



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

Meeting of	Date	Agenda Item	Ward(s)
Licensing Sub-Committee	3 October 2011	B1	Finsbury Park
Delete as appropriate		Non-exempt	

Subject: PREMISES LICENCE REVIEW APPLICATION
RE: BROTHERS SUPERMARKET, 60 FONTHILL ROAD, LONDON, N4 3HT

1. Synopsis

- 1.1 This is an application by David Fordham of 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, Monday to Saturday from 08:00 until 23:00; and on Sunday from 10:00 until 22:30.

ii) Papers are attached as follows:-

Appendix 1: application form;

Appendix 2: current premises licence;

Appendix 3: police representations;

Appendix 4: suggested conditions and map of premise location.

3.2 The Licensing Authority has received a representation by way of a witness statement from the police.

4. Conclusion and reasons for recommendations

4.1 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

22/9/11

Received by

Head of Scrutiny and Democratic Services

Date

Report author: Niall Forde

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Fax: 020 7527 3430

E-mail: niall.forde@islington.gov.uk

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:

**Brothers Supermarket
(also known as Fonthill Mini Market)
60 Fonthill Road**

Post town: **London**

Post code: **N4 3HT**

Name of premises licence holder or club holding club premises certificate:
Haydar Koca

Number of premises licence or club premises certificate: **137513 / 4143**

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 objectives to prevent crime & disorder and Licensing Policy 39 and also the protection of children from harm and Licensing Policy 32. It particularly relates to the supply by the business of smuggled goods and the doubt that the described events introduce about the standard of management evident at the premises.

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 17th May 2011, officers from Trading Standards visited the premises after anonymous information had been received that an off licence in Fonthill Road was selling smuggled tobacco. Katherine Forrest of Trading Standards went into the shop, posing as a customer, and asked if they had any cheap tobacco. Mr Koca, owner and licensee of the business was serving and he sold Miss Forrest a 50g pouch of Golden Virginia tobacco for £8 (normal selling price £13.50 - £14.50). This has been confirmed as genuine, but non-duty paid by the manufacturer, Imperial Tobacco.

Miss Forrest and her colleague, Doug Love, returned to the shop to check for further illicit tobacco and alcohol. Eight more 50g pouches of smuggled tobacco was seized. Mr Koca admitted that the tobacco was illicit. A sample of alcohol was checked and five bottles of Russian Standards vodka were seized, pending examination, as the labels differed to those usually seen on that brand, but these later were shown to be genuine and duty paid and have been returned to the business.

On 13th June 2011, Mr Love received information from John Fitzpatrick of the International Federation of Spirits Producers (IFSP). The IFSP represent various spirits producers, including Diageo, the producer of Smirnoff. The information included notice of a test purchase on May 8th (before the TS visit) at Fonthill Mini Market of Smirnoff that was non-duty paid.

On 15th June, Trading Standards and HMRC officers visited all seven shops identified by IFSP as selling illicit Smirnoff. None was found at Fonthill Mini Market.

While the officers were in the shop, Mr Koca asked about the counterfeit Jacob's Creek wine that he had read about in the press. He invited the officers to check his stock, which they did. They identified 62 bottles that were counterfeit, amongst many genuine bottles. Five varietals were seized: Merlot (20 bottles); Chardonnay (14); Shiraz (13); Cabernet Sauvignon (9); and Semillon Sauvignon Blanc (6).

The counterfeit bottles were identified as such by visual examination:

- there were at least three spelling mistakes on the back label – "Austrlia", "responsibility" and "drinkoware.com"
- the white wines were in 'red-wine' bottles with darker glass
- the Chardonnay was in the wrong shaped bottle.

Pernod-Ricard, the trade mark holder, have confirmed that they do not believe the counterfeit wine is harmful, but of a much lower quality than the genuine product. They believe it is mostly sold from door-to-door. They are aware of one cash and carry business in Brighton where some has been found.

A single 70cl bottle of Highland Gold whisky was also seized on this occasion – it has a separate duty stamp that does not fluoresce and the code starts with an 'A', instead of a 'W' for whisky.

The total duty that would have been evaded had the illicit goods from both visits been sold totals approximately £187.

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

- Counterfeit spirits, particularly vodka, may be unsafe to consume.
- Illicit spirits are 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.
- Smuggling 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.
17/05/11	TS seizure	0.45kg hand rolling tobacco seized. Admitted to be smuggled.
15/06/11	HMRC seizure	62 bottles of counterfeit Jacob's Creek wine and single 70cl bottle of whisky seized.

Recommendations:

The supply of illicit alcohol puts public health at risk and undermines the prevention of crime.

Invoices have been promised by the business in respect of the Jacob's Creek, but have not yet been provided. Given the large amount of genuine Jacob's Creek in the store and the fact that counterfeit Jacobs Creek has only been found in one small independent cash and carry in Sussex, any invoices produced will not provide good evidence that the counterfeit stock was purchased innocently from a reputable supplier.

The fact that Mr Koca asked the officers to check his stock of Jacob's Creek is worthy of consideration. The motive for doing this can only be known by Mr Koca, but it may be an indication that he was concerned about some that had been purchased, or that he thought the officers would find it anyway. It may have been that he was genuinely confident that they would find nothing.

There is no evidence of the business selling alcohol to underage consumers, but it is a concern that a willingness to break one law indicates that the standard of management at the premises is not satisfactory. This increases the possibility that the approach to all consumer laws may be less rigorous than is desirable.

It is for the Committee to consider the appropriate remedy for these facts. Should the licence continue, Trading Standards wish to recommend the following conditions are added to the licence:

1. No alcoholic goods will ever be purchased or taken from persons calling to the shop.
2. The licensee will immediately report to Trading Standards any instance of a caller to the shop attempting to sell alcohol.
3. Invoices (or copies) for all alcoholic goods on the premises will be kept at the shop and made available to officers from the council, police or HMRC upon request.
4. A stock control system will be introduced, so that the licensee can quickly identify where and when alcoholic goods have been purchased.
5. An ultra-violet light will be available at the premises for the purpose of checking the UK Duty Stamp on spirits as soon as practical after they have been purchased.
6. If any spirits bought by the company have UK Duty Stamps that do not fluoresce under ultra-violet light, or are otherwise suspicious, the licensee shall identify the supplier to Islington Trading Standards and HMRC as soon as possible.
7. The licensee shall adopt the Challenge 25, the Retail of Alcohol Standards Group's advice for off-licences.
8. The licensee shall ensure that staff are trained about age restricted products and ensure that they sign to confirm that they have understood the training. The licensee shall keep records of training and instruction given to staff.
9. The licensee shall put arrangements in place to ensure that before serving alcohol to young persons, staff ask to see accredited proof of age cards for example proof of age cards carrying the 'PASS' logo (and no others), a Passport, or UK Driving Licence bearing the photograph and date of birth of the bearer.

10. The licensee shall require staff to note any refusals to sell to young people in a refusals log. The refusals log shall be checked and signed monthly by the designated premises supervisor. The refusals log shall be made available for inspection by the licensing team, police or trading standards.

No conditions have previously been attached by the Licensing Authority.

Have you made an application for review relating to this premises before Please tick ✓ yes

If yes please state the date of that application

Day	Month	Year

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

N/A


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 Please tick ✓ yes

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 18/8/11

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.



ISLINGTON

Environment and Regeneration

Trading Standards Service
Public Protection Division
222 Upper Street
London N1 1XR

Licensing Team
Public Protection Division
222 Upper Street
London
N1 1XR

T 020 7527 3874
F 020 7527 3038
E doug.love@islington.gov.uk
W www.islington.gov.uk

Please reply to: Doug Love
Our ref:
Your ref:
Date: 17/08/11

Dear Sir or Madam

S51 LICENSING ACT 2003: Application for review of premises licence

Fonthill Mini Market, 60 Fonthill Road, N4 3HT

Islington Trading Standards wishes to apply to have the premises licence of the business trading as Fonthill Mini Market reviewed. Smuggled alcohol was found at the premises on 15th June 2011. The Licensee has not produced any evidence of legitimate purchase.

The enclosed document is our formal application for the review. Copies have also been submitted to the people and agencies listed below.

Please contact **Doug Love** (details above) in relation to this matter.

Yours faithfully

David Fordham
Service Manager Trading Standards

The Licence holder for the business
Licensing Office of Islington Police
London Fire and Emergency Planning Authority
Health & Safety Team (G Weaver)
Development Control Team, Islington Council
Noise & Pollution Team, Islington Council
The Child Protection Team, Islington Council
Licensing Team, Islington Council

**PREMISES LICENCE
LICENSING ACT 2003**

Premises licence number	137513/4143		
Postal address of premises, or if none, ordnance survey map reference or description			
BROTHERS SUPERMARKET 60 FONTHILL ROAD			
Post town	London	Post code	N4 3HT
Telephone number	07944 908 041		

Where the licence is time limited the dates
Not Applicable

Licensable activities authorised by the licence
Ground Floor only
<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 07:00 to 23:00 Tuesday 07:00 to 23:00 Wednesday 07:00 to 23:00 Thursday 07:00 to 23:00 Friday 07:00 to 23:00 Saturday 07:00 to 23:00 Sunday 07:00 to 23:00

The opening hours of the premises:
Monday 07:00 to 23:00 Tuesday 07:00 to 23:00 Wednesday 07:00 to 23:00 Thursday 07:00 to 23:00 Friday 07:00 to 23:00 Saturday 07:00 to 23:00 Sunday 07:00 to 23:00

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



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

Mr Haydar Koca
78 Town Road
Edmonton
London
N9 0RG
07944 908 041

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

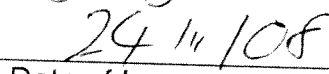
Mr Haydar Koca
78 Town Road
Edmonton
London
N9 0RG
07944 908 041

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

LN/200700293 London Borough of Haringey

Islington Council
Public Protection Division
222 Upper Street
London
N1 1XR
Tel: 020 7527 3031
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

1. CCTV system shall be installed and maintained inside the premises
2. Staff shall be trained regularly on licensing provisions and company policies.
3. The licensee shall liase regularly with the Local Police.
4. Staff shall not tolerate anti – social or aggressive behaviour, customers behaving in such a manner shall be barred from the premises.
5. Noise will not be allowed to emanate from the premises so as to cause a nuisance to nearby properties.
6. The premises shall enforce a proof of age scheme for both Alcohol and cigarette sales, which is approved by the Licensing Authority and by the Local Police.
7. Not sharp or flammable objects shall be in reach of children.

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

Annex 4 – Plans

Reference Number: R001 BA 03 – 04 – 06

Premises Licence Summary
Licensing Act 2003

Premises licence number 137513/4143

Premises details

Postal address of premises, or if none, ordnance survey map reference or description

BROTHERS SUPERMARKET
60 FONTHILL ROAD

Post town	London	Post code	N4 3HT
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Telephone number	07879 877 573
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Where the licence is time limited the dates

Not Applicable

Licensable activities authorised by the licence

Ground Floor only

- The sale by retail of alcohol

The times the licence authorises the carrying out of licensable activities

- The sale by retail of alcohol:

Monday	07:00	to	23:00
Tuesday	07:00	to	23:00
Wednesday	07:00	to	23:00
Thursday	07:00	to	23:00
Friday	07:00	to	23:00
Saturday	07:00	to	23:00
Sunday	07:00	to	23:00

The opening hours of the premises:

Monday	07:00	to	23:00
Tuesday	07:00	to	23:00
Wednesday	07:00	to	23:00
Thursday	07:00	to	23:00
Friday	07:00	to	23:00
Saturday	07:00	to	23:00
Sunday	07:00	to	23:00



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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 Haydar Koca
78 Town Road
Edmonton
London
N9 0RG
07944 908 041

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 Haydar Koca

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

No restrictions

Islington Council
Public Protection Division
222 Upper Street
London
N1 1XR
Tel: 020 7527 3031
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: **12.09.2011**

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 Brothers Supermarket (a.k.a. Fonthill Mini Market) , 60 Fonthill Road, N4 3HT.

I note from the information provided by the trading standards officers that the management of the premises were willing to act in a very worrying manner re the sale of "cheap tobacco" willingly producing such goods when asked by a customer, further to this the large quantity and mixture of wines found on the premises raises some serious concerns about the management of the premises. As such Islington police support the request for revocation or suspension of the licence.

Signature: Signature witnessed by:

Witness contact details

Home address:
..... Postcode:

Home telephone number Work telephone number

Mobile/pager number Email address:

Preferred means of contact:

Male / ~~Female~~ (delete as applicable) Date and place of birth:

Former name: Ethnicity Code (16+1): Religion/belief:

Dates of witness non-availability

Witness care

- a) Is the witness willing and likely to attend court? **No.** If 'No', include reason(s) on **MG6.**
- b) What can be done to ensure attendance?
- c) Does the witness require a Special Measures Assessment as a vulnerable or intimidated witness? **No.** If 'Yes' submit **MG2** with file.
- d) Does the witness have any specific care needs? **No.** If 'Yes' what are they? (Disability, healthcare, childcare, transport, language difficulties, visually impaired, restricted mobility or other concerns?)

Witness Consent (for witness completion)

- a) The criminal justice process and Victim Personal Statement scheme (victims only) has been explained to me Yes No
- b) I have been given the Victim Personal Statement leaflet Yes No
- c) I have been given the leaflet 'Giving a witness statement to police — what happens next?' Yes No
- d) I consent to police having access to my medical record(s) in relation to this matter: (obtained in accordance with local practice) Yes No N/A
- e) I consent to my medical record in relation to this matter being disclosed to the defence: Yes No N/A
- f) I consent to the statement being disclosed for the purposes of civil proceedings e.g. child care proceedings, CICA Yes No
- g) The information recorded above will be disclosed to the Witness Service so they can offer help and support, unless you ask them not to. Tick this box to decline their services:

Signature of witness: Print name:

Signature of parent/guardian/appropriate adult: Print name:

Address and telephone number if different from above:

Statement taken by (print name): **PS45NI 181475 Robin CLARK** Station: **Islington**

Time and place statement taken:

Suggested conditions

As per current licence

Suggested conditions of approval recommended by Trading Standards

1. No alcoholic goods will ever be purchased from sellers calling to the shop.
2. The licensee will immediately report to Trading Standards any instance of a caller to the shop attempting to sell alcohol.
3. Invoices (or copies) for all alcoholic goods on the premises will be kept at the shop and made available to officers from the council, police or HMRC upon request.
4. A stock control system will be introduced, so that the licensee can quickly identify where and when alcoholic goods have been purchased.
5. An ultra-violet light will be available at the premises for the purpose of checking the UK Duty Stamp on spirits as soon as practical after they have been purchased.
6. If any spirits bought by the company have UK Duty Stamps that do not fluoresce under ultra-violet light, or are otherwise suspicious, the licensee shall identify the supplier to Islington Trading Standards and HMRC as soon as possible.
7. The licensee shall adopt the Challenge 25, the Retail of Alcohol Standards Group's advice for off-licences.
8. The licensee shall ensure that staff are trained about age restricted products and ensure that they sign to confirm that they have understood the training. The licensee shall keep records of training and instruction given to staff.
9. The licensee shall put arrangements in place to ensure that before serving alcohol to young persons, staff ask to see accredited proof of age cards for example proof of age cards carrying the 'PASS' logo (and no others), a Passport, or UK Driving Licence bearing the photograph and date of birth of the bearer.
10. The licensee shall require staff to note any refusals to sell to young people in a refusals log. The refusals log shall be checked and signed monthly by the designated premises supervisor. The refusals log shall be made available for inspection by the licensing team, police or trading standards.

