

Application for a Review of a Premises Licence

Committee	Licensing Sub-Committee
Officer Contact	Jhini Mukherjee, Licensing
Papers with report	Appendix 1 - Review Application Appendix 2 - Representation from Metropolitan Police Appendix 3 - Representation from Licensing Authority acting as responsible authority under the Act Appendix 4 - Current premises licence Appendix 5 - Remedial letter following a visit on 03 January 2020 Appendix 6 - Proposed conditions
Ward name	Pinkwell

1 SUMMARY

- 1.1 To consider a review of the premises licence pursuant to Section 51 of the Licensing Act 2003 ("LA03") in relation to Bottle N Brew of 1A Dawley Road, Hayes, UB3 1LS. A copy of the application for review is attached as **Appendix 1**.

2 OPTIONS AVAILABLE TO THE SUB-COMMITTEE

- 2.1 Under Paragraph 11.19 of the Revised Guidance under Section 182 of the Licensing Act 2003, the options available to the Licensing Sub-Committee in a Review Application are the following.
- 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)¹⁰;
 - 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

3 RECOMMENDATION

- 3.1 **That the Sub-Committee suspend the premises licence and impose further conditions to aid the licence holder in rectifying the shortcomings that have led to the review being instigated. Further conditions on the licence will help to set parameters going forward, within which the premises can operate lawfully. The proposed conditions are set out as Appendix 6.**

4 INFORMATION

- 4.1 On 07 February 2019, based on intelligence received, Trading Standards Officers accompanied by a tobacco brand representative and a tobacco detection dog inspected Bottle N Brew on 1A Dawley Road to establish if illegal tobacco was being sold from the premises.
- 4.2 A total of 75 packs of counterfeit cigarettes, 12 packs of counterfeit hand-rolling tobacco and 158 counterfeit Sildenafil Citrate tablets (brand name Viagra) were seized from the shop on the day.

- 4.3 On 12 December 2019 the Licensing Authority received an application to review the premises licence of Bottle N Brew. The review was requested on the grounds of prevention of crime and disorder.

5 CONSULTATION

- 5.1 The 28 days consultation period started from 12 December 2019 and it closed on 09 January 2020. As required by the legislation, the notice of the review was displayed at the premises and a copy of it was also displayed on the Civic Centre Notice board and also on the Council's website.

6 REPRESENTATIONS

- 6.1 Responsible Authorities

Responsible Authority	Ground for Representation	Appendix
Metropolitan Police	Prevention of Crime & Disorder	Appendix 2
Licensing Authority	Prevention of Crime & Disorder	Appendix 3

The Metropolitan Police Services and the Licensing Authority have both submitted relevant representations in support of the review submitted by the Trading Standards Service. They have sought a suspension of the Premises Licence for 3 months on the grounds that the premises have been used for criminal purposes. In addition to this, both responsible authorities would like further conditions to be added on to the existing premises licence.

7 BACKGROUND INFORMATION

7.1 Current Premises Licence

The premises has been licensed as an off-licence since 2005. The current licence is in the name of the individual, Didar Singh Malotra, who is also the present Designated Premises Supervisor (DPS).

A copy of the premises Licence has been attached for reference as **Appendix 4**.

7.2 Description of the Premises

The premises is located on a small parade of shops and the surrounding area is mainly residential.

7.3 Licensable Activities currently authorised

Activity	Permitted
Sale of Alcohol: Consumption off the premises	✓

7.4 Licensable Activity and opening hours currently authorised

	Sale of Alcohol	Opening Hours
Monday	08:00-23:00	Not restricted
Tuesday	08:00-23:00	Not restricted

Wednesday	08:00-23:00	Not restricted
Thursday	08:00-23:00	Not restricted
Friday	08:00-23:00	Not restricted
Saturday	08:00-23:00	Not restricted
Sunday	10:00-22:30	Not restricted

8. OFFICER'S OBSERVATIONS

- 8.1 On Wednesday 03 January 2020 the Licensing Authority visited the premises where further breaches were observed. The result of the visit has been documented by Daniel Ferrer acting as Responsible Authority for licensing on the remedial letter which is appended at **Appendix 5**.

Relevant paragraphs of the S182 Guidance

- 8.2 Paragraph 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, the sale of firearms, or the sexual exploitation of children.

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."

- 8.3 Paragraph 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."

- 8.4 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 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;
- 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 or storage of smuggled tobacco and alcohol."

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."

8.6 Chapter 10 of the S182 Guidance contains information on the imposition of conditions on the Premises Licence.

9. RELEVANT SECTIONS OF THE COUNCIL'S LICENSING POLICY

9.1 The Sub-Committee's attention is drawn to the following, particularly relevant sections of the London Borough of Hillingdon's Licensing Policy:

9.1.1 At 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."

9.1.2 At paragraph 17.2: "Any conditions attached to licences following relevant representations will focus on matters within the control of the Premises Licence Holder or Club Management Committees. They will address matters which have a direct impact on those living, working or engaged in normal activities in the vicinity, as well as patrons of the licensed premises. They will not be used as a means of attempting to attach responsibility to Premises Licence Holders or Club Management Committees for matters outside their reasonable control, such as anti-social behaviour once away from the premises or licensable activity."

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](#)).