

Committee Name and Date of Committee Meeting

Licensing Sub-Committee - 9th October 2023 at 14:00 hours (2:00 pm)

Report Title

Consideration of an application (made in accordance with s.51 of the Licensing Act 2003) for the review of the Premises Licence issued to Mr Vinithan SELVARATNAM in respect of John Bull Stores, 44 Highthorn Road, Kilnhurst, Rotherham S64 5UP.

Report Author

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Report Summary

On the 18th August 2023 an application was made, by the Council's Trading Standards, for the review of the Premises Licence currently in force in respect of John Bull Stores, 44 Highthorn Road, Kilnhurst, Rotherham S64 5UP.

The application seeks the revocation of the Premises Licence.

Representations in support of the application have been made on behalf the Licensing Authority.

Further details on the application and the representations can be found within the body of this 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 Premises Licence (P0257)
- Appendix 2 Location Plan
- Appendix 3 Application under consideration
- Appendix 4 Representations in support of the Review.
- Appendix 5 Evidence from Trading Standards in support of their 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 (August 2023)
(Available at <https://www.gov.uk/government/publications/explanatory-memorandum-revised-guidance-issued-under-s-182-of-licensing-act-2003>)

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) for the review of the Premises Licence issued to Mr Vinithan SELVARATNAM in respect of John Bull Stores, 44 Highthorn Road, Kilnhurst, Rotherham S64 5UP.

1. Background

- 1.1 The premises were first licensed by the Council in 2005 when an application made under the transitional provisions of the Licensing Act 2003 was granted. The transitional provisions allowed for the transfer licence issued by the Magistrates Court to be transferred over to the local authority.
- 1.2 The Licence was transferred to the current holder, Mr Vinithan Selvaratnam, on 6th June 2013, who became the “Designated Premises Supervisor” on the same date.
- 1.3 On 10th August 2023 Mr Vinithan Selvaratnam notified the Licensing Team that his home address had changed from 147 Fitzwilliam Street, Rotherham S64 8RN to 44 Highthorn Road, Kilnhurst, Rotherham S64 5UP, the address of John Bull Stores.
- 1.4 A copy of the Premises Licence issued to Mr Vinithan Selvaratnam in respect of John Bull Stores , 44 Highthorn Road, Kilnhurst, Rotherham S64 5UP is attached at Appendix 1.
- 1.5 In summary the Licence authorises the supply of alcohol for consumption off the premises on:
- each of the days Monday to Saturday between 08:00 hours and 23:00 hours; and on
 - Sunday between 10:00 hours and 22:30 hours.
- 1.6 The Licence is subject to the mandatory conditions and one additional condition, which is:
- Alcohol shall not be sold in an open container or be consumed in the licensed premises.

The mandatory conditions are:

- No supply of alcohol may be made under the premises licence:
 - i) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - ii) at a time when the designated premises supervisor does not hold a personal licence, or his personal licence is suspended.
- Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

- The premises licence holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. 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 a holographic mark.

2. Key Issues

Location of the Premises

- 2.1 A location plan of the premises is attached at Appendix 2.

The application

- 2.2 On 18th August 2023 an application was made on behalf of the Council's Trading Standards Service, for the review of the Premises Licence issued to Mr Vinithan Selvaratnam in respect of John Bull Stores, 44 Highthorn Road, Kilnhurst, Rotherham S64 5UP, a copy of which is attached at Appendix 3.
- 2.3 The application seeks the revocation of the Premises Licence on the grounds that the Licence holder, Mr Vinithan Selvaratnam, is failing to promote three of the licensing objectives, namely the:
- prevention of crime and disorder;
 - public safety; and
 - protection of children from harm

Consultation

- 2.4 Consultation on the application has been carried out on the application 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.
- 2.5 At the end of the prescribed period, representations in support of the review application was lodged on behalf of the Licensing Authority.
- 2.6 The applicant, Licence holder and Licensing Authority 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 raised in their representations.
- 2.7 Members of the Sub-Committee should give full consideration of the issues raised in the application, the representations and any supporting evidence when determining the application.

Representation in Support of Applicant

- 2.8 Representations in support of the review application have been submitted on behalf of the Licensing Authority, a copy of which is attached at Appendix 4.

Evidence provided in support of the Applicant (by the Trading Standards Service)

- 2.9 The Council's Trading Standards Service has submitted additional evidence in support of their application to review the Licence, a copy of which is attached at Appendix 5.

Evidence provided by Licence Holder

- 2.10 At the time of writing the Licence holder, Mr Vinithan Selvaratnam, has not provided any documentation in response to the review application or the supporting representations.

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 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 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.

5.2 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.

6. Legal Advice and Implications

6.1 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.

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 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.

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, members are 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.

8. Accountable Officer(s)

Diane Kraus, Principal Licensing Officer (Policy & Administration), Community Safety and Street Scene

This report is published on the Council's website.

Hearing Procedure - Review

1. The Chair of the Licensing Sub Committee will introduce the Committee and ask officers to introduce themselves.
 2. The Chair of the Licensing Sub Committee will ask the following parties to introduce themselves:
 - i. the applicant and any witnesses they wish to call.
 - ii. any person who has made representations on and any witnesses they wish to call.
 - iii. 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.
 - iii. 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 above and any person who have given evidence on their behalf as a witness.
5. The applicant will then be given the opportunity to sum up the application.
 6. The licence holder will then be given the opportunity to sum up
 7. 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.
 8. The decision of the Licensing Committee will be given in accordance with the requirements of the Licensing Act 2003 and regulations made there under.

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.