

# Application for a Review of a Premises Licence: Spend N Save

<b>Committee</b>	Licensing Sub-Committee
<b>Officer Contact</b>	Mark McDermott, Licensing Officer
<b>Papers with report</b>	<b>Appendix 1</b> - Review Application <b>Appendix 2</b> - Representation from the Metropolitan Police <b>Appendix 3</b> - Representation from the Licensing Authority acting as Responsible Authority <b>Appendix 4</b> - Copy of the current Premises Licence <b>Appendix 5</b> - Map of the area and photo of premises <b>Appendix 6</b> - Signed warning letter dated 9 <sup>th</sup> December 2019 <b>Appendix 7</b> - Companies House record for G S Spend N Save Limited
<b>Ward name</b>	Yeading

## 1.0 SUMMARY

To determine an application for a review of a Premises Licence in respect of Spend N Save, 242 Yeading Lane, Hayes UB4 9AX pursuant to Section 51 of the Licensing Act 2003. The application to review the licence has been submitted by the London Borough of Hillingdon's Trading Standards Service. This follows the seizure of a quantity of illegal tobacco, Sildenafil Citrate (Viagra) and cream chargers (Nitrous Oxide) at the premises. A copy of the application can be found in **Appendix 1**.

## 2.0 OPTIONS AVAILABLE TO THE SUB COMMITTEE

2.1 Under paragraph 11.19 of the revised guidance issued under section 182 of the Licensing Act 2003, the options available to the Licensing Sub Committee in Review Application are as follows:

- 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.

## 3.0 RECOMMENDATION

It is recommended that the Licensing Sub Committee revoke the licence as requested by the Trading Standards Service. Supporting reasons for this can be found under section 11.27 of section 182 which states matters relating to smuggled goods should

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be treated seriously by licensing authorities. This is compounded by the previous written warning received at the premises.

#### **4.0 INFORMATION**

- 4.1 On 29<sup>th</sup> September 2020, following information received regarding the sale of individual cigarettes to underage children and subsequent visit, officers from the London Borough of Hillingdon's Trading Standards Service accompanied by tobacco detection dogs and handlers inspected Spend N Save, 242 Yeading Lane, Hayes UB4 9AX.
- 4.2 The premises were inspected; tobacco detection dogs picked up a scent and were drawn to a Vauxhall van, registration number [REDACTED] parked at the rear of the premises. Mr Gurnam Singh Langani who was working behind the till indicated that the van had nothing to do with the business. The van keys were found to be hanging by the rear door and the van was opened and the illicit items were discovered. Mr Sarabjit Singh Lowgani subsequently attended and stated he was the owner of the van.
- 4.3 The suspected illicit tobacco and associated items were seized by the Trading Standards Service.
- 4.4 A total of 9180 illicit cigarettes, 3370g of hand rolling tobacco, 2653.5g of oral tobacco, 110 tablets of Sildenafil Citrate (Viagra) and 576 cream chargers (Nitrous Oxide) were found in the van at the premises at the time of the visit.
- 4.5 On 16<sup>th</sup> July 2021, the Licensing Authority received an application to review the premises licence for Spend N Save on the grounds of the prevention of crime and disorder.

#### **5.0 CONSULTATION**

- 5.1 The Responsible Authorities have been consulted on the review application in accordance with current legislation and associated guidance. A legal notice of the review was displayed at the premises for the 28-day period. A copy of the legal notice was also displayed at the Civic Centre and was placed on Hillingdon Council's website.

#### **5.2 Closing date for representations**

13<sup>th</sup> August 2021

#### **6.0 REPRESENTATIONS**

##### **6.1**

<b>Responsible Authority</b>	<b>Ground for Representation</b>	<b>Appendix Number</b>
Metropolitan Police	Prevention of Crime and Disorder	<b>Appendix 2</b>
Licensing Authority	Prevention of Crime and Disorder	<b>Appendix 3</b>

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- 6.2 The Metropolitan Police Service and the Licensing Authority have both submitted representations in support of the review submitted by the Trading Standards Service.

The Representation received from PC Butler of the Metropolitan Police service refers to the fact that illicit tobacco was previously found at the premises and a warning letter was issued; when this is combined with this seizure it shows a blatant disregard of the law highlighting the use of the premises for illegal activity.

A representation received from Lois King – Principal Licensing Officer further supports the Trading Standards application to review the licence but, in the event that the Committee decide not to revoke the licence, also suggests imposing a number of conditions that should be attached to the licence to fully promote the Licensing Objectives. This followed an Inspection that seems to indicate the Licence Holder has attempted to put measures in place to promote the licensing objectives but they were not being fully adhered to. For the avoidance of doubt, the Licence Holder was not under a duty to implement these measures as they are not included on the Licence

## 7.0 BACKGROUND INFORMATION

### 7.1 Current Premises Licence

Records show Gurpreet Kaur Lowgani as being the premises licence holder for Spend N Save, 242 Yeading Lane, Hayes UB4 9AX and the designated premises supervisor since 1<sup>st</sup> October 2015. The premises licence is attached as **Appendix 4**.

### 7.2 Description of the Premises

The premises are located on a parade of shops at 242 Yeading Lane, Hayes UB4 9AX. The business operates as a newsagents, off-licence and convenience store.

### 7.3 Licensable Activities currently authorised at the premises

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

### 7.4 Licensable activity and opening hours currently authorised

	<b>Licensable Activities</b>	<b>Opening Hours</b>
<b>Monday</b>	08:00-23:00	Not restricted
<b>Tuesday</b>	08:00-23:00	Not restricted
<b>Wednesday</b>	08:00-23:00	Not restricted
<b>Thursday</b>	08:00-23:00	Not restricted

<b>Friday</b>	08:00-23:00	Not restricted
<b>Saturday</b>	08:00-23:00	Not restricted
<b>Sunday</b>	08:00-23:30	Not restricted
<b>Good Friday</b>	08:00-22:30	Not restricted
<b>Christmas Day</b>	12.00-5.00 & 19.00-22.30	Not restricted

#### 7.5 Other relevant licensed premises nearby

Name of premises	Activities Authorised	Times Authorised
A 1 Food & Wine, 268 Yeading Lane, Hayes UB4 9AX	Off Sale by retail of alcohol	Between 07:00 hours and 23:00 hours Monday - Saturday Between 07:00 hours and 23:30 hours Sunday
Food Bazaar, 266 Yeading Lane, Hayes, UB4 9AX	Off Sale by retail of alcohol	From 06.00 hours to 23.00 hours every day
Yeading Convenience Store, 238 Yeading Lane, Hayes, UB4 9AX	Off Sale by retail of alcohol	Between the hours of 07.00 and 00.00 each day
Yeading Post Office, 246 Yeading Lane, Hayes, UB4 9AX	Off Sale by retail of alcohol	Between the hours of 08.00 and 23.00 each day

#### 7.6 Map and Photos of the outside of the premises

A site map of the local area and photo is attached as **Appendix 5**.

#### 7.6 Companies House record for G S Spend N Save Limited

The Companies House record shows Mr Sarbjit Singh Lowgani as the current sole Director of the Company; he attended the premises on the date of seizure and confirmed he was the owner of the van. It should also be noted that he was the previous premises licence holder and designated premises supervisor and held the licence from 2<sup>nd</sup> October 2013 until 1<sup>st</sup> October 2015. Mr Gurnam Langani who was working at the premises on the day of the seizure is a former Director of the Company and the current Licence Holder and Designated Premises Supervisor Mrs Gurpreet Kaur Lowgani is also shown as a former Director. Please see attached as **Appendix 7**.

## 8.0 OFFICER'S OBSERVATIONS

8.1 On 10<sup>th</sup> August 2021 Mrs King, representing the Licensing Authority, visited the premises in order to establish the level of compliance with the Licensing Act 2003 and the premises licence conditions and no breaches were identified that officers consider in need of mention, please see representation at **Appendix 3**.

## 9.0 RELEVANT SECTIONS OF THE S182 GUIDANCE

9.1 **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.

9.2 **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.

9.3 **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.

9.4 **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.

9.5 **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 and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.

9.6 **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.**

9.7 **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.

9.8 **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.

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

## **10.0 RELEVANT SECTIONS OF THE COUNCIL'S LICENSING POLICY**

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

- At paragraph 10.8: "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."
- At paragraph 10.9: "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."
- At paragraph 20.3: "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."

- At paragraph 22.1 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.

## **11.0 LEGAL COMMENTS**

11.1 When consideration is given for 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.

11.2 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](#)

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[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.

- 11.3 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.
- 11.4 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.

- 11.5 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.
- 11.6 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.
- 11.7 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](#)).
- 11.8 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](#)).
- 11.9 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](#)).

11.10 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](#)).

11.11 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.

11.12 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).

11.13 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.

11.14 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](#)).

11.15 The provisions of the Act should not be used for punishment. A decision should be made in order to protect the licensing objectives.

11.16 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.

11.17 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.

11.18 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 \(Admin\); \(2006\)](#).

11.19 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.

11.20 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.

11.21 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.

11.22 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.

11.23 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.

11.24 Where the Sub-Committee determines an application for review it must provide written notice and reasons for its decision.

11.25 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.

11.26 Section 149(7) of the Equality Act 2010 defines nine relevant protected characteristics these are:

- i. age
- ii. gender reassignment
- iii. being married or in a civil partnership
- iv. being pregnant or on maternity leave
- v. disability
- vi. race including colour, nationality, ethnic or national origin
- vii. religion or belief
- viii. sex
- ix. sexual orientation

11.27 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.