

MEETING

LICENSING SUB-COMMITTEE

DATE AND TIME

TUESDAY 7TH AUGUST, 2018

AT 10.30 AM

VENUE

COMMITTEE ROOM 1, HENDON TOWN HALL, THE BURROUGHS, LONDON NW4 4BQ

TO: MEMBERS OF LICENSING SUB-COMMITTEE (Quorum 3)

Councillor Alison Cornelius
Councillor Lachhya Gurung
Councillor Claire Farrier

** The licensing authority will only allow licensing decisions to be taken by a minimum of three Councillors. In the event of one Member being unable to attend, their place will be substituted by another Member taken from the membership of the full Licensing Committee. In the event of this substitution taking place, all parties will be informed of the change of Membership at the beginning of the hearing.*

You are requested to attend the above meeting for which an agenda is attached.

Andrew Charlwood – Head of Governance

Governance Service contact: Governance Service governanceservice@barnet.gov.uk

Media Relations contact: Gareth Greene 020 8359 7039

- *Please consider the environment before printing. The average Print Cost for this Agenda is £1.61 per copy. Document are available on:
<https://barnet.moderngov.co.uk/uucoverpage.aspx>*

ASSURANCE GROUP

ORDER OF BUSINESS

Item No	Title of Report	Pages
1.	Appointment of Chairman	
2.	Absence of Members (If any)	
3.	Declaration of Members' Disclosable Pecuniary interests and Non Pecuniary interests (If any)	
4.	Licensing Sub-Committee Hearing Procedure	5 - 8
5.	Review of Premises Licence - Best One, 76 High Street Edgware HA8 7EJ	9 - 50
6.	Motion to exclude the Press and Public	
7.	Deliberation by the Sub-Committee in Private Session	
8.	Re-admission of the Press and Public: Announcement of the decision of the Sub-Committee	
9.	Any other Item(s) the Chairman decides are urgent	

FACILITIES FOR PEOPLE WITH DISABILITIES

Hendon Town Hall has access for wheelchair users including lifts and toilets. If you wish to let us know in advance that you will be attending the meeting, please telephone Governance Service governanceservice@barnet.gov.uk. People with hearing difficulties who have a text phone, may telephone our minicom number on 020 8203 8942. All of our Committee Rooms also have induction loops.

FIRE/EMERGENCY EVACUATION PROCEDURE

If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by uniformed custodians. It is vital you follow their instructions.

You should proceed calmly; do not run and do not use the lifts.

Do not stop to collect personal belongings

Once you are outside, please do not wait immediately next to the building, but move some

distance away and await further instructions.

Do not re-enter the building until told to do so.

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LONDON BOROUGH OF BARNET

LICENSING SUB COMMITTEE

HEARINGS PROCEDURE

AGENDA ITEM 4

General points

The following procedure is based on Regulations made by the Secretary of State under the Licensing Act 2003 (“the Hearings Regulations”) which may be viewed or downloaded from the website of the Department for Culture, Media and Sport by following links from www.culture.gov.uk

The procedure is intended as a general framework to ensure natural justice and a fair hearing. The conduct of individual hearings may vary slightly according to circumstances and the discretion of the Chairman. In all cases, however, this general framework will be followed.

The procedure allows each party a maximum period of 5 minutes in which to present their case (Regulations 16 & 24). At the end of the time allowed, the Chairman will terminate the presentation and the hearing will proceed in the form of a discussion led by the authority to explore points of dispute. The discussion will not be timed.

The procedure is subject to periodic review and amendment to reflect best practice and relevant legislative changes. An updated version of this procedure is published as soon as possible following any such amendments.

Governance Officer

- To seek nominations for Chairman
- Elect Chairman
- Hand over to the Chairman

Chairman

- Introduces him/herself and Members of the Committee, and outlines their roles.
- Introduces Licensing, Legal and Governance Officer.
- Explains that Legal and Governance Officers will be present during the Committee’s deliberations to advise only, and that the Licensing Officer will be excluded from deliberations.
- Asks parties present to introduce themselves.
- Outlines procedure to be followed.
- Asks all parties to confirm their understanding of the procedure.
- Clarifies any aspect(s) of the procedure where any parties are uncertain or asks Legal or Governance Officer as appropriate to clarify.

Governance Officer

- Informs Committee of absent parties.
- Details persons whom a party is seeking permission to represent them at hearing.
- Panel confer regarding permission.
- Chairman announces decision regarding permission.

Licensing Officer presents the report to the Committee

- Is a statement of the facts including details of the application and operating schedule, relevant policy details, detail representations made, a chronology of events and highlights the points on which the Authority requires clarification.

Applicant

- Presents opening submissions and clarifies points raised by Authority in notice of hearing. Time allowed 5 mins.

Other parties

- Presents opening submissions either in person or by spokes person Time allowed 5 mins per interested party.

Note regarding use of video evidence

Video evidence must be in DVD format and will form part of the relevant party's five minutes opening submission. Any party wishing to use video evidence must submit a copy to the Authority along with sufficient, identical extra copies to serve on all the opposing parties – i.e. if the applicant is submitting it, there must be enough copies for all parties making representations and if a party making representations is submitting it there must be a copy for the applicant. The recording must be edited down to the highlights, containing only relevant matter which relates to the written representation previously submitted. In addition, a description of how, when and where the video was recorded and what it contains must be submitted. These must be supplied to the Authority at least five working days before the hearing.

Members question Licensing Officer on Policy

Discussion

Chairman leads a discussion concentrating on points of dispute:

Chairman asks Applicant what he disputes in other parties' submissions, and asks other parties to comment.

Chairman proceeds through all objectors dealing with all matters of contention.

When Chairman feels all matters have been thoroughly discussed and all parties have been given a fair and equal opportunity to comment and make representations, she/he closes discussion.

Determination

There are two procedures depending on whether or not determination is to be made at the end of the Hearing or within five working days of the Hearing. This later announcement of determination is permitted in terms of the Legislation for certain types of applications.

Chairman informs all present that the Committee will deliberate, that Legal and Governance Officer will remain to advise but will not be part of decision-making process, and that all others must leave (under Regulation 14).

- Parties, apart from Legal and Governance Officer, leave the room.
- The Committee deliberates, with advice as required from Legal and Governance Officer, and reaches a conclusion. The Legal officer may assist, as required, in formulating the wording of the determination.
- Parties return.
- Chairman reads out determination, and advises it will be sent in ⁶

writing to all parties.

- Opportunity for determination to be clarified by any interested party who is unclear.
- Chairman gives advice about appealing against the determination.
- Chairman thanks all for attending and closes the meeting.


...Within five working days of the hearing

- Chairman explains requirement to determine the Hearing within five working days, and advises that the Committee will proceed to deliberate and announce the determination within that time.
- During deliberations, Legal and Governance Officers remain to advise on law and procedure as required. The Legal Officer may assist, as required, in formulating the wording of the determination. The Licensing Officer plays no part in the determination and withdraws for this part of the proceedings.
- Chairman advises all parties that they will receive written notification of the determination within five working days of the Hearing date, together with general information on how to appeal against the determination.
- Chairman thanks all parties for attending and invites the applicant, objector(s), other party(ies) and the Licensing Officer to leave.

Information on Appealing against the decision

You may at any time before the expiration of a period of 21 days from notification appeal to Willesden Magistrates' Court, 448 High Road London England NW10 2DZ (Telephone 020 8955 0555, DX 110850 Willesden 2) by way of Complaint for an Order. The Court may either dismiss the appeal, substitute for the decision appealed against any other decision which could have been made by the Licensing Authority or remit the case to the Licensing Authority to dispose of it in accordance with the directions of the court, and can make such order as to costs as it thinks fit.

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	<p>Licensing Sub-Committee Tuesday 7th August 2018</p>
<p>Title</p>	<p>Review of Premises Licence – Best One, 76 High Street, Edgware, HA8 7EJ</p>
<p>Report of</p>	<p>Trading Standards & Licensing Manager</p>
<p>Wards</p>	<p>Edgware</p>
<p>Status</p>	<p>Public</p>
<p>Enclosures</p>	<p>Report of the Licensing Officer Annex 1 – Review Application Annex 2 – Current Premises Licence Annex 3 – Trading Standards Representation Annex 4 – Extract from Guidance under section 182 Licensing Act 2003 Annex 5 – Matters for decision</p>
<p>Officer Contact Details</p>	<p>Daniel Pattenden 0208 359 2175 Daniel.pattenden@barnet.gov.uk</p>

Summary

This report asks the Sub-Committee to consider the application to Review a premises licence under section 51 of the Licensing Act 2003.

Recommendations

- This report asks the Sub-Committee to consider the application to Review a premises licence under section 51 of the Licensing Act 2003 for Best One, 76 High Street, Edgware, HA8 7EJ**

1. WHY THIS REPORT IS NEEDED

- 1.1 The licensing authority having received valid review application for an existing premises licence must hold a hearing to consider that application and any valid representations that may have been submitted.

2. REASONS FOR RECOMMENDATIONS

- 2.1 Where an application is submitted under section 51 of the Licensing Act 2003, the authority must hold a hearing to consider it.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 N/A

4. POST DECISION IMPLEMENTATION

- 4.1 The decision will have immediate effect

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 Members are referred to the Council's Licensing Policy for consideration
- 5.1.2 Timely legal and fair decisions support objectives contained within the Corporate Plan. In particular in relation to a "successful London borough" by ensuring that only legal, well regulated licensable activities occur within the borough.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 N/A

5.3 Legal and Constitutional References

- 5.3.1 The Licensing Act 2003 sets out how applications for premises licences should be dealt with where valid representations have been submitted.
- 5.3.2 Under the Constitution, Responsibility for Functions (Annex A), the Licensing Act 2003 and associated regulations, as delegated to it by the Licensing Committee, including the determination of review applications.

5.4 Risk Management

- 5.4.1 N/A

5.5 Equalities and Diversity

5.5.1 Licence applications are dealt with according to the provisions of the Licensing Act 2003 and associated Regulations which allow both applications and representations to applications to be made by all sectors of the

5.6 Consultation and Engagement

5.6.1 The statutory consultation process that has been followed in accordance with the Licensing Act 2003

6. BACKGROUND PAPERS

6.1 The review application and report of the Licensing Officer are necessary appendices are attached to this report.

Officers Report

LICENSING ACT 2003

REPORT FOR PUBLIC HEARING

Review of the premises licence:

Best One, 76 High Street, Edgware, HA8 7EJ

1. The Applicant

An application was submitted by PC Francesca Downes on behalf of the Metropolitan Police.

2. The Application

This application has been made under Section 51 of the Licensing Act 2003 to review the Premises Licence held by Mr Nadarajah Rajamohan.

Licensing objectives to which the review application relates is:

- The Prevention of Crime and Disorder

PC Downes has made the following statements within licensing application:

“The premises Licence holder for Best One is failing to promote the licensing objectives of the prevention of crime and disorder. Selling non-duty paid items allows a trader to sell products at a reduced rate.”

A full copy of the Review application is attached to this report in **Annex 1**.

3. Premises Licence History

This premises licence was first applied for and subsequently granted on 24th August 2005. Since then there has been 1 application to vary the designated premises supervisor, 1 application for a change of details of the premise licence holder and 1 application to review the premises licence following the sale of alcohol outside hours. The premises licence holder is the same as was first applied for Mr Nadarajah Rajamohan.

4. Current Premises Licence

The current licence allows the following licensable activities:

Sale by retail of alcohol

Standard Days and Timings:

Monday to Saturday	08:00hrs - 23:00hrs
Sunday	10:00hrs - 22:30hrs

Non Standard Timings and Seasonal Variations:

Good Friday:	08:00hrs to 22:30hrs
Christmas Day:	12:00hrs to 15:00hrs 19:00hrs to 22:30hrs

The full licence with its conditions can be seen attached to this report in **Annex 2**.

5. Representations

Responsible Authorities

The Licensing Team have received a representation from Mr Jack Dowler on behalf of the London Borough of Barnet Trading Standards Department. Trading standards concerns relate to prevention of Crime and Disorder and Public Safety.

Other representations

The Licensing Team have not received any other representations.

The representation letter can be seen attached to this report in **Annex 3**.

6. Guidance

A Section from the Guidance issued under Section 182 Licensing Act 2003 (June 2013) regarding Reviews Is attached to this report in **Annex 4**.

7. Determination

The sub-committee shall determine the application in accordance with Section 52 of the Licensing Act 2003.
S 52 (3);

“The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

4. The steps are-

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;

- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

5. Subsection (3) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

6. Where the authority takes a step mentioned in subsection (4) (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

Full Copies of the Councils Statement of Licensing Policy and the Statutory Guidance to the Act will be available at the Licensing Sub Committee hearing or in advance if required.

A matters for decision sheet is attached at **Annex 5**

Daniel Pattenden
Licensing Officer
Monday, 23 July 2018

Annex 1 – Review Application

Annex 2 – Current Premises Licence

Annex 3 - Representation

Annex 4 – Guidance issued under Section 182 Licensing Act 2003 (April 2018)

Annex 5 – Matters for Decision

Review Application



TOTAL POLICING

Application for the Review of a Premises Licence or Club Premises Certificate 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 **PC Francesca DOWNES 529SX**

apply for the review of a premises licence under Section 51 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises or club premises details

Postal address of premises or club premises, or if none, ordnance survey map reference or description:

Best One, 76 High Street

Post town:

Edgware

Post code:
(if known)

HA8 7EJ

Name of premises licence holder or club holding club premises certificate (if known):

Mr Nadarajah RAJAMOHAN

Number of premises licence or club premises certificate (if known):

LN/199905448

Part 2 – Applicant details

I am:

Please tick Yes

1	an individual, body or business which is not a responsible authority (please read guidance note 1 and complete (A) or (B) below)	<input type="checkbox"/>
2	a responsible authority (please complete (C) below)	<input checked="" type="checkbox"/>
3	a member of the club to which this application relates (please complete section (A) below)	<input type="checkbox"/>

PROTECTIVE MARKING

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)										
Mr	<input type="checkbox"/>	Mrs	<input type="checkbox"/>	Miss	<input type="checkbox"/>	Ms	<input type="checkbox"/>	Any other title (e.g. Rev.)	<input type="checkbox"/>	
Surname:						First Names:				
I am 18 years old or over				<input type="checkbox"/>						
Current postal address if different from premises address:										
Post town:					Post code:					
Daytime Tel. No.:					Email: (optional)					

(B) DETAILS OF OTHER APPLICANT (fill in as applicable)	
Name and Address:	
Telephone Number (if any):	
Email address: (optional)	

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT (fill in as applicable)	
Name and Address:	
PC Francesca DOWNES - Colindale Police Station, Grahame Park Way, NW9 5TW	
Telephone Number (if any):	0208 7334195
Email address: (optional)	barnet.licensing@met.police.uk

This application to review relates to the following licensing objective(s)		
Please tick one or more boxes		
1	The prevention of crime and disorder	<input checked="" type="checkbox"/>
2	Public safety	<input type="checkbox"/>
3	The prevention of public nuisance	<input type="checkbox"/>
4	The protection of children from harm	<input type="checkbox"/>
Please state the ground(s) for review: (please read guidance note 2)		
<p>The premises licence holder for Best One, 76 High Street, Edgware, HA8 is failing to promote the licensing objective, prevention of crime and disorder.</p> <p>On 15th May 2018 the Barnet Police licensing team along with HMRC and Trading Standards conducted a joint operation in the Edgware area. This premises was found to have a quantity (detailed below) of alcohol and tobacco on the premises that was suspected to be non-uk Duty paid (smuggled) therefore in breach section 112 of the Customs and Excise Management Act 1979.</p> <p>This is the second seizure of suspected non duty paid goods - the first being November 2017,</p>		

PROTECTIVE MARKING

Please provide as much information as possible to support the application: (please read guidance note 3)

On 16th November 2017, officers from the HMRC Individuals and Small business team inspected the premises and found the following non duty paid goods:

- 1) Lech (6 x 24 x 500ml) 72 litres
- 2) Tyskie (10 x 24 x 500ml) 120 litres
- 3) Debowe (3 x 24 x 500ml) 36 litres
- 4) Warka Red (4 x 24 x 500ml) 48 litres
- 5) Perla Green (5 x 24 x 500ml) 60 litres
- 6) Okocim (2 x 24 x 500ml) 24 litres
- 7) Kestral Super (3 x 24 x 500ml) 36 litres
- 8) Zubr (1 x 24 x 500ml) 12 litres
- 9) Mixed beer (9 x 24 x 500ml) 94.5 litres
- 10) Russian Standard Vodka (1 x 70cl) 0.7 litres
- 11) Chewing tobacco (500g) 0.5 kg

On Tuesday 15th May 2018, a joint HMRC & Police operation was conducted at off licences in the HA8 area. Among others, Best One was visited again. A licensing inspection was done, and whilst there were no immediate concerns in respect of the licence, HMRC once again found items in the stock room and shop floor where by the duty could not be accounted for. The following was seized:

- 1) Chewing tobacco (RMD + Mirage) 712g
- 2) Mixed Polish beer brands 324 litres
- 3) Alfredo mixed wine 85.50 litres

Selling non duty paid items allows the trader to sell the alcohol and tobacco products at a reduced rate, thereby undercutting and undermining responsible retailers. This is not the behaviour we expect or will tolerate from premises licence holders on the Borough of Barnet and therefore respectfully request that the licence be reviewed.

Statements from HMRC officers are to follow.

PROTECTIVE MARKING

Have you made an application for review relating to this premises before?						<input type="checkbox"/> (Please tick yes)							
						Day		Month		Year			
If yes, please state the date of that application:						2	5	1	0	2	0	1	3
If you have made representations before relating to this premises please state what they were and when you made them:													
<p>on 25th October 2013, Sergeant Mark Altman applied for a review on the grounds that the licensing objective 'The Prevention of Crime and Disorder' was being undermined:</p> <p>On 15th October 2013 at approximately 06:35hrs an off duty Police Officer witnessed the sale of a bottle of vodka being made at the premises. The officer identified himself and asked the sales assistant if they were allowed to sell alcohol at that time of the morning. The sales assistant replied that they had a 24 hour licence.</p> <p>The premises is permitted to sell alcohol between the following hours:</p> <p>Standard Days and Timings: Monday to Saturday 08:00hrs - 23:00hrs Sunday 10:00hrs - 22:30hrs</p> <p>Non Standard Timings and Seasonal Variations: Good Friday 08:00hrs to 22:30hrs Christmas Day 12:00hrs to 15:00hrs 19:00hrs to 22:30hrs</p>													

PROTECTIVE MARKING

Please tick Yes

I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate.	<input checked="" type="checkbox"/>
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I understand that if I do not comply with the above requirements my application will be rejected.	<input checked="" type="checkbox"/>
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IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (see guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature:		Date:	12/06/2018
Capacity:	Licensing Officer - Metropolitan Police		

Contact name (where not previously given) **and postal address for correspondence associated with this application:** (please read guidance note 6)

Post town:		Post code:	
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Telephone Number (if any):

If you would prefer us to correspond with you using an e-mail address, your e-mail address (optional):

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details, for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example, solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Retention Period: 7 years
MP 321/12

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

Age if under 18: Over 18 (If over 18 insert 'over 18')
Occupation: Higher Officer, HM Revenue & Customs

Occupation: Higher Officer, HM Revenue & Customs

This statement (consisting of 6 page(s) each signed by me is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signature: _____

Date: _____

I work in ISBC Operations, Jubilee House, Stratford. As part of my duties I conduct visits to Off Licences, Cash and Carries and Tobacco and Alcohol Wholesalers. As part of these duties I will seize Excise Goods (that is goods that are liable to a duty of Excise) where the goods are found to be not duty paid. I will also issue Civil Assessments to recover lost duty, and issue Excise Wrongdoing Penalties when evasion has taken place.

I provide the following information under schedule 15 of the Enterprise Act

I acquired the information during my visit under the Customs and Excise Management Act 1979.

1. At approximately 11:25 hours on the 15/05/2018, I was on duty with other HMRC Officers conducting a shop inspection under S112 of the Customs and Excise Management Act 1979 as excise goods were clearly seen on sale. Also in attendance was Officers Strauss and Parr, we identified ourselves as HMRC officers by way of our official identification cards, and reason for the visit was explained. We were also accompanied by Barnet Police officers. The reason for the visit was to verify the duty status of the excise

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

products being sold and stored in the shop. The shop details are: Best One, 76 High Street, Edgware, Middlesex, HA8 7EL. A male working behind the service counter identified himself as Mr Nadarajah Rajamohan and informed officers that he was the owner.

1. A selection of high strength beers on sale in the shop's fridge were selected by HMRC officers and scanned through the shop till. The products selected scanned through as Karpackie (£1.99), Oranjeboom Black (£1.49) and Perla Black (£1.29). All the beer products I refer to in my witness statement are canned beer products of 50 cls. Perla Black is a high strength beer the ABV (alcohol by volume) is 7.6% the UK excise duty and VAT on this product is £1.11 a can this is without any other costs being factored in. The UK excise duty on a 50cl can of Oranjeboom Black at 8.5% ABV is £1.05 plus VAT is £1.26 this is without any other costs being factored in. I had concerns about the UK duty status of the products in question as these beers were being sold very cheaply.

2. Mr Rajamohan stated that no foreign tobacco products were on sale at the premises.

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

- 3. HMRC officers inspected the shop's storeroom as well as behind the service counter. Packets of RMD and Mirage chewing tobacco were found behind the store's counter where Mr Rajamohan was standing.**
- 4. In the shop's storeroom was around 80 cases of beer with approximately 50 of these cases being mixed Polish branded beer. Mr Rajamohan confirmed that despite being the license holder for the business, he was unsure of some of the beer prices. He confirmed that all of the shop's beer was purchased from AA Cash & Carry. I noted that Alfredo wine was on sale in the shop at 2 bottles (75cl) for £8.00.**
- 5. Mr Rajamohan then advised that he was not in fact the owner of the business and that this was Mr Yogalingham Pirasanthan. He showed myself a copy of the Personal License and was asked by Officer Parr to contact the owner as he was unsure where the Alfredo wine on sale had been purchased from.**
- 6. I noted several purchase invoices that were presented to me from AA Cash & Carry dated 06/01/2018, 23/01/2018, 24/01/2018 and 02/02/2018 which showed some purchases for Polish branded beer including the following brands – Lech, Debowe, Warka Red and Tyskie. None of the invoices seen by myself accounted for any high strength beers on sale at the premises.**

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

7. The foreign tobacco products were seized and placed in bags (HMRC Seal No. W0556402).

8. At approximately 11:50 Officer Strauss spoke to a male who identified himself as Mr Pirasanthan who confirmed that he was the director of the business. Officer Strauss queried where the Alfredo wine had been purchased. Mr Pirasanthan stated that it was old stock that had been purchased a long time ago. However, when Officer Strauss highlighted that the lot codes on the goods indicated that they were produced in October 2017 and March 2018 Mr Pirasanthan admitted that he had purchased the Alfredo wine from a man in a van. Mr. Pirasnthan was unable to give any further details on the person that had supplied the Alfredo wine. At approximately 11:55 hours Officer Strauss informed Mt Pirasanthan that the goods would be seized as liable to forfeiture as no evidence of UK excise duty having been paid on the Alfredo wine could be evidenced by the trader.

9. Officer Strauss then asked Mr Pirasanthan where the Polish beer had been purchased from (the Polish beer in question being 50cl cans). Mr Pirasanthan confirmed that the Polish beer in question that was on sale in the shop and in the stock room had definitely been purchased from AA cash & carry and

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

advised that someone would be at the premises soon with additional invoices to account for this stock. At approximately 12:06 a gentleman arrived at the premises with a folder of invoices which was handed to myself.

10. At approximately 12:10 I contacted AA Cash & Carry on 0203 4686111 and spoke to a male who identified himself as Mr. Shah the owner of AA Cash & Carry. He was able to confirm the following for me that AA Cash & Carry stocked the following Polish brands which I had observed in the shop's storeroom – Karpackie, Okocim, Tatra, Debowe and Warka Strong (of which no invoices had currently been seen). Mr Shah advised me that he would call back to confirm how much Best One (Customer Acc. No. 893) had purchased over the last 4 months relating to Polish beer products.

11. At approximately 12:50 Mr Shah from AA Cash & Carry rang me back and was able to confirm that from January 2018 to May 2018 Best One had purchased the following, one single case of Tyskie, Lech, Perla Green, Debowe, Holsten Pils and several cases of Kestrel Super. Mr. Shah was also able to confirm Best One had not purchased any high strength during that period from AA Cash & Carry.

12. Officer Strauss contacted Mr Pirasanthan at approximately

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

13:13 and advised him that AA Cash & Carry had confirmed that he had not purchased his high strength beers from them so where had the high strength beers (as mentioned in point 1 been purchased from) Mr Pirasanthan said that he was sure that he did but was unable to provide an explanation as to why he did not have any invoices to account for the high strength beer in his premises. He then stated that he would not do it again before terminating the call.

13. I seized the high strength beer in the premises that could not be accounted for and also the Polish beer that could not be accounted for (apart from the single cases identified in point 10 of my witness statement which had been purchased from AA Cash & Carry these were left on site but the remainder that could not be accounted for was seized) The goods were seized as liable to forfeiture as seizure as no evidence of UK excise duty having been paid on the Polish beer and high strength beer could be evidenced by the trader.

14. Mr. Rajamohan was issued with all the relevant seizure paperwork and excise warning letter all of which he signed. He was asked to forward the paperwork to Mr Pirasanthan when he was next at the premises and the right to challenge the seizure within 1 calendar month was explained to him. My contact

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

details were left on the seizure paperwork should the owner wish to contact me about this seizure.

15. The seizure was subsequently not appealed within the time limit and as such the goods were condemned. The total amount of UK excise duty evaded from the seizure is £840.00 this has been extracted from a departmental database. The total amount of beer products seized amounted to 324 litres, the total amount of wine products seized amounted to 85.5 litres and the total amount of tobacco seized amounted to 0.712kg.

16. To cut down on unlawful selling of alcohol HMRC have bought in a scheme that requires all businesses who are wholesaling alcohol to become registered AWRS (Alcohol Wholesaler Registration Scheme) if the business is successful it will be issued with a unique reference number which will be visible on the invoice, so the retailer will know that the wholesaler is approved by HMRC. It also requires retail buyers to make sure that they are purchasing alcohol from a registered and approved supplier.

17. HMRC may seize stock supplied from an unapproved UK wholesaler.

18. From the 1st April 2017 trade buyers who buy their alcohol

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B)

Statement of: Mathew Allen

from UK wholesalers for re-sale need to make sure that these wholesalers are approved by HMRC for AWRS.

19. HMRC provides an online look up service that allows trade buyers to look up the details of the alcohol suppliers to ensure that they are approved for AWRS.

20. HMRC had previously visited this trader on the 16/11/2017 and seized excise goods also on this occasion.

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY

Pattenden, Daniel

From:
Sent: 26 June 2018 14:36
To:
Subject: RE: Best One Witness Statement

Good afternoon Frankie,

As requested, here's the details we hold on HMRC systems for the previous seizure of goods at the below trader:

Name: Mr Yogalingham Pirasanthan
Business Type: Sole Proprietor
Business Name: Best One
Seizing Officer: Andre Esponda
Date of Seizure: 16/11/2017

Goods Seized: Lech (24 x 500ml, 6% abv.) **6 cases**
Tyskie (24 x 500ml, 5.5% abv.) **10 cases**
Debowe (24 x 500ml, 7% abv.) **3 cases**
Warka Red (24 x 500ml, 5.5% abv.) **4 cases**
Perla Green (24 x 500ml, 6% abv.) **5 cases**
Okocim (24 x 500ml, 7% abv.) **2 cases**
Kestrel Super (24 x 500ml, 9% abv.) **3 cases**
Zubr (24 x 500ml, 6% abv.) **1 case**
Zywiec (24 x 500ml, 5.6% abv.) **3 cases**
Mixed Beer (24 x 500ml, 7% abv.) **3 cases**
Mixed Beer (24 x 500ml, 6.5% abv.) **1 case**
Mixed Beer (24 x 500ml, 5.5% abv.) **1 case**
Mixed Beer (24 x 500ml, 5.5% abv.) **13 cans**
Mixed Beer (24 x 500ml, 5% abv.) **10 cans**
Russian Standard Vodka (1 x 70cl) **1 bottle**
Chewing Tobacco **0.5kgs**

Reasons for Seizure: Failure to provide evidence of duty payment upon request/possession and sale of foreign tobacco products with unpaid UK excise duty
Total Excise Duty Owning: £706.00

Kind regards

Mathew Allen | Tax Professional | Excise (Tobacco & Alcohol)

From
Sent: 26 June 2018 10:48
To: Allen, Mathew (ISBC T&S)
Subject: RE: Best One Witness Statement

Hi Mathew,

Thank you very much for your statement. If you could attach a list of what was seized on 16.11.17 that would be much appreciated.

Frankie

PC Francesca Downes 529SX
Licensing Officer
Barnet police station
26-32 High Street
Barnet.
EN5 5RU

From:
Sent: 22 June 2018 09:11
To: Downes Frankie R - SX
Subject: Best One Witness Statement

Good morning Frankie,

Here is my witness statement for Best One in relation to the seizure of excise goods on 15/05/2018. I have made reference to the fact that excise goods were seized back on 16/11/2017 but my colleague may not be available to complete a whole witness statement for the event. What I can do is get a list of what was seized on 16/11/2017 and attach that to my witness statement as we'll have it saved in HMRC systems if that helps?

Kind regards

Mathew Allen | Tax Professional | Excise (Tobacco & Alcohol)

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Current Premises Licence

Licensing Act 2003 Part A: Premises Licence Premises Licence Number: LN/199905448	Licensing Authority: London Borough of Barnet, Building 4, North London Business Park Oakleigh Road South New Southgate, London, N11 1NP LPRL/07/18333 (08/04/2014)
--	---

Part 1 – Premises details

Postal address of premises, or if none, Ordnance Survey map reference or description Best One, 76 High Street	
Post Town Edgware	Post code HA8 7EJ
Telephone number 020 8381 2284	

Where the licence is time limited the dates This premises licence is not time limited

Licensable activities authorised by the licence The Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities <u>Sale by retail of alcohol</u> <u>Standard Days and Timings:</u> Monday to Saturday 08:00hrs - 23:00hrs Sunday 10:00hrs - 22:30hrs <u>Non Standard Timings and Seasonal Variations:</u> Good Friday: 08:00 to 22:30 Christmas Day: 12:00 to 15:00 19:00 to 22:30

The hours that the premises are open to the public <u>Standard Days and Timings</u> Not Restricted
--

Where the licence authorises supplies of alcohol whether these are on and/ or off supplies Off supplies only
--

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Mr Nadarajah Rajamohan
84 Mowbray Road
Edgware
HA8 8JH

Registered number of holder, for example company number, charity number (where applicable)

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Annex 1 - Mandatory Conditions

- 1 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.
- 2 Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3
 - (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.
 - (2) 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 a holographic mark.

Annex 2 – Conditions consistent with the operating schedule

- 4 Alcohol shall not be sold or supplied except during permitted hours
- 5 In this condition, permitted hours means:
 - a. On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
 - b. On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
 - c. On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
 - d. On Good Friday, 8 a.m. to 10.30 p.m.
- 6 The above restrictions do not prohibit:
 - a. During the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
 - b. The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
 - c. The sale of alcohol to a trader or club for the purposes of the trade or club;
 - d. The sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;
- 7 Alcohol shall not be sold in an open container or be consumed in the licensed premises.

Annex 3 – Conditions attached after hearing by the licensing authority

- 8 All staff involved with the sale or supply of alcohol will receive training in the Licensing Act 2003 from the premises licence holder or a person/company nominated by them. This will be recorded on their personal record and the training updated at least once every 12 months.
- 9 A CCTV system will be installed that complies with the following specifications:
 - a. Digital recording colour CCTV comprising of a multi camera system.
 - b. The head unit (recorder) for storing the images will store such data on a hard drive or a similar quality medium.
 - c. If the head unit (recorder) is kept on the premises it must be located in a secure cabinet or other secure area, preferably out of the sight and reach of the public. The unit must be further secured by physical means to prevent anyone from merely picking up and removing the unit, e.g. a secure metal boot, or metal case strap, bolted to an immovable object like a wall or floor.
 - d. A CD or DVD burner will also form part of the system to facilitate making copies of the images.
 - e. The quality of the images must be of a sufficiently high standard to allow identification of the subject matter.
 - f. Cameras will cover key areas identified by the operator and Police. These will include clear head shots of persons entering the shop area, the till area and areas where alcohol are displayed for sale.
 - g. Images must be retained for a minimum period of 31 days before overwriting.
 - h. The images will be made available in reasonable time on demand by the Police and authorised officers of the London Borough of Barnet.
 - i. At all times when the premises are open there shall be at least one person who is capable of operating the CCTV system if required to do so by the Police or authorised officers of the London Borough of Barnet.
 - j. This system will be fully maintained at all times to ensure correct operation.
- 10 An incident and refusals log shall be kept on the premises and details of all refusals and incidents to be recorded within. This must be made available for inspection on request from the Police or the Licensing Authority.

Representations

Pattenden, Daniel

From: Dowler, Jack
Sent: 12 July 2018 13:27
To: Pattenden, Daniel
Cc: Connolly, Mariesa; Phasey, Emma
Subject: Review - Best One, 76 High Street, Edgware, HA8 7EJ
Attachments: Health Risks from Fake Alcohol.docx

Dear Mr Pattenden,

Trading Standards are satisfied that allowing these premises to continue being used in accordance with the current permissions of their premises licence could have further negative impact on the licensing objectives of the Prevention of Crime and Disorder and Public Safety.

This is clearly not an isolated incident. Even after non-duty items were seized in November 2017, the business has clearly continued the practice of selling non-duty paid goods. On both occasions in November 2017 and May 2018, it is alcohol and tobacco that were seized. It is also shocking to see that an even larger amount of chewing tobacco was seized on the second occasion, a similar amount of beer was seized and wine was seized which was not seized on the first occasion. This indicates that the premises has chosen to widen the choice of non-duty items that they sell, even after the seizure in November had taken place.

Due to the fact that such a large amount has been seized for being non-uk Duty paid and it is clear that the goods are coming from an unscrupulous source, it is possible that they could also be purchasing counterfeit alcohol and I have attached the health risks associated with this.

Regards

Jack Dowler
Trading Standards Enforcement Officer, Community Protection (Regulation)
Development & Regulatory Services
London Borough of Barnet, 2nd Floor Barnet House, 1255 High Road, Whetstone, N20 0EJ
Tel: 020 8359 7575
Mob: 07951 985 176
Email: Jack.Dowler@barnet.gov.uk
Barnet online: www.barnet.gov.uk
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The dangers of fake alcohol x

Secure | <https://www.drinkaware.co.uk/advice/staying-safe-while-drinking/the-dangers-of-fake-alcohol/>

Facts ▾ Advice ▾ Drink Tracker & Tools ▾

What is fake alcohol?

Fake or illegally produced alcohol is alcohol that is produced in unlicensed distilleries or people's homes and intended for sale. It is illegal to distill and sell alcohol to the public in the UK without a licence from HM Revenue & Customs (HMRC)¹.

The sale of illegal alcohol costs the UK around £1.2 billion per year². Much of the fake or illegally produced alcohol contains potentially dangerous chemicals.

"We're very concerned about this trend in the availability of fake alcohol," says Ron Gainsford, Chief Executive of the Trading Standards Institute. "It's not just about false bargains, counterfeit spirits and wine could be lethal."

Health risks from fake alcohol

Properly produced and certified alcoholic drinks are made with ethanol – alcohol that's safe to drink in moderation. But fake alcoholic drinks can be produced using other cheaper types of alcohol which can have serious adverse effects on your health.

Drinkaware's Chief Medical Advisor Professor Paul Wallace explains: "Commonly used substitutes for ethanol include chemicals used in cleaning fluids, nail polish remover and automobile screen wash, as well as methanol and isopropanol which are used in antifreeze and some fuels. These other types of alcohol can produce similar effects to ethanol in terms of making you feel tipsy. But they are also potentially very dangerous."

Drinking alcohol containing these chemicals can cause nausea and vomiting, abdominal pain, drowsiness and dizziness. It can also lead to kidney or liver problems and even coma. Methanol, a substance which can be used in fake vodka, may cause permanent blindness.

[Find out how alcohol can affect your body here...](#)

"Drinking illegally produced alcohol should be avoided at all costs," says Dr Wallace. "You don't know what's in it in terms of the actual chemicals – and you don't know the strength of what you're drinking because it's not been produced to the standards of commercial alcohol."

11:18
13/03/2017

Guidance issued by Home Office on Reviews

11. Reviews

The review process

- 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.
- 11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 An application for review may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written application. The licensing authority may also agree in advance that the application need not be given in writing. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at premises and wants to intervene early without waiting for representations from other persons. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 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.
- 11.8 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 13 of this Guidance.
- 11.9 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.
- 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 co-operation.
- 11.11 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

Repetitious grounds of review

- 11.12 A repetitious ground is one that is identical or substantially similar to:
- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
 - representations considered by the licensing authority when the premises licence or certificate was granted; or
 - representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.

- 11.13 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.
- 11.14 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.
- 11.15 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

Powers of a licensing authority on the determination of a review

- 11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote 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.
- 11.18 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.
- 11.19 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.
- 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.
- 11.23 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.

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, or the sale of firearms. 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 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 Class A drugs 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 knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
 - for unlawful gambling; and
 - for the sale of smuggled tobacco and alcohol.
- 11.28 It is envisaged that licensing authorities, the police 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.

Review of a premises licence following closure order

- 11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order. The relevant time periods run concurrently and are as follows:
- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review – the determination must be made before the expiry of the 28th day after the day on which the notice is received;

- the hearing must be held within ten working days, the first of which is the day after the day the notice from the magistrates' court is received;
- day (there must be five clear working days between the giving of the notice and the start of the hearing).

Review of a premises licence following persistent sales of alcohol to children

11.30 Where persistent sales of alcohol to children have occurred at premises, responsible authorities should consider applying for a review of the licence, whether there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this outcome is appropriate. Responsible authorities should consider taking steps to ensure that a review of the licence is routine in these circumstances.

Matters for Decision

MATTERS FOR DECISION

An application made under Section 51 of the Licensing Act 2003

Best One, 76 High Street, Edgware, HA8 7EJ

Determination in accordance with Section 52(3) of the Licensing Act 2003.

S 52 (3);

“The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers appropriate for the promotion of the licensing objectives.

4. The steps are-

- (a) to modify the conditions of the licence;
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

5. Subsection (3) is subject to sections 19, 20 and 21 (requirement to include certain conditions in premises licences).

6. Where the authority takes a step mentioned in subsection (4) (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify”.

Notification in accordance with Section 52 (10) of the Licensing Act 2003.

10. Where a licensing authority determines an application for review under this section it must notify the determination and its reasons for making it to-

- (a) the holder of the licence,
- (b) the applicant,
- (c) any person who made relevant representations, and
- (d) the chief officer of police for the police area (or each police area) in which the premises are situated.

11. A determination under this section does not have effect-

- (a) until the end of the period given for appealing against the decision, or
- (b) if the decision is appealed against, until the appeal is disposed of.

Steps taken (if any)	Reason(s)

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