

ANNEX

Supporting Documents

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

Tobacco Products Duty rates

Updated 22 November 2023

Contents

Duty rate

Minimum Excise Duty for
cigarettes

Further information

 [Print this page](#)

Duty rate

Tobacco product	Duty rate from 6pm 27 October 2021	Duty rate from 6pm 15 March 2023	Duty rate from 6pm 22 November 2023
Other smoking tobacco and chewing tobacco	£144.17 per kg	£161.62 per kg	£173.68 per kg

ALFAHRIE P. 10, 100000



£7.50P

Coconut
جوز الهند
100 gm







Share

Edit

Lens

Delete



HATATI[®]
PRO MAX



HATATI[®] PRO MAX
FIZZY CHERRY

PRO MAX
4000+ PUFFS

FIZZY CHERRY

This product contains nicotine which is a highly addictive substance

HATATI[®]
PRO MAX



HATATI[®] PRO MAX
MANGO PEACH PINEAPPLE

PRO MAX
4000+ PUFFS

MANGO PEACH PINEAPPLE

This product contains nicotine which is a highly addictive substance

HATATI[®]
PRO MAX



HATATI[®] PRO MAX
STRAWBERRY HUBBA BUBBA

PRO MAX
4000+ PUFFS

STRAWBERRY HUBBA BUBBA

This product contains nicotine which is a highly addictive substance

HATATI[®]
PRO MAX



HATATI[®] PRO MAX
STRAWBERRY WATERMELON

PRO MAX
4000+ PUFFS

STRAWBERRY WATERMELON

This product contains nicotine which is a highly addictive substance

4000+ PUFFS

**MANGO PEACH
PINEAPPLE**

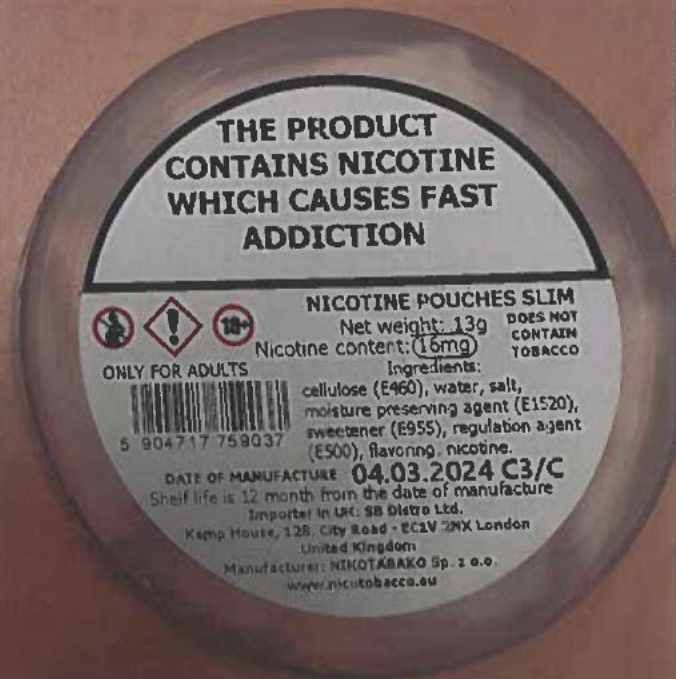
**This product
contains nicotine
which is a
highly addictive**



4000+ PUFFS

FIZZY CHERRY

**This product
contains nicotine
which is a
highly addictive**







Trading Standards Service
 Graham Hill House, Electric Avenue
 Ferry Hinksey Road, Oxford, OX2 0BY
 Tradingstandards@oxfordshire.gov.uk
 Tel: 01865 895999 Option 2



INSPECTION & ACTION REPORT

Date: 04/06/2024	Business Owner: MR SINGH + RAJIV LTD
Trading Name: BANBURY EXPRESS	Address, Telephone & Email: 179 WARWICK ROAD, BANBURY, OX16 1AS

This intervention was carried out under the legislation ticked below:

Children and Young Persons (Protection from Tobacco) Act	Consumer Protection Act	Prices Act	
Consumer Protection from Unfair Trading Regulations	Companies Act	Weights & Measures Act	
Animal Health Act	Food Safety Act	Other	see below ✓
Agriculture Act	Licensing Act		

Areas examined/Issues discussed/Matters requiring action	Legal Requirement	Best Practice
Consumer Rights Act 2015	✓	
Tobacco + Related Products Regulations 2016		
Standardised Packaging of Tobacco Products Regulations 2015		
- 87 unit packs shisha		
- 8 unit packs Hugal Pro Max e-cigarettes		
- Quantity of nicotine pouches		
Seized for non-compliance	✓	
Tobacco Advertising + Promotion Act 2002	✓	
Tobacco Products including 'blunt wraps' + IQOS Neets, must not be on display		
Consumer Rights Act 2015	✓	
Formal request to produce supplier documentation (i.e invoices or receipts) for seized items by 18/06/2024.		
Please note it is an offence not to comply with this requirement		
Letter to follow.		

Timescale for rectifying matters above:

This report covers the specific areas inspected at the time of the inspection. It does not indicate compliance with any legal provisions, nor does it give general approval to your business.

Inspecting Officer Name: [REDACTED]	Recipient Name: [REDACTED]
Signature: [REDACTED]	Signature: [REDACTED]
Job Title: TRADING STANDARDS OFFICER	Job Title: STORE ASSISTANT

ANNEX 8 (1 PAGE)

Annex 2 – Conditions consistent with the operating schedule

a) General - all four licensing objectives (b,c,d,e)

1. Strict implementation of challenge 25 policy
2. CCTV to be installed and 28 days recording system
3. All staff to be trained in responsible alcohol retailing
4. Training manual will be available at the premises

b) The prevention of crime and disorder

1. The premise license holder shall ensure that CCTV camera and recorders are installed at the premises and are of a standard acceptable to and approved by the police
2. The system shall be maintained in good working order and at all times the premise is open to the public, be fully operational covering both internal and external areas of the premises to which the public have access. All images should be stored for a minimum of 31 days
3. The CCTV views are not to be obstructed, at least one CCTV camera is to be placed near to the exit in order to capture clear facial images of all patrons leaving the premises
4. A suitable trained staff member will be able to show and provide police or council licensing officers recent data footage with the minimum delay when requested.
5. All goods, including those subject to duty payments i.e. alcohol and tobacco products will be brought from cash and carries only on invoices and they will be available upon request. All alcohol will be purchased from AWRS registered cash & carry or wholesalers.
6. No alcoholic drinks or tobacco will be purchased by the premises from unannounced sellers calling at the premises
7. All staff employed at the premises will have UK right to work status checked, once passed that stage they shall be offered employment.

c) Public safety

1. Installation of appropriate safety equipment
2. Fire exit signs displayed
3. To comply with all current, fire, health and safety laws
4. CCTV working at all times

d) The prevention of public nuisance

1. Notice displayed asking customers to leave quietly from premises also customers will be told in person to leave quietly and not to disturb the local neighborhood
2. Strict policy in place to tell all staff not to serve alcohol to drunks at all
3. Appropriate signage will be displayed, in prominent position informing customers they are being recorded on CCTV

e) The protection of children from harm

1. A challenge 25 policy will be in force, where any person looking under the age of 25 shall be asked to prove their age when attempting to purchase alcohol and signs to this effect will be displayed at the premises. Challenge 25 posters displayed where alcohol is sold.
2. The only acceptable ID will be those with photographic identification documents; including passport, photo-card, driving license or proof of age card bearing the PASS hologram.
3. An incident/refusal log shall be kept at the premises, and made available for inspection on request to an authorised officer of the council of the police which will record the following;
 - a) All crimes reported at the venue

ANNEX 9 (9 PAGES)



Reference: ED/39447

Mr Surinder Singh Malhotra
Mr Singh & Kaur Ltd t/a Banbury Express
179 Warwick Road
Banbury
OX16 1AS

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

Jody Kerman
Head of Trading Standards

21st June 2024

Dear Mr Malhotra

1. **Tobacco and Related Products Regulations 2016**
2. **Standardised Packaging of Tobacco Products Regulations 2015**
3. **Tobacco Advertising and Promotion Act 2002**
4. **General Product Safety Regulations 2005**
5. **Consumer Protection Act 1987**
6. **Classification, Labelling and Packaging of Substances and Mixtures Regulation (EC) 1272/2008 (as amended and retained in UK Law)**

As you are aware, on 4th June 2024 officers from Oxfordshire County Council Trading Standards visited your business premises, Banbury Express, to check compliance of tobacco and related products. During this visit, a number of products were identified and seized due to suspected non-compliance with the above-mentioned legislation.

Total Items Seized:

- 7 unit packs of shisha tobacco
- 47 unit packs of nicotine pouches
- 8 unit pack of e-cigarettes

Please refer to Annex 1 (pages 7-8) for a full breakdown of items seized with an explanation of their non-compliances.

As non-compliance was detected, the purpose of this letter is to explain the requirements of the legislation and to assist you in trading lawfully in the future.

1 – Legal Requirements Relating to the Supply of Shisha Tobacco

You can only sell waterpipe tobacco (hereby referred to as shisha) that has been officially notified to the Government. This also applies to herbal shisha. The official list of notified shisha products (manufacturer and brand name) can be found here:

<https://www.gov.uk/government/publications/notification-of-tobacco-or-herbal-products-for-smoking> (open "List of tobacco and related products notified" excel spreadsheet)

It is highly likely that any other manufacturer/brand of shisha not on this list is illegal and liable to seizure.

Labelling of Shisha Tobacco Products

It is an offence to supply or sell shisha tobacco products which do not carry health warnings nor have the appropriate packaging details. For shisha tobacco products this must contain a "combined health warning" which contains a text warning and a graphic health warning. It also must be in English, fully visible, indelible, irremovably printed, printed on the pack and surrounded by a black border. The combined health warning must cover 65% of the surface area of the front and back of the product. It must also be accompanied by a general health warning and information message with the phrase "Get help to stop smoking at www.nhs.uk/quit" and one of the following text warnings:

1. Smoking causes 9 out of 10 lung cancers
2. Smoking causes mouth and throat cancer
3. Smoking damages your lungs
4. Smoking causes heart attacks
5. Smoking causes strokes and disability
6. Smoking clogs your arteries
7. Smoking increases the risk of blindness
8. Smoking damages your teeth and gums
9. Smoking can kill your unborn child
10. Your smoke harms your children, family and friends
11. Smokers' children are more likely to start smoking
12. Quit smoking stay alive for those close to you
13. Smoking reduces fertility
14. Smoking increases the risk of impotence

Below is a summary of the health warning and packaging requirements for shisha tobacco products:

Requirement
No discounts, 2-for-1 offers, reductions or similar
No indications that less harmful /lifestyle or environmental benefits / vitalising, healing natural or organic properties
No mentions or depictions of taste, smell or any flavour or additive or the absence thereof
Smoking cessation information
Text warning
General health warning (i.e. Smoking Kills – Quit Now)
Information message (i.e. Tobacco smoke contains over 70 substances known to cause cancer)
Graphic health warning

2 – Legal Requirements Relating to the Supply of Nicotine Pouch Products

Labelling Requirements

It is an offence to supply or sell nicotine pouch products which do not comply with the following requirements:

- Labelling in English
- The name, address and telephone number of the UK supplier or importer is stated
- The nominal quantity of the nicotine content per pouch is stated
- The hazard pictogram and signal word are displayed as shown in Annex 2: CLP hazard classification table (page 9)
 - o Hazard pictograms must cover at least one fifteenth of the surface area of the label and the minimum area shall not be less than 1 cm squared
 - o The packaging must also bear a tactile warning triangle

3 – Legal Requirements Relating to the Supply of E-cigarettes Containing Nicotine

Requirement for products to be notified to MHRA prior to sale

You can only sell pre-filled disposable e-cigarettes or any other vaping liquid that contains nicotine which have been notified to the Medicines and Healthcare products Regulatory Authority (MHRA). When sourcing new supplies of any e-cigarette or e-liquid product, check that a compliant notification has been published in one of the Notified Product lists that can be found on the MHRA's website: (<https://cms.mhra.gov.uk/>).

If you cannot find the product on the MHRA's website, ask your supplier to confirm that it has been published and provide details to enable you to confirm the products status. If a product has yet to achieve publication status, they may not supply it to you. Any stock offered for sale without said MHRA publication status is liable to seizure.

The Maximum Capacity & Strength of E-Cigarettes

Nicotine containing liquid which is presented for sale in a disposable electronic cigarette **must not be in a volume exceeding 2ml**. Please note that the HAYATI PRO MAX (4000+ puffs/10 ml) disposable e-cigarettes seized from your premises contained over 2ml of nicotine containing liquid.

The maximum nicotine content of any type of e-cigarette be it a re-fillable or a disposable device is 2% (or 20mg/ml in liquid form). Devices with a nicotine content higher than 2% cannot be sold in the UK.

Labelling of E-Cigarettes

Each unit pack (individual e-cigarette) must include a leaflet which provides the following information. If the required leaflet information can fit on the pack and other

labelling within the pack without loss of legibility to the consumer, a separate leaflet insert is not required. Such information should include:

- Instructions for use and storage of the product, including a reference that the product is not recommended for use by young people and non-smokers;
- Contra-indications;
- Warnings for specific risk groups;
- Possible adverse effects;
- Addictiveness and toxicity;
- Contact details of the producer. The producer is any person who, in the course of a business, with a view to supplying the product for consumption in the United Kingdom or through the travel retail sector
 - manufactures the product
 - puts a name, trade mark or other distinguishing mark on it by which the person is held out to be its manufacturer or originator; or
 - imports it into any part of the United Kingdom

Each unit pack and any container pack (packaging containing one or more unit pack) must include:

- A list of all ingredients contained in the product set out in descending order by weight;
- An indication of the nicotine content of the product and the delivery per dose;
- The batch number
- A recommendation to keep the product out of reach of children.
- The relevant hazard pictogram, signal word, and statement. Please refer to Annex 2: CLP Hazard Classification Table (page 9).
- A tactile warning triangle that complies with BS EN ISO 11683 PACKAGING - TACTILE WARNINGS OF DANGER - REQUIREMENTS
- A warning on the front and back surfaces of the pack stating: **“This product contains nicotine which is a highly addictive substance”**. This wording must be used exactly as stated, occupy the greatest possible proportion of the space reserved for it and must cover 30% of the surface.

Please note: Any alternative wordings are not compliant with UK packaging regulations and products with any alternative wording must not be offered for sale. If they are then you may commit an offence and the products are liable to be seized. If you are offered stock by a supplier bearing any warning that deviates from the above statutory wording it is recommended that you do not purchase and notify trading standards.

4 – Legal Requirements Relating to the Display of Tobacco Products

Tobacco Advertising and Promotion Act 2002

Since 2015 all open tobacco displays in shops must be covered and any tobacco products must not be on general display to the public. The law does not set out exactly how you have to cover your tobacco display but it must be covered completely and when you retrieve the tobacco, the maximum area that can be displayed is 1.5 square

meters. Retailers are free to choose for themselves the most appropriate and efficient means of removing tobacco products from sight.

During our visit to your premises, it was noted that a quantity of 'IQOS Heets' heated tobacco sticks and blunts/blunt wraps were on open display. Blunts or blunt wraps are manufactured rolling papers made from processed, and sometimes flavoured, tobacco. As these products are classified as tobacco products they must not be on open display. Smoking-related products such as cigarette papers, lighters or non-tobacco blunts are not tobacco products and so can continue to be on open display. You should take care to check the labels carefully and distinguish between products containing tobacco and those that do not.

5 – Enforcement

The non-compliances explained above constitute alleged criminal offences. Subject to certain conditions being met, on this occasion, this Authority does not intend to investigate with this matter criminally.

However, it is noted that similar issues were identified at a previous visit and advice was provided. As such, this Authority is now minded to institute a review of the premises licence.

Before any formal decision is made, it is requested that you, as director of the Company, and Mr Amerjit Singh, Premises Licence Holder and Designated Premises Supervisor, attend an in person meeting to discuss the matter further.

6 – Meeting Details

The meeting will take place at **15:00 on Monday 8th July** at Graham Hill House, Electric Avenue, Ferry Hinksey Road, Oxford. Subject to availability, there is free parking at Graham Hill House. Please confirm your intention to attend by **2nd July**.

During this meeting, you will be asked to complete the following documents:

- i. Voluntary Surrender Form — Authorising the seized products to be voluntarily surrendered in order that they can be destroyed
- ii. Acknowledgment Form — Acknowledging that verbal and written advice has been received and will be implemented

Additionally, as per the request detailed in the Inspection & Action Report Form left at the premises on 4th June, in accordance with the requirements of the Consumer Rights Act 2015, please provide a true copy of the invoice(s) or receipt(s) for the purchase of the seized items by **2nd July 2024**. This can be done by posting copies to the address stated in this letter or, alternatively, photographing and emailing them to me via [REDACTED]

Please note that a criminal offence may be committed by failing to respond to this request.

If you require any further clarification regarding any of the points raised in this letter, please do not hesitate to contact me. Please note, I am on leave from 24th June and return to work on 2nd July 2024. You may wish to seek legal advice in the meantime.

Yours sincerely

[Redacted signature]

[Redacted name]

Trainee Trading Standards Officer

Direct line: [Redacted]

Email: [Redacted]

Enc.

cc. Amerjit Singh, Premises Licence Holder & Designated Premises Supervisor, [Redacted]

[Redacted]

COPY

Annex 1: Full breakdown of items seized

Quantity	Type of Product	Product	Reason for non-compliance
1 unit pack	Shisha Tobacco	AL FAKHER, Raspberry	<ul style="list-style-type: none"> - Packaging indicates flavour - Labelling does not meet any health warning or packaging requirements
1 unit pack	Shisha Tobacco	AL FAKHER, Lemon	<ul style="list-style-type: none"> - Packaging indicates flavour - Labelling does not meet any health warning or packaging requirements
1 unit pack	Shisha Tobacco	AL FAKHER, Blue Berry	<ul style="list-style-type: none"> - Packaging indicates flavour - Labelling does not meet any health warning or packaging requirements
1 unit pack	Shisha Tobacco	AL FAKHER, Coconut	<ul style="list-style-type: none"> - Packaging indicates flavour - Labelling does not meet any health warning or packaging requirements
1 unit pack	Shisha Tobacco	AL FAKHER, Strawberry Mint	<ul style="list-style-type: none"> - Packaging indicates flavour - Labelling does not meet any health warning or packaging requirements
2 unit packs	Shisha Tobacco	AL FAKHER, Berry	<ul style="list-style-type: none"> - Packaging indicates flavour - Labelling does not meet any health warning or packaging requirements
7 unit packs	Nicotine Pouches	KILLA, Cola (12.8 mg nicotine)	<ul style="list-style-type: none"> - No name, address, and telephone of UK supplier/importer - No tactile warning triangle
11 unit packs	Nicotine Pouches	KILLA, Cold X mint (12.8 mg nicotine)	<ul style="list-style-type: none"> - No name, address, and telephone of UK supplier/importer - No tactile warning triangle
8 unit packs	Nicotine Pouches	KILLA, Banana Ice (12.8 mg nicotine)	<ul style="list-style-type: none"> - No name, address, and telephone of UK supplier/importer - No tactile warning triangle
5 unit packs	Nicotine Pouches	KILLA, Blueberry (12.8 mg nicotine)	<ul style="list-style-type: none"> - No name, address, and telephone of UK supplier/importer - No tactile warning triangle
3 unit packs	Nicotine Pouches	CUBA, Watermelon (43mg nicotine)	<ul style="list-style-type: none"> - Incorrect hazard classification - Hazard pictogram too small - No hazard statement
2 unit packs	Nicotine Pouches	CUBA, Pineapple (16 mg nicotine)	<ul style="list-style-type: none"> - Hazard pictogram too small - No hazard statement



8 unit packs	Nicotine Pouches	CUBA, Cola (16 mg nicotine)	- Hazard pictogram too small - No hazard statement
3 unit packs	Nicotine Pouches	CUBA, Cherry (16 mg nicotine)	- Hazard pictogram too small - No hazard statement
2 unit packs	E-cigarettes	HAYATI PRO MAX, Fizzy Cherry	Exceeds maximum capacity of 2ml
1 unit pack	E-cigarettes	HAYATI PRO MAX, Mango Peach Pineapple	Exceeds maximum capacity of 2ml
3 unit packs	E-cigarettes	HAYATI PRO MAX, Strawberry Hubba Bubba	Exceeds maximum capacity of 2ml
2 unit packs	E-cigarettes	HAYATI PRO MAX, Strawberry Watermelon	Exceeds maximum capacity of 2ml

Total Seized:

- 7 unit packs of shisha tobacco
- 47 unit packs of nicotine pouches
- 8 unit pack of e-cigarettes

Annex 2: CLP Hazard Classification Table

For products containing concentrations above 0.3% of nicotine or salts of nicotine

0.0% to 0.2% nicotine	0.3% to 1.6% nicotine	1.7% to 2.0% nicotine
Not classified	Harmful, Oral tox. Category 4	Toxic, Oral tox. Category 3
Signal Word: N/A	Signal Word: Warning	Signal Word: Danger
Hazard Pictogram: None		
Hazard Statement: N/A	Hazard Statement: H302: Harmful if swallowed	Hazard Statement: H301: Toxic if swallowed
Recommended precautions that should be present on the label:		
It is not compulsory, but advised, to use the following: P101: If medical advice is needed, have product container or label to hand. P102: Keep out of reach of children. P405: Store locked up	P101: If medical advice is needed, have product container or label to hand. P102: Keep out of reach of children. P264: Wash ... thoroughly after handling. P270: Do not eat, drink or smoke when using this product. P301 & P312: IF SWALLOWED: Call a POISON CENTER or doctor/physician if you feel unwell. P330: Rinse mouth. P501: Dispose of contents/container to...	P101: If medical advice is needed, have product container or label to hand. P102: Keep out of reach of children. P264: Wash ... thoroughly after handling. P270: Do not eat, drink or smoke when using this product. P301 & P310: IF SWALLOWED: Immediately call a POISON CENTER or doctor/physician. P321: Specific treatment (see... on this label). P330: Rinse mouth. P405: Store locked up P501: Dispose of contents/container to...

Regulation on the Classification, Labelling and Packaging of Substances & Mixtures 2008

ANNEX 10 (2 PAGES)

VOLUNTARY SURRENDER FORM



**OXFORDSHIRE
COUNTY COUNCIL**

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

I agree that the items listed below do not conform to the requirements of the:

Tobacco and Related Products Regulations 2016,
Standardised Packaging of Tobacco Products Regulations 2015,
Classification, Labelling and Packaging of Substances and Mixtures Regulation (EC)
1272/2008 (as amended and retained in UK Law),
General Product Safety Regulations 2005, and/or
Consumer Protection Act 1987

and therefore cannot legally be supplied by me.

7x Al Fakher Shisha Tobacco
31x Killa Nicotine Pouches
16x Cuba Nicotine Pouches
8x Hayati Pro Max E-cigarettes

I hereby abandon all rights to these items. I do not wish to have any claim in respect of them, nor do I have any objection to them being disposed of by Oxfordshire County Council as they see fit.

Signed



Date: 08/07/24

Name: Surinder Singh MALHOTRA

On behalf of: Mr Singh & Kaur Ltd

Address: 179 Warwick Road, Banbury, OX16 1AS

Reference: ED/39447

Note: The voluntary surrender of these items does not absolve you from liability for any offences committed in connection with them.

ACKNOWLEDGEMENT FORM

I hereby acknowledge that verbal and written advice has been received regarding the relevant legislative controls that relate to the supply of tobacco and related products.

I confirm I have taken the necessary remedial action to address the matters I have been advised upon.

Business: Mr Singh & Kaur Ltd

Address: 179 Warwick Road, Banbury, OX16 1AS

Name: Surinder Singh MALHOTRA

Position: Director

Signed:  _____

Date: 08/07/24

Reference: ED/39447

ANNEX 11 (2 PAGES)

Sharland, Russell - Oxfordshire County Council

From: Sharland, Russell - Oxfordshire County Council
Sent: 11 July 2024 15:41
To: [REDACTED]
Cc: [REDACTED] Oxfordshire County Council; [REDACTED] - Oxfordshire County Council
Subject: Banbury Express - summary of meeting
Attachments: Proposed Conditions.docx

Importance: High

Categories: Egress Switch: Unprotected

Dear Mr Singh & Mr Malhotra

Thank you for attending the meeting earlier this week, which I found to be a helpful discussion.

As a result of the seizure of the non-compliant tobacco and nicotine products, as you know, the initial position of this Authority is that it is minded to institute a review of the premises licence and, as a result, the meeting was to discuss the relevant issues, which I summarise as follows:

Mr Malhotra

1. On behalf of the Company, you signed an acknowledgement and voluntary forfeiture form in respect of the seized items. No further action will be taken in relation to the criminal offences identified but if any future offences are detected, it is highly unlikely that this Authority will take a lenient approach again.
2. You stated that the shisha tobacco products were from 6 months ago or more but you chose not to identify the supplier.
3. You sell 50g Amber Leaf hand-rolling tobacco for £39.50 per unit pack yet the shisha tobacco unit packs were being sold for £7.50 per 100g and it was explained to you that the tobacco duty and VAT alone would mean a lawful product could not be sold for this price without making a significant loss.
4. You have provided invoices for the nicotine pouch products and have been provided with verbal and written advice to help you ensure you only buy legally compliant product in the future.
5. You explained that the Hayati electronic cigarettes were supplied by '[REDACTED]' from High Wycombe approximately 2 months ago on a sale or return basis.
6. 24 units were supplied with 8 seized, meaning 16 were sold.
7. You stated that this was the first time you 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
8. You explained that the tobacco products on open display were due to a space issue, which you have now resolved.
9. You acknowledged that you had received verbal and written advice in 2021 regarding similar issues to the above and had signed acknowledgment forms at that time.
10. You are a personal licence holder, which you have held since 30th July 2020
11. When asked why you didn't apply for the premises licence in your own or company name and become the designated premises supervisor yourself, you explained that at the time of the application you were on medication and so did not consider this as an option
12. You declined to comment on what, if any, connection there is to the previous premises licence holder

Mr Singh

1. You stated that you have no involvement in the Company/business
2. You became the premises licence holder and designated premises holder in 2021 to help your friend
3. You are a personal licence holder since 2020 or 2021 and did so because originally you thought about getting your own shop but you changed your mind
4. In terms of new stock, you don't know what Mr Malhotra buys or brings to the shop and you have no involvement in the choice of goods or what is purchased
5. You were last in the shop approximately 6 months ago
6. You have no involvement in monitoring the performance or training staff
7. You are considering whether you may choose to cease your involvement as designated premises supervisor and/or premises licence holder

It was explained to you both that, if this Authority did decide upon a review, it would seek certain conditions, which we then discussed. You expressed your initial view that you may be amenable to accepting these conditions. I attach a copy of the proposed conditions for your consideration.

I also explained 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.

I trust this summary is helpful. If you feel I have made any misrepresentation, please do let me know. Similarly, if there is any further information you wish to be considered, please feel free to contact me.

You may wish to seek legal advice in the meantime.

Yours sincerely

Russell Sharland
Trading Standards Tobacco Control Officer
Community Safety Services | Trading Standards Service
Oxfordshire County Council

www.oxfordshire.gov.uk



ANNEX 12 (8 PAGES)



Reference: E064358

Mr Surinder Singh MALHOTRA
Mr Singh & Kaur Ltd t/a Banbury Express
179 Warwick Road
Banbury
OX161AS

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

Jody Kerman
Head of Trading Standards

17th September 2021

Dear Mr Malhotra

1. **Tobacco and Related Products Regulations 2016**
2. **Classification, Labelling and Packaging of Substances and Mixtures Regulation (EC) 1272/2008 (as amended and retained in UK Law)**
3. **The Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012**
4. **General Product Safety Regulations 2005**

As you are aware, on 24th August officers from Oxfordshire County Council Trading Standards visited your business premises to check compliance of disposable e-cigarettes (aka vapes) with the above-mentioned legislation. These are e-cigarette devices used for the consumption of nicotine-containing vapour.

As non-compliance was detected, the purpose of this letter is to explain the requirements of the legislation and to assist you in trading lawfully in the future.

This letter also sets out what will now happen with the products which were seized from your premises on the suspicion that they were in breach of the above Regulations and the grounds on which you may secure the return of these products.

1 – Legal requirements relating to the supply of e-cigarettes containing nicotine

Tobacco and Related Products Regulations 2016

Requirement for products to be notified to the MHRA prior to sale

You can only sell pre-filled disposable e-cigarettes or any other vaping liquid that contains nicotine which have been notified to the Medicines and Healthcare Products Regulatory Authority (MHRA). When sourcing new supplies of any e-cigarette or e-liquid product, check that a compliant notification has been published in one of the Notified Product lists that can be found on the MHRA's website (<https://cms.mhra.gov.uk/>).

If you cannot find the product on the MHRA's website, ask your supplier to confirm that it has been published and provide details to enable you to confirm the products status. If a product has yet to achieve publication status, they may not supply it to you. Any stock offered for sale without said MHRA publication status is liable to seizure.

The Maximum Capacity & Strength of E-Cigarettes

Nicotine containing liquid which is presented for sale in a disposable electronic cigarette must not be in a volume exceeding 2ml. Some of the products seized contained over 2ml of nicotine containing liquid.

The maximum nicotine content of any type of e-cigarette, be it a re-fillable or a disposable device, is 2% (or 20mg/ml in liquid form). Devices with a nicotine content higher than 2% cannot be sold in the UK. Please be aware that many manufacturers, for example Geek Bar, produce different versions of the same brand/flavour for both the EU/UK market where the limit is 2% and also for other markets (i.e. the USA) where the limit is higher-typically 5%. You must make sure that any stock you order, particularly if you are ordering online, is intended for supply to the UK market.

Labelling of E-Cigarettes

Each unit pack (individual e-cigarette) must include a leaflet which provides the following information. If the required leaflet information can fit on the pack and other labelling within the pack without loss of legibility to the consumer, a separate leaflet insert is not required. Such information should include:

- Instructions for use and storage of the product, including a reference that the product is not recommended for use by young people and non-smokers;
- Contra-indications;
- Warnings for specific risk groups;
- Possible adverse effects;
- Addictiveness and toxicity;
- Contact details of the producer. The producer is any person who, in the course of a business, with a view to supplying the product for consumption in the United Kingdom or through the travel retail sector
 - manufacturers the product
 - puts a name, trade mark or other distinguishing mark on it by which the person is held out to be its manufacturer or originator; or
 - imports it into any part of the United Kingdom

Each unit pack (individual e-cigarette) and any container pack (packaging containing one or more unit pack) must include:

- A list of all ingredients contained in the product set out in descending order by weight;
- An indication of the nicotine content of the product and the delivery per dose;
- The batch number
- A recommendation to keep the product out of reach of children.
- A warning on the front and back surfaces of the pack stating: **“This product contains nicotine which is a highly addictive substance”**. This wording must be used exactly as stated, occupy the greatest possible proportion of the space reserved for it and must cover 30% of the surface.

Please note: On a number of devices found during recent inspections this phrase is incorrectly given as “This product contains nicotine which is a highly addictive chemical”. This is not compliant with UK packaging regulations and products with this alternative



wording must not be offered for sale. Incorrectly labelled products are liable to be seized. If you are provided with stock bearing any warning that deviates from the statutory wording we recommend that you return it to your supplier immediately. Packs may not contain anything that:

- Promotes the product by creating an erroneous impression about its characteristics, health effects, risks or emissions.
- Suggests the product is less harmful, has health benefits or environmental advantages.
- Resembles a food or a cosmetic product (though images of the flavourings are acceptable).
- Suggests economic advantage – e.g. vouchers, offering discounts, free distribution, two-for-one, etc.

Where the packaging of the devices being returned to you does not meet these requirements you must ensure that it does before it is offered for sale. This may be accomplished by the addition of stickers/labels to the products which provide the necessary information; by new packaging being provided or some other alternative method carried out by the Producer/Manufacturer/Importer, provided that it brings the product into compliance with the above. If this is not possible then we would recommend that you seek to return these items to your supplier.

CLP (classification, labelling and packaging) Regulation (CE) 1272/2008

Nicotine, or salts of nicotine are, in most but not all, cases the only hazardous substance contained in e-liquids. The labelling of the product therefore commonly depends on the concentration of nicotine or salts of nicotine it contains. The table below indicates the CLP hazard classification that might be required for mixtures containing different concentrations of nicotine and salts of nicotine. Where products contain concentrations above 0.3% the label should include the relevant pictogram, signal word, hazard statement and up to six of the precautionary statements. It is for the producer to assess which precautionary statements should be present. The packaging should also be fitted with a tactile warning triangle that complies with BS EN ISO 11683 PACKAGING - TACTILE WARNINGS OF DANGER - REQUIREMENTS

0.0% to 0.2% nicotine	0.3% to 1.6% nicotine	1.7% to 2.0% nicotine
Not classified	Harmful, Oral tox. Category 4	Toxic, Oral tox. Category 3
Signal Word: N/A	Signal Word: Warning	Signal Word: Danger
Hazard Pictogram: None		
Hazard Statement: N/A	Hazard Statement: H302: Harmful if swallowed	Hazard Statement: H301: Toxic if swallowed
Recommended precautions that should be present on the label:		
It is not compulsory, but advised, to use the following: P101: If medical advice is needed, have product container or label to hand. P102: Keep out of reach of children. P405: Store locked up	P101: If medical advice is needed, have product container or label to hand. P102: Keep out of reach of children. P264: Wash ... thoroughly after handling. P270: Do not eat, drink or smoke when using this product.	P101: If medical advice is needed, have product container or label to hand. P102: Keep out of reach of children. P264: Wash ... thoroughly after handling. P270: Do not eat, drink or smoke when using this product.

	<p>P301 & P312: IF SWALLOWED: Call a POISON CENTER or doctor/physician if you feel unwell. P330: Rinse mouth. P501: Dispose of contents/container to...</p>	<p>P301 & P310: IF SWALLOWED: Immediately call a POISON CENTER or doctor/physician. P321: Specific treatment (see... on this label). P330: Rinse mouth. P405: Store locked up P501: Dispose of contents/container to...</p>
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Other requirements for e-cigarettes

Manufacturers, Importers and Distributors of e-cigarettes also need to comply with the **Restriction of Hazardous Substances in Electrical and Electronic Equipment Regulations 2012** (known as RoHS). These regulations limit the amount of certain hazardous substances in specific electrical and electronic equipment (EEE), of which e-cigarettes are included. They place obligations onto Manufacturers, Importers and Distributors of e-cigarette models. Details can be found here: <https://www.gov.uk/guidance/rohs-compliance-and-guidance>. This regulation is enforced by the Office for Product Safety and Standards, part of the Department for Business, Energy and Industrial Strategy (which includes Trading Standards). Items which do not comply with these regulations are liable for seizure by Trading Standards.

Distributors (anyone in the supply chain who is not a manufacturer or importer e.g. retailers and wholesalers) who makes EEE available on the market must ensure that the following are clearly identifiable on the products:

- The required "conformity mark". This is a CE mark or UKCA mark until 1st January 2022. After that date only the UKCA mark is allowed), and
- information identifying the manufacturer and importer (name, registered trade name or registered trademark and a single address),

If the information cannot fit on the product itself then the name and address can be given on the packaging or any accompanying documents. The conformity marking must be given on both. These products should now include a UK address following Brexit as the manufacturer/their authorised representative or the importer should be established in the UK and hold the relevant technical documentation to show compliance.

Many of the products seized were not marked with a name or address or did not carry the CE or UKCA mark. This must be rectified if the products are to be put back into the supply chain.

Please note Producers, Manufacturers, Importers and Distributors of e-cigarettes may also be subject to other legislative requirements, some of which are not enforced by Trading Standards and are not covered in this letter. This letter is not a comprehensive guide to all legislative requirements applicable to e-cigarettes.

2 – What happens now to the products seized from your premises?

The products seized from your premises due to non-compliance with the above legislation are detailed in the Annex to this letter.

The non-compliances detected are likely to amount to criminal offences. If prosecuted and found guilty, you could face an unlimited fine and even imprisonment.

However, on this occasion this Authority does not intend to take such formal action and is willing to work with you so that you understand the law on the strict proviso that no non-compliant products may be supplied, by you, at retail or returned into the supply chain. In addition, your premises will be visited again in the future to assess compliance. If further breaches of the above legislation are detected, it is unlikely that a lenient approach will be taken again.

Return of Seized Products

This Authority is prepared to return the items shown in the attached Annex contingent on the following conditions being met. Please note that any items with a nicotine content above 20mg/ml (2%) or that contain more than 2ml of liquid will not be returned as these cannot be brought into compliance:

i. You provide invoices/receipts and supplier contact details for the specific products that were seized. You are obliged to provide this information under Regulation 8 of the General Product Safety Regulations 2005 and failure to do so could lead you to commit further criminal offences for which the penalty is a fine and or up to 3 months imprisonment. Failure to provide this information could result in formal enforcement action being taken.

ii. You take the steps set out below to rectify the defects with the labelling on the packaging as explained above. You can only do this in co-operation with the UK Producer/Manufacturer/Importer as they are also responsible for compliance of these products and have additional responsibilities over and above those of a "distributor". You must not re-label these products yourself without specific authorisation and instructions from the Producer/Manufacturer/Importer. If this is not possible you should arrange to return these items to your supplier.

These steps should consist of:

(a) the provision to us of evidence showing how the packaging is to be brought up to the required standard; or

(b) if you intend to return non-compliant products to your supplier you must provide your supplier with enough information to show that the products are not legal to supply in the UK in the state in which they are returned. We will want to see evidence that you have provided such information to your supplier and that they have agreed for them to be returned by you.

iii. If you do not wish to rectify the defects with the labelling or return them to your supplier then you can voluntarily sign over the stock to us for destruction.

iv. You return a signed copy of the acknowledgement form that accompanies this letter.

v. You agree to surrender to Trading Standards the seized products containing excess levels of nicotine, or that exceed 2ml in capacity, in order that they can be destroyed. A voluntary forfeiture form is attached to this letter so that you can do this.

If you agree with this course of action, you should complete the acknowledgement form and voluntary forfeiture form and return them to me, along with the information required in points i. & ii. above, by the 1st October. At this point arrangements can be made to return the stock to you.

Due to the length of this letter, I will write to you under separate cover regarding the tobacco and related products that were also seized on 24th August.

I look forward to hearing from you. You may wish to seek legal advice in the meantime.

Yours sincerely,

Russell Sharland
Tobacco Control Officer


www.oxfordshire.gov.uk/tradingstandards

ANNEX- ITEMS SEIZED ON 24/08/2021

Premises: Mr Singh & Kaur Ltd t/a Banbury Express, 179 Warwick Road, Banbury OX16 1AS

Brand:	Flavour:	Compliant re traceability?	Compliant re CLP markings?	Excess nicotine?*	Excess capacity?***	Number:
Vape with a Bang XXL - Disposable	Orange Soda -6ml - 6% Nicotine	No	No	Yes	Yes	1
Elf Bar Lux800	Mango - 2ml - 20mg (2%)	No	No	No	No	9
Elf Bar 1500	Spearmint - 4.8ml - 20mg (2%)	No	No	No	Yes	1
Vapeman Solo+ 600	Guava Ice - 2% 2ml	No	No	No	No	9
Vapeman Solo+ 600	Lush Ice -2% 2ml	No	No	No	No	2
Vapeman Solo+ 600	Lychee Ice - 2% 2ml	No	No	No	No	9
Vapeman Solo+ 600	Dual Apple - 2% 2ml	No	No	No	No	7
Vapeman Solo+ 600	P.M.G. (Passionfruit, Mango, Guava) - 2% 2ml	No	No	No	No	10
Vapeman Solo+ 600	Peach Mango Watermelon	No	No	No	No	8
Vape with a Bang XXL - Disposable	Orange Soda -6ml - 6% Nicotine	No	No	Yes	Yes	5
Vape with a Bang XXL - Disposable	Cool Mint - 6ml - 6% Nicotine	No	No	Yes	Yes	8

Elf Bar 600	Blueberry -2ml - 20mg (2%)	No	No	No	No	No	2
Elf Bar 600	Strawberry Ice -2ml -20mg (2%)	No	No	No	No	No	2
Vapeman Solo+ 600	Guava Ice - 2% 2ml	No	No	No	No	No	10
Elf Bar Lux800	Mango - 2ml - 20mg (2%)	No	No	No	No	No	3
Elf Bar Lux800	Peach Ice - 2ml -20mg (2%)	No	No	No	No	No	4
Elf Bar Lux800	Kiwi Passion Fruit Guava - 2ml - 20mg (2%)	No	No	No	No	No	2
Elf Bar Lux800	Pineapple Peach Mango - 2ml - 20mg (2%)	No	No	No	No	No	7
Elf Bar 1500	Cola - 4.8ml - 20mg (2%)	No	No	No	No	Yes	3
Elf Bar 1500	Spearmint - 4.8ml - 20mg (2%)	No	No	No	No	Yes	4
Elf Bar Lux1500	Coffee Tobacco - 4.8ml - 20mg (2%)	No	No	No	No	Yes	5
						TOTAL:	111

* NB any items containing in excess of 2% nicotine will not be returned.

** NB any items with a capacity in excess of 2ml will not be returned.

ANNEX 13 (5 PAGES)



Reference: E064358

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

Mr Surinder Singh MALHOTRA
Mr Singh & Kaur Ltd t/a Banbury Express
179 Warwick Road
Banbury
OX161AS

Richard Webb
Head of Community Protection
Services

23rd September 2021

Dear Mr Malhotra

**Tobacco and Related Products Regulations 2016
Standardised Packaging of Tobacco Products Regulations 2015
Tobacco Advertising and Promotion Act 2002**

As you are aware, on 24th August officers from Oxfordshire County Council Trading Standards visited your business premises ostensibly in relation to e-cigarettes but which incorporated compliance checks of tobacco and related products with the above-mentioned legislation.

As non-compliance was detected, the purpose of this letter is to explain the requirements of the legislation and to assist you in trading lawfully in the future.

Labelling of Shisha Tobacco Products & Herbal Shisha Products

You can only sell shisha tobacco that has been officially notified to the Government. This also applies to herbal shisha. The official list of notified shisha tobacco products (manufacturer and brand name) can be found here:

<https://www.gov.uk/government/publications/notification-of-tobacco-or-herbal-products-for-smoking> (open "List of tobacco and related products notified" excel spreadsheet)

It is highly likely that any other manufacturer/brand of shisha tobacco not on this list is illegal and liable to seizure.

It is an offence to supply or sell shisha tobacco or herbal shisha products which do not carry health warnings nor have the appropriate packaging details. For shisha tobacco products this must contain a "combined health warning" which contains a text warning and a graphic health warning. It also must be in English, fully visible, indelible, irremovably printed, printed on the pack and surrounded by a black border. The combined health warning must cover 65% of the surface area of the front and back of the product. It must also be accompanied by a general health warning and information message with the phrase "Get help to stop smoking at www.nhs.uk/quit" and one of the following text warnings:

1. Smoking causes 9 out of 10 lung cancers
2. Smoking causes mouth and throat cancer
3. Smoking damages your lungs
4. Smoking causes heart attacks
5. Smoking causes strokes and disability
6. Smoking clogs your arteries
7. Smoking increases the risk of blindness
8. Smoking damages your teeth and gums
9. Smoking can kill your unborn child
10. Your smoke harms your children, family and friends
11. Smokers' children are more likely to start smoking
12. Quit smoking stay alive for those close to you
13. Smoking reduces fertility
14. Smoking increases the risk of impotence

For herbal shisha products, health warnings must comply with the "modified health warning" requirement where the front and back area of each product must be 30% covered by a warning with the phrase "Smoking this product damages your health" and back surface area of each product must be 30%

Below is a summary of the health warning and packaging requirements for shisha tobacco and herbal shisha products:

Requirement	Shisha Tobacco	Herbal Shisha
No discounts, 2-for-1 offers, reductions or similar	Yes	No
No information about nicotine, tar or carbon monoxide	Yes	Yes
No indications that less harmful /lifestyle or environmental benefits / vitalising, healing natural or organic properties	Yes	Yes
No mentions or depictions of taste, smell or any flavour or additive or the absence thereof	Yes	No
Smoking cessation information	Yes	No
Text warning	Yes	No
General health warning (i.e. Smoking Kills – Quit Now)	Yes	No
Information message (i.e. Tobacco smoke contains over 70 substances known to cause cancer)	Yes	No
Graphic health warning	Yes	No
Modified health warning	No	Yes

Wholesale Price of Shisha Tobacco and Herbal Shisha

For the purposes of tobacco product duty tax, herbal shisha is classified as a tobacco product. The current tobacco product duty rate for shisha tobacco and herbal shisha is £134.24 per kilogram. Both are also liable for VAT. As such, there is a tax burden of £161.09 per kilogram of both products before any profit margin is added.

This means that the price per kilogram you purchase such products from your supplier should reflect this and you should be highly suspicious of anyone able to offer a price below the tax requirement as it is likely the product has been smuggled into the UK without duty being paid.

Labelling of Cigars

Combined health warnings:

- a unit pack (single pack) and any container pack (multi-pack) of a tobacco product for smoking must carry a combined health warning consisting of a text warning and a corresponding approved colour warning photograph as well as the smoking cessation statement 'Get help to stop smoking at www.nhs.uk/quit'
- it must appear on the front and back surfaces of the unit pack as well as any container pack using the same warning and photograph on each surface; it must be in a format that includes the requirement to cover 65% of the area of the surface on which it appears
- the technical specifications for the layout, design and shape of the combined health warnings are set out in Schedule A1 to the Tobacco and Related Products Regulations 2016

General warnings and information messages:

- a unit pack and any container pack of a tobacco product for smoking must carry the general health warning, 'Smoking kills - quit now', and an information message, 'Tobacco smoke contains over 70 substances known to cause cancer'
- the format for the health warning includes a requirement that it must cover 50% of the area of the surface on which it appears.
- on most unit packs of cigars this means the general warning must appear on one secondary surface of the pack and the information message must appear on the other secondary surface

Display of Tobacco Products

Since 2015 all open tobacco displays in shops must be covered and any tobacco products must not be on general display to the public. The law does not set out exactly how you have to cover your tobacco display but it must be covered completely and when you retrieve the tobacco, the maximum area that can be displayed is 1.5 square meters. Retailers are free to choose for themselves the most appropriate and efficient means of removing tobacco products from sight.

As shisha and cigars are both classified as tobacco products they must not be on open display. Smoking-related products such as cigarette papers, lighters or non-tobacco blunts are not tobacco products and so can continue to be on open display.

Enforcement

The products seized from your premises due to non-compliance with the above legislation are detailed in the Annex to this letter.

The non-compliances detected are criminal offences. If prosecuted and found guilty, you could face an unlimited fine and even imprisonment.

However, on this occasion this Authority does not intend to take any enforcement action but will work with you so that you understand the law. However, your premises will be visited again in the future to assess compliance. If further breaches of the above legislation are detected, it is unlikely that a lenient approach will be taken again.

Next Steps

The proposal outlined above is contingent on the following:

- i. Providing invoices / receipts and supplier contact details for the seized products.
- ii. Authorising the seized products to be voluntarily surrendered in order that they can be destroyed.
- iii. Returning a signed copy of the Acknowledgment Form

If you agree with this course of action, you should complete both the acknowledgement form and voluntary surrender form included with this letter and return them to me by **8th October**.

I look forward to hearing from you. You may wish to seek legal advice in the meantime.

Yours sincerely



Russell Sharland
Tobacco Control Officer



ANNEX

Seized items

13 x Blackwoods Cigars

36 x Soex Herbal Molasses (various flavours)

ANNEX 14 (4 PAGES)

RECEIVED 11 OCT 2021

OXFORDSHIRE COUNTY COUNCIL

Trading Standards Service
Graham Hill House, Electric Avenue, Oxford OX2 0BY

Telephone: 01865 895999
Trading_standards@oxfordshire.gov.uk

VOLUNTARY FORFEITURE OF GOODS

Name:	Surinder Singh		
Address:	179 Warwick Road, Banbury, OX16 1A5		
Telephone Number:	[REDACTED]		
Email:	[REDACTED]		
Trading Standards Reference:	E064358		
I confirm that I am the owner of the following goods:			
Vape with a Bang XXL - Disposable	Orange Soda -6ml - 6% Nicotine		x 1
Elf Bar 1500	Spearmint - 4.8ml - 20mg (2%)		x 1
Vape with a Bang XXL - Disposable	Orange Soda -6ml - 6% Nicotine		x 5
Vape with a Bang XXL - Disposable	Cool Mint - 6ml - 6% Nicotine	8ml	x 8
Elf Bar 1500	Cola - 4.8ml - 20mg (2%)		x 3
Elf Bar 1500	Spearmint - 4.8ml - 20mg (2%)		x 4
Elf Bar Lux1500	Coffee Tobacco - 4.8ml - 20mg (2%)		x 5

I hereby voluntarily assign ownership and all rights in the above described goods to Oxfordshire County Council and request that the goods be destroyed/disposed of in an appropriate manner.

Print Full name... Surinder Singh

Signature... [REDACTED]

Date... 07/10/21


Signature witness by (print full name) ... [REDACTED]

Signature of witness ... [REDACTED]

ACKNOWLEDGEMENT FORM

I hereby acknowledge that written advice has been received regarding the relevant legislative controls that relate to the supply of e-cigarettes.

I also acknowledge that continuing to sell disposable e-cigarettes previously seized by Trading Standards (if returned) without taking the remedial action as outlined in the letter accompanying this form constitutes a criminal offence for which the company and its directors may be liable

Business: Banbury Express Food & Wine
Address: 179 Warwick Road, Banbury, OX16 1AS
Print name: Surinder Singh
Position: Director
Signed: 
Date: 07/10/21
Ref: E064358

VOLUNTARY SURRENDER FORM



**OXFORDSHIRE
COUNTY COUNCIL**

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

I agree that the items listed below do not conform to the requirements of the:

Tobacco and Related Products Regulations 2016 and/or
Standardised Packaging of Tobacco Products Regulations 2015

and therefore cannot legally be supplied by me.

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

I hereby abandon all rights to these items. I do not wish to have any claim in respect of them, nor do I have any objection to them being disposed of by Oxfordshire County Council as they see fit.

Signed

Date: 25/11/21

Name: Mr Surinder Singh MALHOTRA

On behalf of: Mr Singh & Kaur Ltd t/a Banbury Express

Address: 179 Warwick Road, Banbury OX16 1AS

Reference: E064358

Note: The voluntary surrender of these items does not absolve you from liability for any offences committed in connection with them.

ACKNOWLEDGEMENT FORM

I hereby acknowledge that verbal and written advice has been received regarding the relevant legislative controls that relate to the supply of tobacco products.

Business: Mr Singh & Kaur Ltd t/a Banbury Express

Address: 179 Warwick Road, Banbury OX16 1AS

Name: Mr Surinder Singh MALHOTRA

Position: Director

Signed:  _____

Date: 25/11/21 _____

Reference: E064358

ANNEX 15 (2 PAGES)

**SMOKING
PRODUCTS**

OFF
LICENCE
OPEN 11.00 AM



payzor

OFF
LICENCE
OPEN FOR ALL

ANNEX 16 (1 PAGE)



Reference: 135997

Mr Surinder Singh MALHOTRA
Mr Singh & Kaur Ltd t/a Banbury Express
179 Warwick Road
Banbury
OX161AS

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

Jody Kerman
Head of Trading Standards

15th December 2021

Dear Mr Malhotra

Tobacco Advertising & Promotion Act 2002

Further to our telephone conversation earlier today, it has come to my attention that electronic display signage has recently been installed outside the store, some of the contents of which appears to be in breach of the above-mentioned legislation.

The Act creates an offence if any person who in the course of a business publishes a tobacco advertisement or causes one to be published. A tobacco advertisement is defined as one whose purpose is to promote a tobacco product, or whose effect is to do so, and 'tobacco product' means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.

"Advertisement" is not defined in the above legislation and so will be given its ordinary meaning. In Planning law, advertisement is defined as including "any word, letter, model, sign, placard, board, notice, awning, blind, device or representation".

As such, you must remove all references within the electronic display that promotes tobacco products. In the meantime, I strongly advise you to turn the signage off until this can be done to ensure that further breaches of the above legislation are not detected.

If you have not done so already, I would also advise you to liaise with the Cherwell District Council Planning Team to ensure that the advertisement's height, luminescence, and flashing nature comply with any deemed consent or existing planning consent conditions.

I look forward to hearing from you. You may wish to seek legal advice in the meantime.

Yours sincerely,


Russell Sharland
Tobacco Control Officer


www.oxfordshire.gov.uk/tradingstandards

ANNEX 17 (3 PAGES)

[REVIEW THIS LOG](#)[NOTIFY](#)[REPORT](#)[HOME](#)

INTELLIGENCE LOG - I553338 : INCIDENT DATE -
18/04/2023

[INTELLIGENCE](#)[BUSINESS AREAS](#)[PROVENANCE](#)[INTERVENTIONS](#)[AUDIT](#)

Intelligence

S: 1 I: C H: P

INTELLIGENCE DETAILS



The male owner of the Banbury Express Food & Wine shop on the Warwick Road, Banbury has been selling NOS canisters from the store. He sells two different sizes of cannister, these being a smaller one for £40 which is roughly the size of a 2 pint milk carton and a larger cannister for £80. The cannister are not kept in the actual shop but in a rear office/store room. Customers wait in the store and the owner will collect the cannisters from the back of the shop on request.

OPERATION NAME

PRODUCT INFO

Brand: ---

Items: ---

LEVEL OF CONFIDENCE

MEDIUM

GSCP RATING

OFFICIAL-SENSITIVE

PERSONAL

INTELLIGENCE

NOMINALS

VEHICLE

PHONE

BUSINESS

URN: [I27, E7] **B040530**
Banbury Express food and wine
Created: 12/05/2017

ADDRESS

URN: [I22, E4] **A051582**
179 Warwick Road Banbury
OX161AS
Created: 12/05/2017

INTERNET

FINANCIAL

INTELLIGENCE LOG - I503091 : INCIDENT DATE - 08/06/2022

- INTELLIGENCE
- BUSINESS AREAS
- PROVENANCE
- INTERVENTIONS
- DISSEMINATION (2)
- AUDIT

Intelligence

S : 2 I : D H : P

INTELLIGENCE DETAILS



Intelligence received that the Banbury Express Food and Wine convenience store on 179 Warwick Road Banbury OX16 1AS has been selling Nitrous Oxide cannisters in singular issue to members of public and mainly school aged children.They are allegedly being told to come at a convenient time at the rear of the store/stock room and ask for "Balloons"

OPERATION NAME

PRODUCT INFO

Brand: ---

Items: ---

LEVEL OF CONFIDENCE

LOW

GSCP RATING

OFFICIAL-SENSITIVE

PERSONAL

INTELLIGENCE

NOMINALS

VEHICLE

PHONE

BUSINESS

URN: [I27, E7] **B040530**

Banbury Express food and wine

Created: 12/05/2017

ADDRESS

URN: [I22, E4] **A051582**

179 Warwick Road Banbury

OX161AS

Created: 12/05/2017

INTERNET

FINANCIAL

INTELLIGENCE LOG - I487751 : INCIDENT DATE - 07/02/2022

INTELLIGENCE | BUSINESS AREAS | PROVENANCE | INTERVENTIONS |
AUDIT |

Intelligence

S : 2 I : B H : P

INTELLIGENCE DETAILS



Banbury Express Food and Wine on Warwick Road BANBURY are selling Nitrous Oxide cannisters from the back of the shop.

OPERATION NAME

PRODUCT INFO

Brand: ---

Items: ---

LEVEL OF CONFIDENCE

HIGH

GSCP RATING

OFFICIAL-SENSITIVE

PERSONAL

INTELLIGENCE

NOMINALS

VEHICLE

PHONE

BUSINESS

URN: [I27, E7] B040530
Banbury Express food and wine
Created: 12/05/2017

ADDRESS

URN: [I22, E4] A051582
179 Warwick Road Banbury
OX161AS
Created: 12/05/2017

INTERNET

FINANCIAL

ANNEX 18 (2 PAGES)

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.

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**R (BASSETLAW DISTRICT COUNCIL) v WORKSOP
MAGISTRATES' COURT
[2008] EWHC 3530 (Admin)**

Queen's Bench Division

Slade J

7 November 2008

*Premises licence – Unauthorised sales to under age persons – Review –
Appeal – Licensing objectives – Licensing Act 2003*

Following test purchases conducted by trading standards officers of Bassetlaw District Council (the council) at the off-licence premises of Mr and Mrs Jones, when alcohol was sold to two 14-year-old girls on four occasions, the council instituted a review of the premises licence. The licensing committee suspended the licence for 1 month. Mr and Mrs Jones appealed to the magistrates' court where the district judge allowed the appeal and instead imposed what were said by him to be additional conditions on the licence. He stated that it was not the function of the licensing authority to punish licensees for an infringement of licensing law and that the authority's powers were restricted to guidance or remedial action. The council sought judicial review of that decision for the purposes only of clarification as to the correctness in law of the decision.

Held – granting judicial review –

(1) The district judge had considered solely the provisions of the Guidance which were not specific to reviews arising in connection with crime. A proper reading and application of the Guidance, which governs the approach which the 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. Where criminal activity is applicable wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances deterrence is an appropriate objective and one contemplated in the Guidance issued by the Secretary of State.

(2) The Guidance contains specific provisions as to the approach to be adopted where criminal activity connected with the licensed premises is concerned. Plainly an appellate body must operate similar principles to those applicable to the licensing authority. The district judge failed to give reasons for a departure from the applicable guidance.

Statutory provisions considered

Licensing Act 2003, ss 4(2), (3), 51, 52(3), (4), 146(1), 182

Cases referred to in judgment

Stepney Borough Council v Joffe; *Stepney Borough Council v Diamond*; *Stepney Borough Council v White* [1949] 1 KB 599, [1949] 1 All ER 256, QBD

James Quirke for the claimant

The defendant did not appear and was not represented

Cur adv vult

SLADE J:

[1] 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 10 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 1 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] 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] 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] 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 licence. 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] 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] 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 at 2, para 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 s 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] Fourthly, it is said that the district judge failed properly to apply and have regard to para 5.115 of the Guidance given under s 182 of the Licensing Act 2003. This sets out and categorises as criminal certain activities which may arise in connection with licensed premises and which the Secretary of State considers should be treated particularly seriously. Included in the use of licensed 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 compliant of an incident which is categorised rightly as criminal activity in connection with licensed premises, it is said that the district judge failed to take into account para 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] 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*; *Stepney Borough Council v Diamond*; *Stepney Borough Council v White* [1949] 1 KB 599 which the judge himself referred to at 2 of his judgment, para 5. In *Joffe* it was said that although on an appeal, such as this, there is a right to a re-hearing. 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] *Discussion*

[10] I will briefly outline some of the relevant statutory provisions and guidance. Pursuant to the Licensing Act 2003, s 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] Importantly, s 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] Section 52 of the Licensing Act 2003 applies where an application for a review of licence under s 51 has been made. Section 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] Those objects are set out in s 4.

[14] Section 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] It is to be noted that s 146(1) of the Licensing Act 2003 provides:

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

[16] Pursuant to s 182 of the Licensing Act 2003 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 para 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 para 2.3 to s 4 of the Licensing Act 2003 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] 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] 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] The provisions relating to the power of the licensing authorities in conducting a review are set out in para 5.107 and following. Paragraph 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] At para 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 3 months.

[21] 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] 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] 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] 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 para 5.115 such activity is expressly referred to in the following terms:

'There is certain criminal activity that may arise in connection with licensed premises which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed 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] Of importance to the consideration of the case before me is also para 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] 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] At para 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] 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] At paras 4 and 5 of the judgment in the section headed, ‘Discussions’, at 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 10 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] In my judgment, the language of para 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. While 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 licensed premises, the general provisions which apply to all reviews may result in the approach outlined in para 5 being the appropriate one to follow. Indeed, para 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] However, in my judgment 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 para 5.113. For reasons given earlier, and in particular by reason of the fact that para 5.115 clearly specifies criminal activity which may arise in connection with the use of the licensed premises for the purchase and consumption of alcohol by minors, that provision is engaged in this case.

[32] 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] 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 para 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] 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] 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 *Joffe* which he set out at 2, para 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] It is finally said that the district judge erred in that he departed from the Guidance issued under s 182 of the Licensing Act 2003 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 paras 5.113, 5.115 and 5.116.

[37] 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 licensed 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 10 of his judgment, para 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] 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.

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No need for a declaration that the district judge erred in law in his approach to the appeal. No order for costs.

Solicitors: *Local authority solicitor*

KERRY BARKER
Barrister