

## Report of the Assistant Director Corporate Services to a Hearing before the Keighley & Shipley Area Licensing Panel to be held on 17 December 2008.

# G

### Subject:

Application for a Review of a Premises Licence for Tommy's Mini Market, 206-210 Leeds Road, Shipley.

### Summary statement:

Application for review of a Premises Licence authorising the sale of alcohol for consumption off the premises.

Suzan Hemingway  
Assistant Director Corporate Services  
(City Solicitor)

Report Contact: Melanie McGurk  
Senior Licensing Officer  
Phone: (01274) 431873  
E-mail: [melanie.mcgurk@bradford.gov.uk](mailto:melanie.mcgurk@bradford.gov.uk)

**Portfolio:**

**Corporate**

**Improvement Committee Area:**

**Corporate Improvement Committee  
Safer and Stronger Communities**



Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



1. **Summary**

1.1 **Premises Licence Holder**

Mohammed Asam Bashir.

1.2 **Designated Premises Supervisor**

Mohammed Asam Bashir.

A copy of the Licence is included at Appendix 1.

1.3 **The Premises**

Tommy's Mini-Market, 208-210 Leeds Road, Shipley

1.4 **The Current Licence**

The premises have a Premises Licence allowing the sale by retail of alcohol for consumption off the premises.

Hours of licensable activities:

Monday to Saturday:	08.00 to 23.00
Sunday:	10.00 to 22.30
Good Friday:	08.00 to 22.30
Christmas Day:	Noon to 15.00
Christmas Day:	19.00 to 22.30

1.4 **Steps agreed in the Operating Schedule by the Licensee to address the Licensing Objectives**

a) Prevention of crime and disorder

None.

b) Public Safety

None.

c) Prevention of public nuisance

None.

d) Protection of children from harm

None.

e) General – all four licensing objectives

None.

## 1.5 **Embedded Conditions**

The Premises Licence is subject to embedded conditions following the conversion of the Justices 'On' Licence, issued under the Licensing Act 1964 to a Premises Licence under the Licensing Act 2003, in accordance with the transitional provisions.

The embedded conditions are detailed in Appendix 1.

## 1.6 **Conditions Attached after Hearing**

Not applicable.

## 2. **Applications Received asking for a Review of the Licence**

### 2.1 **Responsible Authorities**

Trading Standards have submitted an application for review of the licence following underage sales of alcohol through direct sales and by proxy. An attempt to pervert the course of justice by giving false information to Trading Standards Officers was also made.

Sales of counterfeit DVDs have also been made and complaints of anti-social behaviour by youths congregating outside the premises have been received.

A copy of the application for review is attached at Appendix 2.

Included with the application are supporting documents from Trading Standards and Others.

A copy of the supporting documents is attached at Appendix 3.

## 3. **Legal Appraisal**

3.1 The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:

- a) the prevention of crime and disorder
- b) public safety
- c) the prevention of public nuisance
- d) the protection of children from harm

3.2 The Council must also have regard to the Guidance issued by the Department of Culture Media and Sport under Section 182 of the Licensing Act 2003. Regard must also be taken of the Council's statement of Licensing Policy for the District. Paragraph 5.99 to 5.111 of the Guidance specifically details how applications for review of licences should be determined.

An extract of the Guidance is attached to this report at Appendix 4.

- 3.3 Where it is decided it is necessary to depart from the statutory guidance or the Licensing Policy on the merits of a particular case; then special reasons justifying this must be given that can be sustained.
- 3.4 Only “relevant representations” by or expressly on behalf of a defined “interested party” or “responsible authority” can be taken into account. In order to be “relevant” a representation must fairly relate to achieving a licensing objective. If it does not, it must be discounted.
- 3.5 Any licensing conditions that Members may propose attaching must also relate to achieving one of the licensing objectives; be tailored to the actual premises and style of licensable activity; must be reasonably achievable by the applicant and in his/her control.

#### **4. Statement of Policy Issues**

- 4.1 The following parts of the Licensing Policy are of particular importance; Part 6 (prevention of Public Nuisance).
- 4.2 The Annexes to the Policy sets out various types of model condition that could be considered.

#### **5. Legal Options**

- 5.1 Members may:
  - (a) Refuse the application for review of the licence; or
  - (b) Decide not to impose any further restrictions on the licence; or
  - (c) Decide to impose additional restrictions or remove any licensable activities on the licence, where necessary in order to address the licensing objectives; or
  - (d) Suspend the licence for a period not exceeding 3 months; or
  - (e) Revoke the premises licence; or
  - (f) Remove the named Designated Premises Supervisor from the Licence.
- 5.2 Should the licensee or any other party to the hearing feel aggrieved at any decision with regard to the licence or to any conditions or restrictions attached by Members they may appeal to the Magistrates Court within 21 days of being notified of the decision.

#### **6. Financial and resource appraisal**

- 6.1 There are no apparent finance or resource implications.

**7. Other implications**

**7.1 Equal Rights**

There are no apparent equal rights implications.

**7.3 Community safety implications**

There are no apparent community safety implications.

**7.4 Human Rights Act**

The following rights are applicable:

Article 1 First Protocol to the Convention – Right to peaceful enjoyment of possessions subject to the state’s right to control the use of property in accordance with the general interest.

The Council’s powers set out in the recommendations fall within the states right. A fair balance must be struck between public safety and the applicant’s rights.

Article 6 – A procedural right to a fair hearing. As refusal of the application is an option, adherence to the Panels’ usual procedure of affording a hearing to the applicant is very important. The applicant should also be able to examine the requirements of the fire authority. If the decision is to refuse then reasons should be given.

**8. Not for publication documents**

8.1 None

**9. The Role of the Panel**

9.1 Members are invited to consider the information and documents referred to in this report and, after hearing interested parties, determine the related application for review of the premises licence.

**10. Appendices**

1. Premises Licence.
2. Application for Review.
3. Supporting documents from Trading Standards & Others. (In the interests of economy this document has been sent to Members of the Panel only.)
4. Extract from the Government Guidance.

**11. Background documents**

Licence, representations etc

Licensing Act 2003

**Premises Licence**

**BD/PRA0950**

## Part 1 - Premises Details

### POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

**Tommys Mini-Market**

206-210 Leeds Road, Shipley, Bradford, West Yorkshire, BD18 1EA.

Telephone 01274 591582

### WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

### LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- the sale by retail of alcohol

### THE TIMES THE LICENCE AUTHORIZES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
M. The sale by retail of alcohol for consumption OFF the premises only			
	Monday to Saturday	8:00am	11:00pm
	Sunday	10:00am	10:30pm
	Good Friday	8:00am	10:30pm
	Christmas Day	Noon	3:00pm
	Christmas Day	7:00pm	10:30pm

### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
No Restrictions.		

### WHERE THE LICENCE AUTHORIZES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- M. The sale by retail of alcohol for consumption OFF the premises only

## Part 2

### NAME (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Mohammed Asam Bashir

55 Hustler Street, Undercliffe, Bradford, West Yorkshire, BD3 OPS.  
Telephone 01274 631961 or 07813134371

### REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

### NAME, ADDRESS AND TELEPHONE NUMBER OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORIZES THE SUPPLY OF ALCOHOL

Mohammed Asam BASHIR

55 Hustler Street, Undercliffe, Bradford, West Yorkshire, BD3 OPS.  
Telephone 01274 631961 or 07813134371

Licensing Act 2003

**Premises Licence**

**BD/PRA0950**

PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OF PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES FOR THE SUPPLY OF ALCOHOL

Licence No. BD/PER2140

Issued by Bradford

## ANNEXES

### Annex 1 - Mandatory Conditions

1. No supply of alcohol may be made under the premises licence;-
  - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
  - (b) at a time when the designated premises supervisor does not hold a personal licence or his/her personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

### Embedded Conditions

3. The restrictions on permitted hours do not prohibit:
  - (a) During the first twenty minutes after permitted hours, the taking of alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
  - (b) The ordering of alcohol to be consumed off the premises or the despatch by the vendor of the alcohol so ordered;
  - (c) The sale of alcohol to a trader or club for the purposes of the trade or club;
  - (d) The sale or supply of alcohol to any canteen or mess, being a canteen in which the supply or sale of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's Naval, Military or Air Forces
4. Alcohol shall not be sold in an open container or be consumed in the licensed premises.

### Annex 2 - Conditions Consistent with Operating Schedule

#### **All four Licensing Objectives:**

None

#### **The Prevention of Crime & Disorder:**

None

#### **Public Safety:**

None

#### **The Prevention of Public Nuisance:**

Original Issue Date: 03/10/2005

(Annual Fee Date under Statutory Instrument 2005 No. 79 - Licensing Act 2003 (Fees) Regulations 2005)

Licensing Act 2003

**Premises Licence**

**BD/PRA0950**

ANNEXES continued ..

None

**The Protection of Children from Harm:**

None

**Annex 3 - Conditions attached after a hearing by the Licensing Authority**

Not Applicable.

G:\LEGAL SERVICES\LLC&LICENSING\LICENSING\DEV\TEMPLATE\LIC.STD\LICENCE CONDITIONS\TOMMYS MINI MARKET -  
BDPRA0950



Licensing Act 2003

## Premises Licence Summary

BD/PRA0950

### Premises Details

#### POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

### Tommys Mini-Market

206-210 Leeds Road, Shipley, Bradford, West Yorkshire, BD18 1EA.

Telephone 01274 591582

#### WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

#### LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

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#### THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

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#### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
No Restrictions.		

#### WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND/OR OFF SUPPLIES

- M. The sale by retail of alcohol for consumption OFF the premises only

#### NAME (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

Mohammed Asam Bashir 55 Hustler Street, Undercliffe, Bradford, West Yorkshire, BD3 OPS.

#### REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

#### NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

Mohammed Asam BASHIR


#### STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED

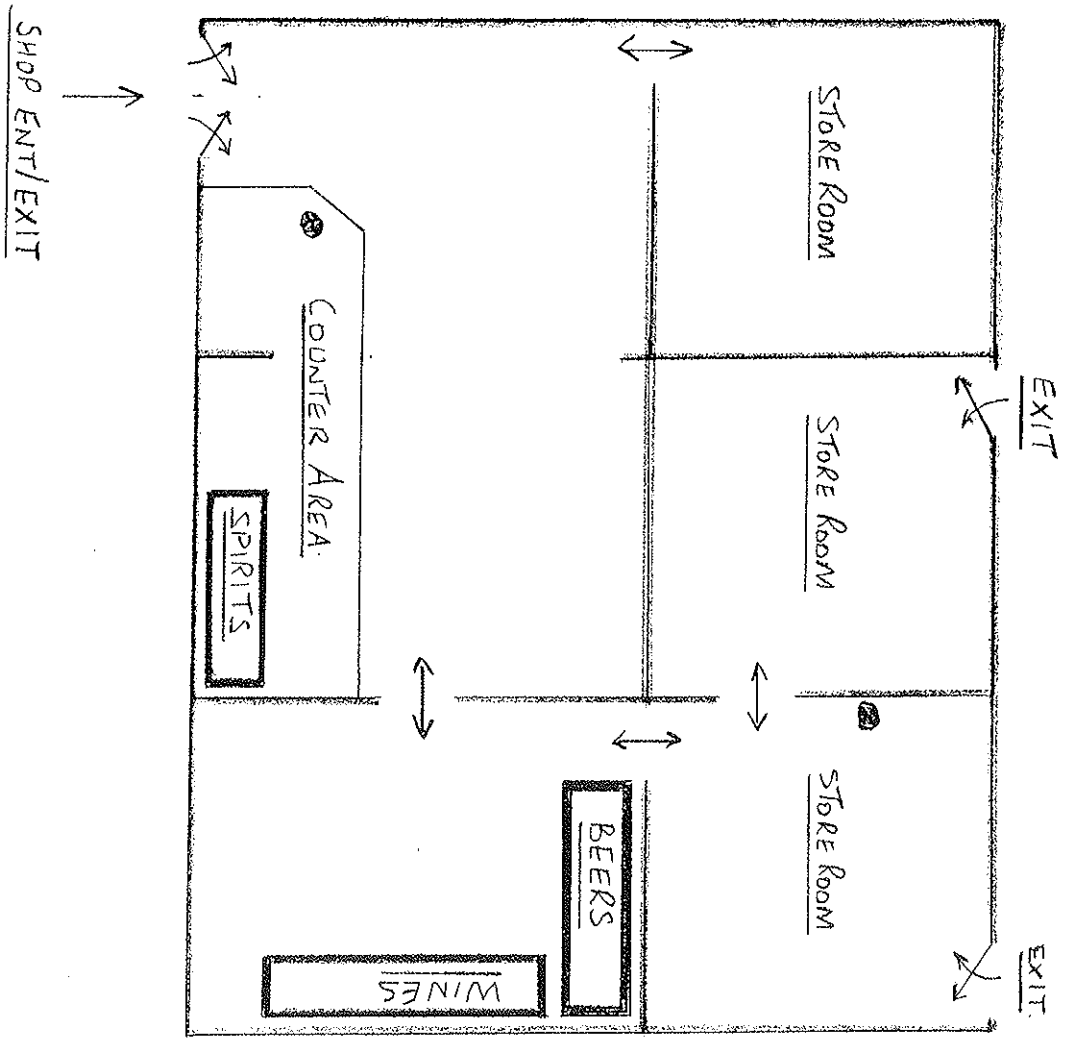
No Restrictions.

ANNEX 4

TOMMY'S MINI-MARKET  
206-210 LEEDS ROAD  
WINDHILL  
SHIPLEY  
BD18 1EA

SCALE: (1 CM = 1 METRE)

KEY :  FIRE EXTINGUISHERS.



[x]

Licensing Team, Room 402, City Hall, Bradford, BD1 1HY

**Application for a 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 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.

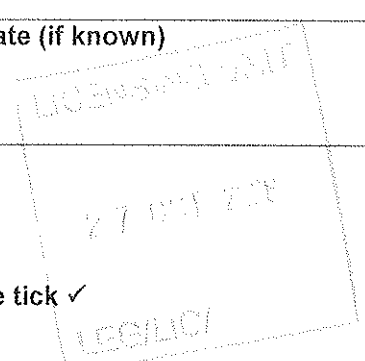
I David Louis Mullins apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

**Part 1 – Premises or club premises details**

<b>Postal address of premises or club premises, or if none, ordnance survey map reference or description</b> Tommy's Mini Market 206 – 210 Leeds Road, Shipley Bradford	
<b>Post town</b> Bradford	<b>Post code (if known)</b> BD18 1EA

<b>Name of premises licence holder or club holding club premises certificate (if known)</b>  Mr Mohammed Asam Bashir
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<b>Number of premises licence or club premises certificate (if known)</b>  BD/PRA0950
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**Part 2 – Applicant details**

I am

Please tick ✓

- |   |                                     |                                  |
|---|-------------------------------------|----------------------------------|
| 1) An interested party:   |                                     |                                  |
| a) A person living in the vicinity of the premises                                  | <input type="checkbox"/>            | please complete (A) or (B) below |
| b) A body representing persons living in the vicinity of the premises               | <input type="checkbox"/>            | please complete (A) or (B) below |
| c) A person involved in business in the vicinity of the premises                    | <input type="checkbox"/>            | please complete (A) or (B) below |
| d) A body representing persons involved in business in the vicinity of the premises | <input type="checkbox"/>            | please complete (A) or (B) below |
| 2) A responsible authority  | <input checked="" type="checkbox"/> | please complete (C) below        |
| 3) A member of the club to which this application relates                           | <input type="checkbox"/>            | please complete (A) below        |

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

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

Surname  First names

**Please tick ✓**

I am over 18 years old or over

Current address

Post Town

Postcode

Daytime contact telephone number

Email address (optional)

**(B) DETAILS OF OTHER APPLICANT**

Name
Address
Telephone number (if any)
E-mail (optional)

**DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

Name	West Yorkshire Trading Standards Service
Address	PO Box 5 Nepshaw Lane South Morley Leeds LS27 0QP  (Case Officer: Helen McGowan)
Telephone number (if any)	0112 253 0241
E-mail (optional)	hmcgowan@wyjs.org.uk

**This application to review relates to the following licensing objectives(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

x
x
x
x

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

Since 24<sup>th</sup> August 2007 West Yorkshire Trading Standards Service has received 7 complaints about Tommy's Mini Market, 206 – 210 Bradford Road, Shipley, BD18 1EA in relation to underage sales and counterfeit DVDs. (The date indicated is the date on which Mr Mohammed Asam Bashir, the current Designated Premises Supervisor (DPS), purchased the business).

Councillor Greenwood, a ward Councillor for the Windhill and Wrose area has received several reports from residents about the shop selling cigarettes and alcohol to underage children and selling drugs. Councillor Greenwood has also received complaints about anti social behaviour around the shops, including fires being lit.

One local resident, Mrs Battensby complained that the shop had been selling cigarettes and alcohol to children and that she had seen children approaching adults to buy alcohol on their behalf. Mrs Battensby complained about a number of anti social behaviour issues surrounding the shop, including children being abusive to customers. Mrs Battensby also raised concerns that the shop was selling counterfeit DVDs.

On 28<sup>th</sup> October 2007 the store was visited as part of a Test Purchase operation, during which a 15 year old school boy was sold alcohol. At the time, the seller introduced himself as Naweed Bashir and explained that his brother Mohammed Asam Bashir managed the shop. Naweed Bashir was not aware who the DPS was and there was no licence on display to clarify the situation.

On 7<sup>th</sup> November 2007, Patricia Harter of West Yorkshire Trading Standards Service interviewed

Naweed Bashir and a man who identified himself as the owner and DPS, Gurdip Singh. Prior to conducting the interview Patricia Harter confirmed with Bradford Licensing the Gurdip Singh was the DPS.

On 13<sup>th</sup> December 2007 both Naweed Bashir and Gurdip Singh were written to and offered a formal caution. On 21<sup>st</sup> December 2007 Gurdip Singh contacted Patricia Harter to explain that he was concerned to received the letter as he was no longer the owner of the business as he had sold it on 24<sup>th</sup> August 2007. Mr Singh then spoke to Mohammed Asam Bashir to get an explanation. Mr Bashir said that he had not taken over as the DPS on the licence and in order to disguise the fact that he had not transferred the licence he had asked an associate to attend the interview with Trading Standards and impersonate Mr Singh. On 4<sup>th</sup> February 2008, the formal caution sent to the seller, Naweed Bashir was returned to sender.

Subsequent enquires have revealed that on 24<sup>th</sup> August 2007 Mr Singh sold the business to Mohammed Asam Bashir. On 5<sup>th</sup> November 2007 Mr Singh was replaced by Mohammed Asam Bashir as the DPS. On 19<sup>th</sup> November 2007 Bradford Licensing issued a new licence.

On 29<sup>th</sup> February 2008, the police and Trading Standards carried out a joint inspection at the premises. During this visit 61 counterfeit DVDs were seized. Mr Mohammed Asam Bashir was subsequently interviewed and offered a simple caution, which he signed.

On four separate dates in February and April 2008 an officer from West Yorkshire Trading Standards Service conducted surveillance operations on Tommy's Mini Market. During these operations the officer witnessed large groups of youths gathering outside the premises, youths concealing alcoholic drinks purchased from the shop and on one occasion witnessed a young girl, who was clearly intoxicated, collapse.

West Yorkshire Trading Standards Service had evidence to suggest that Tommy's Mini Market were selling alcohol to adults who were buying it on behalf of underage children (underage sale by proxy). On 18<sup>th</sup> April 2008 a Trading Standards Officer attempted to buy alcohol on behalf of some children, after being approached by two underage children standing outside the shop. One of the children asked the officer to buy her a bottle of vodka and gave the officer the money to do so. The officer went into the shop to buy the vodka and despite the officer explaining to the sales assistant that the alcohol was being purchased on behalf of the children outside, the bottle of vodka was still sold to the officer.

On the 3<sup>rd</sup> November 2007 a test purchase of fireworks using a child volunteer was made. On this occasion, the sale was refused. On 29<sup>th</sup> May 2008 a test purchase of cigarettes using a child volunteer was made. On this occasion the sale was refused.

West Yorkshire Trading Standards Service, as a Responsible Authority, considers the sale of alcohol to children and subsequent attempts to pervert the course of justice by giving false information to officers to be extremely serious. In addition West Yorkshire Trading Standards is concerned that alcohol is available to children not only through direct sales but also via proxy sales, even where the cashier is made aware that alcohol is being purchase on behalf of children. The sale of counterfeit DVDs is also a serious offence.

In these circumstance, West Yorkshire Trading Standards Service considers that they have no option other than to seek a review of the Premises Licence and would recommend a full revocation of the licence.

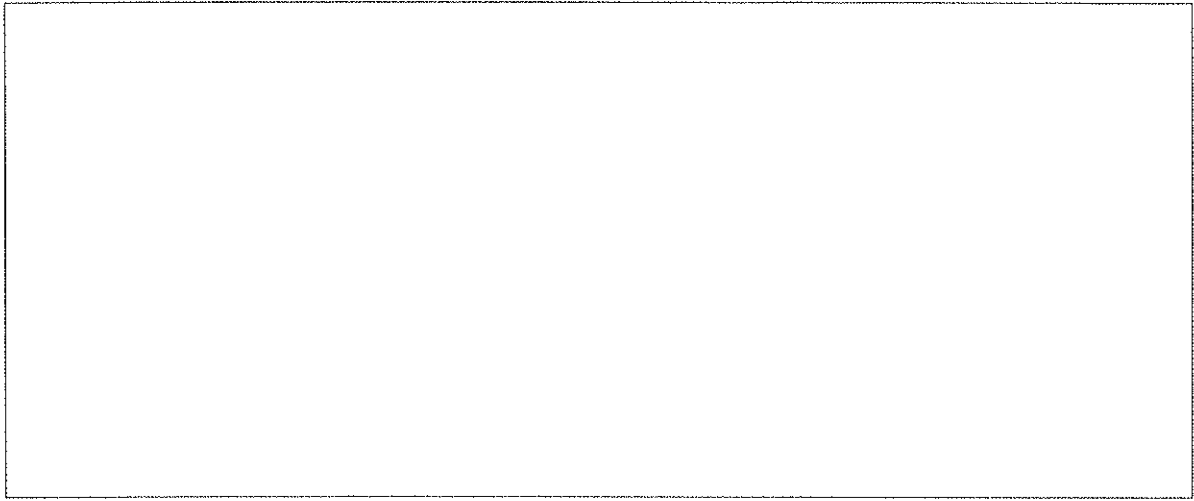
**Please provide as much information as possible to support the application** (please read guidance note 2)

Please see attached package of papers.

This includes documentary evidence to support the review and grounds previously described in the form of Criminal Justice Act witness statements, complaints and written submissions.

The documentary evidence includes;

Sc.9 Statement from Patricia Harter (WYTSS)  
Sc.9 Statement from Gurdip Singh  
Letter from Mr G.Singh to Patricia Harter  
Sc.9 Statement from Melanie McGurk (Bradford Licensing)  
Sc.9 Statement from PC 2856 Robertson  
Sc.9 Statement from David Lovell (WYTSS)  
Sc.9 Statement from Gerald Strover (WYTSS)  
Sc.9 Statement from Noreen Akhtar (WYTSS)  
Sc.9 Statement from Carolyne Dollins (WYTSS)  
Caution signed by Mr Mohammed Bashir  
Sc.9 Statement from PS 2933 Colligan  
Sc.9 Statement from Helen Charles (WYTSS)  
Sc.9 Statement from Della Battensby  
Sc.9 Statement from Councillor Greenwood





Please tick ✓

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

If yes please state the date of that application

Day		Month		Year	

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

No representation previously made by West Yorkshire Trading Standards Service

Please tick ✓

- 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 ..... 17<sup>th</sup> October 2008

Capacity ..... DIVISIONAL MANAGER

Contact Name (where not previously given) and address for correspondence associated with this application (please read guidance note 5)	
Graham Hebblethwaite Chief Officer West Yorkshire Joint Services PO Box 5 Nepshaw Lane South Morley	
Post town Leeds	Post code LS27 0QP
Telephone number (if any) 0113 253 0241	
If you would prefer us to correspond with you by e-mail 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.

Information on the Licensing Act 2003 is available on the website of the Department of Culture, Media and Sport ([http://www.culture.gov.uk/alcohol\\_and\\_entertainment](http://www.culture.gov.uk/alcohol_and_entertainment)) or from Bradford Metropolitan District Council (<http://www.bradford.gov.uk/council/licensing>), your local licensing authority.

# 11. Reviews

## THE REVIEW PROCESS

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.
- 11.2 At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.
- 11.3 In addition, a review of the licence will normally follow any action by the police to close down the premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a notice of magistrates' court's determination sent to the licensing authority.
- 11.4 Licensing authorities may not initiate their own reviews of premises licences. Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may however request reviews on any matter which relates to the promotion of one or more of the licensing objectives.
- 11.5 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.
- 11.6 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.
- 11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.
- 11.8 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. A failure to respond to such warnings is expected to lead to a decision to request a review.
- 11.9 Where the request originates with an interested party – e.g. a local resident, residents' association, local business or trade association – the licensing authority must first consider whether the complaint made is relevant, vexatious, frivolous or repetitious.

11.10 Further information for interested parties about the review process is available in "Guidance for interested parties: applying for a review" which can be found on the DCMS website.

### REPETITIOUS REPRESENTATIONS

11.11 Relevance, vexation and frivolousness were dealt with in paragraphs 9.8 – 9.13 above. A repetitious representation is one that is identical or substantially similar to:

- a ground for review specified in an earlier application for review made in relation to the same premises licence which has already been determined; or
- representations considered by the licensing authority when the premises licence was first granted; or
- representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement;

and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.

11.12 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a second bite of the cherry following the failure of representations to persuade the licensing authority on earlier occasions. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, the Secretary of State recommends that more than one review originating from an interested party should not be permitted within a period of twelve months on similar grounds save in compelling circumstances or where it arises following a closure order.

11.13 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one request for a review of a premises within a 12 month period.

11.14 When a licensing authority receives a request for a review from a responsible authority or an interested party or in accordance with the closure procedures described in Part 8 of the 2003 Act, it must arrange a hearing. The arrangements for the hearing must follow the provisions set out by the Secretary of State in regulations. The details may be viewed on the DCMS website. The Secretary of State considers it particularly important that the premises licence holder is fully aware of the representations made in respect of the premises, any evidence supporting the representations and that they or their legal representatives have therefore been able to prepare a response.

### POWERS OF A LICENSING AUTHORITY ON THE DETERMINATION OF A REVIEW

11.15 The 2003 Act provides a range of powers for the licensing authority on determining a review that it may exercise where it considers them necessary for the promotion of the licensing objectives.

11.16 The licensing authority 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 addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing

objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.

11.17 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:

- to 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;
- to 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);
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

11.18 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response.

11.19 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.20 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives.

11.21 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 a necessary means of promoting the licensing objectives. 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 necessary and proportionate to the promotion of the licensing objectives.

## REVIEWS ARISING IN CONNECTION WITH CRIME

- 11.22 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 or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.
- 11.23 Where the licensing authority is conducting a review on the ground 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 licensee 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 necessary 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 holder of the premises licence.
- 11.24 As explained above, it is not the role of a licensing authority to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. 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. As stated above, at the conclusion of a review, it will be for the licensing authority to determine on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing objectives in respect of the licence in question, regardless of any subsequent judgment in the courts about the behaviour of individuals.
- 11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of Class A drugs 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 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 unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

11.26 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. We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

11.27 It should be noted that it is unlawful to discriminate or to refuse service on grounds of race or by displaying racially discriminatory signs on the premises. Representations made about such activity from responsible authorities or interested parties would be relevant to the promotion of the crime prevention objective and justifiably give rise to a review.

## REVIEW OF A PREMISES LICENCE FOLLOWING CLOSURE ORDER

11.28 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review: The determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within 10 working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than 5 working days before the first hearing day. There must be five clear working days between the giving of the notice and the start of the hearing.