

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 on behalf of Oxfordshire County Council Trading Standards
(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 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) Amerjit Singh (application to transfer to "Mr Singh & Kaur Ltd" has been made)

Number of premises licence or club premises certificate (if known) PRM0813
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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 On behalf of Oxfordshire County Council: 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 27th April 2024, an officer from Oxfordshire County Council Trading Standards conducted a covert test purchase visit to the premises and purchased a unit pack of illegal shisha. Unit packs of shisha, being a tobacco product, were also on open display, which is unlawful.
2. On 4th June 2024, Oxfordshire County Council Trading Standards conducted an announced inspection of the premises when illegal shisha and illegal electronic cigarettes were identified and seized. Non-compliant nicotine pouches were also identified and seized. Tobacco products were again on open display.
3. On 8th July 2024, Oxfordshire County Council Trading Standards met with the current premises licence holder (PLH) and designated premises supervisor (DPS). Also present was the director of the Company trading as Banbury Express. It was established that the then PLH/DPS had no active role in the operation of the business whilst the director was responsible for all decisions relating to the purchase of stock, training staff and for the systems in place.
4. Existing conditions attached to the premises licence appear to have been breached.
5. Three intelligence reports have been received between February 2022 – April 2023 alleging the supply of nitrous oxide from the rear of the premises, including supply to school children.
6. In 2021, this premises has been the subject of seizures of illegal electronic cigarettes, cigars and herbal shisha. In addition, tobacco products were seen on open display and a complaint received regarding the unlawful advertising of illegal cigarettes by outdoor flashing signage. Verbal and written advice was provided in each case.

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 has been used to sell and store illegal tobacco, illegal electronic cigarette products and non-compliant nicotine pouch products in breach of the licensing objective of preventing crime and disorder. In addition the unlawful open display of tobacco products has been observed in breach of the licensing objective of protection of children from harm.

2. On 27th April 2024 a trainee trading standards officer made a test purchase of a unit pack of Al Fakher coconut-flavoured shisha (100g) for £7.50. The current tobacco duty rate for this product is £17.37 per 100g. (See Annex).

3. The product labelling contained none of the statutory pictorial and text health warnings and information. There were also no instructions for use, ingredients, or manufacturer's contact details. The labelling made explicit and implicit claims regarding a taste or smell (i.e. coconut) which is unlawful. (See Annex). The product was also displayed in a glass cabinet by the till point and so on open display, which is also unlawful.

4. On 4th June 2024, a trainee trading standards officer and tobacco control officer, conducted an announced visit at the premises in order to inspect it for tobacco and related products.

5. Further illegal shisha products were identified in the same display cabinet. Also identified were illegal electronic cigarettes on open display and non-compliant unit packs of nicotine pouches. It was also noted that tobacco products were on open display.

6. A total of 7 unit packs of Al Fakher shisha (100g) were seized. Again, the labelling of each unit pack contained none of the statutory pictorial and text health warnings and information. There were also no instructions for use, ingredients, or manufacturer's contact details. The labelling of each unit pack made explicit and implicit claims regarding a taste or smell (i.e. coconut, raspberry, lemon, blue berry, strawberry mint, and berry) which are all unlawful (See Annex)

7. A total of 8 x Hayati Pro Max 4000+ electronic cigarettes were also seized. These products were labelled with a capacity of 10ml, which is 5 times the legal limit of 2ml. Four multipack display cases were observed on display. Each multipack usually contain 10 electronic cigarettes in each (See Annex)

8. A total of 47 x unit packs of nicotine pouches were also seized due to labelling non-compliances including no name, address and telephone number of a UK supplier/importer, no tactile warning triangle and/or incorrect safety warning information. (See Annex)

9. It was also identified that shisha products, heated tobacco products and tobacco blunts/blunt wrap products were also on open display, which is unlawful. (See Annex).

10. Trainee trading standards officer [REDACTED] issued an Inspection & Action Report Form. Included within this document was a statutory request for the invoices and receipts for all the seized products to be produced by 18th June. (See Annex)

11. It is noted that conditions currently attached to the premises licence include:

- All goods, including those subject to duty payments i.e. alcohol and tobacco products will be brought from cash and carries only an invoices (sic) and they will be available upon request
- No alcoholic drinks or tobacco will be purchased by the premises from unannounced sellers calling at the premises
(See Annex)

12. Officer [REDACTED] formally wrote to Mr Surinder Singh Malhotra, the director of Mr Singh & Kaur Ltd t/a Banbury Express, and Mr Amerjit Singh, Premises Licence Holder & Designated Premises Supervisor, on 21st June. This letter made clear that the Authority was minded to institute a review of the premises licence but requested a meeting prior to any decision being made. Officer [REDACTED] also repeated the request for the invoices/receipts to be provided and extended the deadline to 2nd July. (See Annex).

13. On 8th July, Mr Malhotra and Mr Singh attended a meeting at trading standards offices in Oxford. The key points of the meeting can be summarised as follows:

Mr Malhotra:

- on behalf of the Company, he signed an acknowledgement form and voluntary surrender form in respect of the seized items. (See Annex)
- he stated that the shisha tobacco products were from 6 months ago or more but he did not/could not identify the supplier.
- he sells Amber Leaf hand-rolling tobacco for £39.50 per 50g unit pack yet the shisha tobacco unit packs were being sold for £7.50 per 100g.
- he provided invoices accounting for 30 of the 47 seized nicotine pouch products but nothing for the shisha and electronic cigarette seized products.
- the Hayati electronic cigarettes were supplied by [REDACTED] from High Wycombe approximately 2 months ago on a sale or return basis.
- he claimed only 24 units were supplied by [REDACTED] and with 8 seized this means a minimum of 16 illegal electronic cigarettes were sold (this is contradicted by the evidence).
- he stated that this was the first time he had dealt with this supplier, no receipt was issued, no contact details were provided and the supplier has not returned to the premises for payment (this appears to breach one or more of the licence conditions).
- he explained that the tobacco products on open display were due to a space issue, which he has now resolved.
- he acknowledged that he had received verbal and written advice in 2021 regarding similar issues and had signed acknowledgment forms at that time.
- he is a personal licence holder, which he has held since 30th July 2020
- when asked why he didn't apply for the premises licence in his own or company name and become the designated premises supervisor himself, he explained that at the time of the application he was on medication and so did not consider this as an option
- he declined to comment on what, if any, connection there is to the previous premises licence holder, Mr Narinder Singh Malhotra, who was subject of a previous review relating to illegal tobacco products

Mr Singh:

- He stated that he was not involved in the Company/business
- He became the premises licence holder and designated premises holder in 2021 to help his friend
- He is a personal licence holder since 2020 or 2021 and did so because originally he thought about getting his own shop but changed his mind

- In terms of new stock, he does not know what Mr Malhotra buys or brings to the shop and is not involved in the choice of goods or what is purchased
- He was last in the shop approximately 6 months ago
- He is not involved in monitoring the performance of staff or training of staff

14. It was explained to both parties that, if this Authority did decide upon a review, it would seek certain conditions (as set out in this review application), which were then discussed. Mr Malhotra expressed his initial view that he may be amenable to accepting these conditions. Mr Malhotra also signed voluntary surrender and acknowledgement forms on behalf of the Company (see Annex).

15. A summary of the meeting was sent to both parties on 11th July. Within this it stated that "after giving you the opportunity to consider everything and to respond to this Authority with any proposed course of action that you may wish us to consider, I will then appraise the Trading Standards Leadership team, who will ultimately make the decision on the appropriate way of resolving this matter". (See Annex). No further contact was received from either party. This Authority was notified of the transfer of the premises licence and designated premises supervisor by the Licensing Authority on 1st August.

16. This matter is aggravated by the previous history of the premises whilst under the ownership of Mr Malhotra's company and under Mr Singh's tenure as premises licence holder and designated premises supervisor.

17. On 24th August 2021 trading standards officers visited Banbury Express. Mr Malhotra was the sole person working at the premises at this time. 111 electronic cigarette products were seized for non-compliance, namely:

- 42 x Elf Bar (various flavours)
- 14 x Bang XXL (Cool Mint & Orange Soda)
- 55 x Vapeman Solo+ (various flavours)

Of the seized items, 14 had excessive nicotine content of 3 times the maximum amount allowed. 27 of the seized items had excessive capacity of between 2.4 to 3 times the maximum capacity allowed.

18. Also identified and seized due to the absence of statutory health warnings were the following tobacco products and herbal smoking products:

- 13 x Blackwoods Cigars
- 36 x Soex Herbal Molasses (various flavours)

19. A large amount of tobacco products including blunts, cigars, cigarettes and hand-rolling tobacco was on open display on general shelving/display (outside of the tobacco gantry).

20. The statutory tobacco notice warning that it was illegal to sell tobacco products to anyone under 18 years was also not displayed.

21. Detailed letters were sent to Mr Malhotra dated 17th September 2021 and 23rd September 2021 respectively which provided all the information necessary to ensure the issues did not reoccur in the future. Mr Malhotra agreed to forfeiture and signed acknowledgment forms (See Annex).

22. On 15th December 2021, as a result of a consumer complaint regarding outdoor flashing/revolving signage above the shop, a tobacco control officer had cause to warn Mr Malhotra verbally and write to him the same day. The signage itself did not

have the required express consent and so this aspect was referred to the Local Planning Authority. The content of the outdoor signage constituted an unlawful advertisement in that it advertised and promoted tobacco products, which is strictly prohibited. Of particular concern was that all of the cigarettes displayed in the advertisement are illegal to sell in the UK. (See Annex).

23. Three intelligence reports have been received between February 2022 – April 2023 alleging the supply of nitrous oxide from the rear of the premises and including to school children. Nitrous oxide is now classified as a Class C drug under the Misuse of Drugs Act 1971 if it is to be inhaled and, as such, is now a matter enforced by the Police. (See Annex)

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

At para 11.27 it states:

"There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. The list includes the use of the licensed premises:

- 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."

(See Annex).

25. There is also decided case law to assist. In R (Bassetlaw District Council) v Worksop Magistrates' Court (2008) EWHC 3530, MJ Slade found that 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. (See Annex).

26. The sale of illegal tobacco products are regarded as serious criminal offences and are given particular prominence within the guidance. They are sold at prices well below the legally compliant versions, giving premises doing so a commercial advantage over their competitors that trade legally.

27. The severe health risks associated with smoking are widely reported and accepted. Smoking costs the National Health Service in England approximately £2 billion a year for treating diseases caused by smoking. The availability of cheap, illegal tobacco products may undermine the efforts of a current smoker to quit as price is often a key driver and, in fact, may encourage some smokers to smoke more. The sale of cheap tobacco products making unlawful claims regarding smell/taste, whilst also being on open display so they can easily be seen, may also attract children and young people's attention.

28. Following consultation, the UK, Welsh and Scottish Governments announced in February 2024, their intention to introduce legislation to ban the sale and supply of all disposable electronic cigarettes, with the UK Government explaining that they "have been a key driver behind the alarming rise in youth vaping, with the proportion of 11 to 17 year old vapers using disposables increasing almost ninefold in the last 2

years". The sale of electronic cigarettes that are already illegal is of concern due to their greater capacities and/or nicotine content.

29. The Trading standards service regards the failure to heed detailed previous advice as an aggravating factor of particular concern. Given the statutory guidance and supporting precedent, it is the recommendation of this service that revoking the premises licence should be strongly considered.

30. 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 are proposed as follows:

1. Tobacco and Nicotine-containing Products

1.1 All staff who are authorised to buy tobacco and nicotine-containing 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 such products must only purchase such goods from legitimate and established wholesalers who provide full receipts at the time of the delivery

b) The authorised buyers shall ensure that all receipts for tobacco and nicotine-containing 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 trading standards officers on request.

1.3 Where anyone working within the premises becomes aware that any illegal tobacco or nicotine-containing products may have been offered for purchase, they shall inform trading standards immediately and keep a written record of such action.

1.4 Smuggled or counterfeit tobacco products or non-compliant electronic cigarettes and nicotine pouch 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 (to be supplied by trading standards)

3. Challenge 25

The premises shall operate in accordance with the "Challenge 25" scheme. This scheme operates on the basis that whilst tobacco or electronic cigarette products 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.

4. 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 tobacco or electronic cigarette products 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.

5. Training

All staff working at the premises (whether paid or unpaid) who sell tobacco or nicotine-containing products shall receive training in the responsible retail of such products and this training will be repeated on at least an annual basis. The premises licence holder will consult with trading standards 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).

ANNEX

- 1 - Current tobacco duty rate
- 2 - Unit pack of Al Fakher coconut-flavoured shisha (100g)
- 3 - Unit packs of Al Fakher shisha (various flavours) (100g)
- 4 - Unit packs of Hayati Pro Max 4000+ electronic cigarettes
- 5 - Unit packs of Nicotine pouches
- 6 - Tobacco products on open display
- 7 - Inspection & Action Report Form
- 8 - Extract from Premises Licence showing relevant existing conditions
- 9 - Letter dated 21st June 2024
- 10 - Voluntary Surrender and Acknowledgment Form
- 11 - Summary of meeting sent 11th July 2024
- 12 - Letter dated 17th September 2021
- 13 - Letter dated 23rd September 2021
- 14 - Voluntary Surrender and Acknowledgment Forms
- 15 - Unlawful outdoor advertisement
- 16 - Letter dated 15th December 2021
- 17 - Intelligence reports February 2022 - April 2023
- 18 - Extract from statutory guidance
- 19 - R (Bassetlaw District Council) v Workshop Magistrates' Court (2008)

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

1	7	0	9	2	0	1	9
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If you have made representations before relating to this premises please state what they were and when you made them

The hearing took place on 29th October 2019 and the basis of the review was as follows:

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 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  - TRADING STANDARDS OFFICER)

Date 19th August 2024

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
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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.

