

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee C
Report of:	Interim Assistant Director of Regulation & Enforcement
Date of Meeting:	Wednesday 22nd December 2021
Subject:	Licensing Act 2003 Premises Licence – Application to vary a Premises Licence to specify an individual as Designated Premises Supervisor
Premises:	DC Minimarket, 138 Church Road, Yardley, Birmingham, B25 8UT
Ward affected:	Yardley East
Contact Officer:	Shaid Yasser, Senior Licensing Officer, licensing@birmingham.gov.uk

1. Purpose of report:

To consider the relevant notice made in respect of an application to vary a Premises Licence to specify an individual as Designated Premises Supervisor.

2. Recommendation:

To consider the notice that has been made and to determine this application.

3. Brief Summary of Report:

An application was received on 22nd November 2021 to vary a Premises Licence to specify Sharifnejad Abubakr as Designated Premises Supervisor ("DPS") in respect of DC Minimarket, 138 Church Road, Yardley, Birmingham, B25 8UT.

A notice has been received from West Midlands Police.

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

The report complies with the City Council's Statement of Licensing Policy and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

<p>5. Relevant background/chronology of key events:</p> <p>Sharifnejad Abubakr applied on 22nd November 2021 to vary the Premises Licence to specify himself as Designated Premises Supervisor ("DPS") in respect of DC Minimarket, 138 Church Road, Yardley, Birmingham, B25 8UT.</p> <p>The application requests that the change of DPS is to have immediate effect under section 38 of the Licensing Act 2003. Consequently, the change in DPS has immediate effect as soon as the application is made.</p> <p>The Licensing Act 2003 states that where the Chief Officer of Police is satisfied that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention licensing objective he must give the Licensing Authority a notice.</p> <p>In this case, notice has been received from West Midlands Police, see Appendix 1.</p> <p>The application is attached as Appendix 2.</p> <p>The current Premises Licence is attached at Appendix 3.</p> <p>The premises were subject to a review, submitted by the Chief Officer of Weights & Measures, and was determined on 4th August 2021. A copy of that determination is attached at Appendix 4.</p> <p>When holding a hearing to consider an objection notice under s39 (3), a licensing authority must having regard to the notice, reject the application if it considers it appropriate for the promotion of the prevention of crime and disorder licensing objective in the Licensing Act 2003.</p>
<p>6. List of background documents:</p> <p>Copy of the representation as detailed in Appendix 1</p> <p>Application Form Appendix, 2</p> <p>Current Premises Licence, Appendix 3</p> <p>Sub-Committee review hearing decision of 4th August 2021, Appendix 4</p>
<p>7. Options available</p> <p>Grant the application.</p> <p>Refuse the application.</p>

From: bw licensing
Sent: 03 December 2021 12:16
To: Licensing <
Cc: tonymclose@
Subject: WMP objection to the transfer/variation application DC Mini market Yardley
Importance: High

Good Afternoon Licensing,

West Midlands Police object to these applications under the prevention of crime & disorder and public safety licensing objectives.

This shop recently had it's premises licence revoked and DPS removed by Licensing Committee C on 4th August 2021 after a licence review application by Trading Standards due to counterfeit and illicit tobacco products being found on the premises.

I believe that the premises are currently appealing this decision and this is being heard at Birmingham Magistrates Court on 6th January 2022.

Due to the above West Midlands Police have concerns that these transfer applications may not be as it seems, that the current applicant may just be a 'figurehead' , that the premises are attempting to bypass and get around the fact that the premises licence has been revoked and a forthcoming court appearance with the original owner / DPS still in overall ownership and management of the premises.

To allay the above concerns West Midlands Police have asked, via their agent, that the applicant supplies documentation that the transfer applications are legitimate and therefore that the premises is not trying to circumvent the Licensing Act protocol.

The documents requested were:

- Signed lease / ownership of the premises
- Signed solicitors letters / documents for the transfer of the business
- Copies of money transfers between the two parties.
- Copy of the business rates and who has responsibility for the payment.

These have not been forthcoming from the applicant.

The above shows that the circumstances surrounding this application are exceptional and that the grounds for the objection by West Midlands Police meet the exceptional circumstance.

If West Midlands Police receive the requested documentation, to our satisfaction this objection may be withdrawn.

I have copied the applicant's agent into this email.

Regards and thanks

Chris Jones 55410

Birmingham Central Licensing Team West Midlands Police

Application to vary a premises licence to specify an individual as designated premises supervisor under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I / we Sharifnejad Abubakr
(full name(s) of premises licence holder)

being the premises licence holder, apply to vary a premises licence to specify the individual named in this application as the premises supervisor under section 37 of the Licensing Act 2003

Premises licence number

4810

Part 1 – Premises details

<u>Postal address of premises or, if none, ordnance survey map reference or description</u> DC Mini market 138 Church Road Yardley	
Post town Birmingham	Post code (if known) B25 8UT
Telephone number (if any) 	
Description of premises (please read guidance note 1) Convenience store with Off Licence 	

Part 2

Full name of proposed designated premises supervisor

Sharifnejad Abubakr

Nationality

Place of birth

Date of birth

Personal licence number of proposed designated premises supervisor and issuing authority of that licence (if any)

LEIPRS4615 Leicester City Council

Full name of existing designated premises supervisor (if any)

Mohammad Sheikehpour

Please tick yes

I would like this application to have immediate effect under ☐ **yes**

section 38 of the Licensing Act 2003

I have enclosed the premises licence or relevant part of it

(If you have not enclosed the premises licence, or relevant part of it, please give reasons why not)

Reasons why I have failed to enclose the premises licence or relevant part of it

Please tick yes

- I have made or enclosed payment of the fee Y
- I will give a copy of this application to the chief officer of police Y
- I have enclosed the consent form completed by the proposed premises supervisor Y
- I have enclosed the premises licence, or relevant part of it or explanation Y
- **I will give a copy of this form to the existing premises supervisor, if any** Y
- **I understand that if I do not comply with the above requirements my application will be rejected** y

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971] FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND, PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

Part 3 – Signatures **(please read guidance note 2)**

Signature of applicant or applicant's solicitor or other duly authorised agent
(See guidance note 3). **If signing on behalf of the applicant please state in what capacity.**

Signature

.....

Date 16-11-2021

.....

Capacity Agent for applicant

.....

For joint applicants signature of 2nd applicant 2nd applicant's solicitor or other authorised agent (please read guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

.....

Date

.....

Capacity Agent for applicant

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5) Tony Close - AC Consultancy	
Post town Loughborough	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you by e-mail your e-mail address (optional)	

Guidance notes

- 1. Describe the premises. For example the type of premises it is.**
- 2. The application form must be signed.**
- 3. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.**
- 4. Where there is more than one applicant, both applicants or their respective agents must sign the application form.**
- 5. This is the address which we shall use to correspond with you about this application.**

Consent of individual to being specified as premises supervisor

Sharifnejad Abubakr

I

[full name of prospective premises supervisor]

[home address of prospective premises supervisor]

hereby confirm that I give my consent to be specified as the designated premises supervisor in relation to the application for

Convenience store with Off Licence

[type of application]

by

Sharifnejad Abubakr

[name of applicant]

4810

relating to a premises licence

[number of existing licence, if any]

for

DC Minimarket
138 Church Road
Yardley

[name and address of premises to which the application relates]

and any premises licence to be granted or varied in respect of this application made by

Sharifnejad Abubakr

[name of applicant]

concerning the supply of alcohol at

DC Minimarket
138 Church Road
Yardley

[name and address of premises to which application relates]

I also confirm that I am entitled to work in the United Kingdom and am applying for, intend to apply for or currently hold a personal licence, details of which I set out below.

Personal licence number

LEIPRS4615

[insert personal licence number, if any]

Personal licence issuing authority

Leicester City Council, City Hall, 115 Charles Street, Leicester LE1 1FZ 0116 453040

[insert name and address and telephone number of personal licence issuing authority, if any]

Signed

Name (please print) Sharifnejad Abubakr

15-11-21

Date

LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

4810 / 3

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description DC Minimarket 138 Church Road Yardley	
Post town: Birmingham	Post Code: B25 8UT
Telephone Number: Not Specified	

Where the licence is time limited the dates N/A

Licensable activities authorised by the licence M2 Sale of alcohol by retail (off the premises)
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The times the licence authorises the carrying out of licensable activities Monday - Sunday 09:00 - 23:00 M2

The opening hours of the premises Monday - Sunday 09:00 - 23:00
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Where the licence authorises supplies of alcohol whether these are on and/or off supplies Off Supplies
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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Mr Mohammad Sheikhehpour	
Post town:	Post Code:
Telephone Number: Not Specified	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) N/A

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Mohammad Sheikhehpour	
Post town:	Post Code:
Telephone Number: Not Specified	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number 11967	Issuing Authority BIRMINGHAM CITY COUNCIL

Dated 16/02/2021

SHAID YASSER
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

No supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either— (a) a holographic mark, or (b) an ultraviolet feature.

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. (2) In this condition:— (a) “permitted price” is the price found by applying the formula $P = D + (D \times V)$, where— (i) P is the permitted price, (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol; (b) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence— (i) the holder of the premises licence, (ii) the designated premises supervisor (if any) in respect of such a licence, or (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence; (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994. (3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny. (4) Where the permitted price on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

All staff will be trained regarding their responsibilities under the Licensing Act 2003, records of staff training will be maintained and updated accordingly every 12 months.

2b) Conditions consistent with, and to promote the prevention of crime and disorder

The premises shall operate a CCTV system with 6 cameras covering all licensed areas with one camera focused on the entrance/exit. The system shall record continuously while the premises is open for licensable activities. Recordings shall be stored for a minimum of 31 days and can be accessed on site. Viewings of any recordings shall be made available immediately upon the request of police or any authorised officer. The premises licence holder will undertake to ensure the system is maintained at regular intervals to ensure the system is working correctly.

A record shall be kept detailing all refused sales of alcohol. The record should include the date and time of any refusals, detailing the member of staff who refused the sale. This record shall be made available to the police or an authorised officer at all times that the premises are open.

2c) Conditions consistent with, and to promote, public safety

All exits will be clear of hazards.

All staff will be trained in emergency procedures and records maintained.

2d) Conditions consistent with, and to promote the prevention of public nuisance

All refuse will be disposed of in an appropriate manner. Staff will be instructed to maintain all external areas in a clean and presentable manner at all times.

2e) Conditions consistent with, and to promote the protection of children from harm

The Premises Licence holder shall operate a challenge 25 policy where the only acceptable forms of identification are recognised photographic identification cards such as driving licence, forces ID cards, passport or any proof of age card that carries the PASS logo.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

N/A

3b) Committee conditions to promote the prevention of crime and disorder

N/A

3c) Committee conditions to promote public safety

N/A

3d) Committee conditions to promote the prevention of public nuisance

N/A

3e) Committee conditions to promote the protection of children from harm

N/A

Annex 4 – Plans

The plan of the premises with reference number **118480-4810/3** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection by appointment only. Please call the Licensing Section on 0121 303 9896 to book an appointment.



BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE - C

WEDNESDAY 4 AUGUST 2021

DC Minimarket, 138 Church Road, Yardley, Birmingham B25 8UT

That, having reviewed the premises licence held under the Licensing Act 2003 by Mohammed Sheikehpour, in respect of DC Minimarket, 138 Church Road, Yardley, Birmingham, B25 8UT upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that:

- the Licence be revoked, and that
- Mohammed Sheikehpour be removed as Designated Premises Supervisor

in order to promote the objectives of the prevention of crime and disorder, and public safety, in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns expressed on behalf of the Chief Inspector of Weights and Measures, as outlined fully in the Report. Mr Sheikehpour was both the licence holder and the designated premises supervisor for DC Minimarket.

Officers of the Trading Standards department of the City Council attended the meeting and told the Sub-Committee that on 12th March 2021, officers attended at DC Minimarket, accompanied by a tobacco detention dog and handler. Upon receiving an indication from the tobacco detection dog, they dismantled a display unit in the shop, and found 107 packets of illicit tobacco concealed behind it. Some of the packets were non-duty paid products; the rest were counterfeit products. All of this concealed stock was therefore not legal for supply in England. Samples of some of the seized products were sent to the relevant brand manufacturers for analysis; the manufacturers confirmed that those products were counterfeit.

The application for review was supported by West Midlands Police, who advised the Sub-Committee that illicit goods subvert the normal supply chains of legitimate trade. The supply of such goods is controlled by criminal organisations who seek to maximise profit by avoiding legitimate controls and systems. The Sub-Committee was aware that the purchase and sale of counterfeit products is usually made via cash transactions - therefore with no traceability, and of course no UK duty being paid.

Traders acting unscrupulously in offering counterfeit tobacco for sale cannot have any idea of the provenance of these goods, or even if they are fit for their intended use. The Sub-Committee considered that the only intention behind such practices was to maximise profit by tricking consumers; it was doubly unsatisfactory that that no duty would have been paid on the products either.

The Sub-Committee was also aware that the victim in the sale of illicit/counterfeit tobacco is not only the consumer, but the brand itself. These underground activities cause damage to brand manufacturers, destroying consumer confidence in their products and putting their businesses at risk in these uncertain times. A representative of the tobacco brand JT International Group addressed the Sub-Committee to confirm that this was indeed the case; he observed that brands wanted a deterrent for unscrupulous traders, and support for legitimate businesses.

The illicit tobacco trade was of course also detrimental to other retailers who, in offering genuine products, found themselves unable to compete fairly with those shops which chose to break the law by stocking counterfeit goods.

The Sub-Committee therefore considered that counterfeit products damaged the reputation of successful businesses, both manufacturers and retailers; as such, the Sub-Committee took a very dim view of it.

The trade in illicit tobacco was also a drain on the public purse, as West Midlands Police and Trading Standards had to allocate resources to investigate and deal with a criminal activity which had been undertaken, for profit, by a person who should have been more than aware of the standards expected of all licence holders in Birmingham. The Police in particular observed that they had no confidence whatsoever in Mr Sheikehpour to uphold the licensing objectives.

An Enforcement Officer of the Licensing department of the City Council then addressed the Sub-Committee to confirm that there had been a lack of compliance with the licence conditions in general - such as the requirements relating to CCTV, keeping records, and training. The Sub-Committee considered that Mr Sheikehpour should have been aware of his obligations relating to the licence as he was both the licence holder and the designated premises supervisor.

Mr Sheikehpour, via his solicitor, asked for a chance to prove that he could trade in a responsible manner, and offered to welcome the responsible authorities into the shop in order to work in partnership with them in future.

The Sub-Committee looked at all options when making their decision, and placed particular emphasis on the need to ensure that they had confidence that the management of the shop would not engage in, and encourage, criminal activity; criminal activity affected not only consumers in Birmingham, but also respectable businesses and companies.

The Members of the Sub-Committee gave consideration as to whether they could modify the conditions of the licence as suggested by Mr Sheikehpour's solicitor, or suspend the licence for a specified period, but were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, for the reasons set out above.

The operation had been managed in a way that was not merely irresponsible, but also illegal. The findings had shown a lack of professional supervision and control by Mr Sheikehpour as the licence holder, and he had demonstrated that he was incapable of upholding the licensing objectives. After hearing all the evidence, the Sub-Committee determined that the purchase and sale of illicit and/or counterfeit tobacco was indeed so serious that it could not be tolerated. The Sub-Committee therefore resolved to revoke the licence.

A determination to revoke would follow the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003. There were no compelling reasons to depart from the Guidance on this occasion.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by those representing the Chief Inspector of Weights & Measures, West Midlands Police, Licensing Enforcement and the brand manufacturer JT International Group, and also by the licence holder's solicitor.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the determination of the appeal.