

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

Meeting of	Date	Agenda Item	Ward(s)
Licensing Sub-Committee	2 February 2012	B9	Highbury East

Delete as appropriate	Non-exempt
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Subject: PREMISES LICENCE REVIEW APPLICATION
RE: SAIGON EAGLE OFF LICENCE, 90 HORNSEY ROAD, LONDON, N7 7NN

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 protection of children from harm.
 - ii) 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 – 23:00, and Sunday from 10:00 until 22:30.
- 3.2 The licence for the premises was subject to a review by Trading Standards heard by Licensing Sub Committee on 3 October 2011. This review was in relation to the seizure of smuggled good at the premises. The decision of the Sub Committee was to add conditions to the premises licence. This review application was subject to a supporting representation from the Council's Health and Safety representative. The Licensing Committee placed a condition on the amended licence requiring the work set out in this representation be completed prior to the premises selling alcohol.
- 3.3 On the 22 November 2011 the premise was found to still be selling alcohol without clearing this condition. A warning letter was sent the premises on the 22 November 2011. A copy of this letter is contained in Appendix 4. The premises then stopped selling alcohol and the works were finally completed on 2 December 2011.
- 3.4 Papers are attached as follows:-
 - Appendix 1: application form;
 - Appendix 2: current premises licence;
 - Appendix 3: police and health and safety representations;
 - Appendix 4: warning letter;
 - Appendix 5: suggested conditions and map of premise location.
- 3.5 The Licensing Authority has received a representation by way of a witness statement from the Police.
- 3.6 The Councils Trading Standards Team has recommended that the licence be revoked as it is hard to have confidence in the licensees on going ability to fulfil his responsibility to promote the licensing objectives.

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

23/1/12

Received by

Head of Scrutiny and Democratic Services

Date

Report author: Niall Forde

Tel: 020 7527 3227

Fax: 020 7527 3430

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

WK111284184

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:

Saigon Eagle Off Licence

90 Hornsey Road

Post town: **London**

Post code: **N7 7NN**

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

Fevzi Yeter

Number of premises licence or club premises certificate: **LN / 3345-29102011**

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 protect of children from harm and Licensing Policies 32 and 28. It particularly relates to the sale of alcohol by the business to a 14 year old volunteer assisting Trading Standards and the failure to take the required precautions to prevent this sale. Further, there is evidence that the highest standards of management have not been exhibited by the business.

On 13th December 2010, Mr Love of Trading Standards visited Saigon Eagle Off Licence on a visit to inspect the legality of the tobacco display in the shop. As part of the visit, Mr Love left with employee Saben Yilmaz a "Selling age-restricted goods: how to get it right" advice pack and a copy of the inspection report that requested Mr Fevzi Yeter (owner of the business and premises licence holder) to contact Mr Love if further advice was needed. The advice pack also contained a guidance sheet on how to identify and avoid innocently stocking illicit alcohol. Mr Love was not contacted by anyone from the business after this visit.

On 3rd October 2011 a review of this licence was heard by the Licensing Sub-Committee after a seizure of illicit alcohol was made at the shop in June 2011. The Sub-Committee decided to add several conditions to the licence including four relating to the precautions the licence-holder was required to make to help prevent underage sales and one relating to necessary health and safety works. These conditions were added to Annex 3 of the licence and read:

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.
11. The premises shall not be used under this licence until the requirements specified in the schedule dated 2 September 2011 have been completed and approved in writing by the responsible authority for health and safety.

On 19th November 2011, Trading Standards undertook an operation to test business' compliance with the law prohibiting the sale of alcohol to persons under 18. A 14 year old female volunteer was asked to enter the shop and buy an alcoholic product. Ms Gulcan Yeter sold the volunteer one 275ml bottle of Smirnoff Ice (abv 4.0%) and one 275ml bottle of WKD Vodka Red (abv 4.0%). The volunteer was under observation from an officer from Trading Standards, who witnessed the sale. The only other non-customer in the shop was a man who stated that he was not employed at the shop, but was there helping out while the owner was away from the shop. He was not directly supervising Ms Yeter at the till at the time of the sale.

After the sale it was confirmed that Ms Yeter is a relative of Fevzi Yeter and had only been working in the business for one week. She stated that she had only been working at the shop for one week and that she had received verbal training.

Mr Fevzi Yeter arrived at the shop while the officers were still there. He agreed that Ms Yeter had been given verbal training – he said he had told her to ask young people buying alcohol their age and ask for proof of age – but agreed that the training had not been recorded.

No 'Refusals book' or other record of occasions when the business refused to sell age restricted goods could be produced.

A poster from the advice pack promoting 'Challenge 25' was displayed in the shop.

There has only been one other attempted test purchase of age-restricted goods recorded at this premises – an attempt to buy cigarettes was refused in February 2004.

On 21st November, Mr Love of Trading Standards contacted Geoff Weaver of the Council's Health and Safety team to see whether there had been written approval given as required by condition 11, above. He replied to say that there had not.

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

13/12/10	TS advice	Advice pack with guidance on how to avoid selling alcohol to children and avoid supplying illicit alcohol left at shop during TS visits
03/10/11	Review	Conditions added to licence when TS application to review licence after discovery of illicit alcohol was heard
19/11/11	Alcohol sale	Two 'alcopop' bottles sold to 14 year old volunteer

Recommendations:

This licensee has clearly demonstrated that he is unconcerned with legal compliance, let alone fulfilling his responsibility to promote the licensing objectives, .

Clear advice on how to avoid stocking illicit alcohol was delivered to the shop in December 2010, but illicit alcohol which could have been easily spotted was found in June 2011.

This resulted in a review of the licence at which some of the advice given about preventing underage sales in December 2010 was added to the licence in the form of conditions. Less than seven weeks later, there was a sale of alcohol to a child.

Conditions 8 (keeping training records) and 10 (keeping a refusals log) were not being complied with and it would be hard for the Licensee to argue that conditions 7 (adopting 'Challenge 25') and 9 (requiring proof of age) have been effectively implemented whatever the content of the verbal training given to Ms Yeter.

Further, it has transpired that the licence was not valid at the time of the sale, because condition 11 (the health and safety requirement) had not been fulfilled.

I believe on the facts described in this application that this licence should be revoked as the licensee has been involved in two serious breaches of the law within less than 6 months. If he will not comply with the clear licence conditions even six weeks after they have been added to the licence, it is hard to have confidence in his ongoing ability to fulfil his responsibility to promote the licensing objectives or to exhibit the highest standards of management.

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		
1	8	0	8	2	0	1 1

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


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

Please tick ✓ yes

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 19/12/11

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.

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: **12.01.2012**.....

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 Saigon Express Off Licence, 90 Hornsey Road, N7 7NN.

Having read the information provided by the council officials I have very grave concerns about the management of this premise. Having had the licence reviewed and several conditions imposed the management appear to have paid no heed to this and have made no effort to meet the licensing objectives and as such I strongly support the request to revoke this licence.

Signature: Signature witnessed by:

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

Mr Figen Yeter
37 London Fields
East Side
London
E8 3SA

T 020 7527 3227
F 020 7527 3057
E niall.forde@islington.gov.uk
W www.islington.gov.uk

This matter is being dealt with by:
Niall Forde

Date: 22 November 2011

Dear Mr Yeter,

LICENSING ACT 2003 (HEARING REGULATIONS) 2005

NOTICE OF HEARING

RE: SAIGON EXPRESS OFF LICENCE, 90 Hornsey road, London, N7 7NN

I am writing to you, as the licensee for the above premises.

At the review hearing on the 3 October 2011, the Licensing Committee imposed the following condition on your licence following a representation from the Council's Health and Safety Officer.

The premises shall not be used under this licence until the requirements specified in the schedule dated 2 September 2011 have been completed and approved in writing by the responsible authority for health and safety.

I have been notified by Geoff Weaver the Council Health and Safety Officer revealed that all of the works specified in this schedule are still outstanding.

I am therefore advising you to stop selling alcohol at the premises until these works have been completed.

As the responsible person at the premises, you are liable for prosecution if the premises continue to contravene current licence conditions. A person found guilty of such an offence is liable to a maximum fine of £20,000 and or 6 months imprisonment.

I must inform you that if you continue to sell alcohol at the premises without complying with the licence conditions it will result in enforcement action being taken against the license and any responsible person involved in unlicensed activity at the premises.

If you have any questions regarding this matter please do not hesitate to contact Niall Forde on 0207 527 3227.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by a horizontal line that extends to the right and then curves slightly upwards.

Niall Forde
Licensing Officer

If you would like this document in large print or Braille, audiotape or in another language, please telephone 020 7527 2000.

Suggested conditions

As per current licence