

Committee Name and Date of Committee Meeting

Licensing Sub-Committee - 18th December at 14:30 hours (2:30 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 Sangar Mohammad in respect of the premises known as Aro Mini Market and located at 12 Fitzwilliam Road, Rotherham S65 1PT.

Report Author

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Report Summary

On the 25th October 2023 an application was made, by the Council's Trading Standards, in their role as a Responsible Authority, for the review of the Premises Licence currently in force in respect of Aro Mini Market, 12 Fitzwilliam Road, Rotherham S65 1PT.

The application seeks the revocation of the Premises Licence.

Representations in support of the application have been made on behalf the Licensing Authority and South Yorkshire Police.

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 (P1010)
- Appendix 2 Location Plan
- Appendix 3 Application under consideration
- Appendix 4 Representations in support of the Review 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 Sangar Mohammad in respect of Aro Mini Market, 12 Fitzwilliam Road, Rotherham S65 1PT.

1. Background

- 1.1 The premises were first licensed by the Council in December 2017.
- 1.2 The Licence was transferred to the current holder, Mr Sangar Mohammad, on 11th November 2020, who nominated himself as the premises “Designated Premises Supervisor” on the same date.
- 1.3 A copy of the Premises Licence held by Mr Sangar Mohammad in respect of the premises known as Aro Mini Market, 12 Fitzwilliam Road, Rotherham S65 1PT is attached at Appendix 1.
- 1.4 In summary the Licence authorises the supply of alcohol for consumption off the premises on every day of the week between 08:00 hours and 23:00 hours.

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 25th October 2023 an application was made on behalf of the Council’s Trading Standards Service, for the review of the Premises, 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 Sangar Mohammad, is failing to promote three of the licensing objectives, namely the:
 - prevention of crime and disorder;
 - public safety; and
 - protection of children from harm.
- 2.4 A copy of the application was served on the Licence holder, Mr Sangar Mohammad, by post and by email on the 26th October 2023. In addition, on the same date, a copy was hand delivered to him at the premises.
- 2.5 The Licence holder, Mr Sangar Mohammad, has been made aware that a possible outcome of the review is that the Sub Committee may decide to revoke his Licence and advised to seek independent legal advice and support.

Consultation

- 2.6 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.
- 2.7 At the end of the prescribed period, representations in support of the review application have been lodged on behalf of two of the Responsible Authorities, namely the Licensing Authority and South Yorkshire Police.
- 2.8 The applicant, the Licence holder and representatives of the Responsible Authorities 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.
- 2.9 The Licence holder, Mr Sangar Mohammad, has 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.
- 2.10 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.

Representation from the Responsible Authorities

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

Additional Evidence provided by the Applicant (Trading Standards Service)

- 2.12 At the time of writing the applicant, the Council's Trading Standards Service, has not provided any documentation in support of their review application

Additional Evidence provided the Responsible Authorities

- 2.13 At the time of writing the Licensing Authority and South Yorkshire Police have not submitted any additional evidence in support of their representations.

Evidence provided by Licence Holder

- 2.14 At the time of writing the Licence holder, Mr Sangar Mohammad, 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. 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)

Alan Pogorzelec, Licensing Manager, 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 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.
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.