



# Walsall Council

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## **REPORT OF THE DIRECTOR OF RESILIENT COMMUNITIES**

### **LICENSING SUB - COMMITTEE**

**11 FEBRUARY 2021**

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

**European Off Licence and Convenience Store  
278 Wolverhampton Road  
Walsall  
WS2 8RQ**

### **1.0 Summary of Report**

- 1.1 For members of the licensing sub-committee to determine an application for a premises licence review, in respect of European Off Licence & Convenience Store, 278 Wolverhampton Road, Walsall, WS2 8RQ.
- 1.2 The review application is made by the Chief Inspector for Weights & Measures for Walsall Council, a responsible authority under the terms of the Licensing Act 2003.
- 1.3 The application cannot be determined under officer delegated authority.

### **2.0 Recommendations**

- 2.1 That the licensing sub-committee having regard to the submitted review application, determine what steps if any, are considered necessary for the promotion of the licensing objectives at these premises.
- 2.2 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),
  - 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.

### **3.0 Background information**

- 3.1 The current premises licence which includes the operating schedule and premises plan is attached as **Appendix 1**. Mr Bikramjit Singh Mann is the premises licence holder and also the nominated Designated Premises Supervisor.
- 3.2 A street map of the locality is given as **Appendix 2**.
- 3.3 The Chief Inspector for Weights & Measures for Walsall Council has submitted an application to review the premises licence for European Off Licence & Convenience Store, on the grounds that the premises licence holder is not promoting the statutory licensing objectives of the prevention of crime and disorder. A copy of the application is given as **Appendix 3**.
- 3.4 The initial premises licence review application containing summary detail was received by the licensing authority on 9<sup>th</sup> December 2020. The review application outlines that the premises has been found selling illegal tobacco products on 3 different occasions by Trading Standards following numerous complaints registered against the premises. Counterfeit and incorrectly labelled cigarettes has also been bought from the store during a covert test purchase operation in the last year.
- 3.5 The application for review also informs us that the Designated Premises Supervisor (DPS) and the Premises Licence Holder Mr Bikramjit Singh Mann stated to Trading Standards that he has no involvement with the running of the business as he merely leases the premises to the owner of the business. This is contrary to section 10.28 of the guidance issued under the Act. Members are referred to section 4.3 of the report below which states:
- “the designated premises supervisor and the premises licence holder remain responsible for the premises at all times”***
- 3.6 In accordance with prescribed regulation, following the submission of the review application officers arranged for a premises licence review notice to be displayed for 28 consecutive days at the premises and on the council’s website.
- 3.7 The period for further written representations (of either a positive or negative nature) to be submitted from other responsible authorities and ‘other persons’ closed on 6<sup>th</sup> January 2021.
- 3.8 On the 10<sup>th</sup> December 2020 the Licensing Authority received an email from the Home Office (Immigration Enforcement) to inform that they would not be making any representations to the review application. A copy of the email is given as **Appendix 4**.

- 3.9 On 4<sup>th</sup> January 2021 the licensing authority were in receipt of an email from Mr Mann (Licence holder & DPS) on why the authority should not revoke the Premises Licence and documents relating to the different lease that have been in place for the different tenants. A copy of the email is given as **Appendix 5**.
- 3.10 On the 5<sup>th</sup> January 2021, the licensing authority were in receipt of an email from Jennifer Mellor (West Midlands Police) supporting review of the premises licence under the grounds of Prevention of Crime & Disorder. The representation also states that Mr Mann ignored his responsibilities as a premises licence holder and also a DPS (as stated under 4.3 of the report). West Midlands Police also request members to consider Public Safety and the Protection of Children from Harm as illicit tobacco is cheaper than duty paid tobacco which then can attract children to buy these products. A copy of the email is given as **Appendix 6**.
- 3.11 On the 5<sup>th</sup> January 2021 the licensing authority were in receipt of a representation from Neil Aston-Baugh (West Midlands Fire Service). Neil has commented on the fire risks that illicit tobacco holds. Public Safety is being undermined with the sale of potentially dangerous items. A copy of the email is given as **Appendix 7**.
- 3.12 On the 6<sup>th</sup> January 2021 the licensing authority were in receipt of a representation from Walsall Council's Trading Standards. The representation provides evidence of the letter that was sent to Mr Mann in January 2019 relating to a visit that took place on the 24<sup>th</sup> October 2018 where illegal tobacco was seized from the premises. A copy of the representation from Trading Standards is given as **Appendix 8**.
- 3.13 The representation from Trading Standards confirms that the premises was visited 8 times between August 2018 – August 2020 (including a visit by a Licensing Officer). From the 8 visits, 5 times the premises was found selling illicit tobacco. Appendix 8 also includes photos of the seized illicit tobacco.
- 3.14 On the 6<sup>th</sup> January 2021 the licensing authority were in receipt of a representation from Walsall Council's Public Health on the grounds of Public Safety. The representation comments on the impact illicit tobacco has on young people as they are cheaper to buy. There is good evidence that two-thirds of smokers take up smoking before the age of 18. The representation also shows national data that the population in Walsall has consistently significantly high deaths caused by smoking than either the West Midlands region or England. A copy of the representation from Public Health is given as **Appendix 9**.
- 3.15 No further representations have been received from any of the other responsible authorities or other persons.

- 3.16 The Licensing Authority is able to confirm that currently there is still an annual fee of £180 outstanding for the premises. The annual fee was due on the 24<sup>th</sup> November 2020 and an invoice was sent out on the 26<sup>th</sup> November 2020. Since 2013 the premises licence has been suspended 5 times for non-payment of annual fee. The annual fee each year is due on the same day (24<sup>th</sup> November). The table below shows details of number of times the licence was suspended for non-payment of annual fee:

Annual Fee due Date	Date Suspended	Date suspension lifted following payment of annual fee
24/11/2012	30/01/2013	04/02/2013
24/11/2013	09/12/2013	13/12/2013
24/11/2016	13/09/2017	10/01/2018
24/11/2017	14/03/2018	25/06/2018
24/11/2019	13/01/2020	13/01/2020

#### **4.0 Resource Considerations.**

- 4.1 **Financial:** Any decision taken by the Licensing Authority may be appealed to the Magistrates' Court. The Licensing Authority would have to bear the costs of defending such an appeal..
- 4.2 **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, 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 Act.
  - The licensing authorities' policy statement.
- 4.3 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.*

In determining the review application the sub-committee can take such steps as it considers necessary for the promotion of the licensing objectives:

- Take no further action.
- Modify the conditions of the licence.
- Exclude a licensable activity from the scope of the licence.
- Removal of the designated premises supervisor (if applicable).
- Suspend the licence for a period not exceeding three months.
- Revoke the licence.

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.

Where the sub-committee takes the step to modify the conditions of licence or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for one such period (not exceeding three months) as it may specify.

The licensing authority 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 a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

*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, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate (11.18 Guidance).*

*Where the applicant for review, holder of the premises licence or any other person who made relevant representations in relation to the application is aggrieved by the decision of the licensing authority, appeal is to magistrates court where the reasonableness or otherwise of the decision will be tested.*

*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.*

4.4 Paragraph 11.24 of the guidance states:

*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.*

4.5 Paragraph 11.25 of the guidance states:

*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.*

4.6 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.***

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.

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

## 5.0 **Citizen impact**

5.1 None arising from this report.

## 6.0 **Community Safety.**

6.1 Is addressed through the review hearing process.

## 7.0 **Environmental impact**

7.1 None arising from this report.

## 8.0 **Performance and risk management issues**

8.1 None arising from this report.

## 9.0 **Equality implications**

9.1 None arising from this report.

## 10.0 **Consultation**

10.1 Carried out in accordance with prescribed regulation.

## **11.0 Contact Officer**

11.1 Sayful Alom – [Sayful.alom@walsall.gov.uk](mailto:Sayful.alom@walsall.gov.uk)

## **12.0 Appendices**

- 12.1 Appendix 1 – Current premises licence.  
Appendix 2 – Street map of the locality.  
Appendix 3 – Application for review.  
Appendix 4 – Response from Home Office  
Appendix 5 – Email from Premises Licence Holder  
Appendix 6 – Email from West Midlands Police  
Appendix 7 – Email from West Midlands Fire Service  
Appendix 8 – Representation from Trading Standards  
Appendix 9 – Representation from Public Health