

## Licensing Act 2003

Case B 08/01/18

**Application to review a premises licence under the Licensing Act 2003**

<b>Applicant:</b>	<b>Chris Burnett, Principal Licensing Officer</b>
<b>Premises subject to Review:</b>	<b>Kimberworth Late Shopper, 202 Kimberworth Road, Rotherham, S61 1HH</b>
<b>Premises licence holder:</b>	<b>Frantisek Hudy, 186 Psalters Lane, Holmes, Rotherham, S61 1HS</b>

### **1. Purpose of Report**

To consider an application for the review of a premises licence made under Section 51 of the Licensing Act 2003 in relation to the premises known as Kimberworth Late Shopper, 202 Kimberworth Road, Rotherham, S61 1HH.

### **2. The Application**

The applicant is Chris Burnett, on behalf of Rotherham Metropolitan Borough Council.

The application is attached to this report at Appendix A.

The application to review relates to three objectives under the Licensing Act 2003 namely the prevention of crime and disorder, public safety and the protection of children from harm.

The grounds for review are that there has not been a Premises Licence Holder or Designated Premises Supervisor to authorise the sales of alcohol at the premises which has resulted in unauthorised licensable activities.

The response from a Responsible Authority is attached at Appendix B.

### **3. Reasons for Referral**

The Licensing Authority must refer any application for review to the Licensing Committee if they relate to one or more of the licensing objectives.

The applicant and the premises licence holder have been invited to attend the hearing.

### **4. Financial Implications**

There are no specific financial implications arising from this application. However additional costs may be incurred should the matter go to appeal. In such a case it is not possible predict the outcome of any decision by the Courts in relation to costs.

### **5. The Legal Position**

Section 4(1) of the Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting 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.

The Act also requires that the Licensing Authority has regard to its own 'Statement of Licensing Policy' and any guidance issued by the Secretary of State in carrying out its functions.

Section 52(3) of the Licensing Act 2003 requires that the Licensing Authority must, having had regard to the application for a review and any relevant representations, take such steps as it considers necessary for the promotion of the four licensing objectives.

Under section 52(4) the steps are:

- to modify the conditions of the licence;
- to exclude the licensable activity from the scope of the licence;
- to remove the designated premises supervisor;
- to suspend the licence for a period not exceeding three months; and
- to revoke the licence.

Once a determination has been made by Members of the Licensing Committee, section 52(11) of the Act states that the determination 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.

## **6. Hearing Regulations**

Regulations governing hearings under the Licensing Act 2003 have been made by the Secretary of State. The Licensing Authority has provided all parties with the information required in the Regulations.

## **7. Options available to the Licensing Committee**

Members of the Licensing Committee authorise officers to:

- modify the conditions of the licence;
- exclude a licensable activity from the scope of the licence;
- remove the designated premises supervisor;
- suspend the licence for a period not exceeding three months;
- revoke the licence; or
- reject the application for review.

**Contact Name:** Alan Pogorzelec; [alan.pogorzelec@rotherham.gov.uk](mailto:alan.pogorzelec@rotherham.gov.uk)

*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**

*(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 (delete as applicable)**

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

<b>Postal address of premises or, if none, ordnance survey map reference or description.</b>	
Kimberworth Late Shopper, 202 Kimberworth Road, Kimberworth,	
<b>Post town Rotherham</b>	<b>Post code (if known) S61 1HH</b>
<b>Name of premises licence holder or club holding club premises certificate (if known)</b>	
Frantisek Hudy	
<b>Number of premises licence or club premises certificate (if known)</b>	
P0830	

**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)

**X**

3) a member of the club to which this application relates (please complete (A) below)

☐

**(A) DETAILS OF INDIVIDUAL APPLICANT** (fill in as applicable)

Please tick ✓ yes

Mr ☐

Mrs ☐

Miss ☐

Ms ☐

Other title  
(for example, Rev)

**Surname**

**First names**

**I am 18 years old or over**

Please tick ✓ yes

☐

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

**Name and address**

**Telephone number (if any)**

**E-mail address (optional)**

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name and address  Chris Burnett Principal Licensing Officer Rotherham Metropolitan Borough Council Main Street, Rotherham, S60 1AE
Telephone number (if any) <b>01709 823153</b>
E-mail address (optional) chris.burnett@rotherham.gov.uk

**This application to review relates to the following licensing objective(s)**

- |   |                                     |
|---|-------------------------------------|
|   | Please tick one or more boxes ✓     |
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety                        | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance    |                                     |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

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

**1. Application is made for a review of the premises licence under S51 Licensing Act 2003 in respect of premises known as Kimberworth Late Shopper, 202 Kimberworth Road, Rotherham. The application relates to three of the four licensing objectives, namely ;**

***The prevention and detection of crime***

***Public safety***

***Protection of children from harm***

**2. The premise is a medium sized off licence situated within a mainly residential area. The current premises licence licence permits the sale by retail of alcohol for consumption off the premises from 0700hrs to 2200hrs daily.**

**3. The recorded Premises Licence Holder is Frantisek Hudy. The recorded Designated Premises Supervisor is Saima Hussain.**

**4. On Tuesday 7<sup>th</sup> November 2017, following information received, a warrant issued by Sheffield Magistrates was executed at the premises in a joint operation between trading Standards and the Environmental Health Department at Rotherham Council. As a result, a quantity of cigarettes and rolling tobacco were seized from the premises. The seized items were identified as illicit. Enquiries are still on going in respect of this matter**

**5. The premises were visited later the same day by Rotherham Council Licensing Officers. It was established Mr.Basharat Rafiq was the person in charge of the premises and the business.**

**6. Mr. Rafiq was contacted and arrived at the premises about an hour later. He confirmed he was the owner of the business having taken over about 9 months previously. He stated that he leased the property from a male called Mr.Gahni. He stated that Mr Ashraf Hussain owned the business. He showed the officers a number of text messages he had received from a male called Ashraf Hussain with regard to the business. He**

**stated that Ashraf had been in Pakistan for at least 4 - 5 months so he had not seen him. He believed that Mr Hussain was also the DPS, and believed a female called Saima was his sister, but he did not know her, he had never met her and did not have a telephone number for her. Mr. Rafiq was unable to produce the premises licence and no summary was on display. He stated he had seen neither the summary nor the premises licence. Additionally there was no age verification policy in place and no evidence of any staff training to address this. Mr. Rafiq confirmed he did not hold a personal alcohol licence.**

**7. Mr. Rafiq was advised there appeared to be no authority in place to sell alcohol and as a result he was advised to remove all alcohol from the shelves which he duly did.**

**8. On Thursday 9<sup>th</sup> November 2017, Mr Rafiq attended at Riverside House where he was interviewed under caution in respect of the premises. A full transcript of the interview will be disclosed in due course, but in interview he stated he was the owner of the business which he bought from a Mr. Hussain nine months ago. He believed Mr. Hussain was still the business owner and DPS. He was still in the process of paying off the instalments for the business. He confirmed he had never seen a copy of the premises licence, nor was he aware that Saima was the DPS. He confirmed he did not have any contact details for either Hudy or Saima.**

**9. Additional enquiries have been made to locate the recorded premises licence holder and the DPS. The premises Licence Holder, Mr. Hudy, cannot be located. He no longer resides at the address listed on the premises licence and cannot be contacted on the mobile telephone number recorded despite several calls and answer machine messages.**

**10. In respect of the DPS, Saima Hussain, she initially stated she has never been connected in any way with the premises, but she subsequently stated she recalled being the DPS for about 12 months, but left in November 2015. She confirmed she has had no further contact with the premises since that date, and accepted she failed to notify the Licensing Authority of this.**

**11. There are serious concerns over the manner in which the premises have been conducting business. Since Mr. Rafiq took over the business some 9 months ago, there has been no transfer of premises licence or DPS. It is strongly believed there is no longer in place any Premises Licence Holder or DPS responsible for the management of the premises. The premises have effectively operated without any authority to sell alcohol in contravention of condition 1 of the mandatory conditions, and consequently every sale of alcohol over the last 9 months has constituted an offence under S136 Licensing Act 2003.**

**12. Additionally, counterfeit cigarettes have been seized from the premises and will form part of a separate investigation.**

**13. The most recent Home Office Guidance issued under S.182 of The Licensing Act 2003 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; (full list not included)*

*• for the sale or storage of smuggled tobacco and alcohol.*

*11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.*

**14. There are serious concerns that the activity being conducted at the premises is undermining the Licensing objectives. Unlawful activity is being conducted, but additionally, customers, particularly children are being put at risk of harm through unlawful sales of alcohol and tobacco.**

**14. Application is therefore made for a review of the premises licence under S51 Licensing Act 2003. The application is for a revocation of the Licence, however other options are also available to the Licensing Committee.**



**15. Further evidence in support of this application will be disclosed to all parties prior to the hearing and presented at the hearing.**

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

Please tick ✓ yes

☐

If yes please state the date of that application

Day Month Year

1	1	1	1	1	1	1	1
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**If you have made representations before relating to the premises please state what they were and when you made them**

No applications made previously

yes

Please tick ✓


- 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 ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

**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 **13/11/2017**

Capacity **Principal Licensing Officer**

**Contact name (where not previously given) and postal address for correspondence associated with this application** (please read guidance note 6)

Chris Burnett  
Principal Licensing Officer  
Riverside House  
Main Street

**Post town**  
Rotherham

**Post Code**  
S60 1AE

**Telephone number (if any)** 07880 043804

**If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)** 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.

**Underwood-Parkin, Lisa**

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**Subject:** FW: S51 Review application - Kimberworth Late Shopper

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**From:** ISD Alcohol Licensing [<mailto:Alcohol@homeoffice.gsi.gov.uk>]

**Sent:** 12 December 2017 10:54

**To:** Underwood-Parkin, Lisa

**Subject:** RE: S51 Review application - Kimberworth Late Shopper

To whom it may concern,

Could you confirm who the current license holder is?

Please see our representations below;

On 21/07/2013 at 16:15 an Enforcement Visit was conducted to the target premises and consent was obtained from the only male employee. Target was not encountered and whereabouts not known. Subsequent checks revealed that the male was a student with no conditions to work he was arrested as a WIB. A Notice Of Potential Liability was served to the counter as the manager was in Manchester and unable to come to the premises. The premises were made secured including alarmed up by the arrested employee. He gave the managers name as Ashfaq Ahmed.

Kind regards

Semhar Menghis

**Home Office**

Interventions and Sanctions Directorate | The Central Team | Immigration Enforcement  
Apollo House | 3rd Floor | 36 Wellesley Rd | Croydon | CR9 2BY

# Licensing Act 2003 Premises Licence

**P0830**

## Part 1 - Premises Details

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

#### **Kimberworth Late Shopper**

202 Kimberworth Road, Kimberworth, Rotherham, South Yorkshire, S61 1HH.

Telephone 077668561913

### 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	7:00am	10:00pm

### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	7:00am	10:00pm

### 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

Frantisek Hudy

186 Psalter Lane, Holmes, Rotherham, South Yorkshire, S61 1HS.

### 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

Saima HUSSAIN

10 Ewers Road, Kimberworth, Rotherham, South Yorkshire, S61 1EP.

### 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. RM2126

Issued by Rotherham



# Licensing Act 2003 Premises Licence

P0830

## ANNEXES

### Annex 1 Mandatory Conditions

#### Mandatory conditions where licence authorises supply of alcohol

- 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.

### Annex 2 Conditions consistent with operating schedule

#### Prevention of Crime and Disorder

1. The licence holder shall ensure that CCTV is installed at the premises which meets South Yorkshire Police requirements.

#### Public Safety

2. The licence holder shall ensure that appropriate health and safety and fire risk assessments are carried out for the premises.

#### Prevention of Public Nuisance

3. The licence holder shall ensure that persons do not congregate outside the premises.
4. The licence holder shall ensure that any litter which appears to be from the premise or its customers is cleared away at the end of business each day.

#### Protection of Children from Harm

5. The licence holder shall operate the 'Challenge 21' proof of age scheme.

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

None.

### Annex 4 Plans

See attached.



**Licensing Act 2003  
Premises Licence**

**P0830**

ANNEXES continued ...



# Licensing Act 2003 Premises Licence Summary P0830

## Premises Details

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

#### Kimberworth Late Shopper

202 Kimberworth Road, Kimberworth, Rotherham, South Yorkshire, S61 1HH.

Telephone 077668561913

### 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	7:00am	10:00pm

### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Monday to Sunday	7:00am	10:00pm

### 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

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

Frantisek Hudy

186 Psalter Lane, Holmes, Rotherham, South Yorkshire, S61 1HS.

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

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

Saima HUSSAIN

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

The licence holder shall ensure that children do not congregate either inside or outside the shop.

