

LICENSING SUB-COMMITTEE
7th December, 2022

Present:- Councillor Ellis (in the Chair); Councillors Hughes and McNeely.

16. CONSIDERATION OF AN APPLICATION (MADE IN ACCORDANCE WITH S.51 OF THE LICENSING ACT) TO REVIEW THE PREMISES LICENCE IN PLACE AT AVE FERHAM SUPERMARKET, 192 FERHAM ROAD, ROTHERHAM, S61 1DZ

The Chair explained that this was the fourth time the Sub-Committee had been scheduled to meet to consider this review (1st July, 26th September, 2nd November and 7th December, 2022). The date and time of 7th December, 2022, had been agreed by all those present at the adjourned meeting on 2nd November. A request had been received late on 6th December from the Premises Licence Holder's legal representative to delay the start until 11.00 a.m. which had been acceded to. However, due to traffic problems, it was now requested that the meeting commence at 11.30 a.m.

The Premises Licence Holder was invited to join the meeting at 11.30 a.m. but he was not willing to join until his legal representative had arrived. However, given the flexibility that had been given to accommodate this hearing, the Sub-Committee unanimously agreed to proceed with the hearing. The Premises Licence Holder and his legal representative joined the meeting at 11.55 a.m.

Consideration was given to an application for the review of a Premises Licence in accordance with the provisions of Section 51 of the Licensing Act 2003, in respect of the premises known as Ave Ferham Supermarket, 192 Ferham Road, Rotherham.

The Council's Trading Standards Service had submitted an application to review the Premises Licence on 11th May, 2022, as a result of concerns around the use of the premises for the storage and sale of illicit tobacco and cigarettes. Following the prescribed period of 28 days during which time interested parties/responsible authorities may submit representation, one additional representation had been received from the Council's Licensing Authority citing:-

- A general failure to comply with Premises Licence conditions
- Lack of staff training and lack of management control in relation to the sale of alcohol from the premises

Mr. A. Pogorzelec, Licensing Manager, Mr. D. Lodge, Principal Trading Standards Officer and Mrs. D. Kraus, Principal Licensing Officer, were in attendance together with Mr. A. Jawad, Premises Licence Holder and Designated Premises Supervisor (DPS) together with Andrea Forrest (solicitor). Also in attendance was an interpreter for Mr. Jawad.

The Sub-Committee heard the representations of the Trading Standards Service, applicant for the review:-

- The current Premises Licence Holder and DPS had been in charge of the premises since 31st March, 2021
- A test purchase had been carried out at the premises, under the direction of Trading Standards Officers, on 17th August, 2021, resulting in the sale of 2 packets of cigarettes later confirmed to be counterfeit
- A search warrant was executed at the premises in a joint operation with Trading Standards, Police and the Licensing Enforcement Team on 22nd September, 2021. A significant quantity of illicit tobacco products was seized from the premises totalling over 14,000 cigarettes and 118 packs of hand rolling tobacco
- The tobacco was discovered in a flat located directly above the shop premises accessed via an external door separate to the shop premises. During the search of both the shop and flat, a concealed chute was discovered running from the front room of the flat to behind the shop counter below believed being used to feed tobacco products into the shop from where they were being stored upstairs
- Mr. Jawad leased both the shop and the flat with the latter being used as storage. At the time of the visit the flat was not in a habitable state and not licenced by the Council as a dwelling
- Personal correspondence addressed to Mr. Jawad was also found in the flat
- Under interview on 3rd May, 2022, Mr. Jawad had provided a written statement denying any connection with tobacco products and that any property found in the flat was nothing to do with him.
- In November, 2022, a formal interview of Mr. Sdeik who had confirmed his original account of why he had been in the flat at the time of the search warrant. He claimed that he had never been in the shop or had met Mr. Jawad

Investigations were ongoing in connection with a number of individuals who also had connections with both the shop premises and the flat.

Mrs. Kraus, on behalf of the Licensing Authority, presented the representations:-

- The premises had been unlicenced from July 2019 until March, 2021, due to the licence having been previously revoked due to underage sales
- Following a visit on 9th October, 2020, where sales of alcohol had been found to be taking place without the benefit of a licence, the Licensing Authority had attempted to work with Mr. Jawad to help him become compliant and as a result a licence application was made and management control conditions offered to prevent a recurrence of any problems. The licence was granted in March, 2021

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- An inspection took place on 20th April and found not to be in compliance with the licensing conditions
- 2 further inspections have been made by the Licensing Authority post-review application the first being in May 2022 and the second on 1st December, 2022. The premises had been mostly compliant with the licensing conditions. There had been a refusal register but no training records or incident register. However, the member of staff at the time had demonstrated to the officers that they understood Challenge 25 even though no record of their training could be found

Mr. Jawad, applicant, and his legal representative, addressed the concerns raised highlighting:-

- During the search warrant no illicit cigarettes had been found on the shop premises or outdoor storage facility
- The flat above the shop had the same postal address of No. 192 Ferham Road
- When Mr. Jawad had purchased the shop he had not been aware that it did not have a premises licence to sell alcohol
- Following the purchase of the premises, Mr. Jawad had took on the flat with a sitting tenant who previously had an agreement with Mr. Ohmid, the previous Premises Licence Holder (20th June 2020). As the tenant was quiet and did not cause any problems he had agreed to collect the rent and pass it onto the brother of Mariam Bi, the owner
- The flat had never been used by Mr. Jawad for the purpose of storage
- Mr. Jawad had no knowledge of the illicit cigarettes nor why a member of staff had sold them. That member of staff no longer worked for him
- He also had no knowledge of the chute from the flat to the shop

The Sub-Committee considered the application for the review of the premises licence and the representations made specifically in light of the following Licensing objectives (as defined in the 2003 Act):-

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

Resolved:- That, after due consideration of the application for review and to the representations submitted, the premises licence for the premises known as Ave Supermarket, 192 Ferham Road, Rotherham, be revoked with immediate effect.