

APPLICATION FOR REVIEW OF PREMISES LICENCE – BOTWELLEARS, 25 BOTWELL LANE, HAYES

Committee	Licensing Sub Committee
Officer Contact	Sharon Garner, Licensing Officer Tel: 01895 277230
Papers with report	<ul style="list-style-type: none">• Copy of Review application and relevant documents from Sgt Ian Meens• Copy of letter and evidence from Martin King in support of the review• Copy of the premises licence• List of responsible authorities• Map of the area
Ward(s) affected	Botwell

SUMMARY

To consider an application for a Review of a premises licence under Part 3 Section 51 of the Licensing Act 2003 made by Sgt Ian Meens on behalf of the Metropolitan Police Service in respect of **Botwellears, 25 Botwell Lane, Hayes**.

RECOMMENDATION

That the Licensing Sub Committee determine the application.

INFORMATION

1.1 An application for a Review of the premises licence for Botwellears made by Sgt Ian Meens on behalf of the Metropolitan Police Service, was received on 1st July 2011 on the grounds of:-

Prevention of crime and disorder – the sale and display for sale of non-duty paid goods

1.2 The premises is a single unit shop selling groceries and alcohol. The premises licence was issued to Mr Arul Roobathas on 2nd January 2008.

1.3 Sgt Meens sent copies of the application to all the Responsible Authorities as required by the Licensing Act 2003. A copy of the application is annexed to this report as **Appendix 1**.

1.4 In accordance with the legislation, a poster giving details of the application was displayed at the premises for 28 days and checks were made by the council's Licensing Officers to ensure that the poster was still correctly displayed.

1.5 As required by the legislation, a poster was also displayed on the Civic Centre

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notice board for 28 days and the details were listed on the council's website.

1.6 The legislation provides for other Responsible Authorities and/or interested parties such as residents to support the Review application. The period for Responsible Authorities and local residents to support the application expired on 29th July 2011. One letter of support was received from the Council's Trading Standards Officer.

This letter of support is annexed to this report as **Appendix 2**.

2.0 **LEGAL IMPLICATIONS**

The licensing authority must review the premises licence where it is alleged in an application for review by a Responsible Authority or an Interested Party that any of the licensing objectives are being undermined.

2.1 "Relevant representations" are those which :–

- Are relevant to one or more of the licensing objectives;
- Are made by a responsible authority or an interested party within the prescribed period;
- Are made by the holder of the premises licence in response to an application for a review of the said premises
- Have not been withdrawn; and
- If made by an interested party, that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.

The four licensing objectives are –

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

Each objective must be considered to be of equal importance

2.2 The Licensing Sub-Committee must also consider the London Borough of Hillingdon's licensing policy when what action, if any, to institute. The terms of the Statement of Licensing Policy are highly persuasive, but not binding, on the Licensing Sub-Committee. The Licensing Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy if it considers there are clear and convincing reasons to do so.

Where there is a conflict between the Licensing Act 2003 and the Statement of Licensing Policy, the Licensing Act must prevail.

2.3 Members are required to have regard to the DCMS Guidance in carrying out the functions of licensing authority. However, guidance does not cover every possible situation, so long as the guidance has been properly and carefully understood, members may depart from it if they have reason to do so. Full reasons must be given if this is the case.

2.4 The sub-committee may decide to: –

- Take no action
- Modify the conditions of the licence by altering, omitting or adding any condition;
- Issue a formal warning, recommending an improvement within a specified time frame;
- Exclude a licensable activities from the scope of the licence;
- Remove the designated premises supervisor;
- Suspend the licence for a period not exceeding three months; or
- Revoke the licence.

For this purpose the conditions of a premises licence are modified if any of them are altered or omitted or any new condition is added. Modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months.

2.5 The Sub-Committee may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives.

In deciding what remedial action if any it should take, the Sub-Committee must direct its mind to the causes or concerns which the representations identify. The remedial action should generally be directed at these causes and should always be no more than a necessary and proportionate response.

It is of particular importance that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for review.

2.6 Conditions

Conditions will not be necessary if they duplicate a current statutory requirement.

Members are also referred to the Home Office guidance on conditions, specifically section 10.7 and Annex D.

The Statutory Guidance states that only necessary, proportionate and enforceable conditions, which promote one or more of the licensing objectives, should be attached to the licence.

The Licensing Authority may therefore only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the Review application (paragraph 10.11), and should avoid straying into undisputed areas (paragraph 9.24). Statutory Guidance also states that the pool of conditions that are supplied by the Secretary of State should not be applied universally irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations.

2.7 Notification of Determination

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Where the authority determines an application for review it must notify the determination and reasons for making it to: –

- The holder of the licence;
- Any person who made relevant representations;
- The chief officer of police for the area (or each police area) in which the premises are situated

2.8 The Role of the Licensing Sub-Committee

Sub-Committee members will note that, in relation to this application, the Council has multiple roles. Council officers from various departments have been asked to consider the application from the perspective of the Council as authority responsible respectively for environmental health, trading standards, health and safety and as the planning authority.

Members should note that the Licensing Sub-Committee is meeting on this occasion solely to **perform the role of licensing authority**. The Sub-Committee sits in quasi-judicial capacity, and must act impartially. It must offer a fair and unbiased hearing of the application. In this case, Members should disregard the Council's broader policy objectives and role as statutory authority in other contexts. Members must direct themselves to making a determination solely based upon the Licensing Law, Guidance and the Council's Statement of Licensing Policy.

As a quasi-judicial body the Licensing Sub-Committee is required to consider the application on its merits. The Sub-Committee must take into account only relevant factors, and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts. The Licensing Sub-Committee must give fair consideration to the contentions of all persons entitled to make representations to them.

The Licensing Sub-Committee is entitled to consider events outside of the premises if they are relevant, i.e. are properly attributable to the premises being open. The proprietors do not have to be personally responsible for the incidents for the same to be relevant. However, if such events are not properly attributable to the premises being open, then the evidence is not relevant and should be excluded. Guidance is that the licensing authority will primarily focus on the direct impact of the activities taking place at the licensed premises on members of the public, living, working or engaged in normal activity in the area concerned.

The Sub-Committee can only consider matters within the application that have been raised through representations from interested parties and responsible authorities. Interested parties must live in the vicinity of the premises. This will be decided on a case to case basis.

Under the Human Rights Act 1998, the Sub Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision. The Sub-Committee has a duty under section 17 Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the Borough.

Interested Parties, Responsible Authorities and the applicant have the right to

appeal the decision of the Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified by the licensing authority of the decision to be appealed against.

3.0 **FINANCIAL IMPLICATIONS**

Members should be aware that the Planning, Environment and Community Services does not have a budget provision for costs, should the applicant be successful in appealing to the Court(s) against a decision of the Council. In the event that a Court was to uphold an appeal, officers would need to identify how the costs would be funded before action could be taken in order to comply with Council financial policy.

RELEVANT DOCUMENTS

- Copy of Review application and relevant documents from Sgt Ian Meens
- Copy of letter and evidence from Martin King in support of the review
- Copy of the premises licence

BACKGROUND DOCUMENTS:

The Licensing Act 2003
Guidance Under Section 182 of the Licensing Act
Statement of Licensing Policy

APPENDIX ①

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 Police Sergeant Ian Meens

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

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

Botwellears

25 Botwell Lane

Hayes

Post town Hayes

Post code (if known) UB3 2AB

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

Arul Roobathasi

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

228/05

Part 2 - Applicant details

I am

Please tick yes

1) an interested party (please complete (A) or (B) below)

- a) a person living in the vicinity of the premises
- b) a body representing persons living in the vicinity of the premises
- c) a person involved in business in the vicinity of the premises
- d) a body representing persons involved in business in the vicinity of the premises

2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

Please tick yes

I am 18 years old or over

**Current postal
address if
different from
premises
address**

Post town

Post Code

Daytime contact telephone number

**E-mail address
(optional)**

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address

Ian MEENS
Licensing Sergeant
Hillingdon Police
on behalf of the Commissioner Metropolitan Police

2 Murray Road
Northwood
Middlesex
HA6 2YN

Telephone number (if any)

0208 246 1933

E-mail address (optional)

ian.meens@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
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please state the ground(s) for review (please read guidance note 1)

Prevention of crime and disorder.

The sale and display for sale of non duty paid goods being an offence

**Please provide as much information as possible to support the application
(please read guidance note 2)**

On the 7th April 2011 the Metropolitan Police in company with officers from London Borough of Hillingdon Trading Standards and HM Revenue and Customs visited the premises in order to carry out regulatory checks.

At the premises Customs officers removed a number of items under seizure powers of the Customs and Excise Acts. Removed from the premises was 99 litres of mixed wines and 30.5 litres of Spirits

The customs officers were satisfied that due to the proprietors inability to produce invoices or receipts to prove duty payment that the United Kingdom duty had not been paid on the said goods.

The revenue due on the goods seized has been calculated as £934.15

On the particular day of this regulatory check inspections were also made at 8 other shops in and around the UB post code area. 6 of the premises checked had substantial amounts of non duty paid and or counterfeit goods and all 6 are expected to be the subject of the review process. 2 others had small amounts, only one shop did not have any such product.

The level of disregard for the law is clearly evident and is an indication of the problem in parts of Hillingdon

The police feel that the abuse is at such a level that warrants the matter being brought before the committee and in such cases the guidance suggests that revocation of the licence should be a matter for strong consideration.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

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If you have made representations before relating to this premises please state what they were and when you made them

Please tick yes

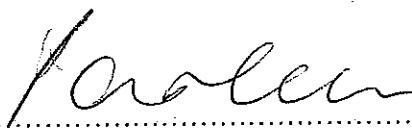
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

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 3)

Signature of applicant or applicant's solicitor or other duly authorised agent
(See guidance note 4). If signing on behalf of the applicant please state in what capacity.

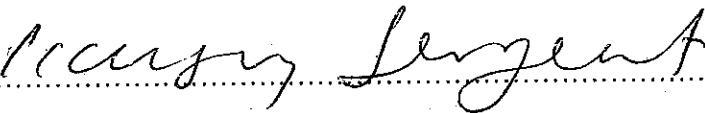
Signature



Date



Capacity



Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

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. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

WITNESS STATEMENT

ENGLAND AND WALES ONLY

(CJ Act 1967, s.9; MC Act 1980, ss.5A(3)(a) and 5B; MC Rules 1981, r.27, CP Rules Part 27.1)

Statement of: Philip Andrew Bush

Age if under 18: Over 18 (If over 18 insert 'over 18')

Occupation: H M Revenue & Customs

This statement (consisting of _____ 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 am an Officer of H M Revenue & Customs based in Jubilee House, Stratford, London, E15 1AT. In my role as a Law Enforcement Coordinator my duties include being responsible for exchanging information with the Police and other Agencies relating to matters of mutual interest.

I have been asked by Sgt Ian Meens from Hillingdon Police Station, to supply details of an inspection made HM Revenue & Customs Officers, on 7th April 2011 to 25 Botwell Lane, Hayes, Middlesex, UB3 2AB trading as Botwellears, for the purpose of supporting an action being taken by the Licensing Unit at Hillingdon Police Station.

I have examined the reports concerning those visits and can confirm that Officers seized a total of 99 litres of mixed wines, 30.5 litres of Spirits and 1.2 kilogrammes of Chewing tobacco as liable to forfeiture by virtue of the Customs & Excise Acts. They were satisfied that due to the proprietors inability to produce invoices or receipts to prove duty payment, that United Kingdom Excise Duty had not been paid on said goods.

The revenue due on the seized goods is £934.15

The goods were seized as liable to forfeiture under section 139 of Customs & Excise Management Act 1979.

No notice of claim against forfeiture was received within the statutory time limit. Therefore the goods were condemned as forfeited in accordance with schedule 3 to the Customs & Excise Management Act 1979.

Date: _____

Signature: _____

(signature of witness)

Signature: _____

(signature witnessed by)

STATEMENT OF WITNESS: ENGLAND AND WALES ONLY



HILLINGDON

LONDON

Sharon Garner
 Licensing Service
 London Borough of Hillingdon
 Civic Centre

29 July 2011

Dear Mrs Garner

LICENSING ACT 2003

I write in relation to the premises licence at 25 Botwell Lane, Hayes, which has been called in for review by the Metropolitan Police Service.

As a responsible authority, the Trading Standards Service fully supports the review of this premises licence and I would ask the Licensing Sub-Committee to consider the enclosed information.

Trading Standards Officers were present during the multi-agency visit to the premises on 7 April 2011. Their role was to examine the alcohol on the premises to ensure that it was genuine. Although no counterfeit bottles of alcohol were found, officers from HMRC did seize a quantity of alcohol on suspicion that no duty had been paid on it. The Trading Standards Officers present were Andrew Beale and Stephen Pearson.

Please do not hesitate to contact me should you require any further information.

Yours sincerely

Martin King
TEAM LEADER - TRADING STANDARDS SERVICE



APPENDIX (3)

LICENSING ACT 2003

Section 24



HILLINGDON
LONDON

PREMISES LICENCE

Ref:

AG103/05

Premises Licence Number:

LBHIL 228/05

This Premises Licence has been issued by Norman C Stanley on behalf of the Licensing Authority, London Borough of Hillingdon, Civic Centre, High Street, Uxbridge, UB8 1UW

Signature:

... Date: 2 January 2008

Part 1 – Premises Details

Postal Address of Premises or, if none, Ordnance Survey map reference or description -

Botwellears Superstore

25 Botwell Lane

Post Town - Hayes

Postcode – UB3 2AB

Telephone number – 0208 561 3048

Where the licence is time limited, the dates -

N/A

Licensable activities authorised by the licence -

Sale by retail of alcohol

The times the licence authorises the carrying out of licensable activities –

Monday to Saturday	0800 to 2300 hours
Sunday	1000 to 2230 hours
Good Friday	0800 to 2230 hours
Christmas Day	1200 to 1500 and 1900 to 2230 hours

The opening hours of the premises -

Not restricted

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

OFF SALES ONLY

Part 2

Name, (registered) address, telephone number and e-mail (where relevant) of holder of Premises Licence -

Arun Roobathas, 25 Botwell Lane, Hayes UB3 2AB 0208 561 3048

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

N/A

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

Mr A Roobathas,

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

London Borough of Harrow – 05AR-00AQ-YF4K-HMjf

Annex 1 – Mandatory Conditions

Alcohol

1. No sale / supply of alcohol shall be made when there is no Designated Premises Supervisor in respect of the Premises Licence.
2. No sale / supply of alcohol shall be made when the Designated Premises Supervisor does not hold a Personal Licence or when his / her Personal Licence is suspended.
3. Every sale / supply of alcohol under the Premises Licence shall be made, or authorised by a person who holds a Personal Licence.

Applicable from 1st October 2010

4. (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

General

The premises licence holder shall ensure that alcohol is not sold in an open container or consumed in the licensed premises.

Annex 3 – Conditions attached after a hearing by the licensing authority

N/A

Annex 4 – Plans

Plan Number Shop and Location 5/H/10

Licensing Service Registered Number 227/05

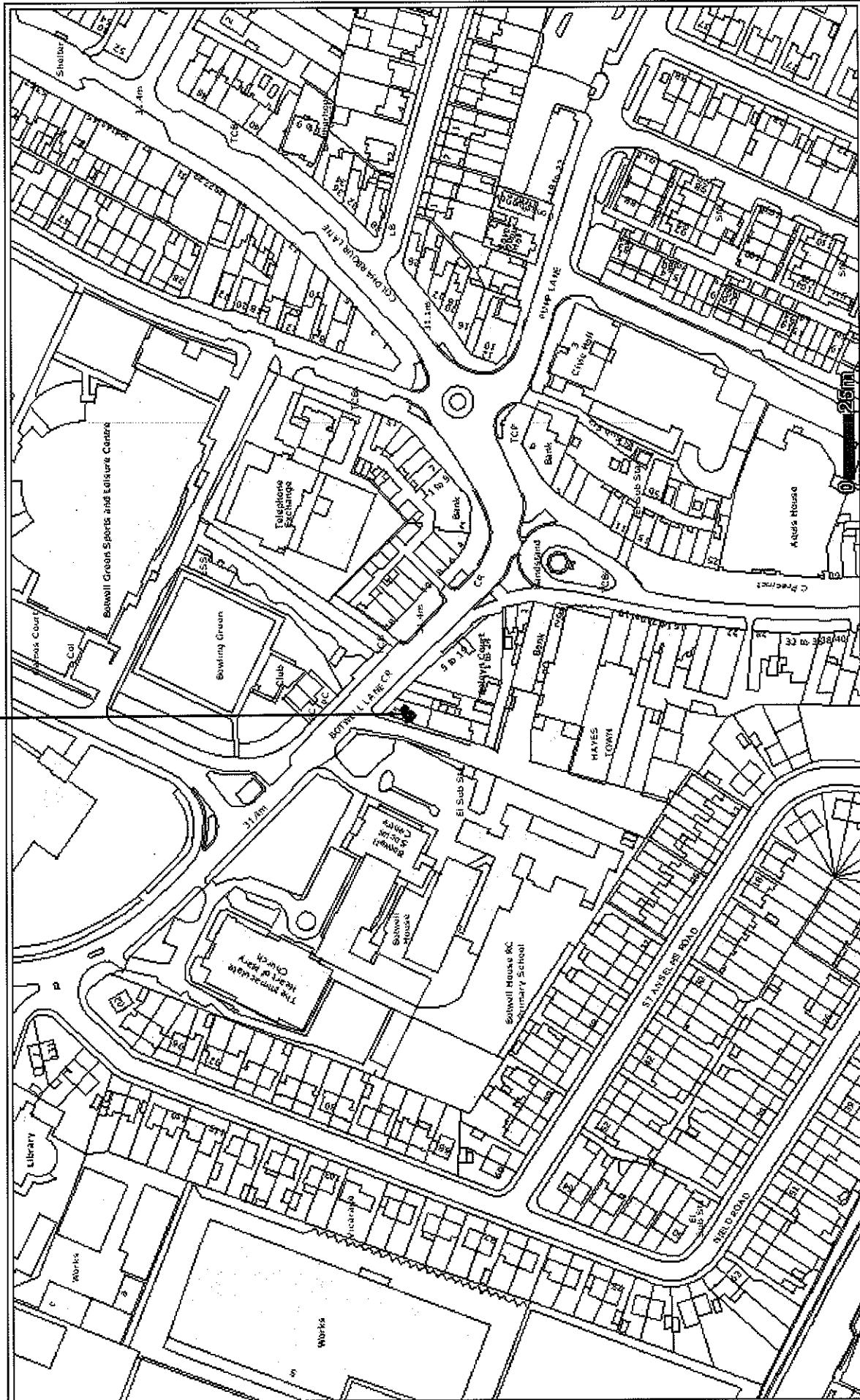
APPENDIX 4

RESPONSIBLE AUTHORITIES FOR GRANT, VARIATION OF A PREMISES LICENCE OR CLUB PREMISES CERTIFICATE WITHIN THE LONDON BOROUGH OF HILLINGDON

The applicant must send the original application to the Licensing Service and a complete copy of the application including the form, operating schedule and plan in the prescribed form to each responsible authority as follows:-

<p>The Licensing Service London Borough of Hillingdon Civic Centre A357 High Street Uxbridge UB8 1UW licensing@hillingdon.gov.uk <i>Licensing Authority</i></p>	<p>Chief Officer of Police c/o Northwood Police Station Murray Road Northwood HA6 2YW Attn Sgt I Meens licensing-xh@met.pnn.police.uk <i>Hillingdon Police Enforcement</i> *for all areas except Heathrow</p>
<p>Chief Officer of Police (Licensing) Heathrow Police Station East Ramp Hounslow TW6 2DJ <i>Heathrow Police Enforcement</i> *for Heathrow area only</p>	<p>Fire Safety Regulation: North West Area 1 London Fire Brigade 169 Union Street London SE1 0LL Attn: North West Area Team hillingdongroup@london-fire.gov.uk <i>Hillingdon Fire Authority</i></p>
<p>Service Manager- Safeguarding Children and Quality Assurance 4S/07 Social Services London Borough Of Hillingdon Civic Centre Uxbridge UB8 1UW PHewitt@hillingdon.gov.uk <i>A body involved in the Protection of Children from Harm</i></p>	<p>Food, Health and Safety Team London Borough of Hillingdon Civic Centre Uxbridge UB8 1UW environmentalhealthcp@hillingdon.gov.uk <i>Enforcing Authority for the Health and Safety at Work Act 1974</i></p>
<p>Trading Standards Service London Borough of Hillingdon Civic Centre Uxbridge UB8 1UW Attn Divisional Trading Standards Officer tradingstandards@hillingdon.gov.uk <i>Enforcing Authority under the Weights and Measures Act 1985</i></p>	<p>Environmental Protection Unit London Borough Of Hillingdon Civic Centre Uxbridge UB8 1UW environmentalhealthepu@hillingdon.gov.uk <i>Enforcing Authority for matters relating to Environmental Pollution and Public Nuisance</i></p>
<p>Head of Planning and Enforcement London Borough Of Hillingdon Civic Centre Uxbridge UB8 1UW planning@hillingdon.gov.uk <i>The Planning Authority</i></p>	

Botwell



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