

**Trading Standards Service
Graham Hill House
Electric Avenue
Ferry Hinksey Road
Oxford OX2 0BY**

The Licensing Department
Cherwell District Council
Bodicote House
Bodicote
Banbury
OX15 4AA

**Richard Webb
Head of Community Protection Services**

10th July 2018

Dear Sir / Madam

Licensing Act 2003: Application for the review of a premises licence

I write in reference to the licensed premises at 33-34 High Street, Banbury.

As a designated Responsible Authority under the Licensing Act 2003, the Trading Standards Service are applying for a review of the premises licence.

As I work part-time, I would be most grateful if, prior to the date of any hearing being set, my availability could be sought.

Yours faithfully

Russell Sharland
Tobacco Control Officer

Russell.Sharland@oxfordshire.gov.uk
[www.oxfordshire.gov.uk /tradingstandards](http://www.oxfordshire.gov.uk/tradingstandards)

**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 Russell Sharland

(Insert name of applicant)

apply for the review of a premises licence under section 51 (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description International Supermarket 33-34 High Street	
Post town Banbury	Post code (if known) OX16 5ER

Name of premises licence holder or club holding club premises certificate (if known) Mr Rafik Mohammed Tofiq
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Number of premises licence or club premises certificate (if known) 18/PRM1253/LAPRE4
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Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises
 - d) a body representing persons involved in business in the vicinity of the premises
- 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

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

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Russell Sharland Tobacco Control Officer Oxfordshire County Council Graham Hill House Electric Avenue Ferry Hinksey Road Oxford OX2 0BY
Telephone number (if any) 01865 333704
E-mail address (optional)

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

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

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

The ground for review are as follows:

1. On 23rd October 2017, Oxfordshire County Council Trading Standards and Thames Valley Police visited International Supermarket and 4240 illegal cigarettes were identified and seized from a black holdall in the rear store room. Some of the seized cigarettes were also later confirmed as being counterfeit.
2. On 17th December 2017, Oxfordshire County Council Trading Standards conducted a covert test purchase visit at International Supermarket and purchased a packet of illegal cigarettes for £6. A further covert test purchase visit at International Supermarket was conducted that same day and 3 packets of illegal cigarettes were purchased for £18.
3. On 23rd February 2018, the premises licence was transferred and a new designated premises supervisor appointed. However evidence gathered shows that the business sale is still yet to take place and the new PLH/DPH takes no active part in decision-making or the day-to-day running of the business.
4. On 25th February 2018, Oxfordshire County Council Trading Standards conducted a covert test purchase visit at International Supermarket and purchased a packet of illegal cigarettes for £6.
5. On 8th March 2018, HMRC and Oxfordshire County Council Trading Standards visited International Supermarket. The actions of an employee frustrated the intention of the visit. However an individual was identified outside the shop premises with 4400 illegal cigarettes stored in a black holdall, which were seized.

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

1. The sale of illegal tobacco products is a significant issue nationally and locally. HMRC estimate the tobacco tax gap to be £2.5 billion in 2016-17. Of this, £1.9 billion was lost in tobacco duties and a further £0.6 billion in VAT.

2. Smoking continues to be the primary cause of preventable morbidity and premature death, accounting for more than the next 6 most common causes combined: drug use, road accidents, other accidents and falls, preventable diabetes, suicide and alcohol abuse. Public Health England estimates the total smoking-related cost to the NHS in 2015 to be £2.6 billion.

3. Illegal tobacco undermines public health policy to reduce smoking. Budgetary price rises have successfully helped reduce smoking prevalence. The Office of National Statistics estimates the current average price of 20 King Size filter cigarettes to be £10.23 whereas the comparable price of 20 illegal cigarettes is between £5-£6 with some brands available for £3-£3.50.

4. Recent research commissioned by Oxfordshire County Council into the illegal tobacco market in the County estimated the market share to be 5.8%, a 66% increase from similar research conducted in 2010.

5. The sale of illegal tobacco gives rise to a variety of criminal offences, some of which are to be regarded particularly seriously. Section 144 of the Licensing Act 2003 creates a criminal offence if any person who works in a licensed premises in a capacity, whether paid or unpaid, which gives that person the authority to prevent the keeping of smuggled goods, such as illegal tobacco, on the premises if he or she knowingly keeps or allows to be kept any such goods which have been imported without payment of duty or which have otherwise been unlawfully imported.

6. Regulation 48 of the Tobacco and Related Products Regulations 2016 creates a criminal offence if any person supplies, offers to supply or exposes or possesses for supply a tobacco product, in the course of a business, which does not comply with the labelling requirements of the regulations, ie the combined health warnings, general warnings and information, in English etc. The maximum sentence for any offence under these regulations is up to 2 years imprisonment and/or an unlimited fine.

7. Regulation 15 of the the Standardised Packaging of Tobacco Products Regulations 2015 creates a criminal offence if any person supplies, offers to supply or exposes or possesses for supply a tobacco product, in the course of a business, which does not comply with the permitted colour or shade requirements, namely Pantone 448 C with a matt finish. The maximum sentence for any offence under these regulations is up to 2 years imprisonment and/or an unlimited fine.

8. Section 8G of the Tobacco Products Duty Act 1979 creates a criminal offence if any person sells, offers for sale or otherwise deals in, or is in possession of, transports or displays any unmarked tobacco products ie not marked with UK Duty paid. The maximum sentence for this offence is an unlimited fine.

9. Section 92 of the Trade Marks Act 1994 creates a criminal offence if any person who with a view to gain for himself or another and without the consent of the proprietor, sells, offers or exposes for sale goods which bear, or the packaging of

which bears, a sign identical to or likely to be mistaken for, a registered trade mark or has in his possession, custody or control in the course of a business any such goods with a view to selling, offering or exposing them for sale. The maximum sentence for this offence is up to 10 years imprisonment and/or unlimited fine.

10. In August 2017, Oxfordshire County Council appointed a dedicated Tobacco Control Officer for the first time with the remit to focus on tackling the illegal tobacco market within the County. An analysis of the historic intelligence reports at that time showed that International Supermarket, 33-34 High Street, Banbury had been the subject of the following intelligence:

- 24th January 2016: illegal tobacco is sold at International Supermarket for £5 for a packet of 20 cigarettes.

- 14th April 2016: International Supermarket might be selling some kind of illicit product. During an inspection by a council official there was a customer at the counter and the sales assistant was acting strangely and didn't give him what he had asked for. The assistant was nodding in the direction of the council official.

- 3rd August 2016: International Supermarket is selling non-duty paid cigarettes (L & M at £4.50 and fake cigarettes at £3.50). These cigarettes are not in English packaging, no tax on sales is paid and no duty is paid on the cigarettes themselves. Further information suggests that an individual within the shop retrieves the cigarettes from a rucksack on request but that if he is suspicious, he will simply walk out of the shop, pretending he was a customer leaving the premises.

- 24th February 2017: International Supermarket sells illegal tobacco. The store owner will take from a rucksack on request however if suspicious they will walk out the shop pretending they are a customer. The cigarettes come from an unknown source and are clearly counterfeit.

- 5th April 2017: International Supermarket sells cheap non-duty paid cigarettes.

- 3rd August 2017: An individual within International Supermarket retrieves illegal cigarettes from a rucksack.

11. It should be noted that no intelligence reports regarding illegal tobacco had been received in respect of New International Store, 33-34 High Street, Banbury with the first report being received soon after the change of ownership to International Supermarket. As a result of this historic intelligence, International Supermarket was formally identified for further investigation.

12. On 25th September 2017 a female customer was seen by an officer from Oxfordshire County Council Trading Standards entering International Supermarket, approaching the till point, where the male working behind the shop counter (approximately mid-late 20s of Arabic appearance) bent down to his left and then handed, what is now known to be, a packet of cigarettes, to the customer. The female customer then left the premises and, upon her exit, opened the cigarette packet, took out a cigarette and lit it. The packet of cigarettes was not labelled in standardised plain packaging and was not a UK brand.

13. On 23rd October 2017 an unannounced inspection visit by Oxfordshire County Council Trading Standards and Thames Valley Police took place at International Supermarket. Also present was a dog handler with tobacco detection dog. 4240 illegal cigarettes were detected and seized, concealed in a black holdall on a top shelf in rear store room. None of the goods complied with standardised plain packaging requirements and were not UK duty paid.

The products seized were as follows:

- 620 NZ Gold Compact cigarettes (English)
- 100 Marlboro Gold cigarettes (Polish)
- 1280 Minsk Capital QS cigarettes (Russian)
- 480 Rothmans (Russian)
- 180 L&M Blue Label (Polish)
- 580 Pect cigarettes (Russian)
- 1000 Mayfair King Size (English)

Small black bags were stored on a hook directly by where the illegal cigarettes were discovered.

14. A representative sample of the Mayfair cigarettes were subsequently examined by the trade mark holder and were deemed to be counterfeit product. Unlike legally-manufactured cigarettes for the EU market, counterfeit versions are highly unlikely to comply with European standard CEN: EN 16156:2010 on reduced ignition propensity of cigarettes, also known as "fire-safer" cigarettes, whereby cigarettes are designed to self-extinguish when left unpudded.

15. The person in charge of the premises at the time identified himself as [redacted] who said he was a part-time worker.

The owner of the business subsequently attended the premises. He gave his name as [redacted]. The business is operated via TAINAL Limited (Company number 10094038) with a registered office address of 33-34 High Street, Banbury. The sole director of the Company is registered as Alan MOHAMMAD (not MOHAMMED). The grounds for review are as follows:
n 24th August 2016, Mr Alan Ali Mohammed sold alcohol to a person under the age of 18 and was subsequently prosecuted at Oxford Magistrates' Court in October 2016 and was fined £445 with £45 VS and £85 costs

16. On 1st December 2017, Mr Alan Ali Mohammed was interviewed under caution. Key points from the interview can be summarised as follows:

- He purchased the business previously trading as New International Store, 33-34 High Street in 2015 [redacted] and became the premises licence holder in 2016

- The shop specialises in Eastern European produce and offers some 35,000 different product lines

- He had to go to Court due to selling alcohol to an underage person and recalled being fined at Oxford Magistrates' Court [NB: On 24th August 2016, Mr Alan Ali Mohammed sold alcohol to a person under the age of 18 and was subsequently prosecuted at Oxford Magistrates' Court in October 2016 and was fined £445 with £45 VS and £85 costs]

- The illegal cigarettes seized by Trading Standards on 23rd October 2017 had been stored on the top of the fridge at the back of the shop.

- He had bought the cigarettes from a customer and had left them there and totally

forgot about them.

- Every single day people come into the shop offering to sell cigarettes to him. He has no idea why. Some people also offer stolen goods like perfumes and even drugs.
- He was offered cigarettes "very cheap" and thought he would sell them to his staff who all smoke
- The purchase happened 2-3 days before the Trading Standards seizure.
- It was the first time he had seen the seller before and didn't know him. He did not know his name.
- He opened the bag the seller had and looked inside. He didn't recall the brands or the language the cigarettes were labelled in but did remember they didn't comply with the standardised plain packaging requirements. He couldn't remember how many cigarettes were in the bag.
- The seller had wanted £500 but Mr Mohammed had offered £300 which was agreed upon. He didn't ask him any questions about where the seller had obtained the cigarettes from. He had not considered that the cigarettes, if genuine, could in fact be stolen.
- He had forgotten to tell his staff about the cigarettes and couldn't explain why he had stored them on top of the fridge in the store room.
- He had no idea why he decided to buy the cigarettes on this occasion (given offers to purchase are apparently a daily occurrence) other than he thought the seller looked honest.
- He was aware that storing contraband on licensed premises was a criminal offence under the Licensing Act 2003.
- He was unable to provide a satisfactory explanation for why small black bags were stored on a hook directly by where the illegal cigarettes were stored
- He was very confident no illegal tobacco will be sold from the store in the future and said "I can guarantee it" and "I can guarantee for the next hundred years (illegal tobacco) is not going to be sold".

17. On 17th December 2017, a covert surveillance operative working on behalf of Oxfordshire County Council Trading Standards, visited International Supermarket and purchased 20 L & M Link cigarettes. The cigarettes were retrieved from the rear of the store and sold for £6. The cigarettes did not comply with standardised plain packaging requirements and were non-UK duty paid.

18. Later that same day, a covert surveillance operative working on behalf of Oxfordshire County Council Trading Standards, visited International Supermarket and purchased 60 L & M Link cigarettes. The cigarettes were retrieved from the rear of the store and sold for £18. The cigarettes did not comply with standardised plain packaging requirements and were non-UK duty paid. This purchase was recorded covertly. The purchased items are inputted into the till and the price to pay established as a result. The money for this transaction is put into the till. When the salesperson returns to the till point, the cigarettes have been placed within a small black carrier bag. It has not been possible to establish the identity of this salesperson. However at the second till point, _____ be seen working.

19. On 1st January 2018, an intelligence report was received that illegal tobacco was being sold and that the cigarettes were stored in a black, small carrying bag not visible to others.

20. On 5th January 2018, an intelligence report was received that imported cigarettes from abroad were being sold without paying tax and that they were being sold from under the counter.

21. On 25th February 2018, a covert surveillance operative working on behalf of Oxfordshire County Council Trading Standards, visited International Supermarket and purchased 20 Kent cigarettes. The cigarettes were retrieved from under the counter and sold for £6.

.. This purchase was recorded covertly. The purchased items are inputted into the till and the money for the transaction is put into the till. states that they do not have L&M but do have Kent or Rothmans.

The cigarettes do not comply with standardised plain packaging requirements and are non-UK duty paid.

22. On 7th March 2018, HMRC led an operation targetting premises suspected of being concerned in the sale of illegal tobacco within Banbury. This operation was supported by Thames Valley Police and Oxfordshire County Council Trading Standards.

23. One of the premises visited in this operation was International Supermarket. Trading Standards Team Leader Kate Davies entered the premises with HMRC officers. The officers were identifiable as enforcement officials as they were wearing badged protective vests. Ms Davies had a clear and unobstructed view of the person working behind the till point who was later established to be ... As soon as noticed the officers it is alleged that she quickly ran to the rear of the store.

24. Suspecting that an attempt was being made to hide or remove evidence, an HMRC officer requested Police support to the rear of the premises. PC 132 Dean O'Dell was at the rear loading bay area behind International Supermarket. When the call came from the officer in the store, a suspect was identified across the road from the rear of the store and had a large black holdall in his hand. As soon as he saw PC O'Dell he ran onto Calthorpe Street. PC O'Dell followed him and eventually detained him on South Bar Street.

25. PC O'Dell took the suspect into International Supermarket where he was identified as Initially he gave a false address in Birmingham as his home address. It was established from items in his wallet, such as a loyalty card to a Banbury barbers and a train ticket from Banbury-London, that it was more likely that he was more locally based. stated that he was not running from the shop but from the parking area. He stated that he bought the cigarettes from a man but didn't know his name.

26. A total of 4400 cigarettes were identified and seized as follows:

- 900 L&M cigarettes
- 1780 Rothmans Demi cigarettes
- 860 Minsk Capital cigarettes
- 860 Pect cigarettes

None of the cigarettes were UK duty paid or complied with standardised plain packaging requirements.

27. Mr Mohammed was present in the shop premises and stated on several occasions that the tobacco and the holdall were nothing to do with him. He also stated that he had sold the business to Rafik Mohammed TOFIQ but that he still owned the company as the sale hadn't completed.

28. On 19th March 2018, officers from Oxfordshire County Council Trading Standards visited International Supermarket and made a formal written request to Mr Tofiq under powers to provide CCTV footage from 7th March 2018. The purpose of this request was to conclusively determine whether or not [redacted] had left the licensed premises upon the entrance of enforcement officers on 7th March. This written request was issued to Alan Ali Mohammed who was present at the premises on 19th March. Mr Mohammed attempted to operate the CCTV footage but was not able to do so. He stated that he did not know how to download a copy. The letter was left with him and he said he would make enquiries. The footage was never received.

29. On 2nd May 2018, Mr Alan Ali Mohammed was interviewed under caution. He said he had sold the business to Rafiq Tofiq just before Christmas. Mr Tofiq had paid [redacted] a deposit. The money was transferred into Mr Mohammed's personal account rather than the Company's account.

30. [redacted] the sale is still to be completed. He explained that Mr Tofiq transferred the premises licence in February as part of the process of ownership transfer. The money from any purchases within the shop is still going into the Company's accounts (Tainal Ltd). Tainal Ltd continues to pay the lease on the premises. One new member of staff [redacted] was recruited in 2018 and this was done by Mr Mohammed.

31. Mr Mohammed confirmed he had received a request for a copy of the premises' CCTV and admitted that he had "no clue" how to provide a copy as he had never done so before. He admitted that he would have been unable to comply with the licence condition on the premises licence stating "CCTV will be in operation, recordings available to police on request" throughout his tenure.

32. He recalled the events of 7th March and said that he did not know [redacted] and that he had not been in the shop. He added that he thinks he has seen [redacted] around Banbury since that date working in another shop. He did not know that a member of staff had run to the back of the shop when officers entered the premises and could not offer an explanation as to why she had done this.

33. When shown still images taken from the covert surveillance footage of the test purchase made on 25th February, he identified the seller as [redacted]. He stated that [redacted] did not know her surname but could provide details at a later stage. She had been employed by him since January and works 20 hours per week. He could not offer an explanation as to why this sale had taken place and advised that he needed to investigate.

34. When shown still images taken from the covert surveillance footage of the test purchase made on 17th December, he stated that he did not know why the man was there and that he did not work for him. When he was told that the man was working alongside [redacted] he stated that maybe he was a friend of [redacted]. When told that the man scanned the purchased cigarettes through the till and put the money for the transaction in the till, he couldn't offer an explanation. He stated that he would need to investigate and that [redacted] was in charge when he wasn't there.

35. On 21st May 2018, Mr Rafik Mohammed Tofiq attended a meeting with officers from Oxfordshire County Council Trading Standards to discuss the illegal tobacco issues and his role in the running of the business. The key points can be summarised as follows:

- He said he became the owner of the business on 23rd December 2017 and had an agreement with Alan Ali Mohammed to buy the shop business . He had paid a deposit () and the rest of the outstanding monies owed will be cleared in July.
- He wasn't aware of any of the issues about illegal tobacco until told by Trading Standards
- He stated that Alan Ali Mohammed was in charge, was responsible for staffing and for buying stock, for paying the salary of the staff and for paying VAT with any profit each month being then paid to him
- He agreed that he had delegated responsibility for running the business to Alan Ali Mohammed and that he didn't know who was in charge when Alan wasn't there, wasn't working, was at the wholesaler, was ill or was on holiday.
- Alan told him he had to transfer the licence into his name. Alan organised the transfer. He didn't know why the transfer of the licence took place at the end of February and not in December when he had bought the business.
- He currently visits the shop once every two weeks as he works full-time , in Manchester.
- He couldn't remember when he got his personal licence but believed it was in Birmingham.
- He didn't know what the conditions attached to the premises licence were and didn't know how he would comply with the CCTV conditions at this time but would make sure he did in July believing that Alan would know how to comply with the CCTV condition at the present time
- {As of 4th July 2018, Mr Tofiq is still yet to complete the sale and take ownership of the business}

36. On 5th June, interviewed under caution. The key points can be summarised as follows:

- She admitted selling Kent cigarettes from International Supermarket
- She obtained the cigarettes when she was on her way back from work, walking through the park, when a man offered her 10 packets of Kent cigarettes for £30. She bought them from him as she is a smoker and she thought it was a good price.
- Because she didn't like the taste of the Kent cigarettes, she only smoked one packet and decided to sell the other 9 packets via her job at International Supermarket
- She sold the Kent cigarettes to customers that she knew. These were mainly other regular customers that she knew.
- When asked why she simply didn't sell them in her own time (ie not within the shop)

she said he just used the opportunity where she had contact with customers

- She couldn't remember how long it took to sell the 9 packets.
- She stored the Kent cigarettes in her own bag under the till
- She confirmed the brand was Kent and there were no other brands
- She said she offered the Kent cigarettes to regular customers by asking them if they wanted cheap cigarettes.
- She did not know that it was a serious issue that risked the premises licence
- She admitted putting the money for the sales into the till due to the CCTV cameras observing her and being concerned that she would be fired if her boss viewed her putting money into her pocket
- When asked why her boss wouldn't see her selling cigarettes from her handbag, she explained that when she retrieved the cigarettes she would place them in small black bags so that it wouldn't be seen on the CCTV
- She stated that once she had put the money in the till, she would subsequently take a packet of UK-duty paid cigarettes from the tobacco gantry. In her view, she would "swap" a packet. Whereas this would be theft.
- She confirmed that she understood the caution and was telling the truth. She was asked whether she was 100% sure and she said yes.
- She was then confronted with a still image taken from covert surveillance footage and told the details of the test purchase.
- It was explained that the test purchaser was not a regular customer, contradicting her earlier assertion about who she sold the Kent cigarettes to. She then stated that she could not remember exactly who she sold to.
- It was explained that the test purchaser said "Can I have LM or LM Link?" and she had replied "We haven't LM, just Kent or Rothmans" and then gave the price of £6.
- She could not explain why the evidence showed her offering Rothmans, contradicting her earlier assertion that there were no other brands other than Kent
- It was put to her that she had concocted a story to fit the evidence she believed Trading Standards possessed which had now been clearly contradicted
- She became visibly upset at this point. She then admitted that the Kent cigarettes were not hers and that they did not belong to her. She added that she had been told what to say during the interview. She would not say who had told her what to say. When asked where the cigarettes came from if they were not hers and she stated that the cigarettes were "from the store". She then said she did not want to say anything else.

37. The revised guidance issued under section 182 of the Licensing Act 2003 provides some assistance in determining the seriousness of the sale or storage of illegal tobacco in licensed premises.

At para 11.24 it states:

"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".

At para 11.26 it states:

"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".

At para 11.27 it states that:

"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 (and includes):

- for the sale or storage of smuggled tobacco and alcohol.

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."

38. In R (Bassetlaw District Council) v Worksop Magistrates' Court (2008) EWHC 3530 MJ Slade found on the application for review of a premises licence in circumstances involving criminal conduct connected with the licensed premises, consideration must be given to what was necessary to promote the objective of crime prevention, and to the needs of the wider community, and not be limited to guidance and remedial action and to the needs of the licence-holders. Deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable.

39. The sale of the business to Mr Tofiq has taken over 6 months and is still not complete. Whilst Mr Tofiq became premises licence holder and designated premises in February 2018, he is not involved in the day-to-day running of the business, purchase of stock, employment of staff or paying of VAT and other taxes. He was unaware of the ongoing issues with illegal tobacco at the premises, was unaware of the conditions attached to the premises licence and appears to exert no actual control on how the business operates. It is clear that Mr Alan Ali Mohammed is the directing mind of the business.

41. Given the statutory guidance and supporting precedent, it is the view of the

Trading Standards Service that revocation should be strongly considered.

42. If revocation is not deemed appropriate in these circumstances, it is recommended that a period of suspension with appropriate conditions could act as a necessary deterrent to promote the crime prevention objective and to protect the needs of the wider community including law-abiding businesses as well as adults and young people. Those conditions to include:

1. CCTV

1.1 CCTV shall be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition.

1.2 CCTV cameras shall cover all ingress and egress to the premises, fire exits, outside areas, and all areas where the sale/ supply of tobacco products occurs.

1.3 The CCTV Equipment shall be maintained in good working order, be correctly time and date stamped with the CCTV recordings be kept in date order, sequentially numbered and kept for a period of 31 days.

1.4 The Premises Licence Holder must ensure at all times that a DPS or appointed member of staff is capable and competent to download CCTV recordings in a recordable media format.

1.5 The CCTV recording equipment and tapes/discs shall be kept in a secure environment under the control of the DPS or appointed member of staff. An operational weekly log report must be maintained and endorsed by the signature of the DPS or the appointed member of staff indicating the CCTV system has been checked, is in working order and compliant, and in the event of any failings remedial actions taken are also to be recorded.

1.6 In the event of technical failure of the CCTV equipment the Premises Licence holder/DPS shall report the failure to the Police on contact number '101' immediately.

1.7 The CCTV recordings must be provided upon demand by the Police, an authorised officer, as defined by Section 13 of the Licensing Act 2003, or an authorised officer of Trading Standards.

2. Tobacco Products

2.1 Only people with a directing mind such as directors, managers or a DPS within the business can be authorised to buy tobacco products.

2.2 Persons authorised to buy tobacco products for the business must be authorised in writing and that list must be made immediately available for inspection by Police or Trading Standards upon request.

2.3 All staff who are authorised to buy tobacco products must take all reasonable precautions and exercise due diligence in order to avoid buying illegal goods. This will include, but not limited to the following:

a. All authorised staff responsible for the purchase of tobacco products shall not purchase any goods from door-to-door sellers other than from established traders who provide full receipts at the time of delivery.

b. The authorised buyers shall ensure that all receipts for tobacco products bought include the following details:

- i. Seller's name and address
- ii. Seller's company details, if applicable
- iii. Seller's VAT details, if applicable
- iv. Seller's vehicle registration details, if applicable

2.4 Legible copies of invoices/receipts shall be retained on the premises and made available to inspection by Police or Trading Standards on request.

2.5 Where anyone working within the premises becomes aware that any non-duty tobacco may have been offered for purchase, they shall inform the Police or Trading Standards immediately and keep a written record of such action.

3. Signage

3.1 A3 Illegal Tobacco Keep it Out posters including the illegal tobacco hotline reporting number to be displayed at the entrance and sales area of the licensed premises at all times

4. Training

4.1 All staff working within the licensed premises, whether paid or unpaid, shall receive training in the Licensing Act 2003 licensing objectives and specifically on the law regarding the keeping of smuggled goods on the licensed premises

4.2 Written records of staff training shall be retained on the licensed premises and made available to police, authorised officers of the Licensing Authority and authorised officers of Trading Standards on request.

4.3 All staff shall receive refresher training in the Licensing Act 2003 at intervals of no more than 12 months.

Please tick yes

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

If yes please state the date of that application

Day Month Year

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

- 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 3)

Signature of applicant or applicant’s solicitor or other duly authorised agent (See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature

Date 10th July 2018

Capacity Tobacco Control Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)
See section C above

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) russell.sharland@oxfordshire.gov.uk

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.

Annex 1:
Rear storeroom at International Supermarket, 33-34 High Street, Banbury



Annex 2:
Seizure of 4240 smuggled and counterfeit cigarettes on 23rd October 2017



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.

CO/9214/2007

Neutral Citation Number: [2008] EWHC 3530 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 7th November 2008

B e f o r e:

MRS JUSTICE SLADE

Between:

THE QUEEN ON THE APPLICATION OF BASSETLAW DISTRICT COUNCIL
Claimant

v

WORKSHOP MAGISTRATES COURT

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
190 Fleet Street London EC4A 2AG
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

MR J QUIRKE appeared on behalf of the **Claimant**
The **Defendant** did not appear in person and was not represented

J U D G M E N T

1. 1.1. MRS JUSTICE SLADE: Bassetlaw District Council applies for judicial review of the judgment and decision of a district judge allowing an appeal from decisions made on a licensing authority's review of a licence held by Mr and Mrs Jones. The licensing committee of the district council had reviewed the premises licence of the premises where Mr and Mrs Jones operated, in the light of offences which had taken place on 10th March 2007 namely the unlawful sale of alcohol on the premises to two 14 year old girls. The girls were sent to the premises for test purchases in accordance with arrangements made by the trading standards office. The sales took place over a relatively short period of time. Each girl made a separate purchase or purchases, was served by one of two different young cashiers. Having regard to these matters, on review the licensing authority suspended the licence for the premises for one month. There was an appeal to the district judge. The district judge overturned the decision of the licensing authority and instead imposed what were said by him to be, "additional conditions on the licence".
2. 2.1. Mr Quirke appears for the licensing authority. The district judge has served two statements in connection with this hearing, but otherwise takes no further part in it. The interested parties, Mr and Mrs Jones, were served with the notice of application but have not served an acknowledgement of service. I am also told that the licensing authority are not going to seek to overturn the determination of the district judge as to penalty. They seek, however, declarations as to the correctness in law of the decision and the judgment of the district judge.
3. 3.1. The grounds for judicial review may be analysed as falling under five headings. As will become apparent later on in this judgment, two of those matters can, in my judgment, be taken together.
4. 4.1. First, it is said that the district judge erred in holding that, in accordance with the guidance issued by the Secretary of State, it is not the function of the licensing authority to punish licensees for an infringement of licensing law and provisions on its license. Further, it is said that the district judge was in error in holding that, on a proper construction of the licensing provisions and guidance applicable, the licensing authority powers were restricted to guidance or remedial action which was the approach of the district judge. It is said that the steps which the licensing authority and the district judge on appeal may take include a range of powers which must be deployed according to the particular circumstances of the case.
5. 5.1. Secondly, it is said that the orders made by the district judge which were in substitution for the suspension of the licence imposed by the licensing authority were, in effect, not additions to the conditions of the licence which applied up to that point. Save in one respect they were merely a reiteration of steps which were already being taken or were already in fact conditions of the licence.
6. 6.1. Thirdly, it is said that the district judge erred in his approach to his own decision making on appeal. It is said that he adopted a too generous approach to his powers on appeal in that he appears in page 2, paragraph 5 of his judgment to direct himself that he could take a decision standing in the shoes of the licensing authority having regard to the particular circumstances and considering whether the licensing

authority's decision was justified. It is said that the district judge failed to give proper regard to the guidance issued under section 182 of the Licensing Act 2003 in that he did not state that he was departing from such guidance in certain respects. Since, it is said, that he departed from such guidance, he erred in failing to state why he was departing from such guidance.

7. 7.1. Fourthly, it is said that the district judge failed properly to apply and have regard to paragraph 5.115 of the guidance given under section 182 of the Licensing Act. This sets out and categorises as criminal certain activities which may arise in connection with licence premises and which the Secretary of State considers should be treated particularly seriously. Included in the use of licence premises for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and prosperity for crime of young people. It is said that the district judge failed to pay proper regard to that. Where there has been a complaint of an incident which is categorised rightly as criminal activity in connection with licence premises, it is said that the district judge failed to take into account paragraph 5.113 of the guidance. This provides that the licensing authority's duty, in circumstances such as these, is:

"... to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence."

8. 8.1. Finally, it is said that the district judge failed in his approach to pay proper regard to the guidance of Lord Goddard in the case of Stepney Borough Council v Joffe which the judge himself referred to at page 2 of his judgment, paragraph 5. In Joffe it was said that although on an appeal, such as this, there is a right to a rehearing. The appellate court should pay regard to the fact that the duly constituted and elected local authority have come to an opinion on the matter. The appellate body ought not lightly to reverse their opinion.

9. 9.1. Discussion.

10. 10.1. I will briefly outline some of the relevant statutory provisions and guidance. Pursuant to the Licensing Act 2003, section 4, the licensing authority must carry out its function under the Act with a view to promoting the licensing objectives. Subsection 2 provides that:

"The licensing objectives are:

"(a) the prevention of crime and disorder;

"(b) public safety;

"(c) the prevention of public nuisance; and

"(d) the protection of children from harm."

11. 11.1. Importantly, section 4(3) provides:

"In carrying out its licensing functions, a licensing authority must also have regard to...

"(b) any guidance issued by the Secretary of State under section 1.282."

12. 12.1. Section 52 of the 2003 Act applies where an application for a review of licence under section 51 has been made. Subsection 52(3) provides:

"The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection 4, if any, as it considers necessary for the promotion of the licensing objectives."

13. 13.1. Those objects are set out in section 4.

14. 14.1. Subsection 52(4) provides that the steps are:

"(a) to modify the conditions of the licence ...

"(d) to suspend the licence for the period not exceeding three months.

"(e) to revoke the licence.

"For this purpose the conditions of the licence are modified. If any of them is altered or omitted or any new condition is added."

15. 15.1. It is to be noted that section 146(1) of the 2003 Act provides:

"A person commits an offence if he sells alcohol to an individual aged under 18."

16. 16.1. Pursuant to section 182 of the 2003 Act guidance is issued. I have already outlined the requirement for the licensing authority in carrying out its functions to do so in accordance with the guidance and to have regard to it. The background and the approach which should be taken to that guidance is set out in paragraph 2.3 of the guidance itself which was applicable at the relevant date. The guidance was revised with effect from June 2007. Reference is made in paragraph 2.3 to section 4 of the 2003 Act which provides that:

"In carrying out its functions, a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent."

17. 17.1. It is recognised that the guidance cannot anticipate every possible scenario or set of circumstances that may arise. So long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it, if they have reason to do so. When doing so, licensing authorities will need to give full reasons for their decisions. Departure from the guidance could give rise to an appeal or

judicial review and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

18. 18.1. I will set out here the passages in the guidance material to this application. Paragraph 5.99 provides:

"Proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licence by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises."

19. 19.1. The provisions relating to the power of the licensing authorities in conducting a review are set out in paragraph 5.107 and following. 5.107 provides:

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

20. 20.1. At 5.109, there are set out the steps which may be taken by the licensing authority where it considers that actions under its statutory powers are necessary. Those include modification of the condition of the premises licence, suspension of the licence and revocation of the licence; the suspension, being for a period not exceeding three months.

21. 21.1. Paragraph 5.110 provides that:

"In deciding which of the powers to invoke the licensing authority should so far as possibly seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response."

22. 22.1. Paragraph 5.111 refers to the need for any detrimental financial impact of a licensing authority's decision, in particular of suspension of a licence, to be considered.

23. 23.1. A separate section in the guidance deals with reviews arising in connection with crime. In my judgment these provisions are particularly material to this case. Paragraph 5.112 states:

"A number of reviews may arise in connection with crime that is not directly connected with licensable activities."

24. 24.1. It is agreed by Mr Quirke that the sale of alcohol on the premises to under age drinkers is connected with licensable activities. Indeed, in paragraph 5.115 such activity is expressly referred to in the following terms:

"There is certain criminal activity that may arise in connection with licence premises which the Secretary of State considers should be treated particularly seriously. These are the use of the licenced premises [and there are enumerated a number of crimes... which include] for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people."

25. 25.1. Of importance to the consideration of the case before me is also paragraph 5.113 which provides:

"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 are necessary to be taken in connection with the premises licence for the promotion of the crime prevention objective."

26. 26.1. The paragraph continues:

"The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence."

27. 27.1. At paragraph 5.114, there is a reference to the fact that it is not the role of the licensing authority to determine guilt or innocence, but it is stated that:

"At the conclusion of the 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 act objectives in respect of the licence in question regardless of any subsequent judgment in the courts about the behaviour of individuals."

28. 28.1. I now turn to a consideration of the various heads of challenge which Mr Quirke, on behalf of the licensing authority, makes to the judgment and determination of the district judge in this case. In the course of the discussion I may refer not just to the district judge's judgment but also, albeit maybe briefly, to a statement filed by him in these proceedings. Taking grounds 1 and 4 of challenge together, the main issue raised by those grounds is that the district judge misdirected himself in considering that the function of the authority and his function as the appellate body was not punitive but in effect was remedial. It is submitted that the approach of the district judge was to confine his consideration to remedy of the cause of the breach of the licence provisions and of the law.

29. 29.1. At paragraphs 4 and 5 of the judgment in the section headed, "Discussions", at page 10 the district judge said that:

"The function of the local authority, and now this court, must be first to establish why the four sales of the alcohol to girls A and B occurred on

10th March 2007. Secondly, to take such steps, if any, under section 52 of the Act as are necessary to ensure that no further sales occur thereby promoting the two licensing objectives principally engaged by this case: namely, the prevention of crime and disorder, and the protection of children from harm. The step or steps taken must be the minimum intervention necessary to achieve those aims. What is necessary is a question of value and judgment which will involve the local authority or the court taking account of all the circumstances of the case."

30. 30.1. In my judgment, the language of paragraph 5 indicates clearly that the district judge was considering solely the provisions of the guidance which were not specific to reviews arising in connection with crime. In my judgment, a proper reading and application of the guidance which governs the approach that a licensing authority must take in discharging its duties requires, where the circumstances render it applicable, the consideration of the paragraphs relating to reviews in connection with crime. Whilst it may be said that in reviews which do not engage a requirement to consider the paragraphs giving guidance on the approach where there is activity in connection with crime related to licenced premises, the general provisions which apply to all reviews may result in the approach outlined in paragraph 5 being the appropriate one to follow. Indeed, paragraph 5.110, which applies generally to the exercise by a licensing authority of its powers on review, does state a requirement, so far as possible, on the authority to establish the cause or causes of the concerns and that remedial action taken should be directed generally to these causes and should always be no more than a necessary and proportionate response. That observation, in my judgment, is directed to the overall approach to the exercise by the licensing authority of its powers on a review. When considering reviews arising in connection with crime, decisions of the licensing authority would have to be reasonable in all the circumstances and that would necessarily engage a requirement to consider necessity and proportionality.
31. 31.1. However, in my judgment was not borne in mind by the district judge failed to have regard to the requirement on a licensing authority conducting a review on the grounds that the premises had been used for criminal purposes to take steps with view to the promotion of licensing objectives in the interests of the wider community. That is a requirement set out in paragraph 5.113. For reasons given earlier, and in particular by reason of the fact that paragraph 5.115 clearly specifies criminal activity which may arise in connection with the use of the licence premises for the purchase and consumption of alcohol by minors, that provision is engaged in this case.
32. 32.1. Accordingly, in my judgment, the district judge misdirected himself by confining his consideration of the case to the test which would be appropriate where no criminal activity was concerned. Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.
33. 33.1. The district judge held that the provisions are not to be used and cannot be used for punishment. That may strictly speaking be correct. However, in my judgment

deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable. Therefore, when the district judge confined himself, as in my judgment he did, to the considerations of remedying, and adopted only the language of paragraph 5.110 in his considerations, he erred in law. In my judgment, that error is sufficient to undermine the basis of his decision. On those two grounds alone, grounds 1 and 4 as I have outlined, I allow this application for judicial review.

34. 34.1. However, I continue to consider under the various headings the other grounds raised. The orders made by the district judge are challenged. He added to the existing conditions of the licence six matters as to which I am told that five were already present but not properly implemented. The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14 year old girls. In effect this is a perversity challenge to the decision of the district judge. Even if the approach of the district judge had been correct, which in my judgment it was not, it may well be that the order he made was perversely minimal to meet the circumstances and gravity of the case.
35. 35.1. Under the third general head of challenge, it is said that the district judge failed to pay proper regard to the decision of the licensing authority. Whereas he directed himself in accordance with the dictum of Lord Goddard in the Stepney Borough Council v Joffe case which he set out at page 2, paragraph 5 of his judgment, nonetheless, it is said that he failed to pay regard to the initial decision of the licensing authority when coming to his decision. Since in my judgment the district judge erred in other respects I determine this judicial review challenge on other grounds.
36. 36.1. It is finally said that the district judge erred in that he departed from the guidance issued under section 182 of the Licensing Act but failed, as he was obliged to do, to state that he was so departing and failed to give reasons for so departing. The departure, it is said, is constituted by the failure to give recognition and carry into effect the provisions of paragraphs 5.113, 5.115 and 5.116.
37. 37.1. Earlier in this judgment I set out the basis upon which licensing authorities must pay regard and be governed by guidance issued. Plainly an appellate body must operate similar principles to those applicable to the licensing authority. The guidance contains specific provisions as to the approach to be adopted where criminal activity connected with licence premises is concerned. He failed to give reasons for a departure from applicable guidance. The district judge in reaching his decision simply referred to the circumstances of the case and the fact that what is necessary is a question of the valuation and judgment which will involve the local authority or the court taking into account all the circumstances of the case, that is at page 10 of his judgment, paragraph 5. The district judge in my judgment failed to identify why and in what respects he was

departing from the guidance. I find that the district judge erred in failing to give reasons for departing from the applicable guidance.

38. 38.1. Accordingly, for the reasons set out in this judgment I allow this application for judicial review and find that the district judge erred in law in his approach to determining the appeal of the licensees in this case.

Yes, Mr Quirke.

39. 39.1. MR QUIRKE: I do not think there is any need to formulate a declaration, I think your judgment, in effect, will do the declaration required and the guidance required.

40. 40.1. I am instructed to apply for costs.

41. 41.1. MRS JUSTICE SLADE: Yes.

42. 42.1. MR QUIRKE: It is a tricky one.

43. 43.1. MRS JUSTICE SLADE: It is rather. Can you help me a bit on this?

44. 44.1. MR QUIRKE: Well, ordinarily the usual rules as to the cost apply. If somebody does not turn up, and for example if it is case stated and the magistrates do not attend at court, the court does not usually make an order for costs, but this is a sort of half way house, where the submissions have been made, although nobody has turned up to make them.

45. 45.1. MRS JUSTICE SLADE: Yes. Who would you want your costs from?

46. 46.1. MR QUIRKE: The Magistrates' Court.

47. 47.1. MRS JUSTICE SLADE: Mr Quirke, as you say, there are certain approaches which may normally be adopted but they are within my discretion. In the circumstances, where one would hope that the Magistrates' courts hearing such cases in the future will adhere to the judgment on matters which may not have been apparent to the district judge when coming to his decision and the subsequent order; since he was exercising his judicial function and there is no suggestion of impropriety or anything of that sort, I will not make an order for costs.

48. 48.1. MR QUIRKE: I am grateful.

49. 49.1. MRS JUSTICE SLADE: Thank you.

50. 50.1. I would ask you, Mr Quirke, to draw up the order.

51. 51.1. Thank you for your assistance.