Licensing Authorities officers and Police. A written record shall be kept of the content of training.

**Annex 3      Conditions attached after a Hearing of Licensing Authority**

None.

**Annex 4      Plans**

See attached



# Licensing Act 2003 Premises Licence Summary P1004

## Premises Details

### POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

#### Ferham Road Supermarket

192 Ferham Road, Ferham, Rotherham, South Yorkshire, S61 1DZ.

### WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

### LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- the sale by retail of alcohol

### THE TIMES THE LICENCE AUTHORIZES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
The sale by retail of alcohol for consumption OFF the premises only	Monday to Sunday	8:00am	11:00pm

### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	8:00am	11:00pm

### WHERE THE LICENCE AUTHORIZES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- The sale by retail of alcohol for consumption OFF the premises only

### NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

Ilyas Gun

### REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

### NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORIZES THE SUPPLY OF ALCOHOL

Ilyas GUN

### STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED

Not applicable



**APPENDIX 3***Rotherham Metropolitan Borough Council – Licensing Office***Application for the review of a premises licence or club premises certificate under the Licensing Act 2003****PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form.  
 If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

**I Chris Burnett. Principal Licensing Officer, Rotherham MBC***(Insert name of applicant)*

**apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below**

**Part 1 – Premises or club premises details**

<b>Postal address of premises or, if none, ordnance survey map reference or description.</b>	
<b>Ferham Road Supermarket,          192 Ferhamr Road,Rotherham          South Yorkshire          S61 1DZ</b>	
<b>Post town</b> Rotherham	<b>Post code (if known)</b> S61 1DZ

<b>Name of premises licence holder or club holding club premises certificate (if known)</b>
<b>ILYAS GUN</b>

<b>Number of premises licence or club premises certificate (if known)</b>
<b>P1004</b>

**Part 2 - Applicant details**

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)



Please state the ground(s) for review (please read guidance note 2)

Application is made under S51 Licensing Act 2003 for a review of the premises licence in respect of Ferham Road Supermarket, 192 Ferham Road, Rotherham S61 1 DZ.

The application seeks a revocation of the licence. The application is made in respect of the following licensing objectives :

- Protection of children from harm
- Public safety
- Prevention of crime and disorder.

Ferham Road Supermarket is a small off licence situated on the outskirts of the Town Centre in a residential area.

The current premises licence holder and DPS, Mr. Ilyas GUN has been in charge of the premises since the premises licence was granted in early 2017. He has always held the post of Premises licence holder and DPS.

As a result of information received, on 13<sup>th</sup> March 2019 a test purchase was carried out at the premises by Trading Standards Officers. The test resulted in the sale of a packet of illicit cigarettes.

A further test purchase was carried out on 7<sup>th</sup> May 2019 and a further packet of illicit cigarettes was again sold at the premises.

Shortly after, on 7<sup>th</sup> May 2019, a search warrant was executed at the premises in a joint operation with the Police, Trading Standards and the Licensing Enforcement team. As a result of the operation, a significant seizure of illicit and counterfeit tobacco products were located and seized from behind the counter. Staffs at the premises at this time were unable to identify the name of the DPS and premises licence holder.

On 15<sup>th</sup> May 2019, the premises were visited by Chris Burnett, the Principal licensing Officer making enquiries to locate the Premises Licence Holder and DPS. Whilst speaking with the shop assistant, the officer noticed a large carrier bag behind the counter out of which illicit cigarettes appears to be evident. A check of the bag revealed another significant quantity of illicit cigarettes. A check behind the counter revealed a further large bag containing almost 100 packets of illicit hand rolling tobacco and two large nik nak boxes were secreted under the counter containing significant quantities of illicit and counterfeit cigarettes and tobacco.

The premises licence holder was subsequently located and on Friday 17<sup>th</sup> May 2019 he attended at Riverside House where he was interviewed under caution about the matter.

In interview he accepted as Premises licence holder and DPS, he had very little control over the premises. He was unaware of the staff who worked at the premises, he was unsure of the management structure and he stated he had only visited the premises 4 times since Christmas. He was asked about the counterfeit and illicit cigarettes and tobacco and he was unable to explain why they were being sold in his premises. He was also unable to explain why none of the staff were aware of who he was despite his status as DPS and Premises licence holder.

In respect of his licence it was clear he had failed to comply with a significant number of conditions on his premises licence including staff training, age verification, completion of incident and refusals register and also the weekly checking and recording of the CCTV system, all criminal offences under S136 Licensing Act 2003.1

Rotherham Council take the view that Mr. GUN is unable to manage and maintain control over his premises. There is clear evidence that he does not have day to day management and control of the premises as a DPS, and there is further evidence that he has little understanding of his roles and responsibilities as a Premises Licence Holder to promote the four licensing objectives. It is the view of Rotherham Council that this conduct has resulted in four instances over the last two months where illicit or counterfeit tobacco products have been seized from the premises.

The Home Office Guidance at S 11.27 sets out which criminal activity at licensed premises should be considered as particularly serious. This includes incidents where the premises are used “for the sale or storage of smuggled tobacco and alcohol”.

The guidance sets out at 11.28 that where, in the event of a review, ....“it is expected that revocation of a licence-even in the first instance-should be seriously considered.

The application therefore seeks a revocation of the premises licence. Additional evidence in respect of the operation and the seizures will be submitted in disclosures and developed at the hearing.

Chris Burnett  
Principal Licensing Officer  
Rotherham MBC

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day		Month		Year		
┆	┆	┆	┆	┆	┆	┆

**If you have made representations before relating to the premises please state what they were and when you made them**

The premises previously sold alcohol without a licence in early 2017. An application for a premises licence was subsequently made but rejected by the licensing sub-committee following a representation made by Rotherham MBC licensing team. The application made for a licence by the current DPS was made following this decision as no link could be made to the previous applicant.

Please tick ✓

yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate x
- I understand that if I do not comply with the above requirements my application will be rejected x

**IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant’s solicitor or other duly authorised agent** (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature  Chris Burnett.....

Date 17/5/2019.....

Capacity **Principal Licensing Officer**  
.....

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 6)	
Chris Burnett Principal Licensing Officer Riverside House Main Street	
<b>Post town</b> Rotherham	<b>Post Code</b> S60 1AE
<b>Telephone number (if any)</b> 01709 823153	
<b>If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)</b> chris.burnett@rotherham.gov.uk	

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

**Adults, Care, Housing and Public Health**

Public Health  
 Riverside House  
 Main Street  
 Rotherham  
 S60 1AE  
 Tel: (01709) [REDACTED]  
 E-mail: [REDACTED]

**Our Ref:**

Ferham Road Supermarket Alcohol License Review

6<sup>th</sup> June 2019

Dear Licensing Team,

I am writing to express my concerns with regards to Ferham Road Supermarket following the application to review the alcohol license. I am aware of the seizure of illicit tobacco at the premises and would like to raise the following points with regards to failures to promote the licensing objectives.

- **The prevention of crime and disorder.**

The illicit tobacco trade is often part of organised criminal activity and is linked to a range of other illegal trades including alcohol and DVD production.<sup>1</sup> The smuggling of cigarettes and hand-rolling tobacco is also a key business for organised criminal gangs who use the proceeds of this crime to fund the smuggling of drugs, weapons and also human beings.<sup>2</sup>

Tobacco smuggling has strong links with terrorist and paramilitary organisations, organised crime syndicates and insurgencies. The enormous profits to be made by evading tobacco duties make smuggling an attractive option for unscrupulous criminal interests. The Taliban, al-Qaeda, Hezbollah and the Kurdistan Workers Party (PKK) are involved in smuggling cigarettes as is the Columbian FARC. Both the Provisional IRA and the splinter group the Real IRA have been linked with tobacco smuggling as a way of raising money to fund their activities.<sup>3</sup>

Tobacco smuggling is a significant threat to UK tax revenues.<sup>4</sup> The tobacco tax gap is driven by the illicit markets in cigarettes and hand-rolling tobacco and was estimated to be £2.5 billion in 2016-17. Of this, £1.9 billion was lost in tobacco duties and a further £0.6 billion in VAT.<sup>5</sup> This is money that could be spent on important public services like schools and hospitals.

The selling of illicit tobacco is linked to criminal activity and therefore demonstrates a significant cause for concern with respect to upholding the licensing condition to prevent crime and disorder.

- **Public safety**

Illicit tobacco products have not been subjected to the same stringent testing for quality control and regulation that governs tobacco generally and therefore may contain even more harmful chemicals and toxins than are permitted by these tests.<sup>6</sup> However, it is dangerous to assume that illicit tobacco is "worse" for health. All cigarettes, legal or otherwise, will kill one in two long-term users. Tobacco use is the leading cause of preventable death and disease globally. In the UK, it leads to over 100,000 avoidable deaths every year and causes many more people to lose years of

<sup>1</sup> Undermining efforts to cut smoking. Illicit Tobacco Partnership <https://www.illicit-tobacco.co.uk/problem/undermining-tobacco-control/>

<sup>2</sup> Tackling Tobacco Smuggling – building on our success. A renewed strategy for HM Revenue & Customs and the UK Border Agency [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398461/Tackling\\_tobacco\\_smuggling\\_-\\_building\\_on\\_our\\_success.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/398461/Tackling_tobacco_smuggling_-_building_on_our_success.pdf)

<sup>3</sup> Illicit tobacco. ASH Scotland <https://www.ashscotland.org.uk/media/6678/Illicit%20Tobacco.pdf>

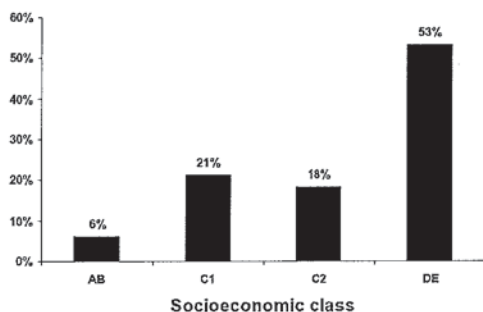
<sup>4</sup> Tobacco smuggling - Home Affairs Committee <https://publications.parliament.uk/pa/cm201415/cmselect/cmhaff/200/20004.htm>

<sup>5</sup> Measuring tax gaps: Tobacco tax gap estimates for 2016-17. HMRC. [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/654490/HMRC-tobacco-tax-gap-estimates-2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/654490/HMRC-tobacco-tax-gap-estimates-2017.pdf)

<sup>6</sup> Local Tobacco Control Profiles. Public Health England <https://fingertips.phe.org.uk/profile/tobacco-control/supporting-information/illicittobacco>

active life through smoking-related illnesses. Tobacco and its smoke contain a toxic cocktail of over 4,000 chemicals, many of which are known to cause cancer, heart disease and chronic obstructive pulmonary disease amongst many other conditions.<sup>7</sup>

% smokers by socioeconomic status using illicit tobacco  
(North of England Illicit Tobacco Study, 2011)



Increasing tax offers an effective incentive for smokers to quit, but this is undermined by cheap smuggled tobacco. Illicit tobacco sells at about half the usual retail price.<sup>8</sup> Cheaper illicit tobacco increases risk to health since it encourages smokers to start smoking at a younger age, to keep smoking and to smoke more, and it can break down a smoker's willpower to quit.<sup>9</sup> Illegal tobacco therefore undermines efforts to reduce smoking prevalence and improve health.

Illicit tobacco also exacerbates health inequalities, as people in poorer communities use illicit tobacco at much higher rates and people using illicit tobacco smoke, on average, an extra two cigarettes a day.

Rotherham smoking prevalence in adults (aged 18+) for 2017 was 16.2%. This is similar to the England average of 14.9% and average among similar local authorities. Prevalence has decreased from 21.9% to 16.2% between 2011 and 2017.<sup>10</sup> By occupation prevalence for 2017 was significantly higher in routine and manual workers (22.8%) and those who have never worked (24.8%)

Ferham Road Supermarket lies in Rotherham West ward. The proportion of routine and manual workers in Rotherham West ward (2011 Census) was 36.3% compared to the Rotherham average of 33.0%. The proportion of those who have never worked in Rotherham West ward was 11.3% compared to the Rotherham average of 7.0%. It is therefore likely that smoking prevalence in Rotherham West will be higher than the Rotherham average.

Rotherham West ward shows higher levels compared to Rotherham overall for many of the conditions for which smoking is a risk factor: lung cancer incidence; emergency hospital admissions for chronic obstructive pulmonary disease (COPD) and coronary heart disease (CHD); premature deaths (aged under 75) due to cancer; and deaths (all ages) due to cancer, coronary heart disease and respiratory diseases.<sup>11</sup> It is well documented that tobacco smoke is a strong risk factor for developing asthma. Data for the main GP Practice in Rotherham West ward shows prevalence of asthma was significantly higher in 2017/18 than the Rotherham average.<sup>12</sup>

The availability of illicit tobacco in Rotherham West is contributing to the worse health outcomes experienced by residents and therefore does not support the licensing condition of regard to public safety.

- **The protection of children from harm**

While smoking rates amongst children and young people have fallen there is a risk that further progress is being slowed by the availability of illicit tobacco.

There is also concern that children and young people may be easier to target by the low price and unregulated packaging that accompany illicit cigarettes, and they may therefore act as an easier gateway into smoking.<sup>13</sup> The sale of illegal tobacco therefore makes it easier for children to buy

<sup>7</sup> Illicit Tobacco Partnership. <https://www.illicit-tobacco.co.uk/problem/>

<sup>8</sup> Smoking: Illicit tobacco. PHE, Smokefree Action, FPH. <http://ash.org.uk/wp-content/uploads/2016/05/Illicit.pdf>

<sup>9</sup> Illegal tobacco: Keep it Out <https://keep-it-out.co.uk/>

<sup>10</sup> Smoking prevalence in adults – Current smokers\* (18+) (APS) <https://fingertips.phe.org.uk/profile/public-health-outcomes-framework/data#page/7/qid/1000042/pat/6/par/E12000003/ati/102/are/E08000018/iid/92443/age/168/sex/4>

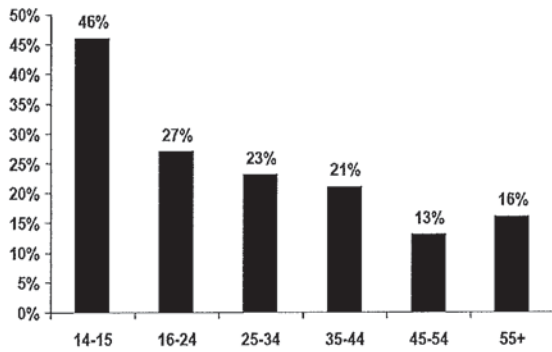
<sup>11</sup> Local Health profile <https://fingertips.phe.org.uk/profile/local-health/data#page/0/qid/1938133184/pat/101/par/E08000018/ati/8/are/E05001030>

<sup>12</sup> The main GP Practice in Rotherham West ward is the Woodstock Bower practice. Prevalence of asthma in patients registered with the practice was 7.4% in 2017/18 and significantly higher than the Rotherham average of 6.5% (and England 5.9%) (Source: Quality and Outcomes Framework, NHS Digital)

<sup>13</sup> Illicit Tobacco. Public Health England. <https://fingertips.phe.org.uk/profile/tobacco-control/supporting-information/illicittobacco>

cigarettes, start smoking and become addicted to smoking. Children and young smokers are often targeted by people who sell illegal cigarettes. Children are often aware who is selling it locally and at pocket money prices.<sup>14</sup> Young and vulnerable people are often the ones to visit private addresses to buy cigarettes. It puts them into risky situations with people who might also be selling alcohol, drugs and stolen goods.<sup>15</sup>

**% smokers by age using illicit tobacco**  
(North of England Illicit Tobacco Study, 2011)



2011 research from the North of England showed that over half of smokers aged 14 to 17 were offered illicit tobacco, and that buying rates amongst these age groups were higher than amongst older smokers. As the graph shows, children are the most common users of illicit tobacco.<sup>16</sup>

The availability of illicit tobacco puts children at risk of harm from involvement in criminal activity and by increasing the likelihood they will smoke and how much they smoke, therefore also directly contributes to significant harms to health.

In summary, through severe contravention of the licensing objectives, we would support withdrawal of the alcohol license for this premise.

Yours sincerely,

[Redacted signature]

Gilly Brenner  
Consultant in Public Health

<sup>14</sup> Illegal tobacco: Keep it Out <https://keep-it-out.co.uk/>

<sup>15</sup> Illegal tobacco PR guide. Illicit Tobacco Partnership. <https://www.illicit-tobacco.co.uk/wp-content/uploads/2017/12/Illegal-Tobacco-PR-Guide-Dec-2017.pdf>

<sup>16</sup> Smoking: illicit tobacco. PHE, Smokefree Action, FPH. <http://ash.org.uk/wp-content/uploads/2016/05/Illicit.pdf>



South Yorkshire  
**POLICE**

South Yorkshire Police  
Licensing Team  
Moss Way Police Station  
Moss Way  
Sheffield  
S20 7XX

RE- Sale of Illicit Tobacco

192 Ferham Road  
Rotherham  
S61 1DZ

Following information received in March 2019, Rotherham Trading Standards carried out a test purchase operation on 13<sup>th</sup> March 2019, which resulted in an illicit packet of cigarettes being purchased.

A further Trading Standards test purchase operation was carried out on the 7<sup>th</sup> May 2019, where again an illicit packet of cigarettes was purchased.

Trading Standards then executed a search warrant on 7<sup>th</sup> May 2019, which resulted in a large quantity of counterfeit tobacco being seized.

South Yorkshire Police support Rotherham Council's review of the premise. The sale of illicit tobacco can be linked to organised crime, and these premises are providing an outlet for such activity to be carried out.

This has the potential to lead to a rise in Crime & Disorder within the Rotherham area.

Yours faithfully,

For and on behalf of

Chief Constable, South Yorkshire Police