



Report of: **Service Director, Public Protection**

Meeting of	Date	Agenda Item	Ward(s)
Licensing Sub-Committee	8th March 2012	36	Barnsbury

Delete as appropriate		Non-exempt
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Subject: PREMISES LICENCE REVIEW APPLICATION
RE: ODESSE FOOD & WINE, 59 COPENHAGEN STREET, LONDON, N1 0JH

1. Synopsis

- 1.1 This is an application by Islington Council's Trading Standards team for a Review of the Premises Licence under Section 51 of the Licensing Act 2003. A copy of the review application is attached as Appendix 1.
- 1.2 The grounds for review are related to the licensing objectives:
 - i) The prevention of crime and disorder.

2. Recommendations

- 2.1 To determine the application to review the premises licence under Section 52 of the Licensing Act.
- 2.2 The Committee must have regard to the application and any relevant representations. The Committee must take such steps as necessary for the promotion of the four licensing objectives.

2.3 The steps stated in Sections 52(4) of the Act are as follows:

- a) to modify the conditions of the licence; and for this purpose the conditions of the licence are modified if any of them are altered, omitted or any new condition is added;
- b) to exclude a licensable activity from the scope of the licence;
- c) to remove the designated premises supervisor;
- d) to suspend the licence for a period not exceeding three months;
- e) to revoke the licence;
- f) the Committee also have the option to leave the licence in its existing state;
- g) the Committee also has the power in relation to steps a) and b) to provide that the modification and exclusion only has effect for a limited period not exceeding three months.

3. Background

3.1 The premises currently holds a licence allowing:

- i) The sale by retail of alcohol, off supplies only, Mondays to Saturdays from 08:00 until 23:00 and Sundays from 10:00 until 22:30.

3.2 Brief licensing history of the premises:

- Premises licence granted on 12th November 2005;
- In January 2007 the premises licence was transferred from Mr Ozgur Yilmaz to the current licensee, Mr Hayri Kale. A subsequent variation of the licence was also granted to change the designated premises supervisor from Ozgur Yilmaz to Hayri Kale;
- 28th July 2007, licensing officer panel meeting arranged as a consequence of a sale of alcohol to an under age person during a test purchase exercise. Licensee did not attend;
- 19th March 2008, premises licence suspended for a period of 7 days after a Licensing Sub-Committee meeting to determine the review application sought by Islington Council's Trading Standards team. The review application was as a consequence of two sales of alcohol to under age persons during test purchase exercises.

3.3 Papers are attached as follows:

- Appendix 1: application form;
- Appendix 2: current premises licence;
- Appendix 3: representations; and
- Appendix 4: map of premise location.

3.4 The Licensing Authority has received 1 letter of representation in support of the review application from London Metropolitan Police.

4. Planning Implications

4.1 This unit is authorised to operate as a retail shop and there are no restricted hours specified.

5. Conclusion and reasons for recommendations

- 5.1 The Council is required to consider this application for review in the light of all relevant information from the applicant and the licence holder. It may attach such conditions necessary to promote the licensing objectives.

Background papers:

The Council's Statement of Licensing Policy

Licensing Act 2003

Secretary of States Guidance

Final Report Clearance

Signed by


Service Director – Public Protection

Date 27/2/12

Received by

Head of Scrutiny and Democratic Services

Date

Report author: Dan Whitton

Tel: 020 7527 3841

Fax: 020 7527 3430

E-mail: dan.whitton@islington.gov.uk

wk/11200700

APPENDIX 1

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form.

If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I David Fordham, Service Manager Trading Standards

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described on Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description:	
Odesse Food & Wine	
59 Copenhagen Street	
Post town: London	Post code: N1 0JH

Name of premises licence holder or club holding club premises certificate: Hayri Kale

Number of premises licence or club premises certificate: 113005 / 2727

Part 2 - Applicant details

I am

Please tick ✓ yes

an interested party (please complete (A) or (B) below)

a person living in the vicinity of the premises

a body representing persons living in the vicinity of the premises

a person involved in business in the vicinity of the premises

a body representing persons involved in business in the vicinity of the premises

a responsible authority (please complete (C) below)

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

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

Please tick

Mr

Mrs

Miss

Ms

Other title
(for example, Rev)

Surname

First names

Please tick ✓ yes

I am 18 years old or over

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

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

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address	David Fordham Service Manager (Trading Standards) Public Protection Division 222 Upper Street London N1 1XR
Telephone number:	020 7527 3458
E-mail:	<u>david.fordham@islington.gov.uk</u>

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

Please tick one or more boxes

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

-
-
-
-

This application to review relates to the objective to prevent crime and disorder and Licensing Policies 39 and 28. It particularly relates to the discovery of illicit alcohol in the shop, which indicates that the highest standards of management have not been exhibited by the business.

On 23rd March 2011, a letter was sent to the premises, addressed to 'The Licensee and Proprietor', that introduced attached guidance about smuggled alcohol and tobacco and warned that businesses found with smuggled goods in future were likely to have their licences reviewed.

On 12th October, 2011, officers from Trading Standards and HMRC visited the premises to inspect the stock of alcohol and tobacco. The Licensee and owner of the business, Mr Hayri Kale, was not present – the only member of staff was Mr Bulent Kale. The officers identified the following alcohol, which they believed to be illicit and which was seized by Mr Love of Trading Standards:

Glens vodka - 8.4 litres (12x 70cl): Wrong style '4' on barcode; self-adhesive back labels.

Teacher's whisky – 7.5 litres (4 x 1l; 5 x 70cl): The litre bottles have no duty stamps at all. The 70cl bottles have separate duty stamps, but of the incorrect format and an i.d. code starting with an 'A', which are only used on stamps incorporated into a back label

J&B whisky – 3 litres (3 x 1l): No duty stamps.

Famous Grouse whisky – 1.4 litres (2 x 70cl): Duty stamps do not fluoresce. No alcohol by volume or nominal quantity markings. Poor print quality on back labels.

Jacob's Creek Semillon Sauvignon Blanc – 3.75 litres (5 x 75cl): Each bottle has three spelling mistakes on the label, which identify the product as a widely distributed counterfeit.

The total duty that would have been evaded had the goods confirmed to have been illicit been sold is approximately £211.

On 16th November Hayri Kale attended a PACE interview at the Council offices. The interviewing officers were Mr Love and PS Robin Clark, Licensing Officer for Islington borough. A friend of Mr Kale assisted with translation. Some key points of the interview follow (timings in brackets):

- HK confirmed he owned the business since 2008 (6.10) as well as being Licensee and DPS from before he owned it (6.35).
- HK said that the Teacher's, Famous Grouse and J&B came from a shop in Stratford (HK could not provide further details) run by a Ahmet Chelbel that was closing. An acquaintance of HK (who he could not provide details for) had arranged for the goods to be given to HK to sell. No paperwork had been provided by the seller (9.25 – 15.00).
- It was initially said that nothing had been paid for them (14.25) although later it was said that a certain amount was paid (28.45). *(Nb: this should not be treated as a contradiction – it may easily have been a misunderstanding or a mistranslation).*
- A relative of HK's might be able to verify this transaction (12.15). HK was requested to provide details of this person in due course, if he could verify anything.
- He bought them in good faith and did not have any suspicion that the whisky was illicit, but he had no evidence of where Mr Chelbel purchased them from (25.15 – 28.00).
- The Glens and the Jacob's Creek were purchased from Fio's Cash and Carry in September 2011 by Murat (an employee, surname unknown). Payment was in cash. (18.15 – 20.35). HK was requested to produce the invoice for this transaction as soon as possible (21.40). He confirmed he had believed these to be legal to sell.

- HK confirms receiving the letter and guidance sent out in March 2011. He said that he had it explained to him and asked Ali, a member of staff, to check all drinks. Ali, who has since left subsequently told HK that he had checked them, but did not raise any issues (33.00 – 34.30).
- HK has not purchased a uv light – he said this had not been explained to him: it was suggested that the letter had not been explained as well as it might have (35.30).
- HK confirmed that no illicit alcohol has been seized from his shop before by HMRC or the Police (39.30).
- HK apologises for the illicit alcohol and promises it will not happen again (40.15).
- DL reminded HK that he had agreed to provide the Fio's invoice; details of Murat, the employee who had bought the Glens and the Jacob's Creek; details of the shop in Stratford; and details of the acquaintance involved in the purchase of the whisky.

At the date of writing, Mr Love has received none of the requested information from Mr Kale.

Trading Standards are concerned at the possession for supply of illicit alcohol and tobacco for the following reasons:

- Illicit alcohol may be counterfeit and as such may be unsafe to consumer. This is particularly true for vodka.
- The willingness to intentionally or recklessly break one law indicates the business is less likely to be compliant with other laws.
- The sale by retailers of illicit goods gives them an unfair advantage over law abiding businesses.
- Illicit goods are often smuggled into the country and / or produced by organised crime. It is believed that the profits are frequently used to fund other types of serious crime.
- The trade in illicit alcohol and tobacco causes huge losses to the UK's tax revenues.

Section 13(4) of Licensing Act 2003 and Regulation 7 of The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 makes a local weights and measures authority a responsible authority for the purposes of the legislation. Islington Council is a local weights and measures authority and that function is carried out by the trading standards team.

Here is a summary of events supporting this application

23/03/11	TS advice	TS sent the business guidance on smuggled alcohol as part of a mailshot to all independent off licences.
12/10/11	Seizure	20.3 litres of spirits and 5 bottles of counterfeit Jacob's Creek wine seized by TS.
16/11/11	PACE interview	Hayri Kale agreed to provide further information during interview.

Recommendations:

Clear advice on how to avoid stocking illicit alcohol was sent to the shop in March 2011. Mr Kale remembers receiving the advice and says that he asked a member of staff to check the stock. No problems were identified, even though it is clear that the whisky (although not the Glens or the Jacob's Creek) would have been very quickly spotted as suspect had the simple precautions outlined in the guidance been followed.

Mr Kale's admission that he had not understood the importance of obtaining a uv light is a concern. It is vital that businesses are able to thoroughly understand advice given to them by Trading Standards and other enforcement bodies and I would question how responsible a business that fails to do so can be.

The stated origin of the goods has not been verified or supported by evidence. Mr Kale has been either unable or unwilling to provide the details and documents requested by Mr Love to help verify his explanation.

I believe on the facts described in this application that this licence should be revoked as there is evidence that the licensee has been knowingly involved in serious breaches of the law. This gives me no confidence in his willingness to fulfil his responsibility to promote the licensing objectives or to exhibit the highest standards of management.

No conditions have previously been attached by the Licensing Authority.

Please tick ✓ yes

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

If yes please state the date of that application

Day Month Year

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

N/A

Please tick ✓ yes

I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate

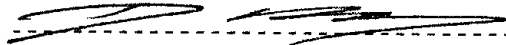
I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

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

Signature



Date

23rd January 2012

Capacity

Service Manager (Trading Standards)

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

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

The ground(s) for review must be based on one of the licensing objectives.
Please list any additional information or details for example dates of problems
which are included in the grounds for review if available.

The application form must be signed.

An applicant's agent (for example solicitor) may sign the form on their behalf
provided that they have actual authority to do so.

This is the address which we shall use to correspond with you about this
application.

**PREMISES LICENCE
LICENSING ACT 2003**

Premises licence number	113005/2727		
Postal address of premises, or if none, ordnance survey map reference or description			
ODESSE FOOD AND WINE 59 COPENHAGEN STREET			
Post town	LONDON	Post code	N1 0JH
Telephone number	020 7278 4364		

Where the licence is time limited the dates
Not Applicable

Licensable activities authorised by the licence
Ground Floor
<ul style="list-style-type: none"> The sale by retail of alcohol

The times the licence authorises the carrying out of licensable activities																												
<ul style="list-style-type: none"> The sale by retail of alcohol: <table> <tr><td>Monday</td><td>08.00</td><td>to</td><td>23.00</td></tr> <tr><td>Tuesday</td><td>08.00</td><td>to</td><td>23.00</td></tr> <tr><td>Wednesday</td><td>08.00</td><td>to</td><td>23.00</td></tr> <tr><td>Thursday</td><td>08.00</td><td>to</td><td>23.00</td></tr> <tr><td>Friday</td><td>08.00</td><td>to</td><td>23.00</td></tr> <tr><td>Saturday</td><td>08.00</td><td>to</td><td>23.00</td></tr> <tr><td>Sunday</td><td>10.00</td><td>to</td><td>22.30</td></tr> </table> <p>Except on: Good Friday: 08.00 to 23.00 Christmas Day: 14.00 to 15.00 and 19.00 to 22.30</p> 	Monday	08.00	to	23.00	Tuesday	08.00	to	23.00	Wednesday	08.00	to	23.00	Thursday	08.00	to	23.00	Friday	08.00	to	23.00	Saturday	08.00	to	23.00	Sunday	10.00	to	22.30
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The opening hours of the premises:																												
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Sunday	10.00	to	22.30																									



ISLINGTON

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

Name, (registered) address, telephone number and e-mail (where relevant) of holder of premises licence

Mr Hayri Kale
59 Copenhagen Street
Islington
London
N1 0JH
Telephone: 020 7278 4364

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


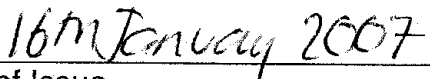
Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Mr Hayri Kale

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

LN/200502317 – Enfield Council

Islington Council
Public Protection Division
159 Upper Street
London
N1 1RE
Tel: 020 7527 3031/3803
Email: licensing@islington.gov.uk


Assistant Director - Public Protection

Date of Issue

Annex 1 - Mandatory conditions

1. No supply of alcohol may be made under the premises licence-
 - a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Annex 2 - Conditions consistent with the Operating Schedule

Annex 3 - Conditions attached after a hearing by the licensing authority

Annex 4 – Plans

Reference Number: ISL 92876

**Premises Licence Summary
Licensing Act 2003**

Premises licence number 113005/2727
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Premises details

Postal address of premises, or if none, ordnance survey map reference or description			
ODESSE FOOD AND WINE 59 COPENHAGEN STREET			
Post town	LONDON	Post code	N1 0JH
Telephone number	020 7278 4364		

Where the licence is time limited the dates Not Applicable
--

Licensable activities authorised by the licence Ground Floor <ul style="list-style-type: none">• The sale by retail of alcohol

The times the licence authorises the carrying out of licensable activities
<ul style="list-style-type: none">• The sale by retail of alcohol: Monday 08.00 to 23.00 Tuesday 08.00 to 23.00 Wednesday 08.00 to 23.00 Thursday 08.00 to 23.00 Friday 08.00 to 23.00 Saturday 08.00 to 23.00 Sunday 10.00 to 22.30 <p>Except on: Good Friday: 08.00 to 23.00 Christmas Day: 14.00 to 15.00 and 19.00 to 22.30</p>



ISLINGTON

The opening hours of the premises:

Monday	08.00	to	23.00
Tuesday	08.00	to	23.00
Wednesday	08.00	to	23.00
Thursday	08.00	to	23.00
Friday	08.00	to	23.00
Saturday	08.00	to	23.00
Sunday	10.00	to	22.30

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

Off supplies

Name, (registered) address of holder of premises licence

Mr Hayri Kale
59 Copenhagen Street
Islington
London
N1 0JH

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

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

Mr Hayri Kale

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

No restrictions

Islington Council
Public Protection Division
159 Upper Street
London
N1 1RE
Tel: 020 7527 3031/3803
Email: licensing@islington.gov.uk

WITNESS STATEMENT

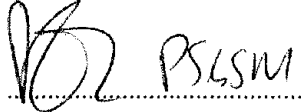
CJ Act 1967, s.9; MC Act 1980, ss.5A(3)(a) and 5B; Criminal Procedure Rules 2005, Rule 27.1

Statement of **Robin Clark**..... URN:

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Age if under 18 **Over 18**..... (if over 18 insert 'over 18') Occupation: **Police Officer 181475**.....

This statement (consisting of: **1**..... pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: ..... Date: **09.02.2012**.....

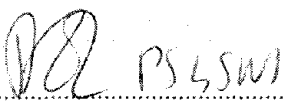
Tick if witness evidence is visually recorded (supply witness details on rear)

My name is Robin Clark and I am a Police Sergeant with the Metropolitan Police Service. I currently work as a Licensing officer at Islington Police Station. I have been given this specific responsibility by the Borough Commander who is acting under the written delegated authority of the Commissioner of Police for the Metropolis. A copy of this authority has been lodged with Islington Council Legal Department.

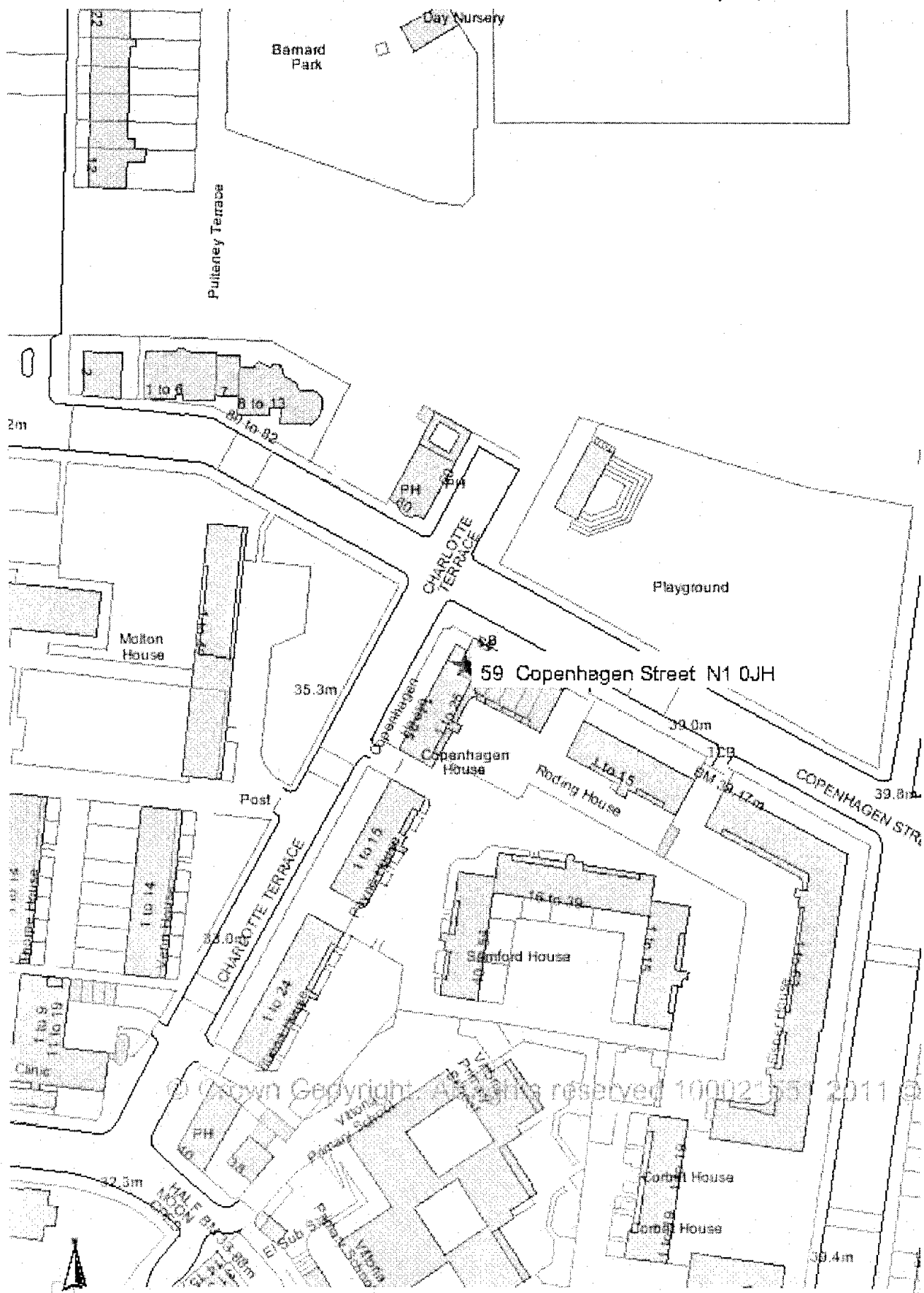
This statement is submitted in response to the review application made by the Mr David Fordham of Islington Council Trading Standards Service regarding the premises Odesse Food and Wine, 59 Copenhagen Street, N1 0JH.

I have read the information provided by the Council officials re this Review Application and indeed I was present on the visit to the premises on the 12th Oct 2011 and during the interview conducted by Mr Love with Mr Hayri Kale. It is my opinion that the management of these premises falls well short of what would be expected and fails to meet the standards required to fulfil the obligations required by the Licensing Act 2003. Having received written guidance from the council they have taken no steps to check the stock and remove the potentially harmful spirits from display and have offered vague accounts for how the goods have come to be on the premises.

As such Islington Police strongly support the Trading Standards officers request for the revocation of this licence.

Signature: ..... Signature witnessed by:

APPENDIX 4



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