

# LICENSING ACT 2003 SUB COMMITTEE

Wednesday, 11th July, 2018  
10.00 am





# LICENSING ACT 2003 SUB COMMITTEE

Wednesday, 11th July, 2018 at 10.00 am

Members are reminded that if they have detailed questions on individual reports, they are advised to contact the report authors in advance of the meeting.

## AGENDA

### 1) *Appointment of Chair*

To consider the appointment of Chair for the meeting

### 2) *Apologies for Absence*

To receive any apologies for absence

### 3) *Additional Items of Business*

To determine whether there are any additional items of business which, by reason of special circumstances, the Chair decides should be considered at the meeting as a matter of urgency

### 4) *Declaration of Interest*

In accordance with the Regulations, Members are required to declare any personal or personal and prejudicial interests they may have and the nature of those interests in respect of items on this agenda and/or indicate if S106 of the Local Government Finance Act 1992 applies to them.

### 5) *Exclusion of the Public*

To determine during which items, if any, the public are to be excluded from the meeting

### 6) *Determination of a Review of a Premises Licence for M&M Food Store, 67-69 Athol Street South, Burnley, BB11 4PA.* 5 - 34

To determine a Review of a Premises Licence under the Licensing Act 2003 relating to M&M Food Store, 67-69 Athol Street South, Burnley, BB11 4PA.

## MEMBERSHIP OF COMMITTEE

Councillor Ida Carmichael-4<sup>th</sup> Member  
Councillor Anne Kelly

Councillor Ann Royle  
Councillor Bill Brindle

**PUBLISHED**

28<sup>th</sup> June 2018

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**REPORT TO LICENSING SUB-COMMITTEE**

<b>DATE</b>	11 <sup>th</sup> July 2018
<b>PORTFOLIO</b>	Regulation
<b>REPORT AUTHOR</b>	John Yardley
<b>TEL NO</b>	0114 3999067
<b>EMAIL</b>	jyardley@burnley.gov.uk

Licensing Act 2003 Determination of an application for a review of a premises licence

**PURPOSE**

1. To advise members of the requirement to determine an application for review under Section 52 of the Licensing Act 2003.
2. The premises are M&M Food Store, 67-69 Athol Street South, Burnley, BB11 4PA

**RECOMMENDATION**

3. Members are recommended to make a determination at the conclusion of the hearing as required by Regulation 26(1) of the Licensing Act (Hearings) Regulations 2005.

Having considered all relevant facts, the Committee is empowered to take any of the following steps which are necessary to promote the licensing objectives:

- a. to modify the conditions of the licence;
- 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; or
- e. to revoke the licence.

**REASONS FOR RECOMMENDATION**

4. Members of the Licensing Committee are responsible for determining such applications.

## SUMMARY OF KEY POINTS

5. The Licensing Objectives are:
- Prevention of Crime and Disorder
  - Public Safety
  - Prevention of Public Nuisance
  - Protection of Children from Harm

The premises currently hold a licence which authorises the supply of alcohol for consumption OFF the premises Monday to Saturday from 8.00am to 11.00pm and Sunday 10am till 10.30pm.

The holder of the premises licence and Designated Premises Supervisor is Arshad Mahmood.

### **Conditions attached to the licence:**

#### **ANNEX 1 – Mandatory conditions**

The licence is granted subject to the Mandatory conditions for sale of alcohol as set out in the Licensing Act 2003 as amended by the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 and Order 2014.

#### **ANNEX 2 - Conditions consistent with the Operating Schedule**

Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- a. On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
- b. On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
- c. On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- d. On Good Friday, 8 a.m. to 10.30 p.m.

The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
- (b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (c) the sale of alcohol to a trader or club for the purposes of the trade or club;
- (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

Alcohol shall not be sold in an open container or be consumed in the licensed premises

**The full existing premises licence is appended at Appendix 'A'.**

- 6 On the 17<sup>th</sup> April 2018, the Licensing Authority received an application from Lancashire County Council Trading Standards Service to review the Premises Licence of M&M Food Store, 67-69 Athol Street South, Burnley. The grounds for the application being that the licensing objectives relating to the Prevention of Crime and Disorder are not being observed at the premises.

Trading Standards will say that Illicit tobacco products have been purchased, or seized, by Trading Standards officers on 12 separate occasions since September 2008. Trading Standards say that a decade of prolific illegal activity at the premises, despite repeated enforcement action, represents a flagrant and systematic disregard for the relevant licensing objectives.

Therefore, the Licensing Committee is encouraged to consider revocation of the relevant premises licence for M & M Food Store.

A previous review hearing on the 6<sup>th</sup> June 2018 was adjourned to this date after an application to transfer the premises licence and vary the Designated Premises Supervisor was submitted on the 5<sup>th</sup> June 2018 by Mrs Rehana Iqbal. These applications took immediate effect but were objected to by the police on the grounds of Crime & Disorder. A hearing to consider the matter has been fixed for 2<sup>nd</sup> July and the outcome will be reported to members.

**The review application submitted by Trading Standards is appended at Appendix 'B'.**

## **FINANCIAL IMPLICATIONS AND BUDGET PROVISION**

7. None

## **POLICY IMPLICATIONS**

8. The following paragraphs from Burnley Borough Council's Statement of Licensing Policy are relevant to this application

1.10 We will endeavor to carry out our licensing functions in a way that:

- ensures public safety
- supports well managed premises where licence holders seek to actively promote the licensing objectives and display sensitivity to the potential impact of licensable activities on local residents and other businesses
- protects residents' quality of life.

3.7 Under the Crime and Disorder Act 1998, the authority must exercise its functions, having regard to the likely effect on crime and disorder in its area, and must do all it can to prevent crime and disorder. Where its discretion is engaged, the authority will seek to promote the licensing objective of preventing crime and disorder in a manner which supports the Lancashire County Council Community Safety Action Plan and any local community safety priorities or emerging threats identified Burnley Community Safety Delivery Group (MATAC)

14.1 Where an application for a review of a premises licence is made, we will inform the public of the application for review in accordance with the regulations made under the Act thereby allowing any other responsible authority, authorised person or interested party to also make application at that time.

Members are reminded of the consideration they should give to the Human Rights Act 1998 in particular those rights afforded by Article 6 (right to a fair hearing), Article 1 of the First Protocol (protection of property) and Article 8 (right to respect for private and family life).

#### **DETAILS OF CONSULTATION**

9. The statutory consultation has taken place.

#### **BACKGROUND PAPERS**

10. Burnley Borough Council Statement of Licensing Policy.  
Licensing Act 2003.

Home Office Guidance issued under Section 182 of the Licensing Act 2003

#### **FURTHER INFORMATION**

**PLEASE CONTACT:**

**John Yardley ext 249067**

**ALSO:**

**Peter Henderson ext 249061**



Licensing Unit  
Parker Lane  
Burnley  
Lancashire  
BB11 2DT

Tel: 01282 425011  
Web: www.burnley.gov.uk

Licensing Act 2003

## Premises Licence

# PLA0015

### Part 1 - Premises Details

#### POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

### M & M Off Licence

67 / 69 Athol Street South, Burnley, Lancashire, BB11 4PA.

Telephone 01282 416183

#### WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

#### LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- the supply of alcohol

#### THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
J. Supply of alcohol for consumption OFF the premises only	Monday to Saturday	8:00am	11:00pm
	Sunday	10:00am	10:30pm

#### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Not relevant to licences granted on conversion		

#### WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- J. Supply of alcohol for consumption OFF the premises only

### Part 2

#### NAME, (REGISTERED) ADDRESS, TELEPHONE NUMBER AND EMAIL (WHERE RELEVANT) OF HOLDER OF PREMISES LICENCE

Arshad Mahmood

528 Colne Rd, Burnley, Lancashire, BB10 2LD.

#### 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

Arshad MAHMOOD

528 Colne Rd, Burnley, Lancashire, BB10 2LD.

## Licensing Act 2003

# Premises Licence

# PLA0015

### PERSONAL LICENCE NUMBER AND ISSUING AUTHORITY OF PERSONAL LICENCE HELD BY DESIGNATED PREMISES SUPERVISOR WHERE THE PREMISES LICENCE AUTHORISES FOR THE SUPPLY OF ALCOHOL

Licence No. PA0241

Issued by Burnley

#### ANNEXES

### ANNEX 1 - MANDATORY CONDITIONS

#### Mandatory Conditions

#### All Premises Licence authorising supply of alcohol

The licence is granted subject to the Mandatory conditions for sale of alcohol as set out in the Licensing Act 2003 as amended by the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 and Order 2014.

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.
3. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.
  - (2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises.
    - a) games or other activities which require or encourage, or are designed to require or encourage, individuals to -
      - (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or
      - (ii) drink as much alcohol as possible (whether within a time limit or otherwise);
    - b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;
    - c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a

### ANNEXES continued ...

significant risk of undermining a licensing objective;

- d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner.
- e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

- 4. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.
- 5.
  - (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
  - (2) The designated premises supervisor in relation to the premises licences must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
  - (3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either:-
    - (a) a holographic mark or
    - (b) an ultraviolet feature.
- 6. The responsible person shall ensure that -
  - (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures -
    - (i) beer or cider: ½ pint;
    - (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
    - (iii) still wine in a glass: 125 ml; and
  - (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and
  - (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.

## Licensing Act 2003

# Premises Licence

# PLA0015

### ANNEXES continued ...

#### Minimum Drinks Pricing

1. A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
2. For the purposes of the condition set out in paragraph 1 -
  - (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979
  - (b) "permitted price" is the price found by applying the formula -
$$P = D + (D \times V)$$
Where -
    - (i) P is the permitted price
    - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
    - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
  - (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
    - (i) The holder of the premises licence
    - (ii) The designated premises supervisor (if any) in respect of such a licence, or
    - (iii) The personal licence holder who makes or authorises a supply of alcohol under such a licence;
  - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
  - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from the paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
4.
  - (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
  - (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

### ANNEXES continued ...

#### **If the Premises Licence allows Exhibition of Films**

1. Where a premises licence authorises the exhibition of films, the licence must include a condition requiring the admission of children to the exhibition of any film to be restricted in accordance with this section.

2. Where the film classification body is specified in the licence, unless subsection (3)(b) applies, admission of children must be restricted in accordance with any recommendation by that body.

3. Where

- (a) The film classification body is not specified in the licence, or
- (b) The relevant licensing authority has notified the holder of the licence that this subsection applies to the film in question,

admission of children must be restricted in accordance with any recommendation made by that licensing authority.

4. In this section "children" means any person aged under 18; and

"film classification body" means the person or persons designated as the authority under Section 4 of the Video Recordings Act 1984(c39) (authority to determine suitability of video works for classification).

#### **If the Premises Licence has conditions in respect of Door Supervision**

##### **except theatres, cinemas, bingo halls and casinos**

1. Where a premises licence includes a condition that at specified times one or more individuals must be at the premises to carry out a security activity, each such individual must:

- (a) be authorised to carry out that activity by a licence granted under the Private Security Industry Act 2001; or
- (b) be entitled to carry out that activity by virtue of section 4 of the Act.

2. But nothing in subsection (1) requires such a condition to be imposed:

(a) in respect of premises within paragraph 8(3)(a) of Schedule 2 to the Private Security Industry Act 2001 (c12) (premises with premises licences authorising plays or films); or

(b) in respect of premises in relation to:

(i) any occasion mentioned in paragraph 8(3)(b) or (c) of that Schedule (premises being used exclusively by club with club premises certificate, under a temporary event notice authorising plays or films or under a gaming licence), or

(ii) any occasion within paragraph 8(3)(d) of that Schedule (occasions prescribed by regulations under that

## Licensing Act 2003

# Premises Licence

# PLA0015

### ANNEXES continued ...

Act.

3. For the purposes of this section:

- (a) "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies, and, which is licensable conduct for the purposes of that Act, (see Section 3(2) of that Act) and
- (b) paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.

### **ANNEX 2 - Conditions consistent with the Operating Schedule**

Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- a. On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
- b. On Sundays, other than Christmas Day, 10 a.m. to 10.30 p.m.
- c. On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
- d. On Good Friday, 8 a.m. to 10.30 p.m.

The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
- (b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (c) the sale of alcohol to a trader or club for the purposes of the trade or club;
- (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

Alcohol shall not be sold in an open container or be consumed in the licensed premises

### **ANNEX 3 - Conditions attached after a hearing by the licensing authority**

None

### **ANNEX 4 - Plan of Premises**

The official plan of the premises is attached and endorsed

## Licensing Act 2003

# Premises Licence Summary

# PLA0015

### Premises Details

#### POSTAL ADDRESS OF PREMISES, OR IF NONE, ORDNANCE SURVEY MAP REFERENCE OR DESCRIPTION

## M & M Off Licence

67 / 69 Athol Street South, Burnley, Lancashire, BB11 4PA.

Telephone 01282 416183

#### WHERE THE LICENCE IS TIME LIMITED THE DATES

Not applicable

#### LICENSABLE ACTIVITIES AUTHORISED BY THE LICENCE

- the supply of alcohol

#### THE TIMES THE LICENCE AUTHORISES THE CARRYING OUT OF LICENSABLE ACTIVITIES

Activity (and Area if applicable)	Description	Time From	Time To
J. Supply of alcohol for consumption OFF the premises only	Monday to Saturday	8:00am	11:00pm
	Sunday	10:00am	10:30pm

#### THE OPENING HOURS OF THE PREMISES

Description	Time From	Time To
Not relevant to licences granted on conversion		

#### WHERE THE LICENCE AUTHORISES SUPPLIES OF ALCOHOL WHETHER THESE ARE ON AND / OR OFF SUPPLIES

- J. Supply of alcohol for consumption OFF the premises only

#### NAME, (REGISTERED) ADDRESS OF HOLDER OF PREMISES LICENCE

Arshad Mahmood

528 Colne Rd, Burnley, Lancashire, BB10 2LD.

#### 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

Arshad MAHMOOD

#### STATE WHETHER ACCESS TO THE PREMISES BY CHILDREN IS RESTRICTED OR PROHIBITED

None

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**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 Rick Wilson,  
(Insert name of applicant)

**apply for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)**

**Part 1 – Premises or club premises details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b>  M & M Food Store 67-69 Athol Street South	
<b>Post town</b> Burnley	<b>Post code (if known)</b> BB11 4PA

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Mr Arshad Mahmood
--

<b>Number of premises licence or club premises certificate (if known)</b> PLA0015
--

**Part 2 - Applicant details**

I am

**Please tick yes**

- 1) an interested party (please complete (A) or (B) below)
  - a) a person living in the vicinity of the premises
  - b) a body representing persons living in the vicinity of the premises
  - c) a person involved in business in the vicinity of the premises
  - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) 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**

**I am 18 years old or over**

**Please tick yes**

**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	
Rick Wilson Lancashire County Council Trading Standards Service 4 <sup>th</sup> Floor, Lancashire Point County Hall Pitt Street Preston Lancashire PR1 0LD	
Telephone number (if any)	01772 532228
E-mail address (optional)	rick.wilson@lancashire.gov.uk

- This application to review relates to the following licensing objective(s)**  
Please tick one or more boxes
- 1) the prevention of crime and disorder
  - 2) public safety
  - 3) the prevention of public nuisance
  - 4) the protection of children from harm

**Please state the ground(s) for review** (please read guidance note 1)

The application for review is submitted by Lancashire County Council Trading Standards Service on the grounds that the licensing objective relating to the prevention of crime and disorder is not being observed at M & M Food Store, 67-69 Athol Street South, Burnley BB11 4PA.

Illicit tobacco products have been purchased, or seized, by Trading Standards officers on 12 separate occasions since September 2008. Trading Standards say that a decade of prolific illegal activity at the premises, despite repeated enforcement action, represents a flagrant and systematic disregard for the relevant licensing objectives.

Therefore, the Licensing Committee is encouraged to consider revocation of the relevant premises licence for M & M Food Store.

**Please provide as much information as possible to support the application**  
(please read guidance note 2)

## **PREVENTION OF CRIME AND DISORDER**

- 26/09/08 – 5 packs of non-duty paid Golden Virginia tobacco were seized by HMRC during a joint inspection with Trading Standards.
- 13/06/11 – 1 pack of Golden Virginia hand rolling tobacco was test purchased from M & M Food Store, 67-69 Athol Street South, Burnley. The tobacco did not contain correct health warnings and was non-duty paid.

An inspection was carried out shortly after the test purchase. During the course of this inspection 7 packets of Jin Ling cigarettes and 7 packs of Cutters Choice hand rolling tobacco were seized, which did not contain correct health warnings and were non-duty paid.

Mr Mehran Arshad (the son of the owner and premises licence holder) accepted a simple caution in August 2011, admitting that he had possessed the illicit tobacco for supply on the 13<sup>th</sup> June 2011.

- 13/03/14 – Trading Standards received intelligence from Crimestoppers which stated that the male owner of M & M Food Store was selling illicit tobacco from the premises.
- 01/04/14 – Trading Standards received intelligence from Crimestoppers which stated that non-duty paid cigarettes were being sold from the premises for £3.50 per pack.
- 24/04/14 – Trading Standards received intelligence from Crimestoppers which stated that the owner of M & M Food Store and a van driver were seen loading 30 boxes of illicit cigarettes and tobacco into a white van on 07/04/14 and 24/02/14.
- 19/05/14 – 1 sleeve of Mayfair cigarettes was test purchased from the premises. These cigarettes were confirmed to be counterfeit by the manufacturer.
- 17/07/14 – An inspection of the premises was carried out. 17 packs of Golden Virginia hand rolling tobacco and 7 packets of President cigarettes were seized. All bore incorrect health warnings and were non-duty paid. Mr Arshad Mahmood was interviewed in relation to this matter on 13<sup>th</sup> August 2014, where he admitted to selling a small quantity of the cigarettes and tobacco but denied selling to the volunteer test purchaser on the 19<sup>th</sup> May 2014.
- 27/08/14 – Trading Standards received a complaint from a member of the public who claimed that counterfeit cigarettes were being sold from the shop.
- 15/01/15 – Arshad Mahmood and High Gaze Limited were convicted of offences contrary to the Consumer Protection Act 1987, for supplying and possessing cigarettes which did not contain correct health warnings on 19<sup>th</sup> May 2014 and 17<sup>th</sup> July 2014. The specific offences were:

1) On 19th May 2014, at M & M Off Licence, 67 Athol Street South, Burnley, in the county of Lancashire, High Gaze Limited did supply by way of sale tobacco products, namely 10 packs of MAYFAIR cigarettes, the packaging of each of which did not comply with the warnings requirements imposed by regulation 7(1) and the Schedule to the Tobacco Products (Manufacture, Presentation and Sale)

(Safety) Regulations 2002, as amended by the Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007, contrary to regulation 14(1) of the 2002 Regulations and section 12(1) of the Consumer Protection Act 1987.

And ARSHAD MAHMOOD being a Director of High Gaze Limited and the offence being committed with his consent or connivance, Arshad Mahmood is liable for this offence by virtue of section 40(2) of the Consumer Protection Act 1987.

2) On 17th July 2014, at M & M Off Licence, 67 Athol Street South, Burnley, in the county of Lancashire, High Gaze Limited did possess for supply tobacco products, namely 17 packs of GOLDEN VIRGINIA tobacco and 7 packs of PRESIDENT cigarettes, the packaging of each of which did not comply with the warnings requirements imposed by regulation 7(1) and the Schedule to the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002, as amended by the Tobacco Products (Manufacture, Presentation and Sale) (Safety) (Amendment) Regulations 2007, contrary to regulation 14(1) of the 2002 Regulations and section 12(1) of the Consumer Protection Act 1987.

And ARSHAD MAHMOOD being a Director of High Gaze Limited and the offence being committed with his consent or connivance, Arshad Mahmood is liable for this offence by virtue of section 40(2) of the Consumer Protection Act 1987.

- 12/02/15 – Trading Standards carried out an inspection of the premises and 1 pack of counterfeit Cutters Choice tobacco bearing incorrect health warnings, and empty illicit tobacco packaging, were seized from the rear storeroom. Arshad Mahmood signed the tobacco over to Trading Standards for destruction.
- 28/05/15 – Trading Standards received an anonymous complaint that counterfeit tobacco and cigarettes were being sold from the premises. The complainant stated that they receive a delivery every Sunday evening.
- 29/03/16 – Trading Standards received a complaint that the shop was selling counterfeit cigarettes.
- 29/03/17 – Test purchase made of one pack of Amber Leaf hand rolling tobacco with incorrect health warnings for £13 from the shop.
- 11/05/17 – Test purchase made of 1 pack of Amber Leaf tobacco bearing incorrect health warnings.

An inspection of the premises was carried out later that evening and 4 packets of counterfeit cigarettes and 5 packs of hand rolling tobacco bearing incorrect health warnings were seized.

- 30/06/17 – Trading Standards received intelligence from HMRC stating that counterfeit cigarettes were being sold from the premises.
- 31/07/17 – Trading Standards received anonymous information alleging that Arshad Mahmood and his family are involved in the supply of illicit tobacco.
- 03/08/17 – Test purchase of 1 pack of Gold Leaf hand rolling tobacco bearing incorrect health warnings.
- 11/08/17 – Entry warrants were executed simultaneously at M & M Food Store and the home address of Mr Arshad Mahmood, 528 Colne Road, Burnley. In total officers seized 1374 packs of tobacco and cigarettes from the shop, which were a mixture of non-duty paid, incorrect health warnings, and counterfeit, and 820 packs of counterfeit cigarettes from 528 Colne Road.

The tobacco seized from M & M Food Store was found behind the counter and hidden under the floorboards in the living room of the residential side of the property, which was only accessible through a trap door. The hiding place was concealed by a rug pulled over the top of the trap door, and a table which rested on top of the rug.

The cigarettes recovered from 528 Colne Road, Burnley were hidden underneath the floorboards. The space where the cigarettes were hidden was accessible through a hatch located in a cupboard under the stairs. £34,705 in cash was also seized from 528 Colne Road.

- 03/10/17 – Test purchase of 1 pack of Gold Leaf hand rolling tobacco, bearing incorrect health warnings.
- Investigations are ongoing in relation to the test purchases and seizures made between 29<sup>th</sup> March 2017 and 3<sup>rd</sup> October 2017.

### **RELEVANT INFORMATION – PREVENTION OF CRIME AND DISORDER**

- Supplying (including possessing for supply) tobacco products that do not display compliant health warnings is an offence, contrary to the Tobacco and Related Products Regulations 2016;
- Supplying (including possessing for supply) tobacco products bearing trademarks without the consent of the proprietor of the mark is an offence contrary to the Trade Marks Act 1994.
- The sale of smuggled tobacco products (non-duty paid) is an offence contrary to the Tobacco Products Duty Act 1979.

Paragraphs 11.27 & 11.28 of 'The Revised Guidance issued under Section 182 of The Licensing Act 2003' (Home Office April 2017) states that:

*'There is certain criminal activity that may arise in connection with licensed premises that should be treated particularly seriously. These are the use of the licensed premises ....*

*...for the sale or storage of smuggled alcohol and tobacco.*

*It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.*

The following options are available to the committee:-

- 1) Do nothing – However the number and seriousness of the offences causes grave concern for no action.
- 2) Modify the conditions of the licence
- 3) Remove the Designated Premises Supervisor
- 4) Suspend the licence for a period not exceeding three months

5) Revoke the premises licence so that no alcohol can be sold at all.

In the opinion of Lancashire County Council Trading Standards Service, the information presented in the application is clear evidence that the Prevention of Crime and Disorder Licensing Objective has been flagrantly and systematically disregarded for almost a decade.

Lancashire County Council Trading Standards respectfully requests that the committee considers whether revocation of the premises licence would be an appropriate finding in the circumstances.

**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**



**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 guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature: 

Date: 17<sup>th</sup> April 2018

Capacity: Principal Officer, Lancashire Trading Standards Service

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

Lancashire County Council Trading Standards Service  
4<sup>th</sup> Floor, Lancashire Point  
County Hall  
Pitt Street

**Post town**

Preston

**Postcode**

PR1 0LD

**Telephone number (if any)**

01772 532228

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

rick.wilson@lancashire.gov.uk

**Notes for Guidance**

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant’s agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

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## **BURNLEY BOROUGH COUNCIL**

### **LICENSING ACT 2003**

### **THE CONDUCT OF HEARINGS**

#### **1. Application**

- 1.1 All hearings subject to the Licensing Act 2003 (Hearings Regulations) 2005 will be held in accordance with this procedure. Schedule 1 details the hearing which are subject to this procedure.

#### **2. Time of Hearing**

- 2.1 Hearings will commence within the times illustrated in Column 2 of Schedule 1, and where the hearing is scheduled to take place on more than one day, it will take place on consecutive working days.
- 2.2 Hearings will normally take place from 2-5pm or 6-9pm on the day of the hearing, but hearings may take place at the discretion of the Committee or Sub-Committee appointed to hear the matter in exceptional circumstances.

#### **3. Members of the Committee or Sub-Committee**

- 3.1 Where the full Licensing Committee sit to hear an application, the full Committee will sit, excluding a member who:
- a) has sat on a Development Control hearing in respect of the premises subject to, or concerned in the Licensing Act 2003 application and/or
  - b) is affected by the application e.g. to be assessed on a case by case basis when a Member is a Member for the Ward or a nearby Ward in which the premises are situated

c) has become an interested party by representing the applicant or any interested party prior to the hearing.

3.2 Where a Sub-Committee sit to hear an application, it will consist of 3 members of the full Committee and will exclude a member who:

- a) has sat on a Development Control hearing in respect of the premises subject to, or concerned in the Licensing Act 2003 application and/or
- b) is affected by the application e.g. to be assessed on a case by case basis when a Member is a Member for the Ward or a nearby Ward in which the premises are situated
- c) has become an interested party by representing the applicant or any interested party prior to the hearing.

3.3 Members will act in accordance with the Licensing Act 2003, be aware of the Local Authority Co-ordinators of Regulatory Services Guidance on the Role of Elected Members in Relation to Licensing Committee Hearings under the Licensing Act 2003 and the requirements of the Standards Board for England and Wales.

#### **4. Opening of a Hearing and Identifying Parties to the Hearing**

4.1 The Chair of the Committee or Sub-Committee will introduce the members of the Committee or Sub-Committee.

4.2 The Licensing Manager or Legal Advisor will advise the Committee or Sub-Committee but will not make recommendations or be part of the determination process. They will not retire with the Committee or Sub-Committee members for the purposes of a determination but the Legal Advisor may be asked by the Committee or Sub-Committee to give advice.

4.3 At the commencement of proceedings the Legal Advisor will identify in turn, each party to the hearing who is present, and in relation to that party, whether they are represented, and if so, by whom.

4.4 The Legal Advisor will identify in turn each party to the hearing who is not present at the hearing and in relation to that party will clarify;

a) whether there is evidence that they were given Notice of the Hearing

- b) whether that party has given notice that they intend to attend or be represented
  - c) whether that party has given notice that they consider a hearing to be unnecessary
  - d) whether that party has given notice that they wish to withdraw their representation
- 4.5 Where a party has given notice that they do not intend to attend or be represented, the Committee or Sub-Committee will state whether they intend to proceed in the absence of that party.
- 4.6 Where a party has not given such notice and has failed to attend or be represented, the Committee or Sub-Committee will then decide whether it is necessary in the public interest to adjourn the hearing to a specified date or hold the hearing in the party's absence. The Committee or Sub-Committee may invite representations from the other parties present on this issue before making their decision.
- 4.7 The Committee or Sub-Committee, should it decide to proceed must subsequently consider the application, representation or notice made by a party who does not attend, attaching the appropriate weight of evidence to it.

## **5. Hearings to be held in public**

- 5.1 Unless the Committee determine otherwise following consideration of representations, if any, from the parties present, the hearing shall take place in public. A member of the public, unless a party to the hearing or a person granted permission to address the hearing by the Committee or Sub-Committee at the request of one of the parties, shall not be entitled to address the hearing.
- 5.2 Where representations are made under 5.1 above, such parts or the hearing as the Committee or Sub-Committee in their absolute discretion determine shall be held in private.
- 5.3 The decision at paragraph 5.2 and the reasons for it will be given in public, and the Committee or Sub-Committee will also state whether any party or any persons assisting or representing a party are to be treated as a member of the public for this purpose.

## **6. Commencement of the Hearing**

- 6.1 The Legal Advisor will explain the procedures that the Committee or Sub-Committee will follow at the hearing. In particular the Legal Advisor will clarify that;:
- a) the hearing will take the form of a discussion led by the Committee or Sub-Committee and cross-examination will not be permitted unless the Committee or Sub-Committee considers that cross examination is required for it to consider the representations, application or notice as the case may require.
  - b) Members of the Committee or Sub-Committee may ask a question of any party or other person appearing at the hearing.
  - c) Members of the Committee or Sub-Committee may take into account documentary or other information produced to the authority before the hearing in support of their application, representation or notice. These will have been provided to the Committee or Sub-Committee members by the Licensing Manager prior to the meeting and the substantive content of the documents need not be repeated verbally at the hearing.
  - d) Members of the Committee or Sub-Committee may take into account any new documentary or other information produced to the authority on the day of the hearing with the content of all other parties (if any) and the substantive content of any such documents need not be repeated verbally at the hearing.
  - e) Parties will be allowed a maximum equal period to exercise their rights, such period to be determined by the Committee or Sub-Committee.
  - f) Parties will be allowed to clarify points upon which they wish to support their application.
  - g) Parties may seek permission to question any other party subject to Paragraph a) above.
  - h) Parties may seek permission to address the Committee or Sub-Committee.

## **7. Procedure**

- 7.1 The Licensing Manager or other appointed officer of the Licensing Authority are not a party to the hearing. The Manager will outline the facts of the application and relevant representations received from parties.

- 7.2 The Licensing Manager will then outline the legislation under which a determination is required.
- 7.3 The Licensing Manager will outline;
- a) Relevant parts of the Act
  - b) Relevant subordinate legislation
  - c) Relevant sections from the statutory guidance made under Section 182 of the Act
  - d) Relevant paragraphs of the Statement of Licensing Policy made under Section 5 of the Act.
  - e) The time limit which the Committee or Sub-Committee must make a determination under the law.
- 7.4 Each party to the hearing present will then in turn provide information supporting or clarifying of their representations – commencing with the Responsible Authorities, followed by any interested party and then the applicant.
- 7.5 The Committee or Sub-Committee may advise all the parties of details of representations they have received from parties not present.
- 7.6 Thereafter each party, commencing with the Responsible Authorities, followed by any interested party and finally the Applicant, will be given an opportunity to summarise their representations. No new evidence will be allowed to be introduced by any party during the course of any such summation.
- 7.7 The Committee or Sub-Committee will disregard any information given by a party or any other person to whom permission to appear at the hearing has been given which is no relevant to;
- a) Their application, representation or notice or in the case of another person, the application, representation or notice of the party requesting their appearance, and
  - b) the promotion of the Licensing Objectives or in the case of a hearing to consider a notice given by a chief officer of the police, the crime prevention objective only.
- 7.8 The Committee or Sub-Committee will satisfy themselves that they have heard all the relevant information and retire to make their decision in private.

## **8. Persons behaving in a disruptive manner**

- 8.1 The Committee or Sub-Committee may require any person attending the, hearing who in their opinion are behaving in a disruptive manner to leave the hearing and may;

- a) refuse to permit that person to return, or
- b) permit them to return only on such conditions as the Committee or Sub-Committee may specify

but such a person may, before the end of the hearing, submit to the authority in writing any information which they would have been entitled to give orally had they not been required to leave.

## **9. Adjournment of Hearing**

- 9.1 The Committee or Sub-Committee may adjourn a hearing to a specified date or arrange for the hearing to be held on specified additional dates where it considers this necessary to consider any representations or notice made by a party.
- 9.2 It will not adjourn a hearing in such a way to create an effect on the requirements of granting or rejecting an application under Schedule 8 of the Act or a review under Section 167 of the Act.

## **10. Determinations**

- 10.1 The Committee or Sub-Committee will make its determination at the conclusion of the hearing but in certain circumstances may make a determination within a period of 5 working days of the last day of the hearing.

## **11. Notice of Determination**

- 11.1 The Licensing Manager will issue a notice of determination forthwith to all parties. Such notice will include the reasons for the determination and details of the right of any party to appeal against the decision.

## **12. Record of Proceedings**

- 12.1 The Democracy Team Officer will provide for a record of the hearing to be taken in a permanent and intelligible form and kept for 6 years from the date of determination.



## SCHEDULE 1

Column 1		Column 2
<b>Provision under which hearing is held.</b>		<b>Period of time which hearing must be commenced.</b>
1.	Section 18(3)(a) (determination of application for premises license)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c)
2.	Section 31(3)(a) (determination of application for a provisional statement).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 30.
3.	Section 39(3)(a) (determination of application to vary premises license).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 17(5)(c) by virtue of section 34(5).
4.	Section 39(3)(a) (determination of application to vary premises license to specify individual as premises supervisor).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 37(5)
5.	Section 44(5)(a) (determination of application for transfer of premises license).	20 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 42(6)
6.	Section 48(3)(a) (cancellation of interim authority notice following police objection).	5 working days beginning with the day after the end of the period within which a chief officer of police may give notice under section 48(2)
7.	Section 52(2) (determination of application for review of premises licence).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 51(3)(c).
8.	Section 72(3)(a) (determination of application for club premises certificate).	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c)
9.	Section 85(3) (determination of application to vary club premises certificate)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 71(6)(c) by virtue of section 84(4)
10.	Section 88(2) (determination of an application for review of club premises certificate)	20 working days beginning with the day after the end of the period during which representations may be made as prescribed under section 87(3)(c)
11.	Section 105(2)(a) (counter notice following police	7 working days beginning with the day after the end of the period within which a chief

	objection to temporary event notice)	officer of police may give a notice under section 104(2)
12.	Section 120(7)(a) (determination of application for grant of personal licence)	20 working days beginning with the day after the end of the period during which the chief officer of police may give a notice under section 120(5)
13.	Section 121(6)(a) (determination of application for the renewal of personal licence)	20 working days beginning with the day after the end of the period during which the chief officer of police may give a notice under section 121(3)
14.	Section 124(4)(a) (convictions coming to light after grant or renewal of personal licence)	20 working days beginning with the day after the end of the period during which the chief officer of police may give a notice under section 124(3)
15.	Section 167(5)(a) (review of premises licence following closure order)	10 working days beginning with the day after the day the relevant licensing authority received the notice given under section 165(4)
16.	Paragraph 4(3)(a) of Schedule 8 (determination of application for conversion of existing licence)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 3(2) or (3) of Schedule 8
17.	Paragraph 16(3)(a) of Schedule 8 (determination of application for conversion of existing club certificate)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 15(2) or (3) of Schedule 8
18.	Paragraph 26(3)(a) of Schedule 8 (determination of application by holder of a justices' licence for grant of personal licence)	10 working days beginning with the day after the end of the period within which a chief officer of police may give a notice under paragraph 25(2) of Schedule 8