

**Licensing Authority, Chichester District Council, East Pallant House,
1 East Pallant, Chichester, West Sussex, PO19 1TY**

Alcohol and Entertainment Licensing Sub-Committee

Date & Time: Wednesday 15 March 2023 at 2:30pm

Venue: Committee Room 1, Chichester District Council, East Pallant House, 1 East Pallant,
Chichester, West Sussex, PO19 1TY

**Application for REVIEW of PREMISES LICENCE
(Application Number – 23/00087/LAPRER)**

Holmbush Stores
4 Holmbush Way
Midhurst
West Sussex
GU29 9BS

1. RECOMMENDATIONS

- 1.1 That the Sub-Committee considers and determines the application made by the Chief Immigration Officer, on behalf of the South-East Immigration Compliance & Enforcement Team ('ICE Team') at the Home Office, seeking a review of the current Premises Licence granted in respect of the premises known as Holmbush Stores, 4 Holmbush Way, Midhurst, West Sussex, GU29 9BS under the Licensing Act 2003 (the 'Act').**
- 1.2 That the Sub-Committee considers the content of this report and any oral or documented evidence during the hearing and determines the review application in accordance with the Act.**
- 1.3 The Sub-Committee is to give reasons for its decision.**

2. REASONS FOR HEARING

- 2.1 On 18 January 2023, this Licensing Authority received an application seeking a review of the current Premises Licence (No. 3815/05/00549/LAPRET) granted in respect of Holmbush Stores, 4 Holmbush Way, Midhurst, West Sussex, GU29 9BS. The application was submitted by Mr Lee Coates, Chief Immigration Officer, on behalf of the South-East ICE Team at the Home Office in their role as a Responsible Authority under the Act.**
- 2.2 The Immigration Act 2016 made the Secretary of State a responsible authority in respect of premises licensed to sell alcohol or provide late-night refreshment with effect from 6 April 2017. In effect this conveyed the role of responsible authority to**

Home Office Immigration Enforcement who exercise the powers on the Secretary of State's behalf. When Immigration Enforcement exercises its powers as a responsible authority it does so in respect of the prevention of crime and disorder licensing objective because it is concerned with the prevention of illegal working or immigration offences more broadly.

- 2.3 The ICE Team submitted the review application under Section 51 of the Act. A copy of the application and supporting documentation is included at Attachment A. It now falls to this Sub-Committee to consider the review application and determine what action, if any, is appropriate.
- 2.4 The grounds for the review are that the following statutory licensing objective under the Act is not being promoted:
 - i) Prevention of Crime and Disorder
- 2.5 It is the opinion of the ICE Team that the above licensing objective has been seriously undermined by the Premises Licence holder having been found to be employing illegal workers with no right to work in the United Kingdom due to their immigration status.
- 2.6 Information was provided by the ICE Team supporting their application and set out their findings following a visit to the premises with Sussex Police on 8 November 2022. Additional information and details of subsequent actions associated with the provision of licensable activities and management practices at the premises thereafter was also included within the application. This is provided at Attachment A.
- 2.7 The purpose of this report is to inform the Sub-Committee of the review application received in order that this Licensing Authority can consider whether action is now appropriate to ensure the promotion of the statutory licensing objectives.
- 2.8 The holder of the current Premises Licence is Mr Navaratnam Sathanathan of 30 Pretoria Avenue, Midhurst, West Sussex, GU29 9PP. Mr Sathanathan is also the current Designated Premises Supervisor ('DPS') at the premises. The 'DPS' is ordinarily the key person who is responsible for the day-to-day management of licensed premises at which alcohol may be sold. Mr Sathanathan has held the licence and position of 'DPS' since 5 October 2005.

3. BACKGROUND

- 3.1 Included in this report are the following:
 - Alcohol & Entertainment Licensing Sub-Committee – Protocol
 - Copy of the application form for review (and supporting documentation) received from the Chief Immigration Officer, on behalf of the South-East ICE Team at the Home Office (**Attachment A**)
 - Location plan showing the premises subject of review (**Attachment B**);
 - Copy of relevant representations received from the Alcohol And Late Night Refreshment Team, Interventions Sanctions And Compliance, Immigration Enforcement at the Home Office, Sussex Police and the Valuation & Estates Manager, Estates Team at Chichester District Council (**Attachment C**); and

- Copy of current Premises Licence (No 3815/05/00549/LAPRET) granted in respect of the Holmbush Stores, 4 Holmbush Way, Midhurst, West Sussex, GU29 9BS (**Attachment D**).
- Photos of the statutory notice displayed at premises subject of review (**Attachment E**).

3.2 At any stage following the grant of a Premises Licence, any person or Responsible Authority may request the Licensing Authority to review a licence because of a matter, or matters, arising at the premises which raise concerns in connection with the promotion of one or more of the licensing objectives, these are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance, and
- The protection of children from harm

3.3 In arriving at its decision, the Sub-Committee must have regard to:

- the evidence presented both orally and documented
- Home Office Guidance issued under Section 182 of the Act (issued December 2022), particularly Chapter 11 (Reviews) and,
- this Licensing Authority's current Statement of Licensing Policy 2022 to 2027. At paragraph 13.5 of the policy, it states that '*When considering an application for a review, the Licensing Authority will carefully consider the wide range of powers available to it under the Act that it may exercise when it considers it appropriate to promote and properly fulfil the licensing objectives. It being recognised that the review process is a key protection for the community where problems associated with the licensing objectives occur.*'

3.4 The Licensing Authority must, having regard to the review application and any relevant representations received. The Licensing Act 2003 provides a range of powers which the Authority may exercise, where it considers them appropriate, on determining a review, in order to promote the licensing objectives. These steps are:

- 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, or
- revoke the licence

3.5 Of course, the Licensing Authority may also decide that the review does not require further appropriate steps to promote the licensing objectives and there is nothing to prevent the Authority issuing a simple written warning or indeed taking no action at all.

4. HISTORY AND SUMMARY OF THE REVIEW APPLICATION

4.1 Holmbush Stores is situated in a parade of residential properties within a predominantly residential area. There are no other retail or licensed premises in the parade.

- 4.2 The area is densely populated with residential dwellings including flats above and immediately adjacent to the licensed premises as depicted in the photographs at Attachment E.
- 4.3 Holmbush Stores is owned by Chichester District Council, leased to the current Premises Licence holder and has been used as a newsagents/ convenience store both licensed and unlicensed for many years. A plan and photographs showing the location of the premises are included at Attachment B.
- 4.4 Holmbush Stores has benefitted from a Premises Licence granted under the Act since 5th October 2005. As mentioned earlier in this report, Mr Sathananthan has held the Licence since this date along with the position of Designated Premises Supervisor. A copy of the current Premises Licence (No. 3815/05/00549/LAPRET) is attached at Attachment D.
- 4.5 As stated above, the Licensing Authority received the application to review the current Premises Licence on 18 January 2023. The application by the ICE Team was made electronically with a hard copy subsequently given to the Premises Licence holder by the responsible authority.
- 4.6 Following receipt of the review application, a statutory 28-day consultation period began during which representations could be submitted to the Licensing Authority. The representation period finished on 15 February 2023. As part of the review process, the Licensing Authority erected Public Notices at the premises (photos of notice on display are shown at Attachment E) and displayed a further copy of the same Notice in the main reception area of the Council offices at East Pallant House. The Notices remained on display throughout the representation period and a copy of the application was also made available on the council's website.
- 4.7 The current Premises Licence permits the retail sale of alcohol for consumption off the premises. The standard days and timings of this are –
- Monday to Saturday 08.00 to 23.00
 - Sunday 10.00 to 22.30
 - Good Friday 08.00 to 22.30
 - Christmas Day 12.00 to 15.00 and 19.00 to 22.30
- 4.8 The opening hours of the premises are unspecified on the Premises Licence.
- 4.9 Within their application the ICE Team refer to sections of the Home Office Statutory Guidance amended and issued during December 2022 in that the review mechanism will be used effectively to deter certain activities and prevention of crime. The Home Office Guidance states *“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.”*

5 RELEVANT REPRESENTATIONS

- 5.1 Relevant representations were received during the representation period from Sussex Police and the Alcohol And Late Night Refreshment Team, Interventions Sanctions And Compliance, Immigration Enforcement at the Home Office, both in their role as responsible authorities under the Licensing Act 2003. A further

representation was received from the Valuation and Estates Manager on behalf of the Estates Team at Chichester District Council. Chichester District Council are the freehold owners of 4 Holmbush Way, Midhurst and lease it to Mr Navaratnam Sathanathan, the current Premises Licence holder. All representations are included at Attachment C.

- 5.2 Sussex Police state in their representation that they *“support the review application by Immigration Enforcement requesting revocation of the premises licence”* whilst also referring to the revised Home Office Guidance which states that the employment of a person who is disqualified from work by reason of their immigration status in the UK is a criminal activity which should be treated particularly seriously.
- 5.3 Sussex Police also refer to the findings of an unannounced licensing visit conducted at the premises on 27 January 2023. Sussex Police state in their representation that *“should the Council Licensing Committee decide not to revoke the licence, then Sussex Police invite the Committee to update the Premises Licence conditions up to current modern standard.....”*. They have subsequently suggested within their representation a number of conditions which they believe would promote the licensing objectives.
- 5.4 The Alcohol And Late Night Refreshment Team, Interventions Sanctions And Compliance, Immigration Enforcement at the Home Office submitted a representation in support of the application for review. In this they confirm that they *“believe the license holder has failed to meet the licensing objectives of prevention of crime and disorder, as illegal working has been identified at this premises.”*. They confirm within the representation that on Tuesday 8 November 2022 officers from Southeast Immigration Compliance and Enforcement (ICE) attended the convenience store with Sussex Police and that three individuals were encountered at the premises with no right to work in the United Kingdom. All three illegal workers were arrested and detained pending removal back to their home countries. An illegal working civil penalty notice was issued to the business with a potential maximum penalty of £60,000 for the 3 workers encountered.
- 5.5 Mr Kevin Gillett, as the Valuation & Estates Manager for Chichester District Council submitted a relevant representation in which he states *“...details of the case that instigated the application by the Home Office to review the Premises Licence are deeply troubling and potentially represent a breach of several leasehold obligations...”*. Mr Gillett further states *“From a landlord’s perspective, tenants are required to avoid any illegal or immoral activity and to provide full details of all notices and orders issued by any government department, local or public regulatory authority”*. It is noted that the Premises Licence holder neglected to advise the council’s Estates department of the Home Office actions.

6. CONSIDERATION

- 6.1 In reaching its determination, the Sub-Committee must take into consideration the promotion of the four statutory licensing objectives, the Council’s Statement of Licensing Policy, the current Home Office Guidance along with written and/ or oral evidence during the hearing.
- 6.2 It is very important to note that these are the only matters to be addressed by the Licensing Authority when considering this application. The licensing objectives are

the only grounds on which representations can be made, and the only grounds on which the Licensing Authority may consider and determine the review application.

- 6.3 Human Rights considerations must be taken into account fully in balancing licensing issues, in particular, article 1 of the first protocol and articles 6 and 8. Article 1 relates to the protection of property and the peaceful enjoyment of possessions and property (holding a licence would be considered a possession). Article 8 relates to the right to respect for private and family life, home and correspondence. Article 6 relates to the right to a fair trial. These are however qualified rights and can be deprived of "in the public interest". Interference is permissible if what is done: -
- Has its basis in law;
 - Is necessary in a democratic society to fulfil a pressing need or pursue a legitimate aim,
 - Is proportionate to the aims being pursued; and,
 - Is related to the prevention of crime or, the protection of public order or health or the protection of the rights and freedoms of others.
- 6.4 The Sub-Committee must consider each application on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 6.5 All applications before the Sub-Committee must be considered against the backdrop of anti-discriminatory legislation including the Equality Act 2010 and in accordance with the Council's current Equality Strategy.
- 6.6 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from Responsible Authorities and any other person(s).
- 6.7 The Sub-Committee are required to give reasons for their decision.

7. OPTIONS OPEN TO THE SUB-COMMITTEE

- 7.1 As is stated at paragraph 3.4 above, when considering and determining an application for a review of a Premises Licence, the Sub-Committee have various options available to them so as to ensure the promotion of the licensing objectives. These can be a combination of one or more of the following in respect of the Premises Licence.
- 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; or
 - revoke the licence.

7.2 The Sub-Committee may also choose not to take any action and a warning may simply be issued. Any steps necessary to promote the licensing objectives should be specified.

7.3 Under Section 181 and Schedule 5 of the Act, right of appeal to the Magistrates' Court in respect of application for review of an existing licence include:

- The applicant or licence holder may appeal against any decision to modify the conditions of the licence, suspend, or revoke a licence;
- The applicant may appeal against a rejection in whole or part of an application to review; and
- Those that have made relevant representations may appeal against a review being granted, rejected, or against the modification or lack of modification of any conditions.

8. BACKGROUND PAPERS

- Licensing Act 2003 (as amended)
- Home Office Guidance issued under Section 182 of the Licensing Act 2003 (December 2022)
- Chichester District Council's current Statement of Licensing Policy 2022-207

9. ATTACHMENTS

Attachment A **Application for review and supporting documentation submitted by the Chief Immigration Officer on behalf of the South-East ICE Team at the Home Office**

Attachment B **Location plan showing the premises subject of the review**

Attachment C **Copy of relevant representations received from Sussex Police, the Alcohol and Late Night Refreshment Team, Interventions Sanctions And Compliance, Immigration Enforcement at the Home Office and the Estates Team at Chichester District Council**

Attachment D **Copy of current Premises Licence (3815/05/00549/LAPRET)**

Attachment E **Photos of the statutory notice displayed at premises subject of review**

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