

## Report of the Assistant Director Environmental & Regulatory Services to the meeting of the Bradford Area Licensing Panel to be held on 21 May 2012.

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### Subject:

Application for a Review of a Premises Licence for K & H News & Off Licence, 122C Morley Street, Bradford.

### Summary statement:

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

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John Major  
Assistant Director  
Environmental & Regulatory Services

**Portfolio:**  
**Environment & Waste Management**

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**Overview & Scrutiny Area:**  
**Environment & Waste Management**  
**Safer & Stronger Communities**



INVESTORS  
IN PEOPLE



2009-2010  
Positive engagement  
of older people  
2006-2007  
Improving Rural Services:  
Empowering Communities



**1. SUMMARY**

The application is for the review of a Premises Licence authorising the sale of alcohol for consumption off the premises.

**2. BACKGROUND**

**2.1 Premises Licence holder**

Khodadad Hassani.

**2.3 Designated Premises Supervisor**

Khodadad Hassani.

**2.2 The Premises**

K & H News & Off Licence, 122C Morley Street, Bradford.

A copy of the Licence is attached at Appendix 1.

**3. Application Received asking for a Review of the Licence**

**3.1 Responsible Authority**

West Yorkshire Police have submitted an application for review of the licence, following two underage sales of alcohol made within a three month period.

The application for review and supporting documents are attached at Appendix 2.

**4. Representations**

None

**5. OVERVIEW AND SCRUTINY COMMITTEE CONSIDERATION**

Not applicable.

**6. OTHER CONSIDERATIONS**

**Legal Appraisal**

6.1 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

- 6.2 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 11.1 to 11.15 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 3.

- 6.3 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.
- 6.4 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.
- 6.5 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.

## **7. Statement of Policy Issues**

- 7.1 The following parts of the Licensing Policy are of particular importance; Part 4 (prevention of Crime & Disorder) and Part 7 (protection of Children from Harm).
- 7.2 The Annexes to the Policy sets out various types of model condition that could be considered.

## **8. OPTIONS**

- 8.1 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.
- 8.2 Should the applicant 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.

**9. FINANCIAL & RESOURCE APPRAISAL**

There are no apparent finance or resource implications.

**10. RISK MANAGEMENT**

There are no apparent risk management implications.

**11. LEGAL APPRAISAL**

Referred to in part 6 of this report.

**12. OTHER IMPLICATIONS**

**12.1 EQUAL RIGHTS**

There are no apparent equal rights implications.

**12.2 SUSTAINABILITY IMPLICATIONS**

There are no apparent sustainability implications.

**12.3 GREENHOUSE GAS EMISSIONS IMPACTS**

There are no apparent sustainability implications.

**12.4 COMMUNITY SAFETY IMPLICATIONS**

When determining the application the Licensing Authority is required to pay due regard to the licensing objectives referred to in 6.1 of this report.

**12.5 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.

**12.6 TRADE UNION**

Not applicable

**12.7 WARD IMPLICATIONS**

Ward Councillors have been notified of receipt of the application.

**13. NOT FOR PUBLICATION DOCUMENTS**

None.

**14 RECOMMENDATIONS**

Members are invited to consider the information and documents referred to in this report and, after hearing interested parties, determine the related application(s).

**15. APPENDICES**

1. Premises Licence
2. Application for review received 13 April 2012. *To protect the identity of individuals witness statements have been removed from this appendix.*
3. Extract from the Government Guidance.

**13. BACKGROUND DOCUMENTS**

Application form, plan etc.

Licensing Act 2003  
Premises Licence

**BD/PRA1224**

Date Issued: 13/09/2011

## Part 1 - Premises Details

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

#### **K&H News and Off-Licence**

122 C Morley Street, Bradford, West Yorkshire, BD7 1BB.

Telephone 01274 737776

### 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 AUTHORISES 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	6:00am	Midnight
	Sunday	7:00am	Midnight

### 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

## Part 2

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

Khodadad Hassani

122c Morley Street, Bradford, West Yorkshire, BD7 1BB.  
Telephone 07908107888

### 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 AUTHORISES THE SUPPLY OF ALCOHOL

Khodadad HASSANI

122c Morley Street, Bradford, West Yorkshire, BD7 1BB.  
Telephone 07908107888

### 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/PER2293

Issued by Bradford

## Licensing Act 2003 Premises Licence

**BD/PRA1224**

Date Issued: 13/09/2011

### 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.
3. (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.  
  
(2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

#### Annex 2 - Conditions Consistent with Operating Schedule

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

None

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

4. All existing external and internal security lighting shall be maintained in good working order and used, where appropriate, at all times the premises remain open to the public.

##### **Public Safety:**

5. The emergency lighting at the premises shall be maintained in good working order.

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

6. The Licensee shall ensure that the external areas of the premises are kept clear of litter and refuse.
7. All outward opening exit doors and all windows are to be kept closed when licensable activities are taking place.

##### **The Protection of Children from Harm:**

8. The Licensee shall enforce an effective recognised "proof of age policy" at all times and ensure appropriate staff training in its operation.

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

Not Applicable.

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Licensing Act 2003  
**Premises Licence**

**BD/PRA1224**

Date Issued: 13/09/2011

ANNEXES continued ...



## Licensing Act 2003 Premises Licence Summary

**BD/PRA1224**  
Date Issued: 13/09/2011

### Premises Details

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

### K&H News and Off-Licence

122 C Morley Street, Bradford, West Yorkshire, BD7 1BB.

Telephone 01274 737776

#### 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 AUTHORISES 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	6:00am	Midnight
	Sunday	7:00am	Midnight

#### 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

Khodadad Hassani

122c Morley Street, Bradford, West Yorkshire, BD7 1BB.

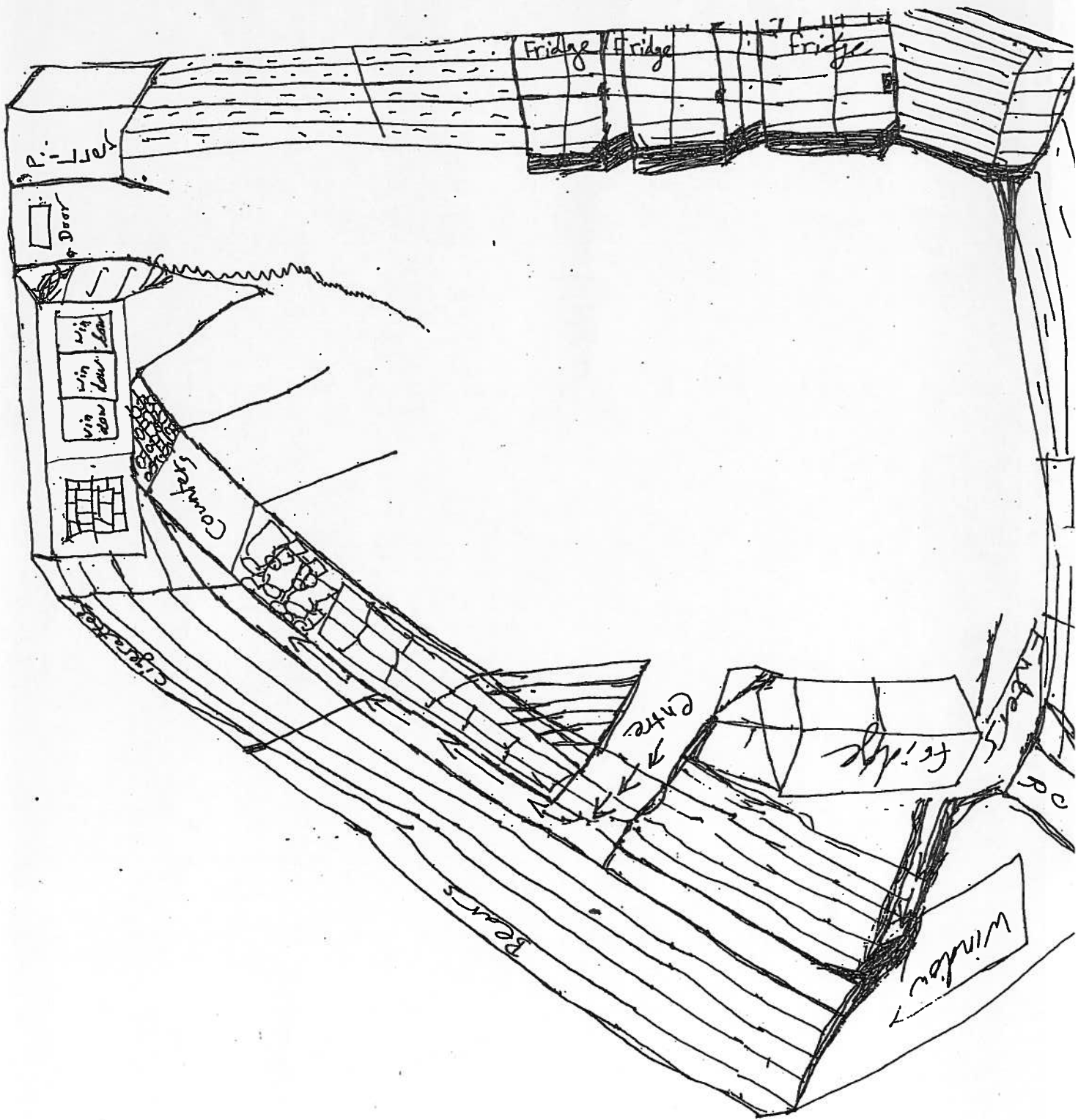
#### REGISTERED NUMBER OF HOLDER, FOR EXAMPLE COMPANY NUMBER, CHARITY NUMBER (WHERE APPLICABLE)

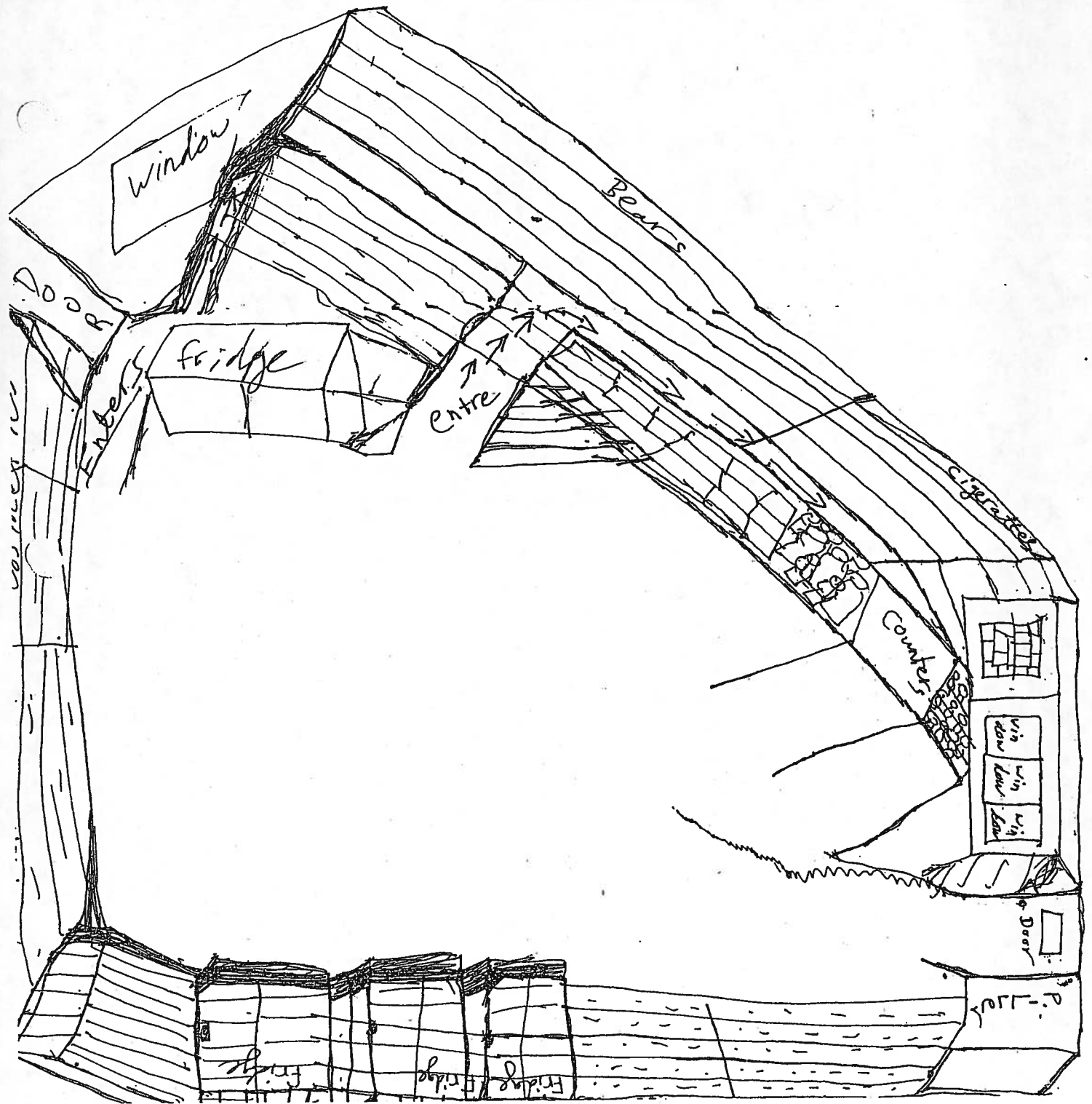
#### NAME OF DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES THE SUPPLY OF ALCOHOL

Khodadad HASSANI

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

No restrictions







**APPLICATION FOR THE 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 that 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, (insert name of applicant) **West Yorkshire Police**

- **Apply for the review of a Premises Licence under Section 51**
- **Apply for the review of a Club Premises Certificate under Section 87 of the Licensing Act 2003 for the premises described in Part 1 below**

**Part 1 – Premises or Club Premises details**

Postal address of premises or, if none, Ordnance Survey map reference or description:

**K & H News and Off Licence – 122c MORLEY STREET, CITY CENTRE**

Town/City: **Bradford**

Postcode: **BD7 1BB**

Name of premises licence holder or club holding club premises certificate (if known):

**Mr Khodadad HASSANI**

Number of premises licence or club premises certificate (if known): **BD/PRA1224**

**Part 2 – Applicant details**

Please 'check' appropriate box(es)

I am:

- An interested party (please complete A or B below)
  - a person living in the vicinity of the premises
  - a body representing persons living in the vicinity of the premises
  - a person involved in business in the vicinity of the premises
  - a body representing persons involved in business in the vicinity of the premises
- A responsible authority (please complete C below)
- A member of the club to which this application relates (please complete A below)

**A – Details of individual applicant**

Surname:

Forename(s):

I am 18 years old or over:

Current postal address if different from premises address:

Town/City:

Postcode:

Daytime contact telephone number:

E-mail address (optional):

**B – Details of other applicant**

Surname:

Forename(s):

Address:

Town/City:

Postcode:

Daytime contact telephone number:

E-mail address (optional):

**C – Details of responsible authority applicant**

Mrs

Police officer

Surname:

Dawson

Forename(s):

Susanne

Address:

Bradford South Police Licensing Department

Trafalgar House, Nelson Street

Town/City:

Bradford

Postcode:

BD5 0DX

Daytime contact telephone number:

01274 376695

E-mail address (optional):

bradford.licensing@West Yorkshire Police

This application to review relates to the following licensing objective(s): (Please 'check' one or more boxes)

(a) The prevention of crime and disorder



(b) Public Safety



(c) The prevention of public nuisance



(d) The protection of children from harm



State the ground(s) for review (please read Guidance note 1):

These premises have the benefit of a Premises Licence which authorises the sale by retail of alcohol for consumption OFF the premises between the following hours:-

Monday to Saturday

06:00am until Midnight

Sunday

07:00 am until Midnight

The original Licence was issued on 6<sup>th</sup> August 2010.

At this time the Police did not have any grounds to object to the licence being issued however a number of conditions were placed onto the licence under

1. The Prevention of Crime and Disorder:-
2. Public Safety
3. Prevention of Public Nuisance
4. Protection of Children from Harm
- a) The licensee shall enforce an effective recognised proof of age policy at all times and ensure appropriate staff training in its operation.

Within the Bradford South Division there is an on going Test Purchase Operation, where a number of premises which have been highlighted by Intelligence from officers or by Crime Stoppers that there may be the possibility of under age sales taking place, are visited.

The premises subject to this review were visited and test purchased were initiated and the details are as follows:-

At approximately 7:25pm on Friday 21<sup>st</sup> October 2011 a sale was made of alcohol namely one (1) bottle of Blue WKD to a 16 year old female Test Purchaser.

As a result that member of staff was issued with a £80:00 Penalty Notice which was subsequently paid.

On Saturday 22<sup>nd</sup> October 2011 at approximately 10:30am I again attended at the premises to speak with the member of staff that had issued the Fixed Penalty Notice at this time the DPS and Premises Licence Holder Khodadad HASSANI was also present and he was informed by me that he had failed test purchase the previous evening, he agreed that his member of staff had informed him.

I also reminded him that further visits would be made at his premises for the sale of alcohol to under age.

At approximately 6:55pm Friday 18<sup>th</sup> November 2011 the premises were visited again under the Test Purchase Operation and at this time a sale of alcohol namely Four (4) tins of Red Stripe was made to a 16 year old male Test Purchaser.

The member of staff who made the sale was the same who had sold on Friday 21<sup>st</sup> October 2011 and again issued with a £80:00 Penalty Notice which was subsequently paid.

On this occasion the Designated Premises Supervisor was not present.

As a result the premises had failed TWO test purchases within a 3 month period but it must be noted that the 2 sales took place within a four (4) week period.

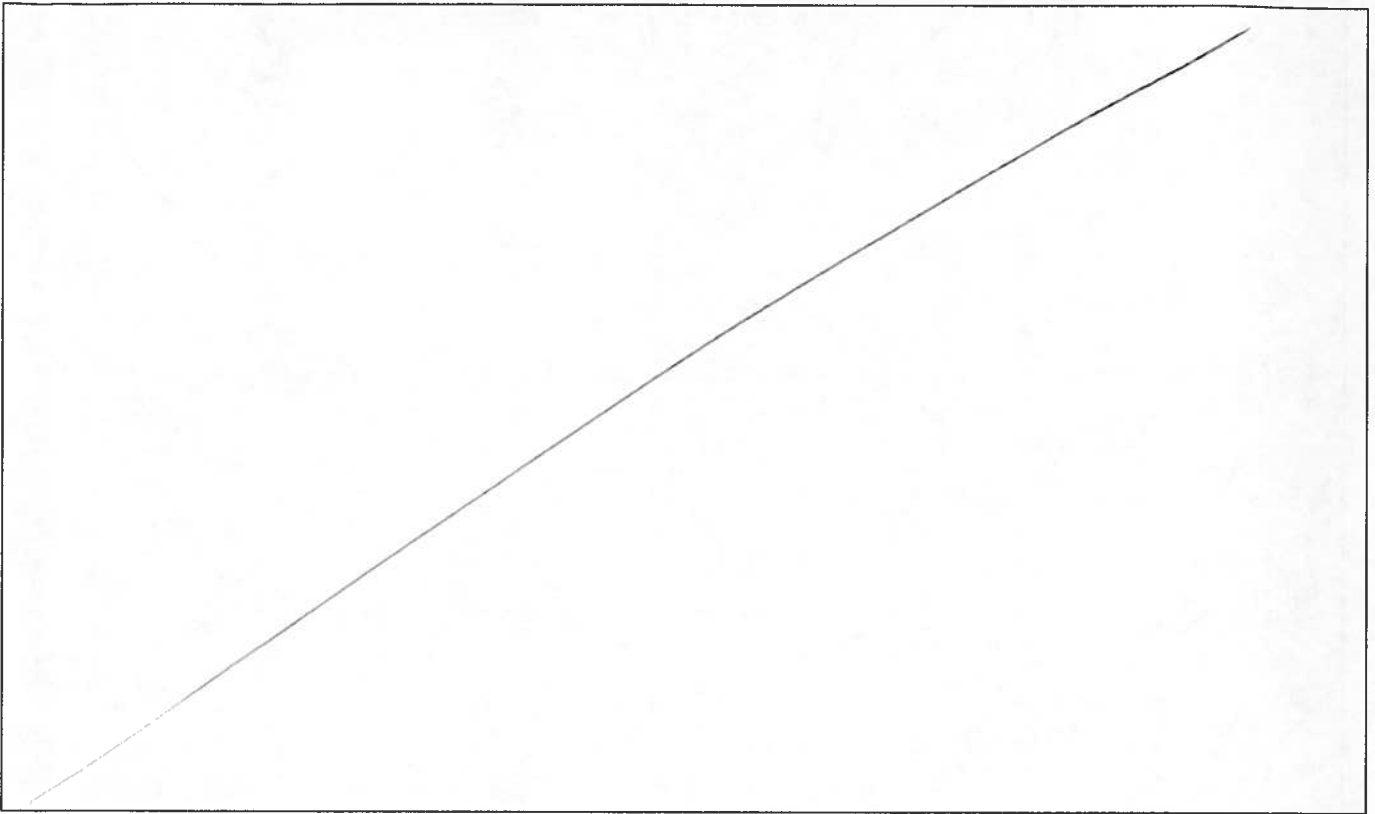
The Premises Licence Holder Khadadad HASSANI who is also the Designated Premises Supervisor was subsequently interviewed under caution regarding the two failures and reported for Summons for the Offence of Persistently Selling Alcohol.

There is currently an on going court case.

As a result the premises have failed TWO test purchases within a 3 month period but it must be noted that the 2 sales took place within a four (4) week period.

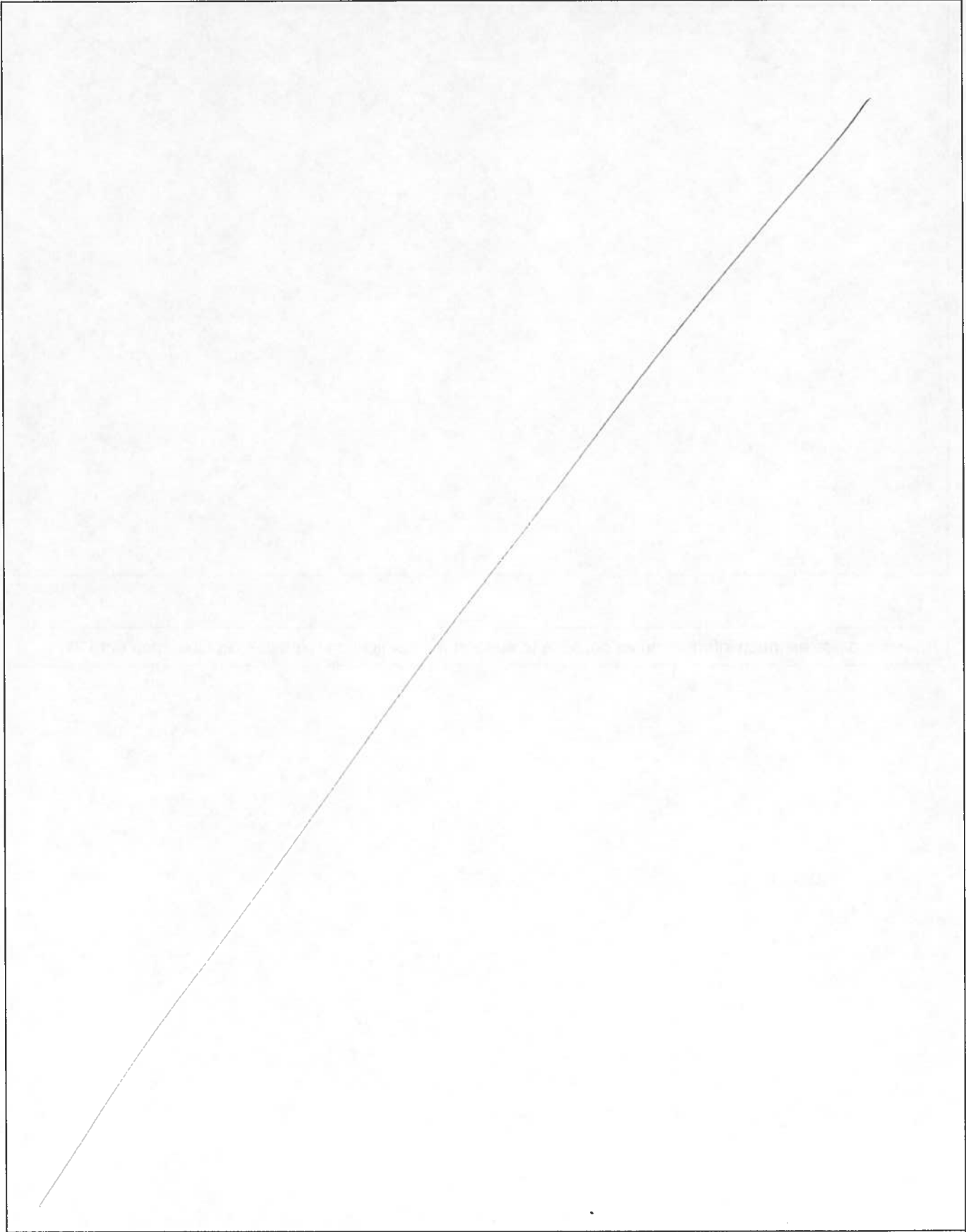
The sales subsequently have an impact on the Licensing Objectives in that alcohol is being made available to young person and children which subsequently impacts on the other Licensing Objectives.

It is therefore requested that the Premises Licence be reviewed by the Licensing Authority.



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





Have you made an application for review relating to this premises before? **NO**

If 'YES', please state the date of that application:

**RESTRICTED**

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

Please 'check' appropriate box(es)

- 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:..... PCALB ..... Date: 13/04/12 .....  
Capacity: licensing officer Bradford soult .....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read Guidance note 5):

Mr

Surname: Forename(s):

Address:

Town/City:

Postcode:

Telephone number (if any):

If you would prefer us to correspond with you using an e-mail address, please state 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.

**DELEGATION OF AUTHORITY**

*Under the Licensing Act 2003, West Yorkshire Police is a 'Responsible Authority' which enables the Chief Officer of Police to make representations and applications in order to promote the licensing objectives.*

*I am the Chief Constable of West Yorkshire Police.*

*For the avoidance of doubt, I can confirm that you are one of the Licensing Officers employed by West Yorkshire Police and as such, you and any of your successors, have my delegated authority to:*

*(a) Make any applications and/or representations under the Licensing Act 2003 to promote the licensing objectives, and/or*

*(b) Appear before the Magistrates Court on behalf of West Yorkshire Police to prosecute or defend any licensing proceedings. The Licensing Officers have my specific authority to do this under section 223 of the Local Government Act 1972.*

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**SIR NORMAN BETTISON**

**CHIEF CONSTABLE**

# 11. Reviews

## THE REVIEW PROCESS

- 11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.
- 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.
- 11.3 An application for review may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written application. The licensing authority may also agree in advance that the application need not be given in writing. However, these applications are outside the formal electronic application process and may not be submitted via Business Link or the licensing authority's electronic facility.
- 11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.
- 11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at a premises and wants to intervene early without waiting for representations from other parties. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.
- 11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this

separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

- 11.7 Any application for a review received by the licensing authority from responsible authorities and any other persons should be given due consideration and treated by the authority in precisely the same way, regardless of the body or individual which made it. This includes an application made by the local authority acting in a separate capacity (for example, environmental health or child protection).
- 11.8 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as 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.
- 11.9 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 13 of this Guidance.
- 11.10 Representations must be made 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. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.
- 11.11 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, responsible authorities and any other persons in pursuit of common aims. Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

11.12 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

### **REPETITIOUS GROUNDS OF REVIEW**

11.13 A repetitious ground 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 or certificate which has already been determined; or
- representations considered by the licensing authority when the premises licence or certificate was 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 grant.

11.14 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.

11.15 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.

11.16 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website ([www.legislation.gov.uk](http://www.legislation.gov.uk)). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

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

- 11.17 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.
- 11.18 The licensing authority may decide that the review does not require it to take any further steps appropriate 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 informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.
- 11.19 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 address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.
- 11.20 Where the licensing authority considers that action under its statutory powers is appropriate, 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.
- 11.21 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 that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

- 11.22 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.
- 11.23 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 that impact upon the licensing objectives.
- 11.24 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. 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. 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.

## **REVIEWS ARISING IN CONNECTION WITH CRIME**

- 11.25 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, 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 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.
- 11.26 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 beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.



11.27 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.

11.28 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.

11.29 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 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 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 of smuggled tobacco and alcohol.

11.30 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 Community Safety Partnership.

11.31 As noted below (Chapter 13, paragraph 13.59), it is unlawful to discriminate or to refuse service on grounds of race, disability, gender reassignment, pregnancy and maternity, religion and belief, sex and sexual orientation or by displaying discriminatory signs on the premises. Representations made about such activity from responsible authorities or other persons 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**

11.32 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).

#### **REVIEW OF A PREMISES LICENCE FOLLOWING PERSISTENT SALES OF ALCOHOL TO CHILDREN**

11.33 Where persistent sales of alcohol to children have occurred at premises, responsible authorities should consider applying for a review of the licence, whether there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this outcome is appropriate. Responsible authorities should consider taking steps to ensure that a review of the licence is routine in these circumstances.

# 12. Appeals

12.1 This chapter provides advice about entitlements to appeal in connection with various decisions made by a licensing authority under the provisions of the 2003 Act. Entitlements to appeal for parties aggrieved by decisions of the licensing authority are set out in Schedule 5 to the 2003 Act.

## GENERAL

- 12.2 With the exception of appeals in relation to closure orders, an appeal may be made to any magistrates' court in England or Wales but it is expected that applicants would bring an appeal in a magistrates' court in the area in which they or the premises are situated.
- 12.3 An appeal has to be commenced by the appellant giving of a notice of appeal to the designated officer for the magistrates' court within a period of 21 days beginning with the day on which the appellant was notified by the licensing authority of the decision which is being appealed.
- 12.4 The licensing authority will always be a respondent to the appeal, but in cases where a favourable decision has been made for an applicant, licence holder, club or premises user against the representations of a responsible authority or any other person, or the objections of the chief officer of police or local authority exercising environmental health functions, the holder of the premises or personal licence or club premises certificate or the person who gave an interim authority notice or the premises user will also be a respondent to the appeal, and the person who made the relevant representation or gave the objection will be the appellants.
- 12.5 Where an appeal has been made against a decision of the licensing authority, the licensing authority will in all cases be the respondent to the appeal and may call as a witness a responsible authority or any other person who made representations against the application, if it chooses to do so. For this reason, the licensing authority should consider keeping responsible authorities and others informed of developments in relation to appeals to allow them to consider their position. Provided the court considers it appropriate, the licensing authority may also call as witnesses any individual or body that they feel might assist their response to an appeal.
- 12.6 The court, on hearing any appeal, may review the merits of the decision on the facts and consider points of law or address both.
- 12.7 On determining an appeal, the court may:
- dismiss the appeal;
  - substitute for the decision appealed against any other decision which could have been made by the licensing authority; or
  - remit the case to the licensing authority to dispose of it in accordance with the direction of the court and make such order as to costs as it thinks fit.

## **LICENSING POLICY STATEMENTS AND SECTION 182 GUIDANCE**

- 12.8 In hearing an appeal against any decision made by a licensing authority, the magistrates' court will have regard to that licensing authority's statement of licensing policy and this Guidance. However, the court would be entitled to depart from either the statement of licensing policy or this Guidance if it considered it was justified to do so because of the individual circumstances of any case. In other words, while the court will normally consider the matter as if it were "standing in the shoes" of the licensing authority, it would be entitled to find that the licensing authority should have departed from its own policy or the Guidance because the particular circumstances would have justified such a decision.
- 12.9 In addition, the court is entitled to disregard any part of a licensing policy statement or this Guidance that it holds to be ultra vires the 2003 Act and therefore unlawful. The normal course for challenging a statement of licensing policy or this Guidance should be by way of judicial review, but where it is submitted to an appellate court that a statement of policy is itself ultra vires the 2003 Act and this has a direct bearing on the case before it, it would be inappropriate for the court, on accepting such a submission, to compound the original error by relying on that part of the statement of licensing policy affected.

## **GIVING REASONS FOR DECISIONS**

- 12.10 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.

## **IMPLEMENTING THE DETERMINATION OF THE MAGISTRATES' COURTS**

- 12.11 As soon as the decision of the magistrates' court has been promulgated, licensing authorities should implement it without delay. Any attempt to delay implementation will only bring the appeal system into disrepute. Standing orders should therefore be in place that on receipt of the decision, appropriate action should be taken immediately unless ordered by the magistrates' court or a higher court to suspend such action (for example, as a result of an on-going judicial review). Except in the case of closure orders, the 2003 Act does not provide for a further appeal against the decision of the magistrates' courts and normal rules of challenging decisions of magistrates' courts will apply.

## **PROVISIONAL STATEMENTS**

12.12 To avoid confusion, it should be noted that a right of appeal only exists in respect of the terms of a provisional statement that is issued rather than one that is refused. This is because the 2003 Act does not empower a licensing authority to refuse to issue a provisional statement. After receiving and considering relevant representations, the licensing authority may only indicate, as part of the statement, that it would consider certain steps to be appropriate for the promotion of the licensing objectives when, and if, an application were made for a premises licence following the issuing of the provisional statement. Accordingly, the applicant or any person who has made relevant representations may appeal against the terms of the statement issued.