

Application for a Review of a Premises Licence : The Wine Cellar Company

Committee	Licensing Sub-Committee
Officer Contact	Lois King, Licensing Officer 01895 277067
Papers with report	Appendix 1 - Review Application Appendix 2 - Officer's recommendation Appendix 3 - Responsible Authority Representation Appendix 4 - Copy of the Premises Licence Appendix 5 - Map of the area plus photos
Ward name	West Drayton

1.0 SUMMARY

To determine an application for a review of a Premises Licence in respect of The Wine Cellar Company, 36 Station Road, West Drayton, UB7 7DD. The application to review the licence has been submitted by the Metropolitan Police. This follows two failed test purchases for under age sales of alcohol. **Appendix 1**

2.0 RECOMMENDATION

It is recommended that the Premises Licence is suspended for a period not exceeding 3 months. This will enable the short comings that have led to this review being instigated to be rectified by the licence holder.

In line with the review application and representations received, it is also recommended that the conditions detailed in **Appendix 2** are imposed upon the Premises Licence.

3.0 INFORMATION

- 3.1 Operation Nebula was set up by the Metropolitan Police Safer Schools Service following a series of incidents in the Borough where children were being supplied with alcohol.
- 3.2 On the 30th July 2018, plain clothes police officers with under age cadets visited The Wine Cellar Company, 36 Station Road, West Drayton as part of Operation Nebula. The cadets purchased four cans of Carling lager and left the premises. At no stage were the children challenged regarding their age nor were they asked for any identification. The employee who had sold the alcohol to the cadets, Mr Pagat Nagpar, was subsequently approached by a police officer and was issued with a £90 fixed penalty notice for the offence. He admitted that he had not challenged the children.

- 3.3 On the 22nd October 2018, a second visit under Operation Nebula was carried out at 36 Station Road, West Drayton. Officers from Trading Standards were also present during this visit. On this occasion the cadets purchased a bottle of Bluehill Valley Chardonnay. Once again the children were not challenged and proof of age identification was not requested. Police identified themselves to the member of staff who sold the alcohol to the children, Mr Pritpal Singh. The Designated Premises Supervisor, Mr Sandeep Singh Nangpal, was also present at the site.
- 3.4 On 6th December 2018, Police and Hillingdon Council licensing officers undertook a joint compliance visit at the premises. During this visit it was noted that the Designated Premises Supervisor, Mr Sandeep Singh Nangpal, had a lack of understanding of the licensing objectives and legislation regarding the sale of alcohol. He had no knowledge of his licence conditions and was surprised to learn that he needed two adults on the premises from 18:00 hours. He did not have a copy of the Premises Licence to provide to the responsible authorities and he did not have an up to date Summary Licence on the wall. The visit was followed up with a letter on 7th December 2018.
- 3.5 On 24th January 2019, Mr Nangpal attended a formal interview with officers from the Council's Trading Standards Service as part of their investigation into offences that may have been committed by Mr Nangpal under Section 146 of the Licensing Act 2003 in relation to the sale of alcohol to a person under 18 at his premises on 22nd October 2018. The Trading Standards Service are considering appropriate penalties/sanctions.

4.0 CONSULTATION

- 4.1 As required by legislation, a legal notice of the review was displayed at the premises. A copy of the legal notice was also displayed at the Civic Centre and was placed on Hillingdon Council's website.
- 4.2 Closing date for representations

12th February 2019

5.0 REPRESENTATIONS

5.1

Responsible Authority	Ground for Representation	Appendix Number
Stephanie Waterford - Licensing Authority	Protection of Children from Harm Crime and Disorder	Appendix 3
King-Yip Cheung - Trading Standards Service	Protection of Children from Harm	Appendix 3

- 5.2 The Licensing Authority detail the shortcomings in the knowledge and awareness of the Premises Licence Holder, who is also the Designated Premises Supervisor

(DPS), in relation to the licensing objectives, the conditions on his licence and what constitutes responsible alcohol retailing. On two separate occasions in a three month period the same offence of selling alcohol to a minor has been committed. In addition the representation highlights the lack of written authorisation authorising members of staff to sell alcohol in the absence of the DPS and that there was a delay in applying for a transfer of the premises licence. This resulted in the premises operating under an old licence with incorrect details from 1st May 2018 - 14th August 2018.

The representation from the licensing authority echoes the concerns from the Metropolitan Police and supports the recommendation to suspend the premises licence and impose further conditions.

The Trading Standards Service has expressed serious concerns that Mr Nangpal is unable to exercise his responsibilities to avoid sales of alcohol and other age restricted goods to persons under 18 and supports the application for review in respect of the protection of children from harm objective.

6.0 BACKGROUND INFORMATION

6.1 Current Licence held

Records show that the premises has been licensed under the Licensing Act 2003 since 2005. Mr Sandeep Singh Nangpal took over ownership of the premises on 1st May 2018, however, he only became the premises licence holder in August 2018 through a transfer application. The premises licence is attached as **Appendix 4**.

6.2 Current Designated Premises Supervisor

In January 2018 Mr Sandeep Singh Nangpal became the Designated Premises Supervisor.

6.3 Description of the Premises

The premises are located on the corner of Station Road and Ferrers Avenue, West Drayton and are part of a small parade of shops. The Wine Cellar Company operates as an off licence selling alcohol, soft drinks, groceries e.g. biscuits, crisps, sweets and tinned goods and cleaning products.

6.4 Other licensed premises nearby

Name of premises	Alcohol	Regulated Entertainment	Late night Refreshment	Opening Hours
Positano Restaurant, 39 Station Road, West Drayton	✓			08:00 - 23:30 Monday to Sunday
Best Food & Wine, 61 Station Road, West Drayton	✓			08:00 - 00:00 Monday to Sunday
Ezee 2 Shop, 25 Station Road,				06:00 - 23:00 Monday to Sunday

West Drayton	✓			
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6.5 Map and Photos of the outside of the premises

A site map of the local area and photographs of the premises are attached as **Appendix 5**

6.6 Licensable Activities currently authorised

<u>Activity</u>		<u>Permitted</u>
Sale of Alcohol:	Consumption off the premises	✓

6.7 Licensable Activity and opening hours currently authorised

	Licensable Activities	Opening Hours
Monday	06:00-00:00	06:00-00:00
Tuesday	06:00-00:00	06:00-00:00
Wednesday	06:00-00:00	06:00-00:00
Thursday	06:00-00:00	06:00-00:00
Friday	06:00-00:00	06:00-00:00
Saturday	06:00-00:00	06:00-00:00
Sunday	06:00-23:30	06:00-00:00

6.8 Visits made by Local Authority Licensing Officers

On the 15th January 2019 review papers were served on Mr Nangpal at the premises. On 7th February 2019 a visit was undertaken at the premises in order to establish the level of compliance with the Premises Licence conditions.

7.0 **OFFICER'S OBSERVATIONS**

7.1 At the time of the visit on 15th January 2019, it was observed that there were cans of Stella Artois and Budweiser stacked up against the entrance door. This was in contravention of a licence condition which states that "no alcohol shall be stored within 2 meters of the door."

During the compliance visit undertaken at 18:30 hours on 7th February 2019, Mr Nangpal was able to provide his Personal Licence, an up to date copy of the Premises Licence and the Summary Licence which were on display behind the counter.

In addition it was noted that there was a CCTV system installed at the premises. The system consisted of 14 cameras covering the till, persons entering and leaving the premises at the main entrance/exit door, the internal parts of the shop and the area outside the front of the store. The monitor was positioned within sight of staff and customers and displayed several images. However, Mr Nangpal advised that the CCTV system only recorded for a period of 14 days rather than the 30 days as stated in his licence conditions.

On this occasion there was no alcohol being stored against the entrance door. It was also noted that there was a sign on the door requesting customers to leave the premises quietly.

Although not a licence condition, Mr Nangpal was unable to produce his refusals log, advising that it had been taken home the previous night by a member of staff in order to enter a refusal that was made immediately prior to closing the shop that same evening. Mr Nangpal had also been unable to produce his refusals log on 22nd October 2018 when requested by Trading Standards.

Mr Nangpal advised that he was working on his own in the shop that evening. When he was informed that his licence conditions specify that there shall be 2 adults on the premises from 18:00 hours until closing each day he advised that his other member of staff was on a day off. This particular licence condition had previously been raised with Mr Nangpal during a joint compliance visit made by the Police and Hillingdon Licensing teams on 6th December 2018.

8.0 RELEVANT SECTIONS of the S182 GUIDANCE and LICENSING POLICY

8.1 S182 guidance

Paragraph 2.22 *The protection of children from harm includes the protection of children from moral, psychological and physical harm. This includes not only protecting children from the harms associated directly with alcohol consumption but also wider harms such as exposure to strong language and sexual expletives (for example, in the context of exposure to certain films or adult entertainment). Licensing authorities must also consider the need to protect children from sexual exploitation when undertaking licensing functions.*

Paragraph 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.*

Paragraph 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.

Paragraph 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 or preventing illegal working. 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 and for the prevention of illegal working in licensed premises. **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.**

Paragraph 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 illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;

Paragraph 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.

Paragraph 13.10 It is important that a licensing authority should give comprehensive reasons for its decisions in anticipation of any appeals. Failure to give adequate reasons could itself give rise to grounds for an appeal. It is particularly important that reasons should also address the extent to which the decision has been made with regard to the licensing authority's statement of policy and this Guidance. Reasons should be promulgated to all the parties of any process which might give rise to an appeal under the terms of the 2003 Act.

9.2 Relevant Sections of the Hillingdon Licensing Policy

The Committee's attention is drawn to the following, particularly relevant sections of the Hillingdon Licensing Policy:

- 7.8 Following the grant of a premises licence, the Metropolitan Police Service, Elected Members and/or interested parties such as local residents and Ward

Councillors can apply to the Licensing Authority for a review of the licence if they consider that the Prevention of Crime and Disorder objective has not been met and are relevant.

- *19.1 At any stage following the grant of a premises licence or a club premises certificate, an application for a review application can be submitted to the Licensing Authority by a Responsible Authority, any Elected Member or an Interested Party in connection with any of the four licensing objectives.*

10.0 LEGAL COMMENTS

10.1 Following receipt of a review application the Licensing Authority must hold a hearing to consider it and any relevant representations. At the hearing, the Sub-committee must, having regard to the application and any relevant representations, take such of the steps following steps (if any) as it considers appropriate for the promotion of the licensing objectives:

- modify the conditions of the licence;
- exclude a licensable activity from the scope of the licence;
- remove the designated premises supervisor;
- suspend the licence for a period not exceeding three months; and/or
- revoke the licence

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

10.2 The Sub-Committee must also have regard to the London Borough of Hillingdon's Statement of Licensing and the Secretary of State's Guidance issued under the Licensing Act 2003 when deciding what action, if any, to instigate. The terms of the Statement of Licensing Policy and Guidance are highly persuasive, but are not binding on the Licensing Sub-Committee. The Sub-Committee may depart from the guidance contained in the Statement of Licensing Policy and or Guidance if it considers there are clear and justifiable reasons to do so. Full reasons must be given if this is the case.

10.3 The Sub-Committee can only consider matters within the application or that have been raised through relevant representations from and each application will be decided on a case to case basis.

10.4 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 application and representations identify. The remedial action should generally be directed at these causes or concerns and should always ensure that any response is necessary and proportionate.

10.5 Members are referred to the Secretary of State's Guidance on conditions, specifically paragraph 1.16 and chapter 10 which state that licensing conditions should be practical and enforceable, tailored to the size, type, location and characteristics and activities taking place at the premises. Conditions should be determined on a case by case basis and standardised conditions which ignore these individual aspects should be avoided. Conditions will not be necessary if they

duplicate a current statutory requirement. Licensing Authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

- 10.6 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.
- 10.7 Where the Sub-Committee determines an application for review it must provide written notice and reasons for its decision.
- 10.8 The licence holder, applicant for review or any party that made relevant representations have the right to appeal the decision of the Licensing Sub-Committee to the Magistrates' Court within a period of 21 days beginning with the day on which the applicant was notified in writing by the Licensing Authority of its decision.