



Walsall Council

REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES

LICENSING SUB - COMMITTEE

8 JUNE 2022

APPLICATION FOR A PREMISES LICENCE REVIEW UNDER SECTION 51 OF THE LICENSING ACT 2003

**Bentley Mini Market
13-15 Bentley Road North
Walsall
WS2 0BZ**

1.0 Summary of Report

1.1 For members of the licensing sub-committee to determine a review of a premises licence in respect of a convenience store/mini-market trading as "Bentley Mini Market" at 13-15 Bentley Road North, Walsall, WS2 0BZ. The licence is held by Mr Raja Rafique who is also the Designated Premises Supervisor ("DPS"). The licence permits the store to sell alcohol for consumption off the premises (i.e. an "off-licence"). The review application is made by the Chief Constable of West Midlands Police ("WMP"), a responsible authority under section 51 of the Licensing Act 2003 (the Act). WMP submitted this review application on the following grounds:

- The Prevention of Crime & Disorder
- Public Safety
- The Protection of Children from Harm

1.2 A relevant representation, in support of WMP's review application, has been received from Trading Standards. There are no other representations.

1.3 The application cannot be determined under officer delegated authority.

2.0 Recommendations

2.1 That the licensing sub-committee hold a hearing to consider the application to review the premises licence and the further relevant representations and take such steps, if any, as it considers appropriate and proportionate for the promotion of the licensing objectives in relation to this premises.

2.2 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- (a) modify the conditions of the premises licence (which includes adding new conditions or altering or omitting any existing condition including permitted hours);
- (b) exclude a licensable activity from the scope of the licence;
- (c) remove the designated premises supervisor;
- (d) suspend the licence for a period not exceeding three months; or
- (e) revoke the licence.

(Where the authority takes a step within (a) or (b) above, it may provide that the modification or exclusion is to have effect only for a specified period not exceeding three months).

3.0 Background information

3.1 The premises previously held a premises licence (24 November 2005) under Mohammed Rafique. This licence lapsed due to the death of Mr Mohammed Rafique. It was brought to licensing authority's attention in October 2021 that the licence holder passed away in February 2021 and the licensing authority received no correspondence until October 2021 when the annual fee invoices were sent out.

3.2 The Licensing Authority notified WMP that the current licence had lapsed following the death of the licence holder.

3.3 A new premises licence was granted on the 29 December 2021 following a successful application by Mr Raja Rafique. **Appendix 1** is a copy of the current premises licence together with a plan of the premises. Mr Raja Rafique is both the premises licence holder and DPS.

3.4 The premises is licensed for the sale of alcohol for consumption off the premises (only) during these hours:

Monday to Saturday: 07:30 – 22:30
Sunday: 08:30 – 22:00

3.5 A street map of the locality and shop front is given as **Appendix 2**.

3.6 WMP's application to review the premises licence of this premises under section 51 of the Licensing Act 2003 is dated 6 April 2022 and was received by the Council on 12 April 2022. A copy of that application to review the premises licence is attached as **Appendix 3**.

The application was made following a visit to the premises by WMP and Walsall Council's Trading Standards department. The police provide information relating to the following concerns:

- (a) In February 2021 the previous premises licence holder, Mr Mohammed Rafique, died. Since the licence was not transferred within the prescribed period it was no longer in force.
- (b) Some 9 months later, on 22 October 2021, the family of Mr Mohammed Rafique contacted the Council. They were advised that the law did not permit the licence to be transferred given the passage of time. Therefore, there was no premises licence in force authorising the sale of alcohol. Any alcohol on display should be removed or else criminal offences would be committed. The Council sent an email to this effect. It appears that the unauthorised sale of alcohol had continued over the 9 month period following the death of the previous licence holder. The Council gave advice on how to regularise the position by way of a new premises licence application. WMP were informed and, on 24 November 2021, they requested a visit by the Neighbourhood policing team.
- (c) On 25 November 2021 a visit was made to Bentley Mini Market by the Darlaston policing team. Sgt Khalid spoke to Mr Raja Rafique, the son of Mr Mohammed Rafique. Mr Raja Rafique indicated to police that he had lodged a new premises licence application and mistakenly believed that whilst his application was pending he was allowed to continue selling alcohol. The Police Licensing officer advised Mr Raja Rafique that he had no authority to sell alcohol, and if he wished to he could apply for Temporary Event Notices online to permit sales during the interim period. No premises licence application had been made. Mr Rafique submitted Temporary Event Notices shortly afterwards.
- (d) On 30 November 2021 a new premise licence application was submitted and after liaising with the applicant, revised conditions were agreed. On the 22 December 2021 the Police confirmed they had no representation to this new application subject to the agreed conditions being applied to the licence should it be granted. The premises licence was granted under delegated authority by an officer. No Licensing hearing was required to determine the application.
- (e) On 26 January 2022, following the receipt of intelligence, police officers attended the shop together with Trading Standards officers. Whilst inside the shop, officers searched Raja Rafique and he was found in possession of cocaine. Also located behind the counter at the shop were items associated with drugs together with a series of weapons. At his home address, which is connected to the shop, a firearm and ammunition was found. Mr Rafique did not have a licence for this weapon. All items were seized by officers and Mr

Rafique was arrested for a number of serious offences. Full details will be supplied at the Licensing hearing where possible. The firearm is currently with WMP forensics awaiting authenticity. However, for all the reasons documented, WMP have no confidence in the management of this premises which has shown a total disregard to the licensing objectives and for the safety of their customer and staff.

4. Representations

4.1 Representations/Responses from Responsible Authorities

Public Health

Appendix 4 is a copy of the response from Public Health Walsall received on the 12 April 2022. They make no relevant comments.

Home Office

Appendix 5 is a copy of the response from the Home Office received on the 13 April 2022 that they cannot find any recent record of any immigration offences in relation to the above premises and make no relevant comments.

Planning

Appendix 6 is a copy of the response from Planning received on the 4 May 2022 with no relevant comments.

Trading Standards

Appendix 7 is a copy of the representation from Trading Standards received on the 9 May 2022 supporting the review of the premises licence on the grounds of Crime & Disorder. Trading Standards report a history of complaints relating to the shop in relation to the sale of illicit cigarettes from 2014 through to 2022. Of more recent reports:

- (a) In December 2018 undercover officers purchased illicit cigarettes from Bentley Mini Market on 2 separate occasions.
- (b) On 6th February 2019, 120 illegal cigarettes and 0.7kg of illegal rolling tobacco were seized.
- (c) In June 2020 a complaint was received by Trading Standards that illicit cigarettes were being sold from under the counter at the shop.
- (d) In November 2020 a complaint was received by Trading Standards that Bentley Mini Market were selling counterfeit cigarettes and non-duty paid hand rolling tobacco.

- (e) On 19th February 2021, 140 illicit cigarettes were seized from the shop.
- (f) On 26th January 2022 (the only date when Mr Raja Rafique was the licence holder), 160 illegal cigarettes were seized from the shop.
- (g) Trading Standards indicate that the illegal tobacco trade is thriving in Walsall and cheap tobacco and cigarettes are widely available in Walsall. The supply chain for such activity is controlled by organised criminal gangs who use the profits from illegal tobacco to help finance more serious crimes such as people trafficking, modern day slavery and even terrorism. Furthermore, between 2019 and 2020, HMRC estimated as much as a third of the 12,000 tonnes of rolling tobacco smoked in the UK was bought and sold illegally and around 2.5 billion illegal cigarettes equating to £2.3 billion in lost tax revenue.

4.2 Representations from 'other persons'

None

5. Walsall Council Licensing Policy

- 5.1 Please click this link to access Walsall Council's Statement of Licensing Policy or copy the URL address into a search bar:

https://go.walsall.gov.uk/business/licensing_and_regulation/alcohol_and_entertainment/premises_licence

6. Resource Considerations.

- 6.1 **Financial:** Any decision taken by the Licensing Authority may be appealed to the Magistrates' Court. The Licensing Authority may have to bear the costs of defending such an appeal.
- 6.2 **Legal:** Any received application for review must be relevant to the promotion of the licensing objectives namely: Prevention of Crime and Disorder, Public Safety, Prevention of Public Nuisance, and Protection of Children from Harm.

In determining the review application the licensing sub committee must have regard to:

- The need to promote the four licensing objectives.
- Representations made.
- Relevant sections of the Licensing Act 2003.
- Relevant sections of the statutory guidance issued under s.182 of the Licensing Act 2003.

- The Licensing Authority's Statement of Licensing Policy.

7. Relevant extracts from Section 182 Guidance:

- 7.1 Paragraph 10.28 of Section 182 Guidance issued under The Licensing Act 2003 states:

The 2003 Act does not require a designated premises supervisor or any other personal licence holder to be present on the premises at all times when alcohol is sold. However, the designated premises supervisor and the premises licence holder remain responsible for the premises at all times including compliance with the terms of the 2003 Act and conditions attached to the premises licence to promote the licensing objectives.

Reviews

- 7.2 Chapter 11 of the section 182 Guidance deals with "Reviews". The following paragraphs may be of particularly relevance:

11.1 - The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate

11.7 - In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.

11.10 - Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should

be encouraged and reviews should not be used to undermine this cooperation.

11.19 - Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
- exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
- suspend the licence for a period not exceeding three months;*
- revoke the licence.*

11.20 - In deciding which of these powers to invoke, it is expected that licensing authorities 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.

11.21 - For example, licensing authorities 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.

11.22 - 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.

Reviews arising in connection with crime

11.24 - A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews

may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.

11.25 - Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.

11.26 - Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

11.27 - There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:

- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;*
- for the sale and distribution of illegal firearms;*
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;*
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;*
- for prostitution or the sale of unlawful pornography;*

- *by organised groups of paedophiles to groom children;*
- *as the base for the organisation of criminal activity, particularly by gangs;*
- *for the organisation of racist activity or the promotion of racist attacks;*
- *for employing a person who is disqualified from that work by reason of their immigration status in the UK;*
- *for unlawful gambling; and*
- ***for the sale or storage of smuggled tobacco and alcohol.***

11.28 - It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Representations from Responsible Authorities

- 7.2 Paragraph 9.12 of the Section 182 Guidance relates to the role of responsible authorities and states:

9.12 - Each responsible authority will be an expert in their respective field, and in some cases it is likely that a particular responsible authority will be the licensing authority's main source of advice in relation to a particular licensing objective. For example, the police have a key role in managing the night-time economy and should have good working relationships with those operating in their local area. The police should usually therefore be the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder licensing objective. However, any responsible authority under the 2003 Act may make representations with regard to any of the licensing objectives if they have evidence to support such representations. Licensing authorities must therefore consider all relevant representations from responsible authorities carefully, even where the reason for a particular responsible authority's interest or expertise in the promotion of a particular objective may not be immediately apparent. However, it remains incumbent on all responsible authorities to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.

8. Relevant Representations

8.1 In determining whether a representation is 'relevant', and may therefore be taken into account, the Sub-Committee must have regard to Sections 18(6) and 18(7) of the Licensing Act 2003, which state:

8.2 18(6) For the purposes of this section, "relevant representations" means representations which—

- (a) are about the likely effect of the grant of the premises licence on the promotion of the licensing objectives;
- (b) meet the requirements of subsection (7);
- (c) if they relate to the identity of the person named in the application as the proposed premises supervisor, meet the requirements of subsection (9); and
- (d) are not excluded representations by virtue of section 32 (restriction on making representations following issue of provisional statement).

18(7) the requirements of Section 18 subsection (7), referenced above, are—

- (a) that the representations were made by a responsible authority or other person] within the period prescribed under section 17(5)(c);
- (b) that they have not been withdrawn; and
- (c) in the case of representations made by a person who is not a responsible authority, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious

8.3 Licensing Objectives

The Licensing Objectives are:

- The prevention of crime and disorder;
- The prevention of public nuisance;
- Public Safety; and
- The protection of children from harm.

8.7 Conditions

Any conditions imposed on the Premises Licence :

- must be appropriate for the promotion of the licensing objectives;
- must be precise and enforceable;
- must be unambiguous and clear in what they intend to achieve;
- should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
- must be tailored to the individual type, location and characteristics of the premises and events concerned;

- should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
- should not replicate offences set out in the 2003 Act or other legislation;
- should be proportionate, justifiable and be capable of being met;
- cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
- should be written in a prescriptive format.

8.8 Conditions must be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally.

8.9 Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

8.10 Licensing authorities are best placed to determine what actions are appropriate for the promotion of the licensing objectives in their areas. All licensing determinations should be considered on a case-by-case basis. They should take into account any representations or objections that have been received from responsible authorities or other persons, and representations made by the applicant or premises user as the case may be.

8.11 The authority's 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.

Appeals

8.12 Where the applicant, responsible authority, or other person who has made a relevant representation is aggrieved by the decision of the Licensing Authority an appeal lies to the Magistrates' Court.

10. **Staffing:** Nothing arising from this report.

11. **Citizen impact**

11.1 None arising from this report.

12. Community Safety.

12.1 Is addressed through the review hearing process.

13. Environmental impact

13.1 None arising from this report.

14. Performance and risk management issues

14.1 None arising from this report.

15. Equality implications

15.1 When considering this review and reaching a determination the Licensing Authority must always have due regard to the Public Sector Equality Duty (“PSED”) set out in section 149 of the Equality Act 2010:

A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

15.2 The Licensing Authority’s approach to having “due regard” is based on legal principles arising from case law including those set out in *Brown vs. Secretary of State for Work and Pensions* (2008) and other cases. These principles may be summarised as:

- **Knowledge** - decision makers should be aware of their duty to have due regard to the aims of PSED.
- **Sufficient information** - decision makers must consider whether they have sufficient information in order to give proper consideration to the matters set out in the PSED. This will assist decision makers to understand the potential impact of their proposed decisions on people with relevant protected characteristics.

- **Timeliness** - public bodies must have due regard “before and at the time that a particular decision is being considered”. This means that equality must form part of the decision making process as it happens and not after the event.
- **Real consideration** - consideration of the aims of the PSED must form an integral part of the decision-making process. The PSED duty must be exercised fully, rigorously and with an open mind.
- **No delegation** - public bodies and others carrying out public functions may use their staff and third parties to assist them to assess the impact of a decision on equality. However, where they make the ultimate decision, they cannot delegate their responsibility to consider the aims of the PSED to another person.
- **Review** - public bodies must have due regard to the aims of the PSED not only when a policy is developed and decided, but also when it is implemented and reviewed. The PSED is a continuing duty.

16. Consultation

16.1 Carried out in accordance with prescribed regulation.

17.0 Contact Officer

17.1 Sayful Alom – Sayful.alom@walsall.gov.uk

18.0 Appendices

18.1 Appendix 1 – Current premises licence.
 Appendix 2 – Street map of the locality.
 Appendix 3 – Review Application
 Appendix 4 – Response from Public Health
 Appendix 5 – Response from Home Office
 Appendix 6 – Response from Planning
 Appendix 7 – Representation from Trading Standards