

APPLICATION TO REVIEW A PREMISES LICENCE: BEST FOOD & WINE, STATION ROAD, WEST DRAYTON

Committee	Licensing Sub-Committee
Officer Contact	Steven Dormer - Licensing Officer - 01895 277409
Papers with report	Appendix 1 - Application to Review a Premises Licence Appendix 2 - Representations from Responsible Authorities Appendix 3 - Current Premises Appendix 4 - Map & Photos
Ward name	West Drayton

1.0 SUMMARY

To determine an application for a review of premises licence in respect of Best Food & Wine, 61 Station Road, West Drayton, UB7 7LR. **Appendix 1**

2.0 RECOMMENDATION

The Licensing Sub-Committee suspend the premises licence for a period not exceeding three months. Supporting reasons for this can be found under section 11.27 of section 182 states matters relating to smuggled goods should be treated seriously by licensing authorities.

3.0 APPLICATION

The London Borough of Hillingdon Trading Standards Service review application to the Premises Licence for Best Food & Wine, 61 Station Road, UB7 7LR. Trading Standards officers seized illicit tobacco items. Trading Standards officers also seized a quantity of prescribed medication intended for public sale.

4.0 CONSULTATION

4.1 The review application has been consulted with all the responsible authorities in accordance with current legislative guidelines. There has been a notice displayed at the Civic Centre offices. A blue notice has also been displayed at the premises for the 28 day period.

4.2 Closing date for representations

10 January 2020.

5.0 REPRESENTATIONS

5.1 Responsible Authorities

Responsible Authority	Ground for Representation	Appendix
Metropolitan Police	Prevention of Crime & Disorder	Appendix 2
Licensing Authority	Prevention of Crime & Disorder	Appendix 2

Two representation's from Responsible Authorities as **Appendix 2**.

5.2 Representation received from PC Butler of the Metropolitan Police service highlights the impact Best Food & Wine have by selling illicit tobacco and medicinal products to the general public. PC Butler expands by stating that ongoing anti-social behaviour issues of West Drayton could potentially be exacerbated by Best Food & Wine engaging in such practices. Legitimate businesses in the area deserve to be protected from businesses such as Best Food & Wine from selling types of illicit tobacco and medicines that are likely to cause harm. West Drayton's ideology is to provide a safe and prosperous area to the community. This ideology is being dragged down by businesses selling cheap poor quality products to discerning members of the community.

Representation received from Lois King - Principal Licensing Officer further supports the Trading Standards application to review the licence of Best Food & Wine. Mrs King references that a three month suspension is sufficient time for measures to be in place to comply with the Licensing Objectives.

6.0 BACKGROUND INFORMATION

6.1 Premises licence

The shop is currently trading under the authority of a Premises Licence for premises known as Best Food & Wine. The records show Mr Harmeet Khaneja as being the premises licence holder and designated premises supervisor since March 2017. **Appendix 3**

6.2 Description of the Premises

The premise is a newsagents, off-licence and convenience store situated on the main thoroughfare to West Drayton train station. The licence holder is also trusted to sell other items such as tobacco, lottery tickets and other age related products.

6.4 Licensable Activities currently authorised at the premises

<u>Activity</u>		<u>Premises licence</u>
Sale of alcohol	Consumption off the premises	✓

6.5 Licensable activity and opening hours currently authorised at the premises

	Hours for the sale of alcohol	Opening hours
Monday	08:00 - 00:00	08:00 - 00:00
Tuesday	08:00 - 00:00	08:00 - 00:00
Wednesday	08:00 - 00:00	08:00 - 00:00
Thursday	08:00 - 00:00	08:00 - 00:00
Friday	08:00 - 00:00	08:00 - 00:00
Saturday	08:00 - 00:00	08:00 - 00:00
Sunday	08:00 - 00:00	08:00 - 00:00

6.6 Other relevant premises nearby

Premises	Activities Authorised	Times Authorised
Positano, 39 Station Road, West Drayton, UB7 7LN	Sale by retail of alcohol	Monday to Saturday 12:00 - 23:00 Sunday 08:00 - 23.30
West Drayton Local, 36 Station Road, West Drayton, UB7 7DD	Sale by retail alcohol	Monday to Sunday 08:00 - 00:00
West Drayton Convenience Store, 18 Station Road, West Drayton, UB7 7BY	Sale by retail alcohol	Monday to Sunday 08:00 - 00:00

West Drayton Food & Wine, 19 Station Road, West Drayton	Sale by retail alcohol	Monday to Sunday 08:00 - 00:00
Go Sing 22 -24 Station Road, West Drayton, UB7 7BY	Sale by retail alcohol	On weekdays, other than Christmas Day, Good Friday or New Year's Eve, between 10.00 and 24.00 hours. On Sundays, Christmas Day and on Good Friday, between 12.00 and 23.30 hours. From the start of licensed hours on New Year's Eve to the start of licensed hours on New Year's Day.
	Provision of Late Night Refreshment	From 23.00 until 30 minutes after the terminal time for the sale of alcohol.
	Recorded Music	No time restrictions.
Ezee 2 shop, 25 Station Road, West Drayton, UB7 7BT	Sale by retail alcohol	Monday to Sunday 08:00 - 23:00

6.7 Map & Photos

Appendix 4

7.0 OFFICER'S OBSERVATIONS

Observations

Hillingdon Council's Trading Standards officers carried out intelligence led operation on Best Food & Wine West Drayton. During the visit, officers seized a combination of counterfeit, non-standardised and non-duty paid tobacco products.

A total of 59 Viagra tablets intended for sale to the public was seized on the 27th August 2019. The total sale value of all products seized was £1,562.

The products seized from Best Food & Wine were intended to be sold to members of the public. This is despite the products not being manufactured to the legal standard or having any duty paid whatsoever.

7.1 Visits made by Local Authority Officers

2nd January 2020

A visit was made to check compliance with the conditions of the licence. During the visit the following observations were made; Mr Balbir Singh was present at the premises working behind the till and replenishing stock. Mr Singh was asked if he was competent to use the CCTV system. He informed us that only Mr Khaneja had the code and can work the system. CCTV systems are a major prevention of crime and disorder. There appeared to be no security door to access the till area. Stacks of alcohol stock were positioned near confectionery products. No notice was displayed to ask customers to have consideration for neighbours. These simple conditions of the premises licence appear not to be adhered to.

8.0 Relevant sections of S.182 Guidance

8.1 **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.

8.2 **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.

8.3 **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.**

8.4 **Paragraph 11.27** There is certain criminal activity that may arise in connection with licensed premises which should be treated 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 drugs controlled under the Misuse of Drugs Act 1971 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; 94 | Revised Guidance issued under section 182 of the Licensing Act 2003
- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- **for the sale or storage of smuggled tobacco**

8.5 **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.

9.0 Relevant sections of the Licensing Policy

9.1 **Paragraph 7.9:** "When making decisions about an application the Licensing Sub-Committee will have regard to the Borough's Crime Prevention Strategy and any conditions attached to licences or certificates will so far as possible reflect local crime prevention strategies."

10.0 Legal Considerations

10.1 When considering an application for review of a Premises Licence, the Sub-Committee shall carry out its functions with a view to taking steps it considers appropriate for promoting the licensing objectives. The licensing objectives are:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

Members should note that each objective is of equal importance.

- 10.2 An application for review of a premises licence may be made pursuant to s.51 of the Licensing Act 2003 and is essentially governed by [Licensing Act 2003, reg.29 of the Licensing Act 2003 \(Premises licences and club premises certificates\) Regulations 2005/42](#), [Licensing Act 2003 \(Hearings\) Regulations 2005/44](#) and s.182 Secretary Code of Guidance.
- 10.3 A responsible authority, or any other person, may apply to the relevant Licensing Authority for a review of a premises licence. The applicant responsible authority may be part of the same local authority as the Licensing Authority s.53 Licensing Act 2003.
- 10.4 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

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

- 10.5 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.
- 10.6 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.
- 10.7 Following receipt of a review application the Licensing Authority must hold a hearing to consider it and any relevant representations. Those who have made representations in respect of an application may choose to rely upon their written representations or they may attend the hearing and can be represented by any person whether that person is legally qualified or not ([reg.15 of the Licensing Act 2003 \(Hearings\) Regulations 2005/44](#)).
- 10.8 The Licensing Authority can determine its own procedure to be followed at a hearing, which should be the procedure contained within its Statement of Licensing Policy, which is made publicly available ([s.9](#) and [s.183](#); [reg.21 of the Licensing Act 2003 \(Hearings\) Regulations 2005/44](#)).
- 10.9 At the beginning of the hearing, the Licensing Authority will explain its procedure and the hearing takes the form of a discussion led by the Licensing Authority with its members being able to ask any question of any party or other person appearing at the hearing ([regs 17, 22 and 23 of the Licensing Act 2003 \(Hearings\) Regulations 2005/44](#)). Cross-

examination is not permitted unless the Licensing Authority considers that the case is such that it is required ([reg.23](#)). All parties must be allowed an equal maximum period of time to make their representations and address the Licensing Authority ([reg.24](#)).

- 10.10 In considering representations, the Licensing Authority may take into account documentary or other information produced by a party in support of their position, either before the hearing or, with the consent of all other parties, at the hearing ([reg.18](#)). The Licensing Authority may exclude the public from all or part of a hearing where it considers that the public interest in excluding the public outweighs the public interest in the hearing taking place in public ([reg.14](#)).
- 10.11 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 by case basis.
- 10.12 Relevant representations are those that relate to the effect of the granting of the application on the promotion of the licensing objectives made by an interested party or responsible authority that have not been withdrawn and are not, in the opinion of the relevant licensing authority, frivolous, vexatious or repetitious s.51(4)(b)(i) and (ii).
- 10.13 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.
- 10.14 In deciding which of their powers to invoke, it is expected that Licensing Authorities should seek as far as is possible to identify the cause/s of the concerns the representations have identified. Any remedial action should be directed at these causes and should be no more than an appropriate and proportionate response ([s.182 of the Guidance at 11.20](#)).
- 10.15 The provisions of the Act should not be used for punishment. A decision should be made in order to protect the licensing objectives.
- 10.16 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.
- 10.17 Conditions should also 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.

- 10.18 Breach of a condition in a licence carries criminal sanctions. Conditions must therefore be clear and precise in their terms, not just clear to those having specialised knowledge of licensing, such as the local authority or the manager of the premises, but also to the independent bystander who may have no knowledge of licensing at all - [Crawley BC v Attenborough \[2006\] EWHC 1278 \(Admin\); \(2006\)](#).
- 10.19 The Sub-Committee must ensure that all licensing decisions have:
- A direct relationship to the promotion of one or more of the four licensing objectives
 - regard to the Council's statement of licensing policy
 - regard to the Secretary of State guidance
 - there must not be a blanket policy to the extent that it is applied so rigidly that an exercise of discretion in each individual case is precluded.
- 10.20 Where a decision is made that is contrary to or a departure from the statement of licensing policy and the guidance, that decision must clearly state on what basis a decision was made to depart from the policy or guidance.
- 10.21 The Sub-Committee must consider the application on its own individual merits and take into account all relevant matters then determine the application by taking the steps it considers appropriate and proportionate to promote the licensing objectives.
- 10.22 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.
- 10.23 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. 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. 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.
- 10.24 Where the Sub-Committee determines an application for review it must provide written notice and reasons for its decision.

- 10.25 The Council in its capacity as Licensing Authority has a duty to have regard to its public sector equality duty under section 149 of the Equality Act 2010. In summary, section 149 provides that a Public Authority must, in the exercise of its functions have due regard to the need to:
- i. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - ii. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - iii. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 10.26 Section 149(7) of the Equality Act 2010 defines nine relevant protected characteristics examples are; race, sex, age, disability and religious beliefs.
- 10.27 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.
- 10.28 An appeal against the final review decision may be made to a magistrates' court within 21 days of the appellant being notified of the licensing authority's determination on the review. An appeal may be made by the premises licence holder, the chief officer of police and/or any other person who made relevant representations.
- 10.29 A record of the proceedings must be kept by the Licensing Authority for a period of six years from the date of the determination or, where an appeal is brought, six years from the disposal of the appeal (reg.30 of the Licensing Act 2003 (Hearings) Regulations 2005/44).
- 10.30 Depending on the type of application, the Licensing Authority must make its determination at the conclusion of the hearing or within five working days of the conclusion of the hearing (reg.26).