

Hearing Procedure - Review

1. The Chair of the Licensing Sub Committee will introduce themselves and the other Members.
 2. The Chair of the Licensing Sub Committee will ask the following parties to introduce themselves:
 - i. The Licensing Officer introducing the report;
 - ii. the applicant and any witnesses they wish to call.
 - iii. any person who has made representations and any witnesses they wish to call.
 - iv. the licence holder, together with any person representing them and any witnesses they wish to call.
 3. The Licensing Officer will introduce the report and provide any updates.
 - i. Questions **solely concerning the report** can be asked by Members, the applicant, persons making representations and the licence holder.
 4. The Chair of the Licensing Sub Committee will then invite:
 - i. **the applicant** to present their application and call any witnesses.*
 - ii. **any person who has made representations** to present their representations and call any witnesses.*
 5. The Chair of the Licensing Sub Committee will then invite:
 - i. **the licence holder** to respond to the application, and representations, and call any witness.*
- *Members of the Sub Committee, followed by the applicant, any person who has made representations, and the licence holder may ask questions of all person's listed in 4 & 5 above and any person who have given evidence on their behalf as a witness.**
6. **The applicant will then be given the opportunity to sum** up the application.
 7. **The licence holder will then be given the opportunity to sum up**
 8. The public hearing will then be concluded, and the Sub Committee will go into closed session, together with the Councils Solicitor and the Clerk to the meeting.

9. The decision of the Licensing Committee will be given in accordance with the requirements of the Licensing Act 2003 and regulations made thereunder.

Note:

- At any time throughout the hearing Members of the Licensing Sub Committee may request legal advice from the Council's Solicitor. Any advice sought during closed session will be included in the notice setting out the decision.
- The Committee Hearing will be held in public unless and in accordance with relevant Regulations the Licensing Sub Committee determine that the public should be excluded.

Committee Name and Date of Committee Meeting

Licensing Sub-Committee – 29th August 2024 at 14:00 hours (2.00pm)

Report Title

Consideration of an application (made in accordance with s.51 of the Licensing Act 2003) to review the Premises Licence issued to Mr Ilyas Nishat in respect of the premises known as Rotherham's Best situated at 88 Cambridge Street, Clifton, Rotherham, S65 2ST.

Report Author(s)

Diane Kraus, Principal Licensing Officer, Community Safety and Street Scene
Tel: 01709 289536

Report Summary

On the 20th June 2024, the Chief Constable of South Yorkshire Police (acting in their role as a Responsible Authority under the Licensing Act 2003) made an application for the review of the Premises Licence in place at Rotherham's Best, 88 Cambridge Street, Clifton, Rotherham, S65 2ST.

The premises trades as an off licence/grocery shop and is currently licensed for the sale of alcohol for consumption off the premises only.

The review application is submitted on the grounds that the Premises Licence holder, Mr Ilyas Nishat has failed to promote three of the licensing objectives, namely, the:

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

The review application seeks the revocation of the Premises Licence.

Representations in support of the review application have been made by the Licensing Authority (in their role as a Responsible Authority under the Licensing Act 2003).

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 Premises location plans
- Appendix 2 Premises Licence
- Appendix 3 Application under consideration
- Appendix 4 Representations received from the Licensing Authority
- Appendix 5 Evidence in support of the application

Background Papers

Rotherham MBC Statement of Licensing Policy 2020 -2025
(available at www.rotherham.gov.uk/licensing)

Revised guidance issued under section 182 of the Licensing Act 2003 (December 2023) available at <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003> (in particular, section 11 of this guidance).

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 issued to Mr Ilyas Nishat in respect of the premises known as Rotherham's Best situated at 88 Cambridge Street, Clifton, Rotherham, S65 2ST.

1. Background

- 1.1 Rotherham's Best is located at 88 Cambridge Street, Clifton, Rotherham S65 2ST and trades as an off licence/grocery shop. Plans showing the location of the premises are attached at Appendix 1.
- 1.2 The shop currently has the benefit of a Premises Licence, issued under the Licensing Act 2003, that permits the sale of alcohol for consumption off the premises on every day of the week between 08:00 hours and 22:00 hours (8am to 10pm). The current holder, Mr Ilyas Nisha, has held the Licence since 1st October 2020 and the DPS, Mr Nishat Burhan, has been nominated as being in day to day charge of the premises since March 2020. A copy of the Premises Licence is attached at Appendix 2.
- 1.3 On 3rd August 2022, the Licensing Authority submitted an application to review the Premises Licence on the grounds that the Licence holder, Mr Ilyas Nisha, had failed to promote the following licensing objectives:
 - prevention of crime and disorder
 - public safety
 - protection of children from harm.
- 1.4 On 14th October 2022 the Council's Licensing Sub Committee met to consider the review and decided to revoke the Premises Licence issued to Mr Ilyas Nisha.
- 1.5 The Licence holder, Mr Ilyas Nisha, appealed the Sub Committee's decision to revoke the licence to Sheffield Magistrates, who, on the 3rd August 2023, allowed the appeal and issued a consent order imposing additional management control conditions on the Licence. These conditions are set out in Annex 4 of the Premises Licence, a copy of which is attached at Appendix 2.

2. Key Issues

Application under consideration

- 2.1 On 20th June 2024 the Chief Constable of South Yorkshire Police (the Police), acting in their role as a Responsible Authority, applied for the review of the Premises Licence issued to Mr Ilyas Nishat (the Licence holder) in respect of the premises known as Rotherham's Best situated at 88 Cambridge Street, Clifton, Rotherham, S65 2ST.
- 2.2 In summary, this application seeks the revocation of the Premises Licence on the grounds that the Licence holder has failed to promote the following licensing objectives:

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

2.3 Detail of the grounds for the review is provided within the application, a copy of which is attached at Appendix 3.

2.4 A copy of the review application was served on the Licence holder by post and by email on the 20th June 2024. In addition, on the same date, a copy was hand delivered to the premises.

Consultation

2.5 Consultation on the application has been carried out in accordance with all statutory requirements and the Council's procedure. There is a prescribed period of 28 days following the submission of an application during which time representations in relation to the application may be submitted.

Representations

2.6 A representation in support of the review application, together with the request that the Licence is revoked, has been received from the Licensing Authority, a copy of which is attached at Appendix 4.

2.7 A representation received from an "other person", also in support of the review application, has been discounted as it was received after the deadline date.

2.8 There have been no representations received in support of the Licence holder.

2.9 The representation received from the Licence Authority has been served on both the Police and the Licence holder. The Licence holders copy was sent by post and email, together with a copy being hand delivered to the premises.

Additional Evidence provided by the Applicant

2.10 The Police have submitted additional evidence in support of the review application, a copy of which is attached at Appendix 5.

Evidence provided by the Licence holder

2.11 At the time of writing the Licence holder has not submitted any evidence in response to either the review application or the Licensing Authority's representations to it.

The Hearing

- 2.12 The Police asked for an extension of the 20 working days in which regulations state that the Sub Committee has to consider their application due to the lead Officer's pre-arranged holiday commitments. It was deemed to be in the public interest to grant his request.
- 2.13 The applicant, Licence holder and representatives of the Licensing Authority have been invited to the hearing today. All parties attending, will be given the opportunity to address the Sub-Committee in relation to the matters raised in the application and the representations to it.
- 2.14 The invite to today's hearing was sent to the Licence holder by post and by email on the 26th July 2024. In addition, on the same date, a copy was hand delivered to the premises.
- 2.15 The Licence holder been informed that if he fails to attend the hearing, unless there is good reason not to, the Sub-Committee, may decide to consider the application in his absence.
- 2.16 The Licence holder has been made aware that a possible outcome of the review is the revocation of the Licence and advised to seek independent legal advice and support.
- 2.17 Members of the Sub-Committee should give full consideration of the issues raised in the application and the representations, the Licence holders response to the application and representations, together any supporting evidence provided by any party prior to the date of the hearing. Documentary evidence provided on the day of the hearing should only be considered with the consent of all parties.

3. Options available to the Licensing Sub-Committee

- 3.1 A Licensing Authority must carry out its functions under the Licensing Act 2003 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 Sub Committee should take into account any representations or objections that have been received from responsible authorities or other persons, together with any representations made by the Licence holder. 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 In relation to this application, the options available to the Sub Committee are to:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition);
- 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.

3.4 The Sub Committee 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 the Sub Committee from issuing an informal warning to the Licence holder and/or to recommend improvement within a particular period of time. Such informal warnings are regarded as an important mechanism for ensuring that the licensing objectives are effectively promoted, and any such warnings should be issued in writing to the Licence holder.

3.5 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, the Sub Committee should not merely repeat that approach and should take this into account when considering what further action is appropriate. Similarly, Sub Committee may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.

3.6 In deciding which of these powers to invoke, it is expected that Sub Committee 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.

3.7 For example, the Sub Committee 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.

3.8 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.

- 3.9 The Sub Committee should also note that modifications of conditions and exclusions of authorised 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 have a financial impact 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 deterring 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 the Sub Committees decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working. 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 certificate.
- 3.10 All licensing determinations should be considered on the individual merits of the application. The Sub |Committees 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.
- 3.11 It is important that the Sub Committee 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. Timetable and Accountability for Implementing this Decision

- 4.1 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.
- 4.2 An appeal may be lodged by either the applicant, Licence holder or a party to the hearing that has made a relevant representation.
- 4.3 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).

5. Financial Implications

- 5.1 There are no specific financial implications arising from this application. 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.

6. Legal Advice and Implications

- 6.1 A Council Solicitor will be in attendance at the hearing to provide appropriate legal advice to the Sub-Committee in relation to specific aspects of the application / hearing, however the advice below is generally applicable to all applications.
- 6.2 Hearings under the Licensing Act 2003 operate under the Licensing Act 2003 (Hearings) Regulations 2005 (as amended).
- 6.3 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.
- 6.4 The Sub Committee may accept hearsay evidence and it will be a matter for the 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.
- 6.5 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.
- 6.6 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.

- 6.7 In addition to the above, the Sub Committee is reminded that all decisions must be taken in accordance with the Council's Statement of Licensing Policy (adopted 3rd June 2020).
- 6.8 Departure from the guidance and / or Statement of Licensing Policy 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.

7. Risks and Mitigation

- 7.1 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.
- 7.2 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.
- 7.3 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.
- 7.4 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 and Statement of Licensing Policy is available for members to review should they wish to do so.
- 7.5 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.
- 7.6 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.
- 7.7 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.

- 7.8 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.
- 7.9 Member's attention is specifically drawn to Section 11 of the guidance which covers Premises Licence reviews.
- 7.10 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. Accountable Officer(s)

Alan Pogorzelec, Licensing Manager, Community Safety and Street Scene

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