



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

Meeting of	Date	Agenda Item	Ward(s)
Licensing Sub-Committee	12 March 2012	BS	Highbury East

Delete as appropriate	Exempt	Non-exempt

Subject: PREMISES LICENCE REVIEW APPLICATION
RE: Highbury Wine, 225 Blackstock Road, London, N5 2LL

1. Synopsis

- 1.1 This is an application by Islington Council Trading Standards 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) 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 to:

- i) Permit the sale of alcohol from 08:00 until 23:00 Monday to Saturday, and from 10:00 until 22:30 on Sunday.

3.2 Papers are attached as follows:-

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

3.3 The Licensing Authority has received two letters of representation from the Metropolitan Police and the Council's Health and Safety officer.

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

1/3/12

Received by

Head of Scrutiny and Democratic Services

Date

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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:	
Highbury Wine	
225 Blackstock Road	
Post town: London	Post code: N5 2LL

Name of premises licence holder or club holding club premises certificate: Ali Iman Yildirim
--

Number of premises licence or club premises certificate: LN/2495-170610
--

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

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

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 and tobacco in the shop, which indicates that the highest standards of management have not been exhibited by the business.

On 11th November 2011 officers from Trading Standards and HMRC visited the premises to inspect the stock of alcohol and tobacco. The Licensee / DPS, Ali Imam Yildirim was present. The owner of the business, Mehmet Yildirim (brother of Ali) was not present. The officers seized the following as they were believed to be non-duty paid:

High Commissioner whisky - 7 litres (10 x 70cl): Duty stamps do not fluoresce. Resealed case.

Glens vodka – 5.6 litres (8 x 70cl): Duty stamps do not fluoresce properly. Self adhesive labels. Resealed case.

Italian wine – 135.75 litres (181 bottles): The wine was recognised by HMRC officers as brands that have regularly been smuggled and supplied in the region without duty being paid.

The total duty that would have been evaded had the goods confirmed to have been illicit been sold is approximately **£453**.

On 20th January 2012, Licensee / DPS Ali Imam Yildirim attended a PACE interview. Some key points of the interview follow (timings in brackets):

- AIY state that he and his brother, Mehmet (MY), are responsible for buying alcohol for the shop. (6.10)
- AIY states that he had previously advised not to buy any alcohol from the street. He says that the business buys alcohol from cash and carries. (7.45)
- AIY states that MY has told him after the seizure that he bought 18 cases of 12 of the Italian wine from an Indian man a few days before the visit. No paperwork was obtained, although only part-payment was made pending the promised production of a receipt. The seller, however, never returned. AIY is not sure how much MY paid, or what the total price was. AIY is not sure why his brother had bought the wine from such a source and did not realise anything was wrong until after the as he had previously bought similar wine from Eastenders cash and carry. (8.10 – 12.25)
- DL requested that invoices be supplied for the Italian wine bought from Eastenders. (12.30)
- AIY states that MY must have bought the High Commissioner and he does not know where it came from. He believes that he bought the Glens from a cash and carry – Dhamecha or maybe Eastenders) – maybe two months ago. He states that a maximum of 2-3 bottles of Glens were sold each week. (15.40 – 17.35)
- AIY states he has never done anything illegal in his life. (18.10)
- AIY doesn't remember seeing the letter and guidance sent out in March 2011. It may have been received by his brother, but AIY says MY cannot read English very well. AIY says he can read English well. He also says that if he doesn't understand anything in official correspondence, he would ask a cousin to help. (19.50 – 22.20)
- AIY reiterates that the shop does not buy alcohol from street sellers. He mentioned one who came in three days before the interview and was sent away. PS Clark requests to view the CCTV footage of this seller. (23.50)

Trading Standards have no previous record of significant non-compliance at the shop.

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 consume. 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	Guidance on illicit alcohol and tobacco and covering letter sent to the business.
11/11/11	Seizure	12.6l spirits & 181 bottles of Italian wine seized.

Recommendations:

The licensee has declared that it is a policy of the business that alcohol is not purchased from 'street sellers', but accepts that the seized wine was bought in exactly this manner by his brother, the owner of the shop.

He does not know where the High Commissioner whisky came from – he also believes his brother bought this – although he believes that the Glens may have come from a legitimate cash and carry a couple of months before the seizure. Actually, from the identical method in which the two cases have been resealed, it is believed likely that both can from the same source.

Mr Yildirim says that he was unaware of the advice sent, although it was addressed with the correct shop name. Whether he received it or not, it is hard to credit that he and his brother, Mehmet Yildirim, could have been unaware of the Council's activity on illicit alcohol in the 14 months before the seizure, so there is little excuse for purchasing anything from sellers calling to the shop. If Ali Imam Yildirim's version is truthful, most of the blame may lie with the owner of the business, but it is the responsibility of the Licensee / DPS to ensure legality in terms of the buying and selling of alcohol.

I believe on the facts described in this application that this licence should be revoked. Whether the described breaches were intentional, or genuinely the result of extreme naivety and a failure to heed clear advice, it is very clear that the Licensee has failed in his responsibility to promote the Licensing Objectives.

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

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

30/1/12

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.



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

Tel : 020 7527 3874 / 4028
Email : doug.love@islington.gov.uk

Website : www.islington.gov.uk

Our ref: Mailshot

Date: March 2011

The Licensee and Proprietor

Dear Sir/Madam,

Important information – YOUR LICENCE IS AT RISK

In the last few months Islington Trading Standards and Her Majesty's Revenue and Customs (HMRC) have visited off-licensed businesses to look for illicit alcohol and tobacco. Seizures of the following goods – all of which have evaded excise duty and some of which is also counterfeit - have been made from 40 businesses in this time:

- **Over 800 litres of spirits**
- **Over 5,000 bottles of smuggled wine**
- **Over 3,500 cigarettes and 23kg of other tobacco products**

Trading Standards and HMRC are going to intensify their campaign as a result of these alarming findings which are evidence of very serious offences. As well as the **£19,000 evaded excise duty** these goods represent, there are health concerns caused by counterfeit goods, which are produced with no regard to health standards or quality control – sellers do not know what they are selling or how much harm it may do.

- **Counterfeit alcohol can cause breathing difficulties, blindness or be lethal.** There have been deaths in the UK attributed to counterfeit alcohol containing methanol – a type of alcohol that is particularly dangerous to ingest. Thousands of deaths are reported worldwide to be caused by counterfeit spirits.
- **Asbestos and rats' droppings** are amongst the 'ingredients' recently found in counterfeit tobacco.

Goods such as these are distributed by **organised crime gangs** who will often be involved in other crimes, such as people trafficking, violent crime and even terrorism. Selling them is not a 'harmless' crime that benefits your customers, but one that harms society as a whole.



Up to now, the businesses that have had illicit goods seized have generally been required to attend a meeting and given advice and a final warning.

As we have found this problem to be so widespread, there will now be tougher action taken against businesses found to be selling smuggled or counterfeit alcohol or tobacco.

Is it likely that your licence to sell alcohol will be reviewed and either suspended or taken away entirely. Licensing Panels will consider **permanently revoking the licence of businesses that sell smuggled goods**. You and the owner of the business may also be prosecuted.

You can prevent yourselves getting into trouble by understanding and **following the advice given in the attached guidance sheet**.

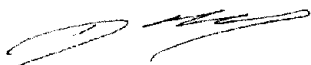
You can also be active in protecting your business. If you have any details – e.g. name or telephone numbers, vehicle details, or CCTV footage – of anyone calling at your shop and trying to sell you alcohol or tobacco, please let Trading Standards know. If your business is being undercut by local competitors trading unfairly by stocking illicit goods, let us know. We will treat all information in **complete confidence** – your name will not be revealed and any subsequent visits will appear to be random.

Goods that have been regularly seized are as follows:

- **Cheap Italian wine** – with a variety of brand names – sold door-to-door for unrealistically low prices. The excise duty alone payable of 6 bottles of wine will be over £10.
- **Vodka** that is counterfeit or was originally intended for export, especially **Glens** and **Smirnoff**.
- **Whisky** - counterfeit or intended for export – especially **Famous Grouse, High Commissioner, Bells** and **Teachers**.

Trading Standards remains committed to working with law-abiding businesses to improve legal compliance and to protect them from unfair competition. If you need further advice or have any questions, please contact me on the number shown above. However, we will continue to take strong measures against businesses that break the law and cause a hazard to the public. Do not let your business suffer the consequences of illegal trading.

Yours sincerely



Dave Fordham
Service Manager, Trading Standards



Smuggled Alcohol and Tobacco Products

Trading Standards

1. Introduction

Smuggled goods are goods for which the appropriate excise duty (import tax) has not been paid. Alcohol and tobacco products are regularly smuggled as the excise duty that must be paid on them is very high. Some will also be counterfeit as well.

Smuggled goods:

- may be unsafe, if they are also counterfeit, as the normal quality standards will be ignored.
- boost the profits of organised criminals;
- cause huge losses to the UK's tax revenues.

Islington Trading Standards have been carrying out visits in partnership with Her Majesty's Revenue and Customs (HMRC) to detect smuggled goods and many seizures have been made. We intend to carry out many more visits to counter this widespread problem. Businesses selling smuggled goods may be **prosecuted** or their **alcohol licence may be revoked** or **suspended**.

2. Legislation

The main legislation that deals with smuggled goods is enforced by Her Majesty's Revenue and Customs (HMRC), although Trading Standards can also take action under some or all of the following laws:

- The **Fraud Act 2006** or the **Consumer Protection from Unfair Trading Regulations 2008** where a business sells items when they know or should know that they are, or might be, smuggled.
- The **Consumer Protection Act 1987** if tobacco products do not carry the required written and pictorial warnings.
- The **Licensing Act 2003** enables the Police or Trading Standards to apply for reviews of alcohol licences, which may lead to the licence being suspended or revoked.

3. How do I tell if goods are smuggled?

Alcohol: Alcoholic drinks with a stated alcohol by volume level of 30% or more (which will include all spirits) in containers of 35cl or more will be required to carry a UK Duty stamp, normally on the back label. The stamp will be pink in colour, but will glow green, yellow or white when ultra violet (UV) light is shined on it. It should not reflect blue / violet and any stamp that does is likely to be fake. UV lights are easy and cheap to buy and checking your stock with such a light is a sensible precaution, although please note that some fakes are good enough to have stamps that do glow as if genuine.



You should also check the print quality of the stamp and that the label or stamp are not stuck onto an existing label – poor print quality and overlabelling are clear indicators that the product may be illegal.

Black & white representation of a UK Duty stamp

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Another indicator is if spirits are sold in boxes with the 'UK Duty Paid' statement crossed through, or that have been resealed – indicating that export bottles may have been removed to have their back label changed for one carrying the UK Duty Stamp.

Tobacco products: Any tobacco product – including shisha and chewing tobacco - that does not carry the required health warnings is illegal for sale in the UK and is almost certain to be smuggled. The warnings must be in English and include one of the following statements:

- **"Smoking kills" or "Smoking seriously harms you and others around you"** (on cigarettes, hand rolling tobacco and shisha). A picture warning is also required on these products.
- **"This tobacco product can harm your health and is addictive"** (on chewing tobacco).

Full details of the required warnings can be viewed by following the following links:

<http://www.legislation.gov.uk/uksi/2002/3041/contents/made> (written warnings can be found in section 7 and the Schedule)

<http://webarchive.nationalarchives.gov.uk/+www.dh.gov.uk/en/Publichealth/Healthimprovement/Tobacco/Picturewarningsontobaccoproductspressimages/index.htm> (picture warnings)

General:

- **Never buy alcohol, cigarettes or tobacco from anyone who brings the goods to the shop.** They will undoubtedly be illegal in some way – smuggled, counterfeit or stolen – and may be unsafe for people to consume. You should be very careful buying any goods in this manner – without a means of contacting the seller the responsibility for any offence will be yours. Counterfeit batteries, condoms, DVDs and unsafe cosmetics are also regularly sold in this manner.
- **Only deal with reputable traders** and get proper invoices. Cash and carry businesses have been known to deal in illicit goods, so you must still check purchased goods, especially if the seller is not a business you know and trust. If smuggled or counterfeit goods are found then we will expect you to be able to produce these invoices.
- **Control your stock** so you can be sure what goods come from where eg. mark boxes of alcohol with the supplier and date of purchase. Be careful about accepting returns of tobacco products or alcohol from customers who have changed their minds.

4. What are the penalties if I sell smuggled goods?

Substantial fines or even imprisonment can be imposed on anyone breaking the law by selling smuggled goods.

Further, if you hold a licence to sell alcohol, it is likely to be reviewed and may be revoked if smuggled goods are found in your shop.

5. How can I get further advice?

If you require further information, clarification or advice on any of the above, please do not hesitate to contact the Trading Standards Service at:

222 Upper Street, London, N1 1XR

Tel: 020 7527 3198

Email: tradingstandards@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:  **PS45W1**..... Date: **21.02.2012**.....

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 Highbury Wine 225 Blackstock Road, N5 2LL.

I have read the information provided by the council staff re the history of these premises and confirm that I was present during the interview of the management of the premises. It appears clear to me that there is a clear failure on the part of the management to fulfil their obligations under the Licensing objectives and they are clearly failing to prevent the risk of harm to the public by stocking non duty paid alcohol. We have a situation here where we have been unable to verify where any of the goods have come from and the management have no clear idea of who purchased what and from whom. The management of these premises fails to meet the required standard for a licensed trade and in failing to meet that standard puts the public at risk of harm. As such Islington Police strongly support the request to revoke this licence.

Signature:  **PS45W1**..... Signature witnessed by:

**Islington Licensing Authority
Licensing Act 2003**

Representation form from Responsible Authority for Health and Public Safety

Name	Geoff Weaver
Job title	Senior Building Surveyor (Licensing Health and Safety)
Postal address	Islington Council, Building Control Service 222 Upper Street, London N1 1XR
email	geoff.weaver@islington.gov.uk
Contact telephone number	020 7527 5986
Name and address of the premises concerning the representation	Highbury Wine 225 Blackstock Road N5 2LL
Public Safety	The arrangements at the premises are insufficient for health and safety. See attached requirements schedule.
Suggested conditions that could be added to the licence to remedy the public safety representation	The premises shall not be used under the licence until the requirements specified in the schedule dated 23 February 2012 have been completed and approved in writing by the responsible authority for health and public safety.

Signed: _____ Date: _____

Please return this form along with any additional sheets to: Applicant and Islington Council, Licensing Team, 222 Upper Street, London N1 1XR or email to licensing@islington.gov.uk This form must be returned within the statutory period. For more details please check with the Licensing Support Team on 020 7527 3031.

**Licensing Act 2003 – Requirements schedule dated 23 February 2012 for
Highbury Wine 225 Blackstock Road N5 2LL**

- (1) In addition to the lighting, emergency lighting in compliance with BS 5266 – 1 should be provided in the trading area of the shop so all gangways are clearly illuminated.

Note: Non-maintained emergency lighting should be wired to the local lighting circuit in such a manner as to operate not only in the event of failure of the mains supply but also on failure of the supply to the local lighting circuit.

- (2) One water fire extinguisher (rating 13A) and one carbon dioxide fire extinguisher (rating 34B) should be provided behind or adjacent to the cashiers/sales counter.

Fire extinguishers should be on brackets or stands and located so as not to obstruct exit routes or cause a hazard to persons in and about the premises.

Appropriate signs should be fixed adjacent to the fire extinguishers indicating the type of fire fighting appliance and the class of fire covered.

- (3) A copy of the inspection and service certificate for fire fighting appliances obtained from an organisation certified by the British Approvals for Fire Equipment (BAFE), or competent person from an appropriate approved organisation, should be submitted to the responsible authority for health and public safety.



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Mr Ali Iman Yildirim
Highbury Wine
225 Blackstock Road
London
N5 2LL

Building Control Service
Planning and Development
222 Upper Street
London
N1 1XR

T 020 7527 5986
F 020 7527 5998
E geoff.weaver@islington.gov.uk
W www.islington.gov.uk

Our ref : GW

Your ref:

Date: 23 February 2012

Dear Sir

**Licensing Act 2003
Representation from Responsible Authority for Health and Public Safety
Highbury Wine 225 Blackstock Road N5 2LL**

With reference to the recent application for the review of the premises licence under the Licensing Act 2003 at the above named premises, as the health and safety consultant for the responsible authority for health and public safety I will be making a representation to this application.

At a survey of the premises on 22 February 2012 it was found that the requirements specified in the attached schedule are in need of urgent attention to ensure the existing arrangements at the premises are adequate for health and public safety.

The premises should be maintained in good condition. Staff should be trained in the health and safety measures applicable to the premises and the action to be taken in the event of an emergency or evacuation. Enclosed for your attention are **Health and Safety Standards for Places of Assembly, Shops and Commercial Premises**.

This communication is without prejudice to the necessity of complying with any other statutory controls which may be applicable, whether administered by the council or by any other authority.

Please give notification of the commencement and completion of the works.

Should you require any advice or information please contact me at the above address.

Yours faithfully

Geoff Weaver
Senior Building Surveyor (Licensing Health and Safety)

Suggested conditions of approval consistent with the operating schedule

1. Not applicable

Suggested conditions of approval recommended by the Police

2. None suggested.

Suggested conditions of approval recommended by the Trading Standards

3. None suggested.

