

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 Banbury Express Food & Wine 179 Warwick Road	
Post town Banbury	Post code (if known) OX16 1AS

Name of premises licence holder or club holding club premises certificate (if known) Mr Narinder Singh Malhotra

Number of premises licence or club premises certificate (if known) PRM1609
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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) [REDACTED]
E-mail address (optional) [REDACTED]

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 type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

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

The grounds for review are as follows:

1. On 16th December 2018, Oxfordshire County Council Trading Standards conducted a covert test purchase visit at Banbury Express and purchased 20 illegal smuggled cigarettes for £6.50. The purchaser was not asked their age or for proof of age.
2. On 3rd March 2019, Oxfordshire County Council Trading Standards conducted a covert test purchase visit at Banbury Express and purchased 20 illegal smuggled cigarettes for £6.50. The purchaser was not asked their age or for proof of age.
3. On 9th June 2019, Oxfordshire County Council Trading Standards conducted an announced enforcement visit at Banbury Express. 300 illegal smuggled cigarettes were identified in a chocolate bar box behind the till point and seized. 2540 illegal smuggled cigarettes were also identified within two boxes in the shop storeroom and seized. A further single packet of illegal smuggled hand-rolling tobacco was identified in an additional storeroom and seized.
4. Breaches of licence conditions have been detected during the course of investigations into the above matters.
5. The premises licence holder / designated premises supervisor has been complicit in the unlawful conduct.

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

1. This review is being brought due to evidence that the licensed premises Banbury Express has been used to sell and store illegal tobacco. Further, this submission will show that this activity has been ongoing for a significant amount of time and an aggravating factor is that Mr Narinder Singh Malhotra, the owner and sole director of the Company that owns and runs the shop, has been directly involved in the criminality. Mr Malhotra is also now the premises licence holder and designated premises supervisor.

2. Banbury Express was granted its premises licence on 31 August 2016. The premises licence was granted to Mr Gurmeet Singh who also was appointed as the designated premises supervisor at this time.

3. However, the business itself is operated by Banbury Express Food and Wine Ltd and its director Mr Malhotra. Mr Singh is Mr Malhotra's brother-in-law. Mr Malhotra is a personal licence holder and, at the time of this submission, is also the premises licence holder and designated premises supervisor of another convenience store in Wokingham, albeit a business he does not own or work in.

4. On 4th October 2018, Trading Standards received intelligence alleging that Banbury Express was selling illegal tobacco. The intelligence alleged that "the shopkeeper/assistant goes through into the back of the shop to get it".

5. After receiving judicial authorisation from Oxford Magistrates' Court, on 16th December 2018, 1 x 20 Marlboro Gold cigarettes were retrieved from under the counter and sold for £6.50 at Banbury Express to a covert operative working on behalf of Trading Standards. The cigarettes were labelled in a foreign language, do not comply with standardised plain packaging requirements and are non-UK duty paid. The purchaser was not asked their age or for proof of age. The seller was described as an Asian male, aged in his 30s, with a black beard and wearing a patka.

6. After receiving further judicial authorisation from Oxford Magistrates' Court, on 3rd March 2019, 1 x 20 Marlboro Gold cigarettes were retrieved from under the counter and sold for £6.50 at Banbury Express to a covert surveillance operative working on behalf of Trading Standards. The cigarettes were labelled in a foreign language, do not comply with standardised plain packaging requirements and are non-UK duty paid. The purchaser was not asked their age or for proof of age. The seller was described as an Asian male but was not the same Asian male that sold on the earlier occasion.

7. On 9th June 2019, officers from Oxfordshire Trading Standards conducted an announced visit at Banbury Express in order to inspect the premises for tobacco products. A white male, who identified himself as "redacted - person A", was the sole person present in the premises. A short time later, Narinder Singh Malhotra arrived at the premises.

8. Mr Malhotra was asked, other than the legitimate tobacco products in the gantry, were there any other tobacco products in the premises. He directed officers to a box of (legal) cigarettes in a box in a rear storeroom. He did not indicate any other storage of tobacco products in the premises. The inspection then commenced and shortly afterwards smuggled and suspected counterfeit cigarettes were identified concealed in a "Snickers box" on a shelf in the counter area. Mr Malhotra made the unsolicited comment that he had bought them from a Polish guy the day before. The search continued and further smuggled and suspected counterfeit cigarettes were

identified in two boxes within the main storeroom.

9. The following items were subsequently seized:

From counter area:

3 x 20 Marlboro Red
10 x 20 Marlboro Gold
2 x 20 L&M Blue

From rear storeroom:

47 x 20 Marlboro Gold
33 x 20 L&M Blue
23 x 20 Vogue LA
6 x 20 Vogue Clic
10 x 20 LD Green
8 x 20 Marlboro Red

A total seizure of 2840 illegal cigarettes. The Marlboro Red cigarettes appeared to be counterfeit as each packet was marked with an identical code whereas each packet should have a unique code.

10. In order to obtain evidence of the person who had allegedly supplied the illegal cigarettes the day before the seizure, the CCTV was requested. However Mr Malhotra was unable to get the system to work at the time of the request.

11. Subsequent enquiries determined that, at the material time, the then premises licence holder and designated premises supervisor, Mr Gurmeet Singh, did not work at the shop, had no financial involvement in the shop, had not met "person A" and runs a Vape shop in Birmingham. He had not had any involvement with the business for over a year.

12. Mr Malhotra was interviewed under caution on 26th July 2019. He was asked what he understood the law to be in relation to selling smuggling or counterfeit tobacco from a shop and answered "It means I should not be selling counterfeits because they are not duty paid" and subsequently added "If the police catches me then I am in trouble".

13. Initially he said that he had bought some of the seized cigarettes from a Polish man on 8th June, the day before the seizure. He explained that the Polish man had approached him around 2 and a half months previously and he had bought illegal cigarettes from him on 3 or 4 occasions. Mr Malhotra said that he had first purchased illegal cigarettes from the Polish man at the start of April 2019. He was asked how sure he was of this and he replied "I'm sure, sir, 'cause obviously if I buy something then I should be sure".

14. Mr Malhotra initially said that it was only him who sold the illegal cigarettes and not any of his staff. He sold between 30-40 packets of illegal cigarettes per week. He said he only sold them to 4 or 5 regular Polish customers. He was asked how sure he was that he had only sold to these 4 or 5 customers and he answered that he was sure as they were his regular customers and he knew them personally.

15. The test purchase of illegal cigarettes which was made on 3rd March 2019 was then disclosed to Mr Malhotra. When challenged that he had previously said that he had purchased the illegal cigarettes for the first time from the Polish man in early April, he adjusted his answer to say that it could have been March. He then said he hadn't purchased any illegal cigarettes before March.

16. Mr Malhotra was shown an image of the physical seller on 3rd March taken from the covert camera which recorded the transaction. The seller was neither Mr Malhotra or person A.

17. Mr Malhotra explained that this person was a customer who had happened to be in the shop one day when he needed to go to London to the cash and carry. He said he was a Pakistani-Asian and he only knew him by his nickname of "Sam". He did not know his surname or have a contact number for him. He no longer frequented the shop.

18. When asked what training he had given "Sam" on age-restricted sales, Mr Malhotra said "I told him like the person looks under 25 or 21, he must ask for the ID and stuff. Even the system, the EPOS till does tell you as well that you must check for the ID and anything you must sell over 18". However, the test purchaser was aged 21 and was not asked their age or for proof of age.

19. Mr Malhotra could not explain how "Sam" came to know that illegal tobacco was sold at the premises, where it was stored or the price it was sold for.

20. Mr Malhotra was then asked if he wanted to think again about any of the answers he had given so far. He answered "I think I stick to my answers, sir".

21. The test purchase from 16th December 2018 was then disclosed to Mr Malhotra. He stated "It can't be true to be honest. 2018, can't be true. Can't be true. I know you said you did it but it can't be true" and "We didn't have any in 2018".

22. Mr Malhotra was shown the covert footage from the test purchase and identified himself as the physical seller. He adjusted his earlier statements and stated that "maybe it was October or November something like that" in respect of when the shop started selling illegal cigarettes.

23. He said he was now "100% sure" that he had started buying them in October or November and had bought them every 2-3 weeks. He explained that he said April 2019 initially "Because I got really scared, to be honest"

24. The evidence contradicts Mr Malhotra's account that the shop followed a Challenge 25 policy and that the illegal cigarettes were only sold to 4-5 Polish customers he knew personally. The two test purchasers were aged 21 and 22 respectively at the time of the sales, neither are Polish and neither had been in the shop before. Mr Malhotra apologised saying "It's a big mistake. It can never happen again sir. I apologise for that. Sorry. To be honest I say, I say, if they look like Polish or something" and added "It's a big mistake, I agree with my mistake, it can never happen again sir. I apologise for that sir".

25. It was put to Mr Malhotra that he had consistently lied during the interview and he replied "To be honest, you are right. I agree with you". He later added "All I can say is that I am so sorry for what I did. I made a mistake and it will never happen again".

26. The premises licence currently includes the following conditions within its operating schedule:

- strict implementation of Challenge 25

- on (sic) staff at all times will have knowledge how to operate the CCTV and download images if needed

- All staff to be trained in responsible alcohol retailing
- All stock to be bought from reputable Cash & Carry / Wholesalers
- All alcohol and tobacco products will be purchased from established and bona fide VAT registered traders.

27. As has been explained, there is prima facie evidence to indicate that these conditions have been breached.

28. The revised statutory guidance provides some assistance in determining the seriousness of the sale and storage of illegal tobacco in licensed premises.

At para 11.26 it states:

"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:

"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

And at para 11.28 it states that:

"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."

29. 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 connect with 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 to 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.

30. The evidence shows that Mr Malhotra, the sole director of the Company and now the premises licence holder and designated premises supervisor, has been directly involved in alleged criminal conduct. The evidence also shows that he has lied when given the opportunity to do so. Existing conditions have been wilfully ignored over an extended period. The Trading Standards Service regards these as aggravating factors of particular concern. Given the statutory guidance and supporting precedent, it is the recommendation of this Service that the premises licence be revoked.

31. If revocation is strongly considered but not deemed appropriate, it is recommended that a period of suspension with appropriate conditions would 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 amend/replace any similar existing conditions as

follows:

1. Tobacco Products

1.1 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 the 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

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

1.3 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.

1.4 Smuggled or counterfeit tobacco products for personal use must not be stored on the premises.

2 Signage

A3 Illegal Tobacco Keep It Out posters including the illegal tobacco hotline reporting number shall be displayed prominently at the entrance and sales area of the licensed premises at all times.

3 Challenge 25

The premises shall operate in accordance with the "Challenge 25" scheme. This scheme operates on the basis that whilst alcohol or tobacco may be sold to persons aged 18 years and over, anyone who appears under 25 years of age will be asked for proof of age. Notices to this effect shall be displayed in a clear and prominent position at the entrance to the premises and at the point of sale.

3. Refusals Book

A refusals book shall be kept at the premises in which must be recorded forthwith the date, time and circumstances under which any attempted purchase of alcohol or tobacco by a customer has been refused. This book must be made available for inspection by any duly authorised officer of trading standards or licensing (including Police licensing) upon request.

4. All staff working at the premises (whether paid or unpaid) who sell alcohol or tobacco shall receive training in the responsible retail of alcohol/tobacco and this training will be repeated on at least an annual basis. The premises licence holder will consult with trading standards and the Police regarding the nature of that training. Such training shall be recorded and these records shall be made available upon the request of a duly authorised officer of trading standards or licensing (including Police licensing).

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 17th September 2019

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) 

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.