

Report No.
ES 20022

London Borough of Bromley

PART ONE - PUBLIC

Decision Maker: LICENSING SUB-COMMITTEE

Date: WEDNESDAY 24th JUNE 2020

Decision Type: Non-Urgent Non-Executive Non-Key

Title: APPLICATION FOR THE REVIEW OF PREMISES LICENCE AT SHAMPAN 4 THE SPINNING WHEEL GRAYS ROAD WESTERHAM TN16 2HX

Contact Officer: Steve Phillips, Head of Health Safety and Licensing
Tel: 020 8313 4659 E-mail: steve.phillips@bromley.gov.uk

Chief Officer: Colin Brand Director of Environment and Public Protection

Ward: Darwin

1. Reason for report

- 1.1 To provide the Licensing Sub-Committee with information supporting them to determine this review of a licence application.
-

2. RECOMMENDATIONS

- 2.1 The Licensing Sub-Committee asked to determine this application having taken into account the Council's Statement of Licensing Policy 2016 to 2021 and written and oral representations by the applicant and objectors.

Members can

1. Modify the conditions of the licence
2. To exclude a licensable activity from the scope of the licence.
3. To remove the Designated Premises Supervisor
4. To suspend the licence for a period not exceeding three months
5. To revoke the licence

Impact on Vulnerable Adults and Children

1. Summary of Impact:

When making decisions under the Licensing Act 2003 the Council is required to promote the licensing objectives, one of which is the protection of children from harm.

Corporate Policy

1. Policy Status: Existing Policy:

The Council has adopted a statement of its licensing policy under the Licensing Act 2003 for the period 2016 to 2021.

2. BBB Priority: Children and Young People Excellent Council Quality Environment Safe Bromley Vibrant, Thriving Town Centres Healthy Bromley Regeneration

Financial

1. Cost of proposal: Licensing statutes allow for an appeal to the Magistrates Court against the Council's decision. Should an appeal be made, costs are likely to be incurred but it is not possible to quantify these.
 2. Ongoing costs: Non-Recurring Cost
 3. Budget head/performance centre: Public Protection and Portfolio
 4. Total current budget for this head: £2.4 m
 5. Source of funding: Revenue Budget 2020/2021
-

Personnel

1. Number of staff (current and additional): 2 Licensing Officers supported by 4.5 FTE admin
 2. If from existing staff resources, number of staff hours: N/A
-

Legal

1. Legal Requirement: Statutory Requirement: The Council is the Licensing Authority for the Licensing Act 2003. This is a Non-Executive function and is delegated to the General Purposes and Licensing Committee. Where representations are received about a licence application, it is referred to the Licensing Sub Committee for a hearing and decision.
 2. Call-in: Not Applicable:
-

Procurement

1. Summary of Procurement Implications: Not applicable
-

Customer Impact

1. When considering and making a determination on this application Members need to balance the benefits of holding the licence against any adverse effects to the Public, Local Residents and Businesses by considering its impact against the licensing objectives

Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes. Ward Members were notified about the application by e-mail on 19th March 2020
2. Summary of Ward Councillors' comments: No Councillors responded to this application

Responsible Authorities Views

The following Responsible Authorities were notified about this application and their views sought

Responsible Authority	Date Notified	Comments (further details in Appendix 3)
Metropolitan Police	19 th March 2020	No Response
Planning Authority	19 th March 2020	No Response
Trading Standards Service	19 th March 2020	No Response
Public Health Nuisance Team	19 th March 2020	See Report
Health & Safety Team	19 th March 2020	See Report
Child Protection Team	19 th March 2020	No Response
Immigration (Home Office)	19 th March 2020	See Report
Fire Authority	19 th March 2020	No Response
Public Health	19 th March 2020	No Response

3. COMMENTARY**3.1. Licensing Act 2003.**

The Licensing Act 2003 states that any premises require a licence/certificate issued by the Council (premises licence/club premises certificate) where the following activities occur:-

Provision of regulated entertainment

- a) Plays. (Where the audience exceeds 500 people)
- b) Films.
- c) Indoor sporting events. (Where the audience exceeds 1000 people)
- d) Boxing or wrestling entertainment.
- e) Live music. (subject to the Live Music Act 2013 exemptions)
- f) Recorded music.
- g) Performances of dance. (Where the audience exceeds 500 people)

Provision of late night refreshment (between 2300hrs and 0500hrs).

Supply of alcohol (on and off sales).

The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

The sale by retail of alcohol by or on behalf of a club to a guest of a member of the club for consumption on the premises where the sale takes place.

Licences/Certificates may be issued subject to any terms, conditions or restrictions the Council feels are appropriate to address any or all of the four licensing objectives.

The Council has previously agreed Bromley's Statement of Licensing Policy for the Period 2016 – 2021.

The Licensing Sub-Committee must consider the Statement of Licensing Policy and any Special Policy of Cumulative Impact currently in force when making any decisions in respect of these applications.

Members' attention is drawn to the following parts of the policy which are relevant to this application

Guidance adopted by members on Review Applications found in appendix 5

Description of the Premises

The premise sits on the Junction of Grays Road and Buckhurst Road (see photos in appendix 5) . It comprises of a large corner plot with several interconnecting buildings. The premise has operated since the commencement of the Licensing Act 2003 initially under the name "The Spinning Wheel" but since 2010 it has been Shampán 4. The current premises licence shown in appendix 2.

Licensing History

The premises have been relatively problem and complaint free since 2015, however, there is always a series of complaints which occur when the premises have external Temporary Events on New Year 's Eve each year. When they have external marquees and extended operating hours.

The current licence is shown at Appendix 2.

Details of the Application

To review the premises licence following a joint operation undertaken by the Home Office Immigration Compliance Team, Housing Enforcement Team, Health and Safety Team and the Licensing Authority. The operation was in response to intelligence provided to and by the Home Office Immigration Team.

A copy of the full application is set out Appendix 1

Supporting Witness Statement from Jean Bywater Health and Safety and Jenny Dickeman Public Health and Residential Team and Photographs from two site visits on 13th and 19th March 2020 contained in appendix 3

Extract from guidance from the Home Office on the Licensing Act 2003 at appendix 4

Representations

During the public consultation period the Licensing Authority received no additional representations.

IMPACT ON VULNERABLE ADULTS AND CHILDREN

- 4.1 Licensing regimes provide for additional controls through specific permissions to undertake activities. Both the Licensing Act 2003 and Gambling Act 2005 contain licensing objectives which seek to protect particular vulnerable groups. In the case of the Licensing Act 2003 it seeks to protect children from harm whereas the licensing objectives under the Gambling Act 2005 are wider and seek to protect children and vulnerable adults from being harmed or exploited.
- 4.2 Businesses and the Council are required to promote these objectives in the way they operate or make decisions.
- 4.3 Details of applications under both Acts are referred to the appropriate safeguarding teams for comment. None were received in this instance

4. POLICY IMPLICATIONS

- 5.1 Both the Licensing Act 2003 and the Gambling Act 2005 require the Council to prepare, consult on and publish statements of their licensing policy. These must be reviewed at least every 5 years under the Licensing Act and 3 years under the Gambling Act.
- 5.2 Members should make decisions in accordance with these policies but are free to depart from them with good reason.
- 5.3 The current policies are -
 - Statement of Licensing Policy 2016 – 2021
http://www.bromley.gov.uk/downloads/file/226/statement_of_licensing_policy_2016-2021
 - Statement of Gambling Policy 2016-2019
http://www.bromley.gov.uk/downloads/file/325/gambling_policy

5. FINANCIAL & LEGAL IMPLICATIONS

- 6.1 There are rights of appeal to the Magistrates Court against the decision of the Sub-Committee under both the Licensing and Gambling Acts. If an appeal were to be lodged there are costs associated with defending it. These are difficult to quantify and the Courts can award costs. In the event of a successful appeal we could pay the costs of the appellant as well as our own. Equally if we successfully defended an appeal, it is open to the Court to order our costs to be paid by the appellant.
- 6.2 Parties involved in a hearing before a Sub-Committee can also seek a Judicial Review if the Local Authority has failed to administer the hearing in accordance with proper procedures.
- 6.3 The Council has adopted a procedure for the conduct of hearings.

Non-Applicable Sections:	Personnel and Procurement implications
Background Documents: (Access via Contact Officer)	Soft File Computer based records

Appendix 1

Application Form

London Borough of Bromley

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 Stephen Phillips

apply for the review of a premises licence under section 51 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 Shampan 4 The Spinning Wheel Grays Road Westerham	
Post town Bromley	Post code TN16 2HX

Name of premises licence holder or club holding club premises certificate Mr Sufian Miah Of Sara Villa 67 Canadian Avenue London SE6 3AX
--

Number of premises licence or club premises certificate (if known) 10/00593/LAPRE

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates
(please complete (A) below)

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

Please tick ✓ yes

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

Surname

PHILLIPS

First names

STEPHEN

I am 18 years old or over

Please tick ✓ yes

Current postal address if different from premises address

Health Safety and Licensing Team
Bromley Civic Centre
Stockwell Close

Post town

Bromley

Post Code

BR1 3UH

Daytime contact telephone number

0208 313 4218

E-mail address (optional)

Steve.phillips@bromley.gov.uk

(B) DETAILS OF OTHER APPLICANT

Name and address N/A
Telephone number (if any)
E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Licensing Team London Borough of Bromley Civic Centre Bromley BR1 3UH
Telephone number (if any) 0208 313 4218
E-mail address (optional) Licensing@bromley.gov.uk

This application to review relates to the following licensing objective(s)

- Please tick one or more boxes ✓
- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 2)

This application for a review is placed following a Joint Licensing, Immigration, Housing and Police operation which was undertaken on Friday 13th March 2020.

The operation targeted the Premises "Shampan 4" formally the Spinning Wheel on Grays Road Westerham TN16 2HX.

The premises are a large restaurant that sits on a corner plot at the edge of Bromley borough with its borders with Tandridge DC. See the photos and plan in appendix to this report.

The premises currently holds a premises licence issued by the London Borough of Bromley and it was under the powers confirmed within the Licensing Act 2003 section 179 that the operation was undertaken. Copy of the exiting Licence is attached as an appendix to this report.

During the operation it was clear that the following Licensing Objectives we being compromised.

Crime and Disorder.
Public Safety.

The operation was targeted on information supplied by the South East Immigration Team a redacted version is shown below:

Shampan is a restaurant and xxxxxxx has worked at the restaurant and lived above it on the first floor.

The first floor is accessible via a side door, not via the main entrance to the restaurant (unless you make your way through via the kitchens). xxxxxxx has a bed in a room with three other people. The room is last room on the right (room 6 - second bedroom after the two bathrooms). xxxxxx bed is the one under the window along the back of the room.

There are at least seven bedrooms on the first floor. Each bedroom contains up to four beds, most of which appear to be used as permanent living spaces. Occupants at location appear to all be foreign nationals. All occupants are male.

When staff in the restaurant were asked if people live at the location and if there are bedrooms at the restaurant, they state there is nobody living at the restaurant and that there are few rooms where staff "rest during their one-two hour breaks".

*It is clear that a large number of people are living full time at the location.
A supplementary intel report dated 02/03/2020 further states:*

A male was arrested on 29/01/2020, on suspicion of attempting to defraud multiple persons. The male was carrying a photocopied Spanish ID card and gave his details as xxxxxxxxx. He later gave his true identity as xxxxxxxxxx is believed to have obtained an xxxx document by fraud.

xxxxxx was found to be an overstayer as his family visit visa had expired in April 2012 and he had failed to make any further applications. xxxxxx has no right to work in the UK however, is working at Shampan at the Spinning Wheel Grays Road Westerham Kent TN16 2HX. He lives in the 1st floor accommodation above the restaurant.

It is suspected that other offenders are living and working illegally at the restaurant.

xxxxxx is currently remanded at HMP xxxxxxx. Without attending the premises to speak to the staff members there it is not possible to corroborate the allegation that other staff members are working illegally. The South London tasking board have reviewed the available intelligence and are satisfied that an enforcement visit is a suitable and proportionate response to the above information.

During the operation the following information and evidence was obtained and is being pursued by the individual enforcement agencies. It is expected that full witness statements will be provided by each agency to support the evidence presented here in this application.

Immigration Officers arrested Three (3) individual for immigration offences, all were staff members and employees at Shampan 4.

The following is a direct statement from the Lead Immigration officer on the outcome of the operation:

On Friday 13th March at approximately 18:45 Immigration Officers conducted a pre-planned operation to Shampan At The Spinning Wheel, Grays Road, TN16 2HX acting on information they had received alleging that staff at this premises were working illegally in the UK. Also in attendance were officers from the Metropolitan Police and officers from the Bromley Council licensing and HMO teams.

During the course of their enquiries Immigration officers identified 4 staff members who they suspected of working illegally in the UK. Two who were not permitted to undertake employment and two were found to be undertaking employment in breach of their visa restrictions (students permitted to work 20 hours per week but found to be working in excess of these hours). Of the four staff members suspected of working illegally three were arrested and detained and one was granted immigration bail. As a result of identifying suspected illegal working the employer was issued with a Civil Penalty Referral Notice informing them of their potential liability to a fine of up to £20,000 per illegal worker.

Health and Safety and Licensing Officer Ms Jean Bywater established by personal interview with Mr Raju Gurung who identified himself as the on site manager that the Premises Licence Holder (Mr Sufian Miah) and the Designated Premises Supervisor (Mr Abdul Malik) were not present at the premises and no longer involved with the premises.

The following is a direct statement from Jean Bywater

At approximately 18.45 on Friday 13th March 2020 I attended an operation in conjunction with Immigration Officers and Police Officers at Shampan at The Spinning Wheel Grays Road Westerham TN16 2HX. I was accompanied by Miss Charlotte Hennessey and Miss Jenny Dickman, Officers from Environmental Protection. Upon entering the premises, Immigration Officers were interviewing several staff members. I approached a male who was standing behind the bar. I asked his name and he replied "Raju Gurung". He identified himself with his Personal Licence card, issued by L B Greenwich. I photographed the Personal Licence card. I asked him what his role was at the premises. He replied that he was the Acting Manager. I asked him where Sufian Miah was. He replied "He's at Chatterton Road. He is not here anymore". I asked him where Abdul Malik was. He replied ""He is not here since early 2019". I asked Mr Gurung if he operated a "Challenge 25" policy. He replied that he did. I asked him if he kept a log of every refusal to sell alcohol. He replied that he didn't have a log, or if there was one, he didn't know where it was kept. I thanked him for his co-operation and proceeded to inspect the premises. I proceeded through the bar and kitchen to the stairs to the first floor, where my colleagues and several Immigration Officers were carrying out their investigation. I observed no handrails on the stairs to the first floor. I observed that off the first floor corridor there were seven bedrooms, two shower rooms, a laundry room containing personal clothing and two storage cupboards which contained items associated with the business. I counted 25 bed spaces in the seven bedrooms. These were clearly occupied overnight with suitcases, wardrobes and drawers full of clothes and toiletries in every shower room. I took photographs of all rooms. In bedroom 2, I observed an ashtray full of cigarette ends and there was a strong smell of tobacco smoke. I descended the stairs and proceeded to the office at the rear

of the premises, where I began to examine documents pertaining to the Health & Safety Management system of the premises. The Fire Risk Assessment was dated 2011. The ventilation extraction system cleaning certificate (TR19) was dated October 2018 and Raju Gurung informed me that was the latest one. No thorough examination of the electrical installation could be located. (5 year periodic examination). The matters observed and these documents pertain to public safety at the licensed premises and gave rise for serious concern.

Environmental Protection & PRS Housing Manager Ms Charlotte Hennessy accompanied by EHO Ms Jenny Dickman inspected the premises in relation to it being an unlicensed "House in Multiple Occupation" The investigation revealed over 25 sleeping locations in several rooms on the first floor. The rooms appeared to be well below minimum standards for approved occupancy and the fire precautions and health provisions were dangerously compromised throughout the whole first floor area.

The following is a direct statement from Ms Charlotte Hennessy

Environmental Health Officers undertook a joint operation with Immigration Officers at the Shampan 4, The Spinning Wheel, Grays Road, TN16 2HX on Friday 13th March 2020. Immigration officers provided the Housing Enforcement Team with intelligence that a number of members of staff may be living in overcrowded accommodation above the restaurant premises. Officers from the Environmental Protection Team attended and upon inspection found 7 bedrooms with potential sleeping capacity for 25 persons on the first floor of the premises. It is an offence to operate a HMO with 5 or more people from more than one households without a license, further the property does not meet the London Borough of Bromley's Adopted Standards in relation to HMO's and lacks adequate fire precautions, posing a severe risk to the health and safety of all occupants.

Having mind to the current guidance (issued by the Home Office under Section 182 of the Licensing Act 2003(revision April 2018)), sub section 11.27 and 11.28 states the following:

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 employing a person who is disqualified from that work by reason of their immigration status in the UK;***
- *for unlawful gambling; and*
- *for the sale or storage of smuggled tobacco and alcohol.*

11.28 *It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) 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.*

In light of the above evidence and the current guidance it is clear that the premises are not being run in an appropriate manner with the unlicensed HMO and the employment of illegal immigrants the matters are very serious.

In placing this review consideration was given to the stepped approach normally undertaken when this type of action is being considered for licenced premises. However due to the serious nature of the multiple offences and in line with current guidance It was decided to go for an immediate review.

I would request that in line with the serious nature of the issues found at this premises I recommended that the Licensing Sub Committee seriously consider revocation as the appropriate response to these offences, However if the committee is not minded to exercise this power then a period of suspension and the addition of rigorous conditions should be the minimum level of response.

Please tick ✓ yes

Have you made an application for review relating to the premises before

If yes please state the date of that application

Day Month Year

<input type="checkbox"/>								
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If you have made representations before relating to the premises please state what they were and when you made them

N/A

Please tick ✓

yes

- 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 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature *SPhillips*

Date **17th March 2020**

Capacity **Head of Health Safety and Licensing**

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) Mr Steve Phillips Head of Health Safety and Licensing London Borough of Bromley Civic Centre Stockwell Close	
Post town Bromley	Post Code BR1 3UH
Telephone number (if any) 0208 313 4218	
If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) licensing @bromley.gov.uk	

Notes for Guidance

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

Appendix 2

Current Premise Licence

LICENSING ACT 2003

**Premises Licence
London Borough of Bromley**

Premises licence number

10/00593/LAPRE

Signed

Paul Lehane

Head of Food Safety, Occupational Safety and Licensing

Licence Granted 1st November 2010

Issue Number: **001**

This licence consists of **9** pages (Including Licence Summary)

Part 1 – Premises Details

Postal address of premises, or if none, ordnance survey map reference or description

Shampan 4
The Spinning Wheel
Grays Road
Westerham
TN16 2HX

Where the licence is time limited the dates

Not applicable.

Licensable activities authorised by the licence

Sale or Supply of Alcohol
Alcohol Off Sales
Late Night Refreshment
Live Music
Recorded Music
Performance of Dance
Provision of Facilities for Dancing

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Both On & Off Supplies

The opening hours of the premises

Hours Open to the Public on Every Day from 10:00 to 01:00

Non Standard Timings listed below are allowed in addition to the normal permitted hours of this licence:-

10 Days prior to Christmas Day and until New Years Eve inclusive 10:00 until 02:00

New Years Eve 10:00 until 02:30

The times the licence authorises the carrying out of licensable activities.

Sale or Supply of Alcohol on Every Day from 10:00 to 00:30

Alcohol Off Sales Timings Same as for Sale or Supply of Alcohol

Late Night Refreshment Timings Same as for Sale or Supply of Alcohol

Non Standard Timings listed below are allowed in addition to the normal permitted hours of this licence:-

Sale or Supply of Alcohol

Alcohol Off Sales

Late Night Refreshment

10 Days prior to Christmas Day and until New Years Eve inclusive 10:00 until 01:30

New Years Eve 10:00 until 02:00

Live Music on Every Day from 10:00 to 23:00

Recorded Music on Every Day from 10:00 to 23:00

Performance of Dance on Every Day from 10:00 to 23:00

Provision of Facilities for Dancing on Every Day from 10:00 to 23:00

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Mr Sufian Miah
of
Sara Villa
67 Canadian Avenue
London
SE6 3AX

Registered number of holder, for example company number, charity number (where applicable)

Not applicable.

Name, address and telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol

Full Name: Mr Abdul Malik
Address: 187 White Horse Hill Chislehurst BR7 6DH

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

DPS Licence Ref: 08/00774/LAPER issued by London Borough of Bromley

Mandatory Conditions

1. No sale of alcohol may be made under the premises licence at a time when there is no designated premises supervisor in respect of the premises licence or at a time when the designated premises supervisor does not hold a personal licence or his/her personal licence is suspended.
2. Every sale of alcohol under the premises licence must be authorised by a personal licence holder.

3. (1) The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic (other than any promotion or discount available to an individual in respect of alcohol for consumption at a table meal, as defined in section 159 of the Act);

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less;

(d) provision of free or discounted alcohol in relation to the viewing on the premises of a sporting event, where that provision is dependent on—

(i) the outcome of a race, competition or other event or process, or

(ii) the likelihood of anything occurring or not occurring;

(e) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.

4. The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

5. The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

6. (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.

7. The responsible person shall ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

(i) beer or cider: ½ pint;

(ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and

(iii) still wine in a glass: 125 ml; and

(b) customers are made aware of the availability of these measures.

Conditions consistent with the Operating Schedule

8. A “Challenge 25” scheme shall be implemented at the premises. This Scheme must be approved by the Council. No sale of age restricted products shall take place save in accordance with the scheme.

9. Where it is necessary to request proof of age it shall be proven by either the production of a passport, driving licence or Government-approved PASS (Proof of Age Standards Scheme) Accredited cards.

10. Entertainment may be provided by the reproduction of wireless (including television) broadcasts or of programmes included in any other service (within the meaning of the Broadcasting Act 1990)

or

Entertainment by way of music and singing only which is provided solely by the reproduction of recorded sound,

Both of which must be at a level that must not exceed background levels as determined by the licensing authority.

11. The incidental performance of live music. This is where it is incidental to another activity which itself is not entertainment or provision of entertainment facilities. The live music must be at a level that must not exceed background levels as determined by the licensing authority.

12. The premises must operate in accordance with the submitted application form and is subject to additional conditions as specified within, Part 3 (Operating Schedule) of the Form, held by the Licensing Authority.

Stamped Reference Number: 10/00593/LAPRE Dated: 1st November 2010

Conditions attached after a hearing by the Licensing Authority

13. No regulated entertainment to take place beyond 23:00 hours on any night

14. A fixed hard wire noise limiter shall be installed, then set by a representative of the Noise Pollution Team at Environmental Health

15. The garden / patio of the premises shall not be used after 23:00 hours on any night

16. No regulated entertainment to take place in the garden / patio area of the premises

17. All doors and windows are to be kept closed when regulated entertainment is taking place

18. Signs to be displayed on all exits requesting that the public should leave quietly

Plans

Held by the Licensing Authority Stamped Reference Number: 10/00593/LAPRE
Dated: 1st November 2010

LICENSING ACT 2003

Premises Licence Summary

Premises licence number

10/00593/LAPRE

Signed

Paul Lehane
Head of Food Safety, Occupational Safety and Licensing

Licence Granted 1st November 2010

Issue Number: **001**

This licence summary consists of **3** pages

Premises Details

Postal address of premises, or if none, ordnance survey map reference or description

Shampan 4
The Spinning Wheel
Grays Road
Westerham
TN16 2HX

Where the licence is time limited the dates

Not applicable.

Licensable activities authorised by the licence

Sale or Supply of Alcohol
Alcohol Off Sales
Late Night Refreshment
Live Music
Recorded Music
Performance of Dance
Provision of Facilities for Dancing

The opening hours of the premises

Hours Open to the Public on Every Day from 10:00 to 01:00

Non Standard Timings listed below are allowed in addition to the normal permitted hours of this licence:-

10 Days prior to Christmas Day and until New Years Eve inclusive 10:00 until 02:00

New Years Eve 10:00 until 02:30

Where the licence authorises supplies of alcohol whether these are on and/or off sales

Both On & Off Sales

The times the licence authorises the carrying out of licensable activities

Sale or Supply of Alcohol on Every Day from 10:00 to 00:30

Alcohol Off Sales Timings Same as for Sale or Supply of Alcohol

Late Night Refreshment Timings Same as for Sale or Supply of Alcohol

Non Standard Timings listed below are allowed in addition to the normal permitted hours of this licence:-

Sale or Supply of Alcohol

Alcohol Off Sales

Late Night Refreshment

10 Days prior to Christmas Day and until New Years Eve inclusive 10:00 until 01:30

New Years Eve 10:00 until 02:00

Live Music on Every Day from 10:00 to 23:00

Recorded Music on Every Day from 10:00 to 23:00

Performance of Dance on Every Day from 10:00 to 23:00

Provision of Facilities for Dancing on Every Day from 10:00 to 23:00

Name, (registered) address of holder of premises licence

Mr Sufian Miah
of
Sara Villa
67 Canadian Avenue
London
SE6 3AX

Registered number of holder, for example company number, charity number (where applicable)

Not applicable.

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol

Full Name: Mr Abdul Malik

State whether access to the premises by children is restricted or prohibited

Not applicable

Appendix 3

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Criminal Justice Act 2003, S.117)

STATEMENT OF: Jean Bywater

AGE OF WITNESS Over 18

This statement (consisting of 4 pages) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signed:  **Date:** ...24th March 2020.....

I am employed by London Borough of Bromley Public Protection Division as a Health & Safety and Licensing Inspector. I have been employed by L B Bromley for in excess of 28 years. I hold a BSc in Environmental Health awarded by Kings College London. In addition, I act as an Out of Hours Officer, undertaking investigations into complaints of statutory nuisance. I have carried out these duties, as an Out of Hours Officer, since 2002.

At approximately 18.45 on Friday 13th March 2020 I attended an operation in conjunction with Immigration Officers and Police Officers at Shampan at The Spinning Wheel Grays Road Westerham TN16 2HX. I was accompanied by Miss Charlotte Hennessey and Miss Jenny Dickman, Officers from Environmental Protection. Upon entering the premises, Immigration Officers were interviewing several staff members. I approached a male who was standing behind the bar. I asked his name and he replied "Raju Gurun". He identified himself with his Personal Licence card, issued by L B Greenwich. I photographed the Personal Licence card. I asked him what his role was at the premises. He replied that he was the Acting Manager. I asked him where Sufian Miah was. He replied "He's at Chatterton Road. He is not here anymore". I asked him where Abdul Malik was. He replied " "He is not here since early 2019". I asked Mr Gurun if he operated a "Challenge 25" policy. He replied that he did. I asked him if he kept a log of every refusal to sell alcohol. He replied that he didn't have a log, or if there was one, he didn't know where it was kept. I thanked him for his co-operation and proceeded to inspect the premises. I proceeded through the bar and kitchen to the stairs to the first floor, where my colleagues and several Immigration Officers were carrying out their investigation. I observed no handrails on the stairs to the first floor. I observed that off the first floor corridor there were seven bedrooms, two shower rooms, a laundry room containing personal clothing and two storage cupboards which contained items associated with the business. I counted 25 bed spaces in the seven bedrooms. These were clearly occupied overnight with suitcases, wardrobes and drawers full of clothes and toiletries in every shower room. I took photographs of all rooms. In bedroom 2, I observed an ashtray full of cigarette ends and there was a strong

smell of tobacco smoke. I descended the stairs and proceeded to the office at the rear of the premises, where I began to examine documents pertaining to the Health & Safety Management system of the premises. The Fire Risk Assessment was dated 2011. The ventilation extraction system cleaning certificate (TR19) was dated October 2018 and Raju Gurun informed me that was the latest one. No thorough examination of the electrical installation could be located. (5 year periodic examination). The matters observed and these documents pertain to public safety at the licensed premises and gave rise for serious concern. Raju Gurun informed me that the Company operating the restaurant was Spinning Wheel Restaurant Limited and the Director of the company was Mohammed Sadek Miah of 17 Essex House Giraud Street London E14 6LD.

On Monday 16th March I searched Companies House website for company information regarding Spinning Wheel Restaurant Limited. The search stated Spinning Wheel Restaurant Limited, company number 12158276 was incorporated on 15th August 2019. The Registered Office address being 114-116 Goodmayes Road Ilford Essex IG3 9UZ. Officers of the company were Mohammed Sadek Miah, Director. Resigned Director stated as Sufian Miah. I also searched Companies House for information regarding Shampan 4, which is the name the premises had been trading as according to Licensing and Food Safety records. The search stated Shampan 4 Limited, company number 07196748, Registered Office at Unit 2 Spinnaker Court 1c Becketts Place Hampton Wick Kingston Upon Thames KT1 4EG. Company status Liquidation. Accounts overdue. Last accounts made up to 31st December 2017. 1 insolvency case. Date of commencement of winding up 19th December 2019. Active Company Secretary Sufian Miah. Active Director Shipa Miah. Active Director Sufian Miah.

On Monday 16th March 2020 I consulted the Health & Safety Executive Enforcement Management Module (EMM), in order to establish the initial enforcement expectation to secure compliance with the law. The EMM indicated the risk gap was substantial against defined standards and stated the initial enforcement expectation was to serve Health & Safety at Work (etc) Act 1974 section 21 Improvement Notices to secure compliance in respect of the missing

handrails to the staircase, the lack of cleaning of the ventilation extraction system and ducting and the lack of thorough examination of the electrical installation. I drafted notices in respect of all three matters. On Tuesday 17th March I served Improvement notices reference numbers IJB219, IJB 221 and IJB 223 by recorded delivery post on Spinning Wheel Restaurant Limited at the company registered office, 114-116 Goodmayes Road Ilford Essex IG3 9UZ. I produce copies of these notices as exhibits SWJB01, SWJB02 and SWJB03 respectively. On Tuesday 17th March I served Improvement notices reference numbers IJB220, IJB222 and IJB 224 by first class post on Mohammed Sadek Miah at 17 Essex House Giraud Street London E14 6LD. I produce copies of these notices as exhibits SWJB04, SWJB05 and SWJB06 respectively. At 14.50 on Tuesday 17th March I posted copies of notices IJB219, IJB220, IJB221, IJB222, IJB223 and IJB224 in envelopes addressed to both recipients, by hand through the door at Shampan at The Spinning Wheel Grays Road Westerham TN16 2HX.

On Wednesday 18th March 2020, Mr Stephen Phillips, Head of Health & Safety and Licensing, London Borough of Bromley informed me that Sufian Miah had contacted him by telephone and informed Mr Phillips that he was still involved in the operation at Shampan at the Spinning Wheel Grays Road Westerham Kent TN16 2HX. On the basis of that information, I drafted and served Improvement Notices reference numbers IJB225, IJB226 and IJB227 by first class post on Sufian Miah at Sara Villa 67 Canadian Avenue London SE6 3AX. I produce copies of these notices as exhibits SWJB07, SWJB08 and SWJB09 respectively.

At 14.55 on Wednesday 18th March I posted copies of notices IJB225, IJB226 and IJB227 in envelopes addressed to both recipients, by hand through the door at Shampan at The Spinning Wheel Grays Road Westerham TN16 2HX.

The matters requiring the service of the Improvement Notices compromise the Licensing objective of Public Safety.

The ashtray full of cigarette ends and the smell of tobacco smoke in bedroom 2 are evidence that the occupant(s) were smoking in the premises, which is a workplace and must be “smokefree”. It is an offence to permit smoking in a smokefree place under Section 8 Health Act 2006. This offence leads only to prosecution. If found guilty of an offence, under this section, a fine of up to £2500 may be incurred. This matter compromises the Licensing objective of Crime and Disorder.

Signed: ... 

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Criminal Justice Act 2003, S.117)

STATEMENT OF: Jenny Dickman

AGE OF WITNESS (if over 18, enter "over 18"): Over 18

This statement (consisting of pages) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signed:  **Date:** 30th April 2020

1. I am an Environmental Protection Officer. I am employed by The London Borough of Bromley since October 2018, with five years' experience in a similar role. I hold a BSc (Hons) degree in Environmental Health from Cardiff Metropolitan University.
2. On Friday 13th March 2020, Charlotte Hennessy, Environmental Protection & PRS Housing Manager and Jean Bywater, Health and Safety Inspector and I attended Shampan @The Spinning Wheel restaurant, Grays Road, Westerham, TN16 2HX at the request of Immigration Officers. The Immigration Officers had intelligence that the staff may be residing at the premises on the first floor which is not classified for residential use.
3. When we arrived the restaurant was open and operating, Immigration went ahead with their operation and secured the building.
4. We then entered the premises, upon entering we were led through the kitchen and into a corridor which contained stairs leading to accommodation upstairs.
5. Upon approaching the top of the staircase, I was able to see a corridor the length of the building with a number of rooms.
6. Charlotte and I began our inspection. We walked the length of the corridor noting that each dormer in the corridor had shoe racks with a number of different types of footwear.
7. We entered the room at the end of the corridor this was labelled as Room 7. In the room a person was being questioned by Immigration Officers he was sat on a bed, which he had identified to officers as his own. The room contained 2 single beds, a wardrobe and a dresser. A fire exit door was located in the room leading to the external fire escape. At the

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Criminal Justice Act 2003, S.117)

CONTINUATION OF THE STATEMENT OF:

time the door was open and an immigration officer was stood on the escape. It was not possible to inspect the door or the external escape at this time.

8. We then entered Room 6. Room 6 contained a bunk bed, 2 single beds, a wardrobe and a hand wash basin. 1 occupier was present in the room with immigration officers. He was asked by Charlotte Hennessy how long he had lived at the property he replied 1 year. He was then asked if he paid rent, the reply was no. When asked who he would report repairs to he stated I wouldn't report there are no issues, when asked what he would do if there were issues, he replied he would tell the owner.
9. We then approached Room 5, this was locked, and we were informed by the occupier of Room 6 that this room belonged to the Executive Chef who was currently at work in the kitchen. An Immigration Officer went to find a person who had a key. A male then approached us and confirmed that he was the occupier of the room, he opened the room and let us go in, upon entering I could see the room had 1 bed, a wardrobe and a temporary heater. I asked the male how long he had lived at the property, he replied since 2011. He was then asked did he pay rent, the response, no. He was then asked who would he report any repairs too, he replied the owner. He then returned to work.
10. We then inspected Bathroom 1 and 2 which are adjacent to each other, both of which had signs stating 'out of order' please use other available bathrooms. The bathrooms shared a window, and each contained a WC, Handwash Basin, and Shower.
11. We moved onto Room 4. Room 4 contained a single bed, a bunk bed and a handwash basin.
12. We moved onto Room 3, this contained 2 single beds, a bunkbed, and a handwash basin.
13. We then entered Room 2. It appeared to have once been a self-contained unit with a Kitchen and Ensuite. The room contained 2 bunkbeds and a single bed, a number of wardrobes. The kitchen contained work surfaces, a standalone cooker, cupboards and a sink. It was being used to store footwear and as a drying room for clothes. The bathroom contained a WC, handwash basin and shower.
14. We then proceeded to Room 1, which contained an Ensuite. The room had 2 double beds,

Signed:

Page No. 2 of 3

STATEMENT OF WITNESS

(Criminal Procedure Rules, r. 16.2; Criminal Justice Act 1967, s. 9; Criminal Justice Act 2003, S.117)

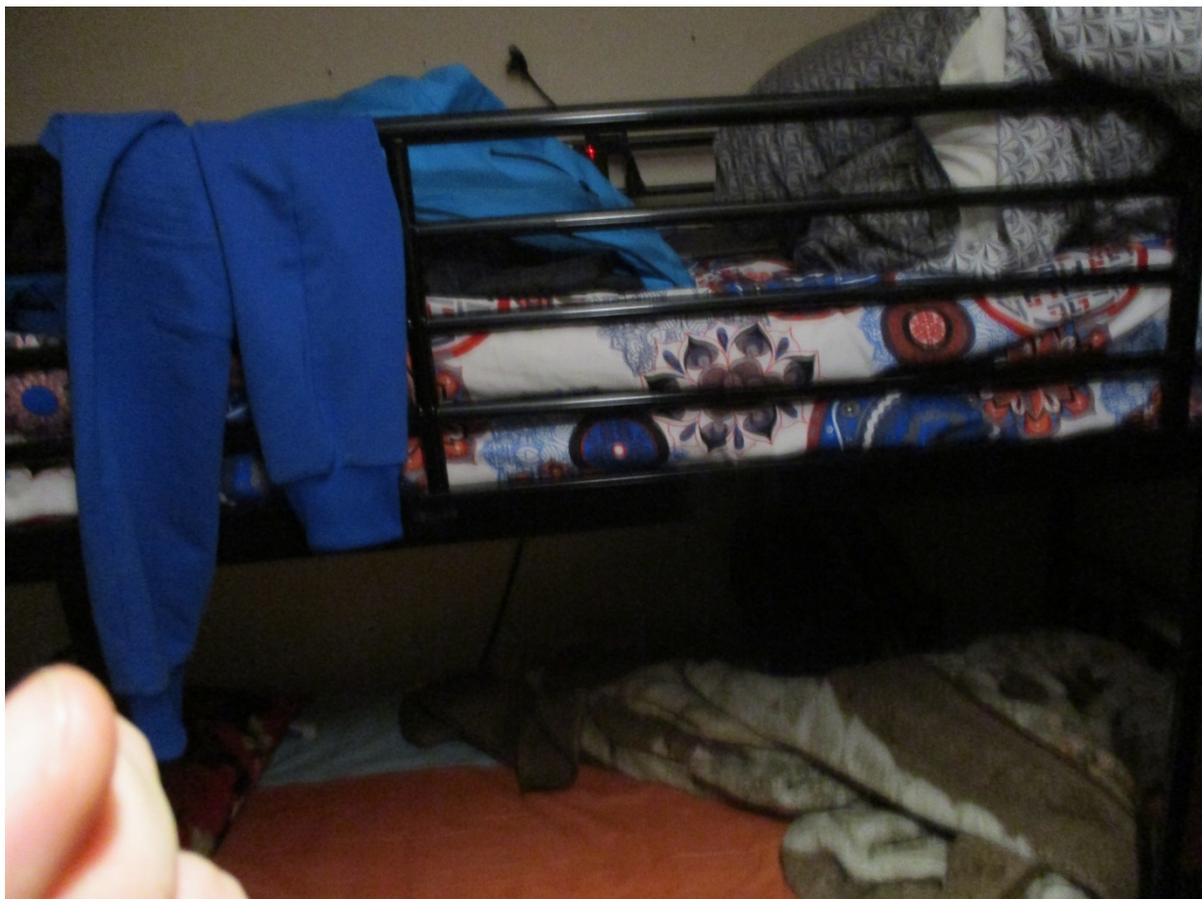
CONTINUATION OF THE STATEMENT OF:

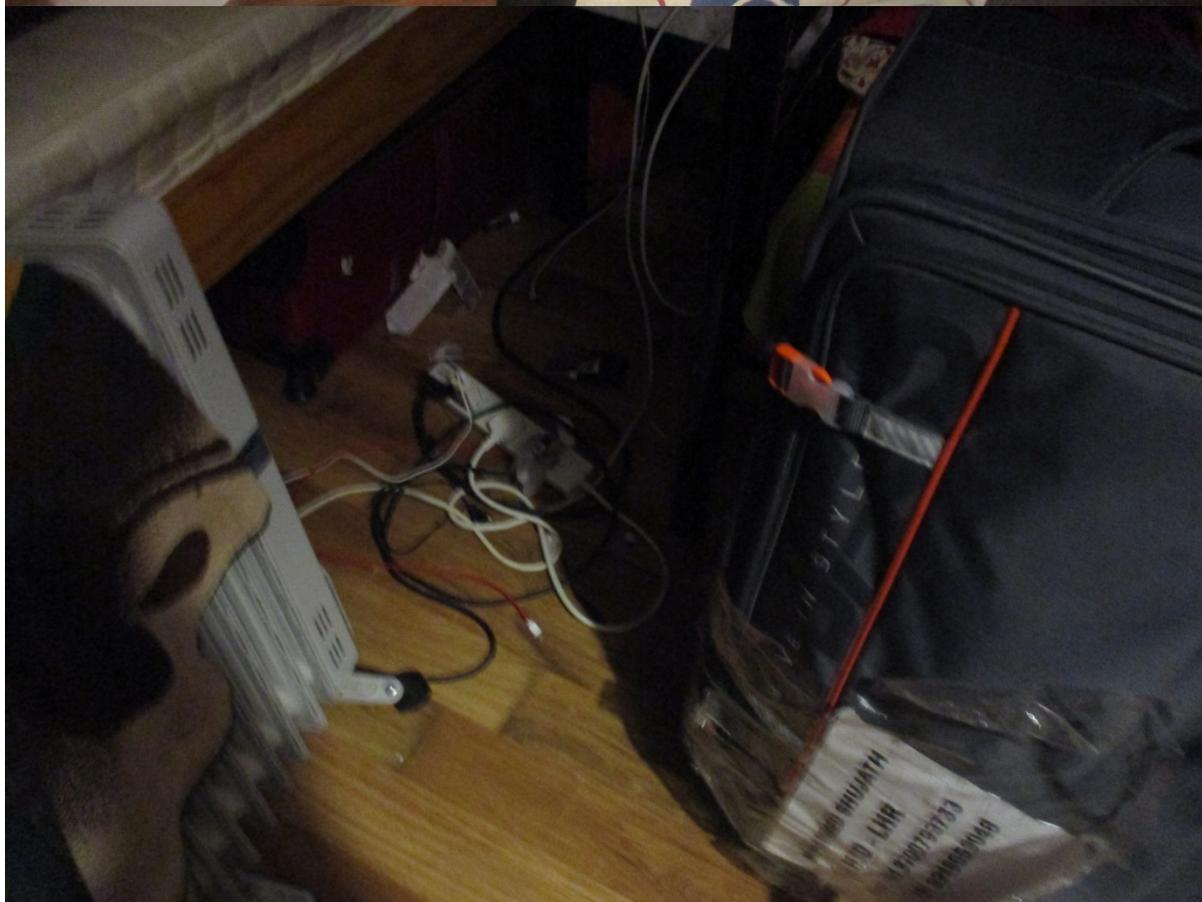
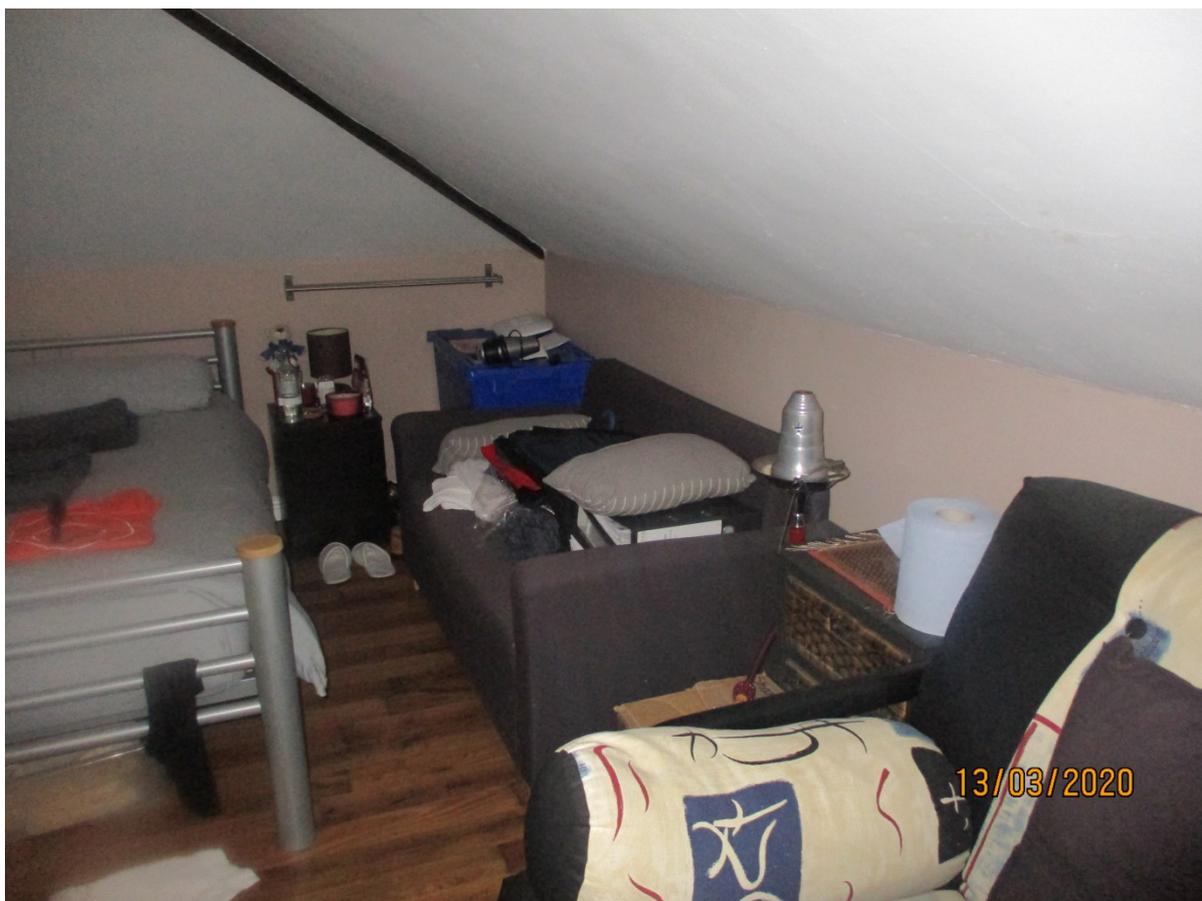
and 2 sofas. The Ensuite contained a WC and shower.

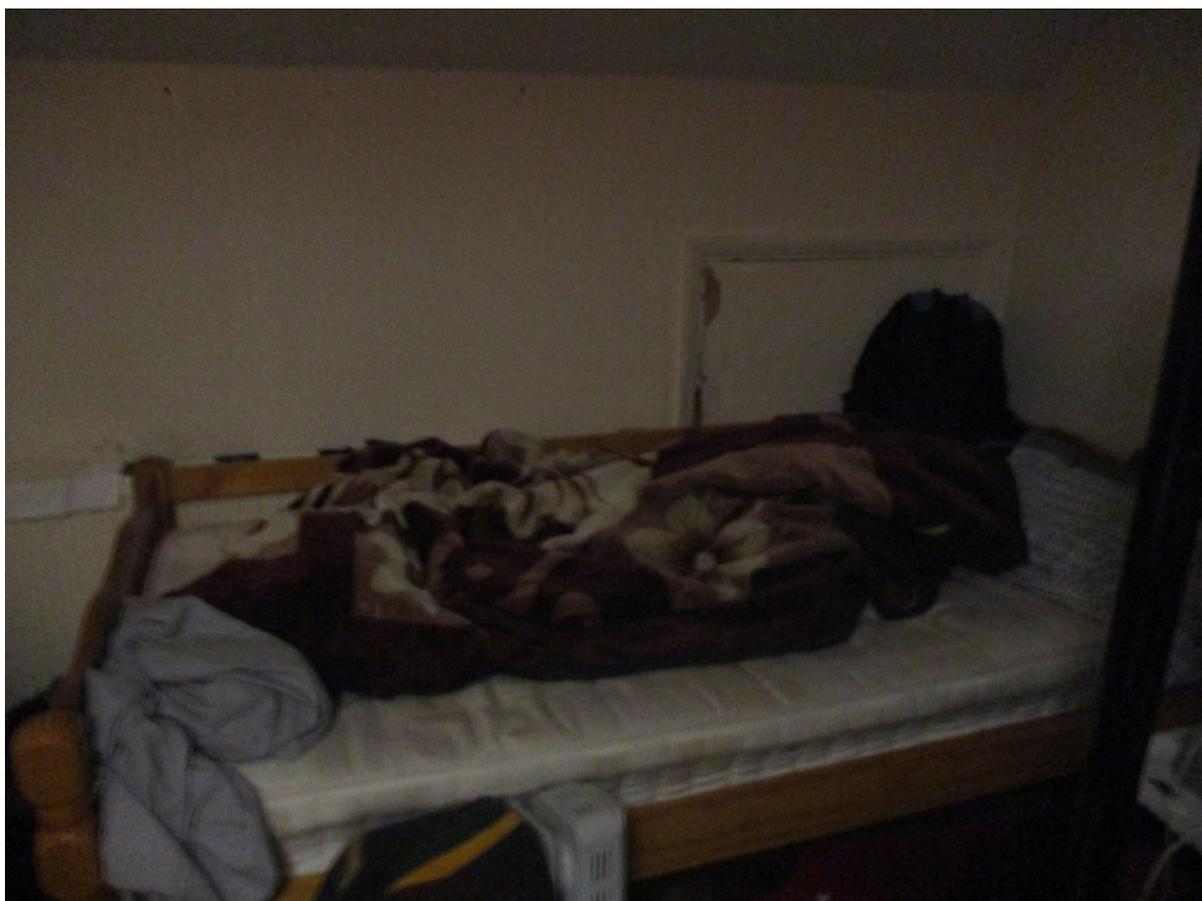
15. We also found 2 storerooms which were being used to store commercial goods for the restaurant.
16. The premises had a room which I would describe as a Laundry Room; it contained a washing machine and drying facilities. The room was being used to dry clothing at the time of the visit.
17. All rooms contained clothes, toiletries and personal belongings all of which suggest that the property was being used for residential purposes.
18. The property contained enough beds for up to 25 people to reside there, which would be considered overcrowded. All rooms which contained beds lacked adequate fire safety precautions.

Signed: 

Date: 30th April 2020

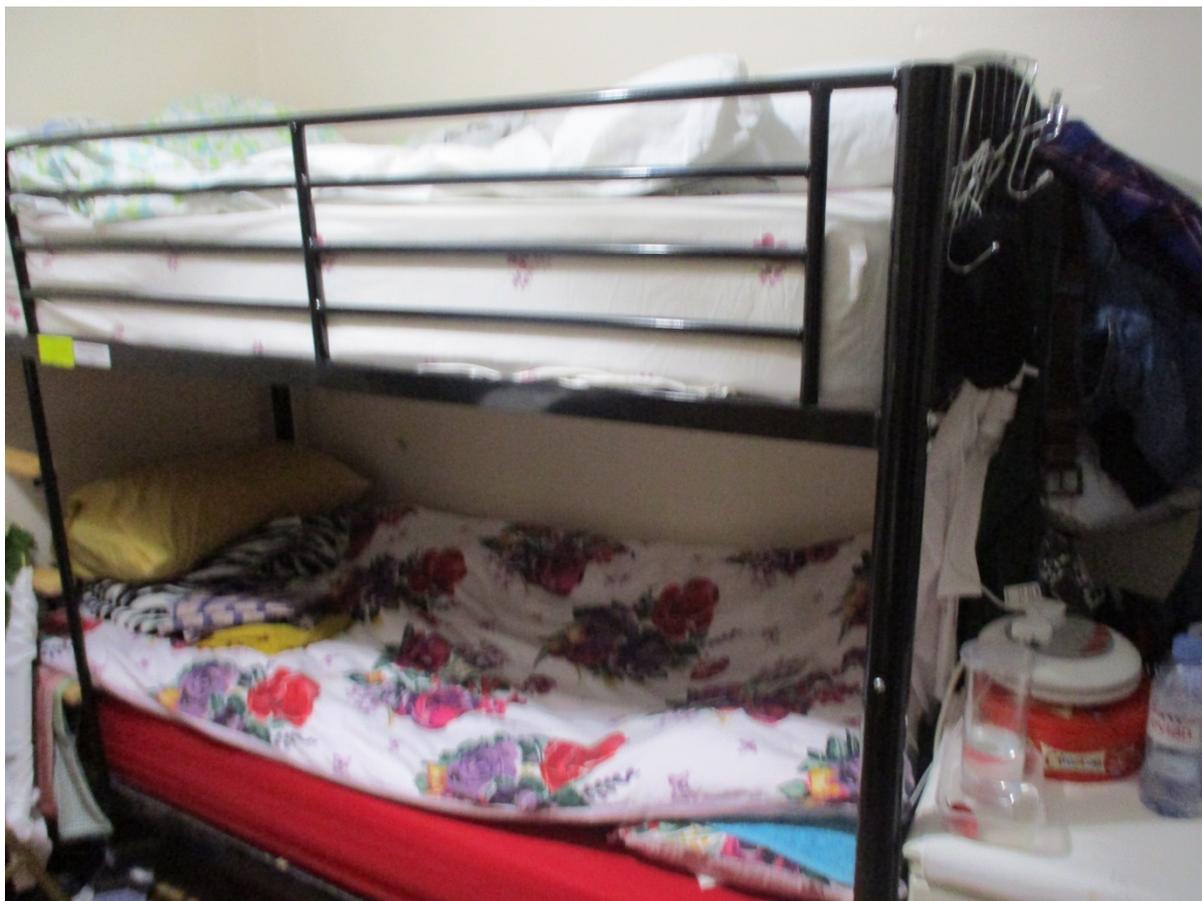














Appendix 4

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 that the licensing authority agrees and the applicant submits a subsequent hard copy of the application, if the licensing authority requires one. The licensing authority may also agree in advance that the application need not be given in hard copy. However, these applications are outside the formal electronic application process and may not be submitted via GOV.UK 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 premises and wants to intervene early without waiting for representations from other persons. 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 or the sexual exploitation of children. 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 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.
- 11.8 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 14 of this Guidance.
- 11.9 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 hard copy, unless the licensing authority waives this requirement.
- 11.10 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.
- 11.11 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

- 11.12 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.

- 11.13 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.
- 11.14 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.
- 11.15 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). 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

- 11.16 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.
- 11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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.
- 11.18 However, where responsible authorities such as 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. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker.
- 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)¹⁰;
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence.

11.20 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 to address the causes of concern that instigated the review.

11.21 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.

11.22 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.

11.23 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.

¹⁰ See chapter 15 in relation to the licensing of live and recorded music.

Reviews arising in connection with crime

- 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.
- 11.25 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. 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.
- 11.26 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.
- 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 employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) 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.

Review of a premises licence following closure order or illegal working compliance order

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or an illegal working compliance order under section 38 of and Schedule 6 to the Immigration Act 2016. 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 ten 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 five 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

11.29 The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place, licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where 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 appropriate.

Appendix 5

Map and Photos









Appendix 5

Guidance to Members on Review Hearings

Guidance for Members hearing a Review of a Premises Licence or Club Premises Certificate

Licensing Act 2003 section 52 & 88 and Part 11 of the Secretary of States Guidance

The purpose of a Review

To ensure that the licence holder is promoting the licensing objectives, which are

1. Prevention of crime & disorder
2. Prevention of public nuisance
3. Protection of public safety
4. Protection of children from harm

Reviews can be brought by any Responsible Authority, individual, business or Ward Councillors on any of the licensing objectives

At a Review Members of the Sub Committee can

1. Modify licence conditions
2. Exclude a licensable activity from the licence
3. Remove the DPS from the licence
4. Suspend the licence for up to 3 months
5. Revoke the licence

Seriousness

After hearing the evidence at a Review hearing Members need to decide the level of seriousness of the failure to promote the licensing objective. This guide suggests factors which Members may consider to be 'aggravating' or 'mitigating' but it is not a definitive list and Members may identify other factors during a Review hearing.

Based on Members views as to seriousness and 'aggravating' or 'mitigating' factors the suggested 'starting Point' for the imposition of actions under Section 52 can be considered and varied 'upwards' or 'downwards'.

Members are advised to note 'aggravating' or 'mitigating' factors and ensure these are recorded in their reasoned decision.

Reviews Based on Crime & Disorder

(Matters referred to in Paragraph 11.29 of the secretary of States Guidance (April 2012))

Failure to promote the licensing objective by	Aggravating factors	Mitigating factors	Suggested Starting point action by Members in Bold
Manufacture sale or distribution of Class A drugs	<ul style="list-style-type: none"> • Large scale over a long period • Professional operation • Links to organised crime • 2nd Review 	<ul style="list-style-type: none"> • Small scale for a short period of time. • No links to organised crime • Licence holder genuinely unaware or had tried to deal with the problem 	Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence
Sale or distribution of Firearms	<ul style="list-style-type: none"> • Large scale over a long period • Professional operation • Links to organised crime • 2nd Review 	<ul style="list-style-type: none"> • Small scale for a short period of time. • No links to organised crime • Licence holder genuinely unaware or had tried to deal with the problem 	Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence
Underage sales affecting the health, educational attainment employment prospects or the propensity for crime	<ul style="list-style-type: none"> • Evidence of a significant impact / harm on a number of children • Associated with significant crime and / or disorder in the area • 2nd Sale • 2nd Review <p>See also section on underage sales in Protection of Children section</p>	<ul style="list-style-type: none"> • No evidence of a significant impact / harm on a number of children • Not associated with significant crime and / or disorder in the area <p>See also section on underage sales in Protection of Children section</p>	Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence See also section on underage sales in Protection of Children section

Use of the premises for prostitution or pornography	<ul style="list-style-type: none"> • Associated with serious organised crime. • Involves children or trafficked women • 2nd Review • Large scale and for a long period 	<ul style="list-style-type: none"> • No association with serious organised crime. • No involvement with children or trafficked women • Licence holder genuinely unaware or had tried to deal with the problem • Small scale and for a short period 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence</p> <p>Suspend the licence for up to 3 months Revoke the licence</p>
Grooming of children by paedophiles	<ul style="list-style-type: none"> • Organised and large scale • Resulted in psychological harm • Resulted in actual physical abuse 	<ul style="list-style-type: none"> • Licence holder genuinely unaware or had tried to deal with the problem • No evidence of psychological harm • No evidence of actual physical abuse 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence</p> <p>Suspend the licence for up to 3 months Revoke the licence</p>
Use of premises for organised crime especially by gangs		<ul style="list-style-type: none"> • Licence holder genuinely unaware or had tried to deal with the problem 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence</p> <p>Suspend the licence for up to 3 months Revoke the licence</p>
Racist activity	<ul style="list-style-type: none"> • Condoned or encouraged by the Licence holder • Associated with organised groups or with organised crime 	<ul style="list-style-type: none"> • Licence holder genuinely unaware or had tried to deal with the problem 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence</p> <p>Suspend the licence for up to 3 months Revoke the licence</p>

Unlawful gambling or gaming			<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Sale of smuggled alcohol or tobacco			<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Crime and Disorder - Other matters			
Sale, distribution or use of Class B or C drugs	<ul style="list-style-type: none"> • Large scale over a long period • Professional operation • Links to organised crime • 2nd Review 	<ul style="list-style-type: none"> • Small scale for a short period of time. • No links to organised crime • Licence holder genuinely unaware or had tried to deal with the problem 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Other underage sales			See section on the Protection of Children from harm

Breach of Licence conditions 1 st occasion	<ul style="list-style-type: none"> • Previous warnings ignored 	<ul style="list-style-type: none"> • Minor breach 	Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence
Breach of Licence conditions 2 nd occasion			Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence

Reviews Based on Prevention of Public Nuisance

Failure to promote the licensing objective by	Aggravating factors	Mitigating factors	Suggested Starting point action by Members
One off serious noise nuisance	<ul style="list-style-type: none"> • Long duration affecting many people • Deliberate act • Lack of cooperation from the licensee • Significant financial gain obtained 	<ul style="list-style-type: none"> • Short duration affecting limited number of people • Not deliberate • Full cooperation by licences 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
More than one serious noise nuisance or second Review for a similar matter	<ul style="list-style-type: none"> • Long duration affecting many people • Deliberate act • Lack of cooperation from the licensee • Significant financial gain obtained 		<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Deliberate and persistent noise / nuisance, anti social behaviour	<ul style="list-style-type: none"> • Long duration affecting many people • Deliberate act • Lack of cooperation from the licensee 		<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>

<p>Breach of Licence conditions 1st occasion</p>	<ul style="list-style-type: none"> • Previous warnings ignored 	<ul style="list-style-type: none"> • Minor breach 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
<p>Breach of Licence conditions 2nd occasion</p>			<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>

Reviews based on Public Safety

Failure to promote the licensing objective by	Aggravating factors	Mitigating factors	Suggested Starting point action by Members
One off failure to protect public safety / breach of a licence condition / A matter dealt with by an Improvement Notice	<ul style="list-style-type: none"> • Long duration affecting many people • Deliberate act • Lack of cooperation from the licensee • Significant financial gain obtained 		<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Repeated failures to protect public safety / Serious single failure or breach of condition / a matter dealt with by a Prohibition Notice	<ul style="list-style-type: none"> • Long duration affecting many people • Deliberate act • Lack of cooperation from the licensee • Significant financial gain obtained 		<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Deliberate / persistent placing of public / staff at risk	<ul style="list-style-type: none"> • Actual harm caused • Risk of significant harm • Deliberate act • Lack of cooperation from the licensee • Significant financial gain obtained 	<ul style="list-style-type: none"> • No actual harm caused • Risk of minor injury • Cooperation 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>

<p>Breach of Licence conditions 1st occasion</p>	<ul style="list-style-type: none"> • Previous warnings ignored 	<ul style="list-style-type: none"> • Minor breach 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
<p>Breach of Licence conditions 2nd occasion</p>			<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>

Reviews Based Protection of Children from Harm

Failure to promote the licensing objective by	Aggravating factors	Mitigating factors	Suggested Starting point action by Members
1 st time underage sale	<ul style="list-style-type: none"> • Poor Management • No effective challenge policy • Poor training • Deliberate • Significant financial gain 	<ul style="list-style-type: none"> • Effective challenge policy but a one off failure 	Vary conditions Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence
2 nd Underage sale	<ul style="list-style-type: none"> • Failed to respond to previous sale • Deliberate • Significant financial gain • Failed other underage sales for age restricted products 		Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence
Permitting children to be in premises where there is drunkenness	<ul style="list-style-type: none"> • Younger children would be treated more seriously • Regular occurrence 	<ul style="list-style-type: none"> • Older children may be treated as being less serious • Infrequent occurrence 	Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence
Exposing children to age restricted films	<ul style="list-style-type: none"> • Poor Management • no effective challenge policy • Poor training • Deliberate • Significant financial gain 	<ul style="list-style-type: none"> • Effective challenge policy but a one off failure 	Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence

Exposing to entertainment of an adult , sexual, violent nature	<ul style="list-style-type: none"> • Poor Management & supervision • No effective challenge policy • Poor training • Deliberate • Significant financial gain 	<ul style="list-style-type: none"> • Effective challenge policy but a one off failure 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Permitting children to gamble	<ul style="list-style-type: none"> • Poor Management & supervision • No effective challenge policy • Poor training • Deliberate • Significant financial gain 		<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Breach of Licence conditions 1 st occasion	Previous warnings ignored	<ul style="list-style-type: none"> • Minor breach 	<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>
Breach of Licence conditions 2 nd occasion			<p>Modify licence conditions Exclude a licensable activity from the licence Remove the DPS from the licence Suspend the licence for up to 3 months Revoke the licence</p>