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Community Safety and Street Scene Licensing Service

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My Reference: LA2003/Hearing.
Please ask for: Alan Pogorzelec

Your Reference:
Date: 18th July 2024

Mrs Diane Kraus
Principal Licensing Officer (Policy & Administration)
Riverside House
Main Street
Rotherham S60 1AE

Dear Mrs Kraus

RE: LICENSING ACT 2003 – REVIEW OF PREMISES LICENCE ROTHERHAM'S BEST, 88 CAMBRIDGE STREET, ROTHERHAM S65 2ST

I write on behalf of Rotherham Council's Licensing Authority in its role as a designated Responsible Authority under the Licensing Act 2003.

The Licensing Authority supports the application, made by South Yorkshire Police, to review the Premises Licence issued to Mr Ilyas Nishat in respect of the Rotherham's Best, 88 Cambridge Street, Clifton, Rotherham S65 2ST, together with their recommendation that the Licence is revoked.

Mr Ilyas Nishat has been the premises licence holder since 1st October 2020. The current Designated Premises Supervisor (DPS) is Mr Nishat Burhan, a position he has held since March 2020.

Every effort has been made to work with Mr Ilyas Nishat to allow him to operate the shop in compliance with the licensing objectives, but despite this evidence supports that he is unable, or unwilling, to operate in compliance with the terms, conditions, and restrictions on the Licence. Mr Nishat Burhan remains on the Licence as the DPS, despite not being in charge of the day-to-day management of the premises.

The grounds for the Licensing Authority's recommendation that the Licence is revoked are that Mr Ilyas Nishat has repeatedly demonstrated a failure to promote the following Licensing Objectives:

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

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Evidence to support the Licensing Authority's recommendation to revoke the Licence

1. Summary of the evidence - Licence Review brought by the Licensing Authority - determined by the Council's Licensing Sub Committee on 14th October 2022

This application sought the revocation of the premises licence on the grounds that the premises licence holder was failing to promote the licensing objectives of the prevention of crime and disorder, public safety, and the protection of children from harm. The following evidence was presented to the Sub Committee in support of the application:

- i. On 15th December 2021 the Council's Licensing Service was informed by South Yorkshire Police that a student from a local comprehensive school had purchased vodka from the shop. The information stated that when a male behind the counter asked the student if they were 18, they allowed the sale despite being told by the student that they were only 16. The vodka was then consumed by the student and a 12 year old.
- ii. On February 9th, 2022, Licensing Officers visited the premises to undertake a compliance visit. During the visit officers spoke with Mr Ilyas Nishat, no other members of staff were present. During the visit the following matters were identified as non-compliant:
 - No staff training records were available;
 - No premises licence summary was on display; and
 - The DPS named on the Licence, Mr Burhan Nishat, had no involvement in the day-to-day management of the premises.
- iii. Immediately following this visit an email was sent to Mr Nishat providing him with the application form to vary the DPS. The following day, 10th February 2022, a further email was sent to Mr Nishat, detailing what he needed to put in place in order to comply with the conditions of licence, together with best practice guidance.
- iv. On 16th February 2022 Licensing Officers carried out a pre- arranged visit to the premises to assess whether the required actions had been implemented. It was noted that none of the Annex 2 licence conditions were being complied with and no progress had made regarding changing the DPS.
- v. On 2nd March Licensing Officers visited the premises to check compliance. Mr Nishat was not present, however a male who identified himself as Mr Nishat's father was working alongside another employee, Mr Saied Nishat. When questioned about training, Mr Saied Nishat could not recall any training provided and was not familiar with the Challenge 25 scheme. It was noted that there were no incident records, staff training records, DPS authorisation to sell alcohol, Challenge 25 Policy and Posters and no licence summary on display.
- vi. On 15th March 2022, officers met with Mr Ilyas Nishat and Mr Burhan Nishat (the DPS). The process relating to changing the DPS was explained. Both stated they understood the process and that the DPS would be changed.

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- vii. On 24th March 2022 Officers visited the premises. Mr Ilyas Nishat was present, and the premises licence and Challenge 25 posters were on display. However, training records, refusal records, incident records, and DPS authorisation to sell alcohol, were still not in place. During this visit Mr Nishat stated that he had not completed the DPS transfer documentation. Whilst in attendance at the shop Officers witnessed Mr Ilyas Nishat serving two customers a single cigarette for 50p each.
- viii. On the 31st of March 2022 a warning letter was sent to Mr Ilyas Nishat, together with further information regarding best practice, such as record books and incident logs.
- ix. On the 6th of April 2022 Licensing Officers spoke with Mr Ilyas Nishat by telephone who told them no progress had been made.
- x. A visit to the premises on 18th May 2022 established that Mr Ilyas Nishat still had not completed the transfer of DPS documentation. When questioned about training records Mr Ilyas Nishat stated that they were not on the premises, but he would send them by email to Officers. The documents were never received. Mr Nishat did present some poor-quality refusal records in the form of sticky notes.
- xi. On 25th May 2022 a further warning letter was sent to Mr Ilyas Nishat.
- xii. On 10th June 2022 Licensing Officers visited the premises. Mr Saied Nishat was present, and Officers found no training records or any other records at the premises. Mr Ilyas Nishat was in Manchester at the time of this visit but told a Licensing Officer in a phone call that the records were on the premises. However, Mr Saied Nishat was unable to locate these records.
- xiii. On 16th June 2022 Officers made enquiries with South Yorkshire Police, who lead on the licence watch scheme. The Police confirmed that no application to join the scheme had been made by the premises.

2. Decision of the Council's Licensing Sub Committee of 14th October 2022

The decision of the sub-committee was to revoke the premises licence held by Mr. Ilyas Nishat in respect of the premises described as Rotherham's Best, 88 Cambridge Street, Clifton, Rotherham, South Yorkshire, S65 2ST.

The sub-committee decided that continuing to permit the sale of alcohol for consumption off the premises would be contrary to the promotion of the licensing objectives, namely the prevention of crime and disorder, public safety and the protection of children from harm.

The reasons for the decision of the Sub-Committee are as follows:-

- i. The sub-committee considered that condition 2 of the licence had been breached. The sub-committee found there was no supporting evidence, other than the account given in the hearing, that staff had been trained. The sub-committee were not satisfied that Mr. Ilyas Nishat had demonstrated what training would look like and were not satisfied that any training had been undertaken.

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- ii. The sub-committee found that condition 3 of the licence had been breached, there was no evidence Mr. Ilyas Nishat had applied to become a member of Rotherham Licence Watch and the sub-committee were not satisfied by his assurances during the hearing that he would join.
- iii. The sub-committee considered the issue of compliance with condition 7 of the licence requiring the operation of a proof of age scheme is in operation. The sub-committee were satisfied that Challenge 25 posters were now on display.
- iv. The sub-committee were concerned that there was no written evidence of any log of refusals and nor was this issue referred to by the licence holder when he discussed the training he provided.
- v. The sub-committee were concerned that the current DPS is not involved in the day to day running or the management of the premises. The sub-committee noted that this is not a breach of a licence condition but were concerned that the licence holder had not followed advice about changing the DPS and had repeatedly indicated that he did not think it was important.
- vi. The sub-committee had general concerns regarding the licence holder including the allegations of the sale of single cigarettes, underage sales, a previous lack of premises licence on display, and a failure to demonstrate an acceptance of the responsibilities and duties he has as the personal licence holder, including his repeated statements that he did not receive any help. The sub-committee were of the view that the licence holder demonstrates a lack of understanding of the licensing requirements and a lack of appreciation of the need to comply with licence conditions which the sub-committee characterised as a cavalier attitude to licensing regulation.

It is for the reasons set out above that the Sub-Committee were not satisfied that the modification of, or imposition of, further conditions would sufficiently address the concerns raised.

The sub-committee considered poor management of the premises as systemic.

The sub-committee did not consider the suspension of the licence appropriate given the failure to demonstrate an understanding of the licensing regime despite multiple attempts by the licensing team to engage with the licence holder.

3. Appeal to Sheffield Magistrates on 3rd August 2023

Mr Ilyas Nishat appealed the Sub Committee decision to revoke his Premises Licence. On 3rd August 2023 the Magistrates allowed the appeal and issued a consent attaching management control conditions to the Premises Licence. The following conditions were imposed by the Magistrates:

- i. The age verification policy operated at the premises shall be "Challenge 25". This means that whilst alcohol may be sold to persons aged 18 years or over, any person who appears under 25 years of age shall be required to provide proof of age using an acceptable form of ID. The only forms of ID that may be accepted shall be:
 - a. a proof of age card bearing the PASS hologram logo;
 - b. a passport;
 - c. a UK photo driving licence; or
 - d. a military ID card.

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- ii. Notices advertising that the premises operate a "Challenge 25" scheme shall be displayed in a clear and prominent position at the retail premises entrance and at the till area.
- iii. All staff who are to be involved in the sale of alcohol shall be trained in the prevention of sales to underaged persons, and the challenge 25 scheme in operation at the premises.
- iv. A record of such training shall be kept / be accessible at the premises at all times and be made immediately available for inspection at the premises to council or police officers on request. The training record shall include the trainee's name, the trainer's name, the signature of the trainee, the signature of the trainer, the date(s) of training and a declaration that the training has been received.
- v. An alcohol authorisation form shall be kept at the premises, this form will detail any member of staff that is authorised to sell alcohol on behalf of the designated premises supervisor. This form needs to have the names of the persons authorised along with the signature of the designated premises supervisor and the date of which it was signed. This form shall be refreshed annually and made available for inspection upon demand by any police officer or any authorised local authority officers.
- vi. A refusals log shall be kept that will record any refusals of sale for alcohol or other age restricted products at the premises. This should detail the time and date and a brief description of the refusal. This book will always be kept on the premises and be made available for inspection immediately upon the demand of the police or authorised local authority officers. The records in this book must be held for a period of no less than 12 months. The Designated Premises Supervisor shall check the refusals book monthly to ensure all staff are using it and shall sign and date it immediately after the latest entry.
- vii. An incident book shall be kept that will record the date, time and circumstances of any disorder, ejection or other relevant incident that occurs on the premises. This book will always be kept on the premises and be made available for inspection immediately upon the demand of the police or authorised local authority officers. The Designated Premises Supervisor shall check the incident book monthly to ensure all staff are using it and shall sign and date it immediately after the latest entry.
- viii. The premises shall install a CCTV system at the premises which has 30-day recording and retrieval and be capable of downloading onto a portable storage device such as DVD or memory stick. The CCTV cameras shall cover the entirety of the premises, including the till area where payment is made for alcohol.
- ix. The location of the monitor to allow playback and retrieval of data shall be located in an area which is easily and safely accessible to Police Officers and Local Authority Officers. At least one current staff member shall be trained in the use of the system to ensure rapid data retrieval and download is retrieved should it be required by a Police Officer or Council Officer.
- x. The Police and authorised Local Authority officers will be given unhindered access to the CCTV system as soon as is reasonably practicable for them to take copies of the images in connection with the prevention and detection of crime and disorder.

4. The Review Application

The application to review the Premises Licence submitted by the Police clearly sets out that on 15th and 30th May 2024 Police visited the premises and found them to be operating

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in non-compliance with the condition imposed on the Licence by the Magistrates. In addition on 4th June 2024 alcohol was sold to a 17 year old test purchaser.

5. Licensing Compliance Inspection on 3rd July 2024

On 3rd July 2024 Licensing Officers visited the premises to carry out a compliance inspection. Officers met with Mr Saied Nishat (the Licence holders father), who told them that he worked at the premises every day for over a year.

Officers asked Mr Saied Nishat if he knew who the DPS was (Mr Nishat Burhan), his response was that he thought he was the old owner, he is a cousin and he doesn't actually work there. Mr Saied Nishat told Officers that he made the sale to the underage person.

A Challenge 25 poster was on display at the time of the inspection. Mr Saied Nishat told Officers that he understood it meant asking for ID from anyone who looked between 18 and 25, and that acceptable ID was a passport / driving licence and biometric card. Mr Saied Nishat said he had been given training on age restricted products such as alcohol/lighters/cigarettes and energy drinks but had no other training and had not signed any documentation to evidence his training.

No summary of the Premises Licence was on display at the premises. When asked if a copy of the Licence was kept at the shop Mr Saied Nishat stated he hadn't seen one.

Officer then carried out a full compliance inspection of the Annex 2 Licence conditions (consistent with operating schedule) and the Annex 3 Licence conditions (attached after a Hearing at Sheffield Magistrates Court via a consent order on 3rd August 2023)

The Annex 2 Licence conditions are set out below, with Officer comments in bold below each condition.

Condition 1: The licence holder shall ensure that all staff are trained in the requirements of the Licensing Act 2003.

No training other than Challenge 25, above.

Condition 2: The licence holder shall ensure that all fire safety risk assessments are carried out and kept up to date.

Officers shown a Fire Extinguisher and a certificate of Fire Safety inspection dated 2020. Mr Saied Nishat stated he "*thought there was a new one somewhere, maybe Ilyas had it*". The Licence holder, Mr Ilyas Nishat, stated in phone during the Inspection that he had an update certificate, which he would sent to the Officers. At the time of writing this has not been received.

Condition 3: The licence holder shall ensure that fire alarms/emergency lighting are installed at the premises and maintained and in working order.

Mr Saied Nishat had no knowledge of any fire alarm system or emergency lighting.

Condition 4: The licence holder shall ensure that the outside area of the premises is kept clean and tidy.

The front of the premises was clear of litter at the time of the inspection.

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The Annex 3 Licence conditions are set out in full in part 3 of these representations. Officer feedback on compliance with the Annex 3 conditions is set out in bold below.

No training records available. It was accepted during the visit by Mr Saied Nishat that none had ever been completed. This was confirmed by the Licence holder Mr Ilyas Nishat over the phone during the inspection.

No alcohol authorisation form available, nor any knowledge of any requirement.

A refusals log was available with 3 entries from 10th June 2024 to 27th June 2024. It was accepted this had only been used following the failed Test Purchase.

An incident log was available but was empty and had not been checked/signed by the DPS.

CCTV was available and Mr Saied Nishat was able to demonstrate the use of the system. Mr Saied Nishat stated that the CCTV system recorded for a month, but that the footage today went back to 9th June as the shop had a re-fit and a new system installed from this date.

The Licence holder, Mr Ilyas Nishat was asked in a telephone conversation held at the time of the inspection on the status of the DPS and made aware that his father had told Officers that the DPS, Mr Nishat Burhan, never visited the shop. Mr Ilyas Nishat responded by saying that *“he has applied for a personal licence and needs to speak to licensing about getting some forms to change the DPS into his name”*. **At the time of writing no application to vary the DP has been received.**

Yours sincerely

**Alan Pogorzelec
Licensing Manager**