

Agenda



Licensing Sub-Committee

Date: Tuesday, 4 April 2017

Time: 9.30 am

Venue: Committee Room 1 - Civic Centre

To: Councillors C Suller (Chair), J Guy (Deputy Chair), M Cornelious, D Davies, C Ferris, E Garland, C Jenkins, M Rahman, H Thomas and D Harvey

Item		Wards Affected
1	<u>Agenda - Cym</u> (Pages 3 - 4)	
2	<u>Apologies for Absence</u>	
3	<u>Declarations of Interest</u>	
4	<u>Licensing Sub-Committee Code of Practice</u> (Pages 5 - 18)	
5	<u>Licensing Review Application</u> (Pages 19 - 40) Eastern European Food, 155 Commercial Road, Newport NP20 2PJ Time of Hearing: 9.30am	Pillgwenlly

The agenda sets out the intended date and time of the hearing. The hearing may be adjourned or cancelled should circumstances change.

Please also note Section 5 of Code of Practice for Licensing Hearings. **The Licensing Sub-Committee Code of Practice will be available upon request at the meeting.**

Requirements for Applicants and Interested Parties etc.

Upon receipt of the notice of the meeting, the Applicant and the interested parties must inform the Council in writing addressed to Mrs A Jenkins, Democratic Services, Newport City Council, Civic Centre, Newport, South Wales, NP20 4UR:

- Whether they intend to attend or be represented at the hearing,
- Whether they consider a hearing to be unnecessary, and
- Requests for any other people to attend the hearing eg witnesses

Contact: Anne Jenkins (Democratic Services Officer)

Tel: 01633 656656

E-mail: anne.jenkins@newport.gov.uk

Date of Issue: 21 March 2017

(including their names and a brief description of the evidence that they can give and its relevance to the application).

NB: Would Members and officers please take any paper copies of the Agenda with them after the meeting and please not leave unattended.

Rhybudd ynghylch Gwrandawriad Is-bwyllgor Trwyddedu

Dyddiad: Dydd Mawrth, 4 Ebrill 2017

Amser: 9.30am

Lleoliad: Ystafell Bwyllgora 1 - Y Ganolfan Ddinesig

At: Y Cyngorwyr C Suller (Cadeirydd), J Guy (Dirprwy Gadeirydd), D Harvey, D Davies, H Thomas, C Jenkins, E Garland, M Rahman, M Cornelious, C Ferris

Eitem		Y wardiau yr effeithir arnynt
1	<u>Ymddiheuriadau am absenoldeb</u>	
2	<u>Datganiadau o fuddiant</u>	
3	<u>Cod Ymarfer yr Is-bwyllgor Trwyddedu</u>	
4	<u>Cais i adolygu trwydded</u> Eastern European Food, 155 Commercial Road, Newport NP20 2PJ Amser y gwrandawriad: 9.30am	Pillgwenlly

Mae'r agenda yn nodi dyddiad ac amser arfaethedig y gwrandawriad. Gall y gwrandawriad gael ei ohirio neu'i ganslo os bydd amgylchiadau'n newid.

Yn ogystal, dylech ystyried Adran 5 y Cod Ymarfer ar gyfer Gwrandawriadau Trwyddedu.

Gofynion ar gyfer Ymgeiswyr a Phartïon â Diddordeb ac ati

Ar ôl cael y rhybudd ynghylch y cyfarfod, rhaid i'r ymgeisydd a'r partïon â diddordeb hysbysu'r Cyngor yn ysgrifenedig gan ddefnyddio'r manylion cyswllt canlynol: Mrs A Jenkins, Swyddog Gwasanaethau Democraidd, Cyngor Dinas Casnewydd, Y Ganolfan Ddinesig, Casnewydd, NP20 4UR

- A ydynt yn bwriadu bod yn bresennol neu gael eu cynrychioli yn y gwrandawriad
- A ydynt o'r farn nad oes angen gwrandawriad
- A hoffent wneud cais i unrhyw bobl eraill fynychu'r gwrandawriad, e.e. tystion (gan gynnwys eu henwau a disgrifiad byr o'r dystiolaeth y gallant ei rhoi a'i pherthnasedd i'r cais).

NB: Would members and officers please take any paper copies of the agenda with them after the meeting and please not leave unattended

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Conduct and Procedure of Licensing Sub-committee

1 Membership and appointment of Chair

- 1.1 The Licensing Sub-committee comprises all members of the committee, other than those who have an interest or who is the ward member for the ward in which premises under consideration is located. The quorum is three. The Chair will be elected on the day by a simple majority vote.
- 1.2 For example, if they live in the vicinity of the licensed premises, or have a friendship or a close personal association with either the applicant or any objector this would disqualify the Member from considering the matter.
- 1.3 Members of the Licensing Sub-Committees should inform the Senior Democratic Services Officer immediately if they consider that they are disqualified from considering any application, if members of the Licensing Sub-Committee become aware of any personal interest in any application before them they should declare the interest at the beginning of the meeting and withdraw immediately.

2 Ward Councillors

- 2.1 Ward Councillors are no longer expressly permitted to make representation in their capacity as Ward Councillors although they are entitled to make representations as individuals falling within the category of “any other person”, if they are likely to be affected by an application (for example if they live in close proximity to the licensed premises). Councillors however must comply at all times with the Members Code of Conduct (“the Code”). Ward Councillors should avoid discussing the application with any of the Licensing Sub-Committee beforehand to avoid any suspicion of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.
- 2.2 If a Ward Councillor has a personal interest in an application (for example, because he/she lives in close proximity to the premises), then this is also likely to be a “prejudicial” interest under the Code. Provided that the Member declares the interest and withdraws from the hearing after making representations, then he/she is entitled under paragraph 14(2) of the Code to appear at the hearing in the same way as any other member of the public having made a relevant representation within the meaning of the Act (“any other person”). This also applies whether or not the Councillor is a Member of the Licensing Committee. Because of this “personal and prejudicial” interest the Ward Councillor cannot have any other involvement with officers or members regarding the application.
- 2.3 Ward Councillors who are not members of Licensing Committee may also act as the appointed representatives for any other person at the hearing, if requested to do so, but they should avoid discussing the application with any of the Licensing Sub-Committee beforehand. If a Ward Member is representing any other person, that other person must have objected by their own accord before a Ward Member can be requested to act as their representative at the hearing.
- 2.4 Ward Councillors who are members of Licensing Committee should not appear as the appointed representatives for any other person at the hearing because of the requirements of natural justice and the need to avoid giving any impression of undue influence or breach of the general obligation in the Code not to improperly use their position as a Councillor to secure any advantage.

3 Lobbying

- 3.1 Other Members must not lobby any Member of the Licensing Sub-committee, directly or indirectly, about any application before them.
- 3.2 Members of the public or any of the parties must not lobby any members of the Licensing Sub-Committee about any application before them. If any of the members of the Licensing Sub-Committee are approached by any person about a licensing matter, they should explain that they cannot discuss the matter and refer the person to the Licensing Officer. Any written representations received by individual members of the Licensing Sub-Committee must be passed to the Licensing Officer and reported at the hearing.

4 Chair of the Licensing Sub-Committee

The Chair of the Licensing Sub-Committee is to be elected by Members on the day by simple majority vote.

5 Quorum

- 5.1 Although the Act allows for the hearing to continue with two members present, the Council's Constitution and the Statement of Licensing Policy provides that three Councillors shall constitute a quorum for any meeting and it is good administrative practice for three members to be present.

If the meeting becomes inquorate at any time, the matter will need to be adjourned or referred to full Licensing Committee.

- 5.3 Membership may change during the course of a Sub-Committee meeting only if an individual member is disqualified from considering some but not all of the applications on the agenda. All members considering an application however must be present throughout the individual hearing. If, for any reason, a member needs to withdraw during the hearing, the proceedings should be temporarily adjourned until the member returns. The meeting will only commence if quorate. If a member arrives late and after the hearing commences, he or she will be disqualified from hearing the specific case under consideration but can hear other cases set out in the agenda.

6 Statutory Guidance

- 6.1 The Licensing Act 2003 (Hearings) Regulations 2005 SI 44/2005 and the The Licensing Act 2003 (Hearings) (Amendment) Regulations 2004 SI 78/2005 ("the Regulations") made under Section 183 of the Act set out the statutory framework for the Licensing Sub-Committee hearings.
- 6.2 These Regulations make provision for hearings required to be held by the Council as Licensing Authority, under the Licensing Act 2003. In particular, the Regulations provide for the timing of the hearings and the notification requirements regarding the time and date of the hearings and information to be given to the parties. In addition, provision is made for a party to provide information to the Licensing Committee about attendance at a hearing, representations, the seeking of permission for another person to attend to assist and whether a party believes that a hearing is necessary.
- 6.3 The Regulations provide for a range of procedural issues to govern the way in which preparations are made for a hearing, the procedures to be followed, the rights of parties at the hearing, the keeping of records and the manner of giving notices. The Regulations also make provision for the timing of the Licensing Committee's determination following a hearing.

6.4 Insofar as the Regulations do not make specific provision for procedures for and at hearings, the Licensing Authority can determine its own procedures.

7 Notice of Hearings

7.1 The provisions of the Local Government Act 1972 requiring at least three clear working days' notice of Council and Committee meetings do not apply to hearings conducted under the Licensing Act 2003.

7.2 Instead Regulation 6 of the Regulations prescribes the period of notice to be given for a Licensing Committee hearing, depending upon the type of application being considered.

7.2.1 At least two clear working days' notice must be given if the hearing is to consider

- the cancellation of an interim authority notice following a police objection
- counter notice following a police objection to a temporary event notice

7.2.2 at least five clear working days' notice must be given if the hearing is to consider

- review of premises licence following a closure order
- determination of application for conversion of existing licence
- determination of application for conversion of existing club certificate
- determination of application by holder of justices' licence for the grant of a personal licence

7.2.3 In all other cases, at least 10 clear working day's notice of the hearing must be given.

8 Timescale for arranging hearings

8.1 Regulations 4 and 5 and Schedule 1 set out the time periods within which the Council is required to arrange hearings. Where a hearing cannot be concluded in one day and has to be held on more than one day, the Regulations require that the hearing must be arranged to take place on consecutive working days.

8.2 The time frame for arranging hearings again depends on the nature of the application and varies from 20 working days from the last date when representation may be made or notice may be received from the Police to five working days in the case of cancellation of an interim authority notice following a police objection.

9 Form of Notice

9.1 Regulation 34 requires that notice of the hearing shall be in writing although it is a matter for the Council to determine how the notice should be given. The Regulations specifically provide that notice can be given electronically (eg by email or fax transmission) provided that the recipient agrees to this method of notice beforehand and a hard copy of the notice is also despatched at the same time. The notice is then deemed to have been properly served at the time of the electronic transmission. Any notice served by second class post would generally be deemed to have been served within two working days.

9.2 It is recommended that all notices and information should be sent to the parties by second class post. In the case of emergency applications that have to be dealt with at short notice or where the parties specifically request, copies will also be sent by email or fax, where these details are known.

10 Information to be provided

10.1 Regulation 7 provides that the following information must be sent out with the notice of hearing

- The rights of attendance, assistance and representation
- The consequences if a party does not attend or is not represented at the hearing (which will usually be that the hearing will proceed in the party's absence)
- The procedure to be followed at the hearing
- Any particular points on which the Licensing Committee considers that it wants clarification from any party at the hearing

10.2 Regulation 7(2) also provides that, in relation to the hearings listed in column 1 of Schedule 3 of the Regulations, certain specified documents must be sent with the notice of hearing to the persons identified. For most types of application, this means that copies of the relevant representations or notices given must be sent to the applicants or licence holders.

10.3 The Regulations require that the notice of the hearing and supporting information must be sent to the appropriate parties ie the applicant and any persons making relevant representations. There is no requirement for public notice to be given of the hearing or for the supporting information to be made available to the press and public or any other members of the Council. The Council however has a discretion as to whether or not to publicise the hearing more widely.

10.4 Having regard to the principles of open government, the Constitutional requirements that decisions are taken in a transparent and accountable manner and the requirements of Regulation 14(1) that hearings are generally conducted in public, it is recommended that the Licensing Sub-committees follow the same publicity arrangements as with other Committee meetings.

11 Requirements for Applicants and any other persons

11.1 Upon receipt of the notice of the meeting, the Applicant and any other person must inform the Council in writing

- Whether they intend to attend or be represented at the hearing
- Whether they consider a hearing to be unnecessary
- Requests for any other people to attend the hearing eg witnesses (including their names and a brief description of the evidence that they can give and its relevance to the application)

11.2 In the case of emergency applications, such as the cancellation of an interim authority notice following representations by the police or a counter notice following a police objection to a temporary events notice, this information must be provided not later than one working day before the hearing. In the case of the review of premises licences following closure orders, an application for conversion of existing licences or club certificates and the grant of personal licences, the information must be provided at least two working days before the hearing. In all other cases the information must be provided at least five working days before the hearing.

11.3 It is recommended that a separate letter be sent to the Applicant and any other person at the same time as the agenda for the meeting, reminding them of the need for this information and asking them for a response as soon as possible before the meeting. If the Licensing Sub-committee is informed in good time before the meeting that the parties do not wish to attend, then it may be possible to reschedule other business or applications for that meeting.

- 11.4 Regulation 9 allows the Council to dispense with the need for a hearing if the Applicant and all any other persons agree. If all the parties respond to the request for information stating that they consider a hearing to be unnecessary, the hearing can be vacated and notice given to the parties accordingly. A determination must then be made within 10 working days of the notice.
- 11.5 Regulation 10 provides that any party may withdraw their representations by giving written notice at least 24 hours before the hearing or orally at the hearing itself. There are no powers to avoid wasted costs in favour of either party in the event of an abortive hearing due to late withdrawal of representations. The parties should be encouraged to give as much notice as possible if they intend to withdraw their representations to avoid the unnecessary time and expense of arranging a hearing.
- 11.6 Where all objections are withdrawn and/or all the parties agree that a hearing may be dispensed with, the applications may be determined by officers under delegated powers.

12 Extensions of Time and adjournments (Regulations 11-13)

The Licensing Sub-Committee have a general discretion to extend the time limits contained in the Regulations or adjourn hearings if this is considered to be necessary in the public interest. Proper notice would have to be given of any extension of time or adjournment. Time cannot be extended or hearings adjourned if this would result in a failure to comply with the timescales set out in the Act.

13 The Hearing

13.1 Exclusions

Regulation 14 provides that all hearings must be held in public. The Licensing Sub-Committee may however exclude the press and public (including the parties and their representatives) from all or part of the hearing if they consider that the public interest in doing so outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

13.2 The Access to Information provisions of Schedule 12A of the Local Government Act 1972 do not apply to hearings before the Licensing Sub-Committee. The test for exclusion of the press and public is not whether there is "exempt information" (as defined in Schedule 12A) which is likely to be disclosed, but whether it is in the "public interest" that the hearing (or part of the hearing) should be in private.

13.3 It is recommended that, as a general rule, all representations from the parties should be heard in public unless there are exceptional circumstances. The overriding public interest dictates that hearings should be conducted in a fair, open and transparent manner and justice should be seen to be done. The Council's constitution is also based on democratic open government, accountability and public access to meetings. The parties should be given the opportunity at the beginning of the hearing to make an application for a private hearing, but they would have to establish a clear reason why this should override the public interest in an open hearing. The fact that personal information or information relating to financial, business or commercial interests would be disclosed would not, in itself, justify exclusion. An application for exclusion of the press and public could be made, for example, where sensitive information relating to individual children could be disclosed in relation to a policy issue involving the protection of children from harm, or where there are criminal justice implications involving representations made by the police. The final decision as to whether the press and public should be excluded for all or part of the hearing on public policy grounds is a matter for the Licensing Sub-Committee.

13.4 It is however recommended that, as a general rule, the press, public and the relevant parties are all excluded from the meeting while the Licensing-Sub-committee deliberate and come to

their decision on the grounds that this private debate is considered to be in the “public interest”. Everyone should then be asked to withdraw from the room, except for the Licensing Officer, the Democratic Services Officer and the Head of Law and Standards or his nominated representative. These three officers shall be entitled to remain, but only for the purpose of offering advice as to procedure or any particular point of law and to record decisions. They must not participate in the decision-making by the Licensing Sub-Committee. Where it is more convenient, the Licensing Sub-Committee may withdraw to a private room rather than require everyone else to withdraw from the meeting room.

- 13.5 If there are any further points of clarification required, then all of the parties and the public should be allowed back into the meeting while these points of clarification are addressed.
- 13.6 Regulation 25 permits the Licensing Sub-Committee to exclude any person from the hearing if they are behaving in a disruptive manner, either permanently or temporarily (permitting them to return only if they comply with such conditions as may be specified). If one of the parties is excluded on these grounds and not permitted to return, they are entitled to submit to the Licensing Sub-Committee in writing any information which they would have been entitled to give orally had they not been excluded from the meeting.
- 13.7 Representations
Any person or responsible authority may make written representations about an application for a premises licence or certificate within a specified period, which is generally 28 working days of the receipt of the application. Representations or requests for review will only be relevant if they relate to the four licensing objectives. The applicant will be provided with copies of all relevant representations received at the same time as the notice of hearing. The written representations will also be referred to as background papers to the Report of the Licensing Officer, which will be circulated to Members of the Licensing Sub-Committee and made available to the press and public as soon as possible and, in any event, at least two clear working days before the hearing.
- 13.8 Advice should therefore be given that, if any person responds to any notice or advertisement, their letter of objection or support will be made available to the public, including personal data (such as names and addresses) in accordance with the Data Protection Act 1988. If any person objects to their name and address, or any other personal information, being made public, then their representations will need to be redacted or anonymised before being circulated (but this may affect the weight that the Licensing Sub-Committee attaches to their representations).
- 13.9 Where relevant representations have been made and an application is to be determined at a hearing, the applicant and those parties who have made representations have a right to attend the hearing (subject to rights of exclusion) and may be assisted or represented at the hearing by any person (whether or not that person is legally qualified) (Regulation 15).
- 13.10 Regulation 16 provides that a party shall be entitled at the hearing to
- Give further information in response to a point upon which the Licensing authority has given notice that it wants clarification
 - Question any other party, if permission is given by the Licensing Sub-Committee
 - Address the Licensing Sub-Committee
- 13.11 Regulation 17 provides that Members of the Licensing Sub-Committee may question any party or other person appearing at the hearing.
- 13.12 In considering any application, representations or notice made by a party, the Licensing Sub-Committee may take into account documentary or other information produced by a party in support of their application, representations or notice, either before the hearing or, with the consent of the parties, at the hearing. The Licensing Sub-Committee has discretion as to whether to admit this documentary evidence but should, generally allow this to be presented

if it is relevant and material to the application, the representations or notice submitted and the licensing objectives. This however should not be seen as an opportunity to introduce new representations outside the statutory timescale. The parties should be advised to provide any additional documentary evidence as soon as possible before the hearing and, wherever possible, this should be circulated in advance to the Members of the Licensing Sub-Committee and the other parties. The Sub-Committee will then decide at the hearing whether or not this additional documentary evidence should be admitted and considered. If admitted, the additional information will then be made available to the press and public at the meeting. If the additional documentary evidence has not been produced before the hearing, it can only be admitted with the consent of all the parties. If any other party objects to the evidence being produced at the hearing, the Licensing Sub-Committee has no discretion to admit it or take it into account.

14 Failure of parties to attend the hearing

If a party has informed the Council that he/she does not intend to attend or be represented at the hearing, then the hearing may proceed in their absence. If a party, who has not given prior notice of his/her intention not to attend the hearing, is absent from the hearing the Licensing Sub-Committee may either adjourn the hearing or hold the hearing in the party's absence. Where the hearing proceeds in the absence of a party, the Licensing Sub-Committee must still consider the written representations or notice submitted by that party and follow the same principles of decision-making.

15 Procedure at the hearing

- 15.1 Subject to the provisions of the Regulations, the Licensing Sub-Committee has the discretion to regulate their own proceedings and procedure to be followed at the hearing. The proceedings should be kept as informal as possible although a logical and ordered approach should be maintained in order to ensure a fair and impartial hearing. A suggested form of procedure is attached however the Chair should make it clear that the Licensing Sub-Committee are not totally inflexible and would be prepared to vary the order of proceedings if this would facilitate the proper consideration of an application or notice.
- 15.2 Regulation 7(c) provides that parties should be informed of the procedure to be adopted at the hearing when they are sent notice of the arrangements for the meeting. It is therefore suggested that a copy of the written procedure is sent to the parties with the notice of the hearing.
- 15.3 Regulation 22 requires the Licensing Sub-Committee to explain the procedure to the parties at the beginning of the hearing and consider any request under Regulation 8(2) for permission for another person to appear at the hearing (such permission not to be unreasonably withheld). Prior notice should have been given if parties wish to call witnesses or other persons to address the hearing. Provided that their evidence or representations are relevant and material, permission should generally be allowed.
- 15.4 Regulation 23 provides that the hearing should take the form of a "discussion led by the authority" and cross-examination should not be permitted unless the licensing committee considers that this is required to enable them to consider the matter properly. Whilst parties and their representatives should not be allowed to make the hearing too adversarial, it is suggested that both parties should be allowed an equal opportunity to put questions to the other party and their representatives/witnesses (under Regulation 16). A period of five minutes each should be allowed for questions, with the Chair having discretion to disallow any questions which are considered by the Licensing Sub-Committee to be irrelevant, hostile or repetitive. Wherever possible, large groups of objectors should be encouraged to appoint a single spokesperson to present their case, to save time and avoid unnecessary duplication.

15.5 Regulation 24 provides that the Licensing Sub-Committee must allow the parties an equal maximum period of time in which to exercise their rights to put questions and address the hearing. It is suggested that, as a general rule, a maximum time of 20 minutes should be allowed for both parties, with 10 minutes for addressing the Sub-Committee, five minutes for questioning and five minutes for summing up at the end. The Licensing Sub-Committee can however extend time for both parties if this is necessary for the proper consideration of the matter.

16 Site Visits

The Sub-Committee may, at its discretion, undertake a site visit of any premises that are the subject of any application. The visit may take place either before the hearing, by arrangement with the parties, or the Sub-Committee may adjourn the hearing at any time to visit the premises. If a site visit is undertaken, it should be a fact-finding exercise only and no representations should be heard from any party. Any questions should be addressed to licensing officer(s), wherever possible, but if it is necessary to ask a question of any party, this should be done in the presence of all the other parties.

17 Determination of applications

17.1 Normally, the licensing Sub-Committee must make its determination at the conclusion of the hearing. In other cases the Sub-committee shall make its determination within five working days. Where a hearing has been dispensed with, the decision must be made within 10 working days of the notice to dispense with the hearing.

17.2 The Council's Statement of Licensing policy provides that every decision of the Licensing Sub-Committee shall be accompanied with reasons for that decision. A summary of the decision shall be posted on the Council's website as soon as possible after the decision has been made, where it will form part of the statutory licensing register.

17.3 Paragraph 24 provides that comprehensive reasons should be given and, on making findings of fact in its reasons, the Licensing Sub-Committee should ensure that they address the standard of proof and the burden of proof that they have adopted. The Licensing Sub-Committee should also address the extent to which the decision has been made with regard to its Statement of Licensing Policy and the Statutory Guidance issued under Section 182 of the Act.

17.4 Regulation 28 requires the Council to notify the parties in writing of the determination of the Licensing Sub-Committee and their rights of appeal. The Council is also required to send notification of the determination to the Chief Officer of Police, where the police have not been a party to the hearing. This notification must be sent within the period specified in the Act or, if no period is prescribed, forthwith on making the determination.

18 Right of appeal

Any aggrieved party will have the right of appeal to the Magistrates' Court within 21 days of being notified of the decision.

19 Record of proceedings

Regulation 30 provides that the Council must keep a record of the hearing in a permanent and intelligible form for a period of six years from the date of the determination or, where any appeal is brought against the determination of the Licensing Sub-Committee, from the disposal of any appeal. A verbatim note or transcript of the proceedings is not required, but the Minute recording the decision must be sufficiently detailed so as to provide an accurate record of both the proceedings and the decision taken, together with the reasons given and any conditions imposed.

20 Irregularities

Regulations 31-33 provide that any irregularities or clerical errors shall not invalidate any decision or render a determination void and enables the Council to correct any error or cure any irregularity as soon as possible.

Organisation of Cases for the Hearing

- 1 The hearings will normally take place at the Civic Centre, Newport at times to be agreed with the Sub-Committee.
- 2 The agenda for the meetings of the Licensing-Sub-committee shall be agreed by the Licensing Officer and the Senior Democratic Services officer after any necessary consultation with the relevant Chair of the Licensing Sub-Committee. The officers shall determine how many applications can be heard at each meeting and the order in which the applications should be considered, taking into account the number of parties who will be attending.
- 3 Hearings should be scheduled in accordance with the timescales prescribed by the Regulations. In general a hearing must be held within 20 working days after the time has expired for making representations.
- 4 Once the draft agenda has been agreed, the Senior Democratic Services Officer should send out notice of the agenda to the Members, press and public in the usual way. Members should immediately inform the Senior Democratic Services Officer if they consider they are disqualified from hearing or they have an interest in any specific case.
- 5 At the same time, the Licensing Officer shall send notice of the hearing to the parties, together with
 - A copy of the procedure to be followed at the hearing
 - Confirmation of the parties' rights to be assisted or represented at the hearing (whether or not that person is legally qualified)
 - Confirmation that the parties will be allowed to address the Licensing Sub-Committee and put questions to the other parties for a maximum of 20 minutes
 - Confirmation that, if a party does not attend the hearing, the hearing would generally proceed in his/her absence
 - A note of any particular point on which the Licensing Sub-committee requires further clarification.
 - Copies of all relevant representations received
- 6 The parties should also be requested to notify the Council as soon as possible (and in any event within the timescale prescribed by the Regulations) whether they intend to appear and/or be represented at the hearing or whether they consider a hearing to be unnecessary.
- 7 If they intend to proceed with a hearing, they should be requested to give advance notice of any application to adduce any further documentary evidence (which should preferably be provided as soon as possible before the hearing) or request for any other person to appear at the hearing. The request must contain details of the name of the witness and a brief description of that person's evidence.
- 8 The notice of hearing and supporting documents should be sent by second class post and, except in the case of emergency applications or where the Regulations specify a shorter period, at least 10 clear working day's notice should be given. The Licensing Officer may also send electronic copies by email or fax by agreement with the applicants or other party.

- 9 The Chair of the Licensing Sub-committee may meet with the Democratic Services Officer, the Solicitor to the Licensing Sub-Committee and the Licensing Officer(s) presenting the report in advance of the hearing to identify any issues where further clarification should be requested from the parties. These issues will be notified to the parties by the Licensing Officer to enable them to address these issues in their submissions at the hearing. During this preliminary meeting and any pre-agenda meeting, no decisions shall be made and no discussions shall be held regarding the substantive merits of the application or representations.
- 10 The hearings shall be attended by a Solicitor, a Democratic Services Officer and the Licensing Officer. The officers shall attend for the sole purpose of giving advice on law and procedure and are not parties to the decision.
- 11 The role of the Solicitor is to provide legal advice in relation to the applications and submissions.
- 12 The role of the Democratic Services Officer is to record the proceedings and the decisions of the Sub-Committee and ensure efficient administration.
- 13 The Licensing Officer shall prepare a written Report for consideration by the Licensing Sub-Committee, which should include
 - A brief summary of the application
 - A brief summary of the representations
 - The relevant licensing objectives
 - Relevant aspects of the Council's Statement of Licensing Policy and statutory Guidance
 - Other background information (such as copies of letters)
- 14 The Licensing Officer's Report should be sent out as soon as possible and, in any event, no later than 10 clear working days before the hearing, together with copies of relevant documentary evidence submitted by the parties. Wherever possible, the Licensing Officer's Report should be sent out at the same time as the notice of hearing and supporting documents, but this will not be reasonably practicable where there are a significant number of applications to be determined. If additional documentary evidence is provided later by the parties, it should be copied and sent to the other parties before the hearing, if reasonably practicable.
- 15 After hearing all the representations and prior to retiring to make its decision, the Licensing Sub-Committee may, if it wishes, seek the guidance of the Licensing Officer and/or Solicitor on possible conditions that could be attached to any licence.
- 16 The Democratic Services Officer shall keep a record of the decisions taken and the Licensing Officer shall send written confirmation of the decision to the relevant parties, together with the reasons, any conditions and their rights of appeal.

Principles of Decision-Making

- 1 This note is intended to provide members of the Licensing Sub-committee with a guide to the principles of decision-making. The licensing hearings are of a quasi-judicial nature and the procedures are, therefore, markedly different to the usual arrangements for Committee meetings.
- 2 It should be noted that the proceedings are governed by adjudication procedures and the rules of natural justice will, therefore, apply. All the parties should be given a full and fair hearing, which should be conducted in an open, transparent and accountable manner.
- 3 Members must, at all times, comply with the Council's Member Code of Conduct.

- 4 All licensing applications must be considered on the basis of whether they promote the four licensing objectives set out in the Act and incorporated in the Statement of Licensing Policy, namely
 - The prevention of crime and disorder
 - Public safety
 - The prevention of public nuisance
 - The protection of children from harm
- 5 In reaching their decisions under the Act, the Licensing Sub-Committee must have regard to all relevant considerations including (but not limited to)
 - The relevant statutory provisions
 - Relevant Statutory Guidance issued under Section 182 of the Act
 - The Council's Statement of Licensing Policy
 - The licensing objectives
 - The material facts based on the relevant evidence presented and representations received
 - The individual merits of each case
 - The public interest
- 6 The Licensing Sub-Committee must disregard any irrelevant considerations, including (but not limited to) information or evidence which is not relevant to the application or to the promotion of the licensing objectives. Members must also disregard any party political considerations or decisions taken in political group meetings.
- 7 Members of the Licensing Sub-Committee must act fairly, objectively and impartially throughout. They must not show any bias or predetermination and must keep an open mind on all applications until they have heard all the relevant representations and evidence. Members must not prejudge any application, express any view on the merits of any application, organise any support or opposition to any application, in advance of the hearing. Any Member with a "closed mind" on any application would be disqualified from sitting on the Licensing Sub-Committee which considers that application.

In the event of any licensing applications submitted by or on behalf of the Council or an officer of the Council, the same rules and procedures shall apply. No account shall be taken of the fact that the application is submitted by the Council or an officer and no favour or consideration shall be shown in relation to the application. Any member involved in the decision to apply for the licence shall be disqualified from sitting on the Licensing Sub-Committee which considers the application.

Procedure to be Followed at The Hearing

1 Preliminaries and Opening remarks

At the commencement of the meeting, the Chair for the meeting shall be elected by simple majority of members present.

The Chair of the Sub-Committee opens the meeting and welcomes those attending.

The Chair introduces the members and the officers present.

2 Apologies/declarations of interest

The Chair deals with any apologies for absence and declarations of interest. Any substitution of members will be dealt with at this stage.

3 Introductions

The Chair invites the applicant, any other person and their representatives to introduce themselves and indicate who will be speaking.

The Chair explains the procedures to be followed and the time allocated to each party and asks if there are any questions. (The order of proceedings may be varied at the discretion of the Sub-Committee where the parties have any particular preference or where this is necessary for proper consideration). The proceedings will generally be conducted in public unless it is in the public interest to hear cases in private. Any applications to exclude the press and public should be dealt with at this stage.

4 Applications

The Chair will inform the parties whether their applications to have certain people attend the hearing under Regulation 8(2) (eg witnesses) have been granted or refused.

The Chair will summarise the papers before the Licensing Sub-Committee and will confirm that everyone has copies. Chair will ascertain whether any representations have been or are now to be withdrawn. Licensing Sub-Committee will consider any requests for additional documentary evidence or other information to be introduced by either party. (Note that advance notification must be given, otherwise the additional information or evidence can only be adduced at the hearing with the consent of all the parties and the agreement of the Sub-Committee).

Chair is to identify any specific points about which the Licensing Sub-Committee have requested clarification.

5 Report from Licensing Officer

The Licensing Officer presents the Report outlining

- The nature of the application
- Any relevant background information
- Relevant issues in relation to the promotion of the four licensing objectives
- Relevant representations received
- Any relevant policy issues, including the Statement of Licensing Policy and any statutory Guidance

The Licensing Officer presenting the report will not make any recommendation regarding the determination of the application, but will simply outline the relevant considerations which the Licensing Sub-Committee will need to take into account when arriving at their decision. (It should be noted if the Licensing Authority wishes to make representation regarding application as a relevant authority under the Licensing Act 2003 a further Licensing Officer will be required to attend the committee and Act as a relevant authority).

The Members will be able to ask questions of the Licensing Officer(s) presenting the report to clarify any issues arising out of the Report.

7 The Applicant's case

- (a) The Applicant/representative to address the Sub-Committee and to call any witnesses where permission has been granted (maximum period of 10 minutes). Parties may give their evidence by making a statement or by being questioned by their representative.
- (b) The objectors/representatives shall be allowed to put questions to the applicant/representative and any witnesses (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the applicant/representative and any witnesses

8 The Objector(s) case

- (a) The Objectors/representatives to address the Sub-Committee and to call any witnesses, where permission has been granted (maximum period of 10 minutes). (The responsible authorities eg Police, Fire Authority, followed by any other person in the order in which they submitted their written representations. Where a large group have objected, they should be encouraged to appoint a single spokesperson in order to save time and avoid repetition).
- (b) The applicant/representative shall be allowed to put questions to the objectors/representatives and any witnesses, (maximum five minutes).
- (c) The members of the Licensing Sub-committee to put questions to the objectors/representatives and any witnesses.

9 Closing Statements

- (a) Objectors or their representative(s) to sum up (maximum of five minutes). (In the order in which they addressed the Sub-Committee, if more than one).
- (b) Applicant or representative to sum up (maximum of five minutes). (At this stage the applicant/representative should indicate whether, in the light of the representations made, they wish to amend their application or offer any conditions to overcome the objections and/or promote the licensing objectives).

10 Decision

If there are no further matters to be resolved, the Chair will ask all the parties if they are satisfied that they have had a fair hearing and will then close the proceedings.

The Sub-committee to consider whether it is in the public interest that they deliberate in private or whether this part of the hearing should continue to take place in public.

Pass resolution to exclude the press and public (including the parties and their representatives) pursuant to Regulation 14(2) during this part of the hearing, while the Sub-Committee discusses its decision. Everyone should then be asked withdraw from the room, except the Licensing Officer(s) presenting the report, the Democratic Services Officer and the Head of Law and Standards or his nominated representative(s). These officers shall be entitled to remain but only for the purpose of offering advice as to procedure or any particular point of law. The Sub-Committee may withdraw into a private room to do this

The Members of the Sub-Committee will deliberate and come to their decision. The reasons for the decision, the material findings of fact and any conditions will be agreed and recorded in writing by the Chair. In the event of any disagreement, any matter under consideration shall be determined by a simple majority of votes cast.

The hearing will then resume in public. The Chair will announce the decision and give the reasons for that decision, any material findings of fact, any licence conditions that are to be imposed and the licensing objectives that they relate to (unless, where permitted by the regulations, the decision is to be communicated at a later time).

11 Repeat process for each hearing

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Report

Licensing Sub-Committee

Part 1

Date: 04th April 2017

Item No: 1

Subject Licensing Review Application

Purpose The consideration and decision in respect of a Review application under Licensing Act 2003

Author Senior Licensing Officer, William Stephen Lewis

Ward Pillgwenlly

Summary The Licensing Committee have statutory and delegated powers to take decisions in relation to licensing applications. The Licensing Committee will make the decision on the application made pursuant to the relevant legislation under which the application has been made.

Proposal To make a decision on the application as detailed within this report.

Contact Senior Licensing Officer

Action by Head of Law and Regulation

Timetable Statutory Consultation Period

Signed

1. Application

- 1.1 On 14th February 2017 an application under Section 51 of the Licensing Act 2003 was served on the Licensing Authority by Ruth Harris the Principal Trading Standards Officer of Newport City Council, a 'Responsible Authority' under the 'Act' to review the Premises Licence issued in respect of Eastern European Food 155 Commercial Road, Newport NP20 2PJ. (Location and street images included at Appendix 1).
- 1.2 A copy of the application (included at Appendix 2) details that the review has been requested as a consequence of the undermining of the Licensing Objective of 'the prevention of crime and disorder'. The review application provides detail of criminal activity at the premises associated with the sale of illegal tobacco and the prosecution and conviction of persons connected to the premises.
- 1.3 Particular reference is given to the existing Premises Licence reference number 14/02733/LAPVPT (included at Appendix 5) held by Maleek (Npt) Ltd where 'Companies House' detail that Feryad Abdul Kadir is a Director of the company. He is also detailed on the Premises Licence as the Designated Premises Supervisor (authorised to sell alcohol). Mr Kadir was sentenced to serve a 20 month in prison (suspended) for two years.
- 1.4 It is also relevant within the context of this application for review that another of the defendants was Mr Tahar Mohammed who was the holder of the Premises Licence and the Designated Premises Supervisor between October 2010 and December 2013. Tahar Mohammed was sentenced to serve 3 years imprisonment.
- 1.5 In accordance with the provisions of section 51(3)(a) of the Licensing Act 2003 a copy of the Review Application was served on all of the Responsible Authorities defined under the Licensing Act and an officer of Newport City Council Licensing Authority attended at the premises on 14th February 2017 and served a copy of the Review Application on a responsible person working at the premises. At the same time a blue notice (copy included at Appendix 3) advertising the application to review the Premises Licence was displayed in the window of the premises thereby inviting representations to be made by interested parties during the consultation period of the application which terminated on 14th March 2017.
- 1.6 In accordance with statutory provisions of the Licensing Act 2003 the application for review was also published on Newport City Council website and a review notice was displayed in the reception at the Information Station.

2. Premises Licence History

- 2.1 A Premises Licence under the Licensing Act 2003 was granted on 27th August 2008, this licence authorised the sale for alcohol 'off the premises' between the hours of 0900 and 2300 on each day of the week.
- 2.2 On 11th October 2010 the Premises Licence was transferred to Mr Tahir Mohammed who at the same time specified himself as the Designated Premises Supervisor.
- 2.3 On 07th August 2013 Newport Trading Standards applied for a review of the Premises Licence as a consequence unlawful sale of alcohol to underage persons.
- 2.4 Tahir Mohammed appeared at a review hearing before Newport City Council Licensing Sub-Committee on 26th September 2013. The Sub-Committee determined that the Premises Licence Holder had failed in his obligations of promoting the Licensing Objectives and attached conditions to the Premises Licence which directly addressed measures to attend to prevention of sales of alcohol to underage persons.

2.5 On 06th December 2013 the Premises Licence was subject of a further transfer to Choman Anwar Omar who was also specified as the Designated Premises Supervisor.

2.6 On 19th December 2014 the Premises Licence was subject of a further transfer to Maleek(Npt)Ltd where Feryad Abdul Kadir was specified as the Designated Premises Supervisor, this is the current Premises Licence.

3. Promotion of the Licensing Objectives.

The Licensing Objectives which underpin the Licensing Act 2003 are achieved by the compliance with:

- the 'mandatory conditions' of a Premises Licence,
- conditions attached to the operating schedule shown in Part A of a Premises Licence
- the statutory requirements of the Licensing Act 2003.

4. Representations from 'Other Persons' and Additional Information

There have been no additional representations from 'other persons' in respect of this application.

5. Presentation of the review application by Responsible Authority and/or Other Person

5.1 The application for this review was requested by Trading Standards and an officer will present to the Licensing Sub-Committee details of the investigation and outcome contained within the application (included at Appendix 2) of this report.

5.2 The application by Trading Standards has attracted a representation (included at Appendix 4) from Mr Alastair Dearling the Principal Licensing Officer of Newport City Council exercising his power as a 'responsible authority' under the provisions of The Police Reform and Social Responsibility Act 2011, supporting the application for the review of the Premises Licence.

6. Policy Considerations regarding a review of a Premises Licence

Section 33 of Newport City Councils Statement of Licensing Policy as regards this application includes:

The Licensing Authority can only review a licence where it is alleged by a "responsible authority", or other person that the licensing objectives are being breached. Responsible authorities will aim to give licence holders early warning of any concerns identified at the premises. Only Responsible Authorities or other local persons (e.g. local residents, local organisations and councillors) can apply for the review of a licence. At any subsequent hearing, the Sub-Committee will consider evidence and make a determination. It views particularly seriously applications for the review of any premises licence which involves the:

- use of licensed premises for the sale and distribution of controlled drugs and the laundering of the proceeds of drugs crimes;
- use of licensed premises for the sale and distribution of illegal firearms;
- evasion of copyright in respect of pirated films and music;
- underage purchase and consumption of alcohol;
- use of licensed premises for prostitution or the sale of unlawful pornography;
- use of licensed premises for unlawful gaming;
- **use of licensed premises as a base for organised criminal activity;**
- use of licensed premises for the organisation of racist, homophobic or sexual abuse or attacks;
- **use of licensed premises for the sale of smuggled tobacco or goods;**
- use of licensed premises for the storage or sale of stolen goods;
- the police being frequently called to attend to incidents of disorder;
- prolonged and/or repeated instances of public nuisance;

- serious risk to public safety have been identified and the management is unable or unwilling to correct;
- serious risk to children.

The Licensing Sub-Committee will consider all evidence provided at the hearing and apply appropriate weight to that evidence when making its decision. It will consider all sanctions at its disposal by virtue of the Act and guidance, including taking no action, if appropriate. In cases where a licensing objective is seriously undermined, the revocation of the licence, even in the first instance, will be considered where appropriate to ensure the licensing objectives are promoted.

7. Legal Considerations

The decision must be taken following consideration of the representations received with a view to promoting the licensing objectives which are:

- Prevention of crime and disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

In each case the Sub-Committee may make the following determination

- a. To refuse the application (in which case there shall be no action taken in respect of the Premises Licence), **OR**
- b. To grant the application and make what changes the sub-committee consider necessary in the promotion of the Licensing Objectives such as:
 - Attaching new conditions or amending existing conditions
 - Amending the times during which licensable activity is authorised.
 - Remove the Designated Premises Supervisor
 - Suspension of the Premises Licence for a period not exceeding 3 months
 - Revocation of the Premises Licence

All decisions taken by the Sub-Committee must:

- a. be within the legal powers of the Council and its Committees;
- b. comply with any procedural requirement imposed by law;
- c. be undertaken in accordance with the procedural requirements imposed by the Council eg. standing orders and financial regulations;
- d. be fully and properly informed;
- e. be properly motivated;
- f. be taken having regard to the Council's fiduciary duty to its taxpayers; and
- g. be reasonable and proper in all the circumstances.

8. Issues for discussion

- a. The review application by NCC Trading Standards.
- b. The representation served by NNC Licensing Authority
- c. The response by the holder of the Premises Licence to the application.
- d. Any other evidence or matters presented by all parties and any mitigating circumstances.

9. Appendices

9.1 Street map and images (courtesy of Google Maps)

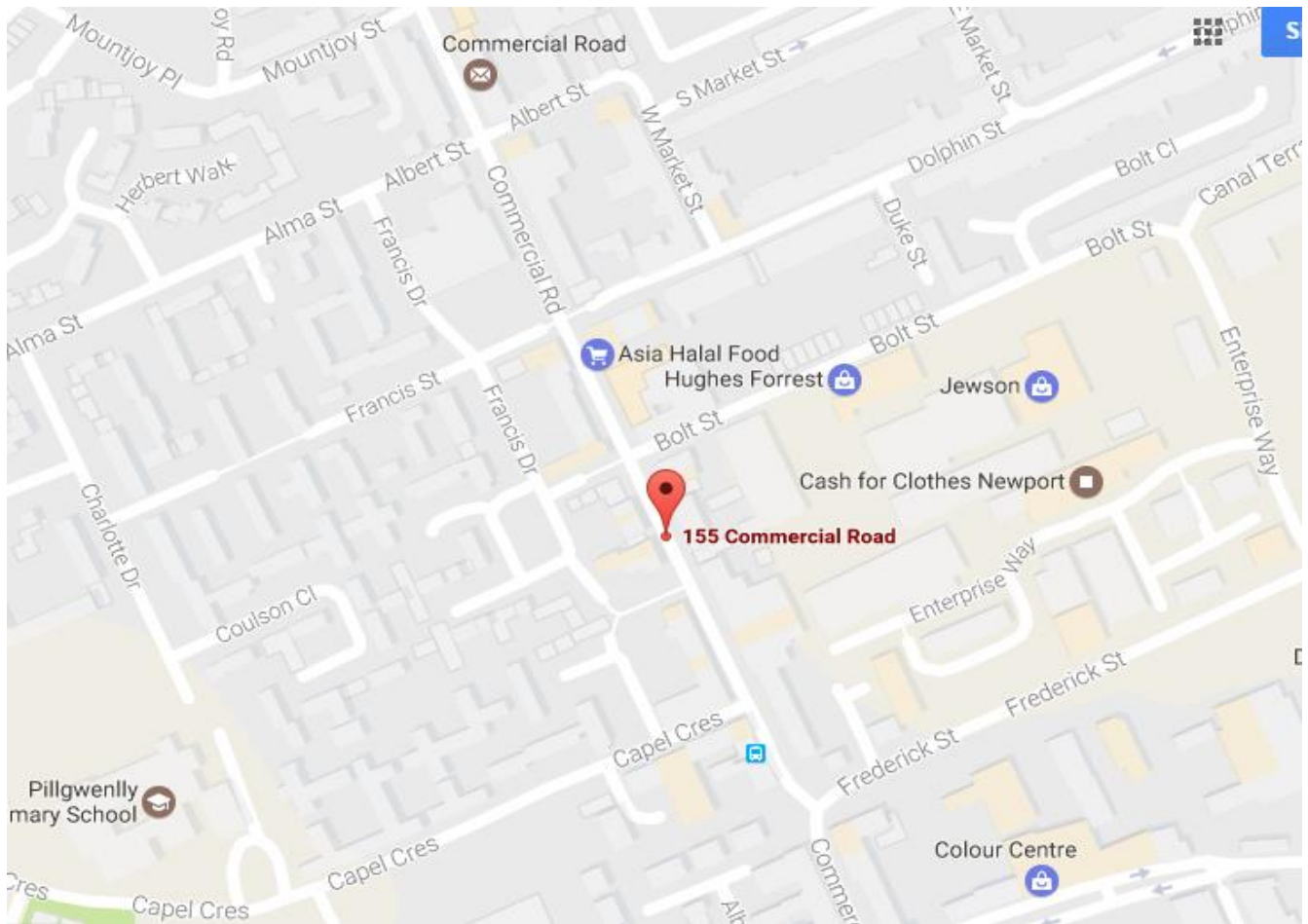
9.2 Application by Newport City Council Trading Standards for the review of a premises licence under the Licensing Act 2003

9.3 Copy of Blue Notice advertisement of review

9.4 Representation from Newport City Council Licensing Authority.

9.5 Copy of Part A of the existing Premises Licence

Street map and images (courtesy of Google Maps)





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

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 Ruth Harris

(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

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

Maleek (NPT) Ltd trading as Eastern European Food
155 Commercial Road

Post town Newport

Post code (if known) NP20 2PJ

Name of premises licence holder or club holding club premises certificate (if known)

Feryad Mohammed Abdul-Kadir

Number of premises licence or club premises certificate (if known)

14/02733/LAPVPT

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 Ruth Harris Principal Trading Standards Officer Newport City Council Civic Centre Newport South Wales NP20 4UR
Telephone number (if any) 01633 656656
E-mail address (optional) trading_standards@newport.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 | <input checked="" type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

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

Maleek (NPT) Ltd t/a Eastern European Foods of 155 Commercial Road, Newport, NP20 2PJ has been identified as a shop in Newport where illegal and smuggled cigarettes and tobacco products have been available for sale.

In one of the largest Trading Standards investigations in Wales of its kind, Newport Trading Standards have successfully proved that Feryad Mohammed Abdul-Kadir, sole director and designated premises supervisor for Maleek (NPT) Ltd used his business as an outlet for the sale of illegal tobacco.

Furthermore, Abdul-Kadir actively took part in the criminal act of supplying illegal tobacco himself.

The grounds for the review are therefore based on failures of the licencing objectives; the prevention of crime and disorder.

In June 2013 the Home Office published "Amended Guidance Issued under Section 182 of the Licensing Act 2003". In the section "Reviews arising in connection with crime"; at paragraph 11.27 it states that there "is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises....for the sale of smuggled tobacco and alcohol".

Paragraph 11.28 directs licensing authorities and law enforcement agencies acting as responsible authorities to use review procedures effectively to deter such crime and where "reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further

crime, it is expected that revocation of the licence – even if the first instance – should be seriously considered".

In light of the above the Trading Standards Section feels that revocation of the licence is considered as a potential outcome to the review.

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

On 21 April 2015 officers from Newport Trading Standards discovered 225,820 illegal cigarettes and 112.4 kg of illegal hand-rolling tobacco in a self-storage unit in Newport. Evidence showed the unit was being rented and controlled by Tahar Mohammed, a previous owner of International Food Market, 155 Commercial Road, Newport, NP20 2PJ. At the time of the visit the last known director of International Food Market, Choman Omar, was currently serving a custodial sentence following a successful prosecution by Newport Trading Standards in 2014 for possessing and supplying illegal tobacco from the shop.

On the same day officers visited the new business at 155 Commercial Road, namely Maleek (NPT) Ltd trading as Eastern European Foodstore which had been operating since December 2014. During the visit empty boxes identical to those found to contain illegal tobacco at the storage unit were found in the stock room and on the shop floor. The director of the company, Feryad Mohammed Abdul-Kadir denied knowing Tahar Mohammed however, when officers examined his mobile phone, he had made and received calls from Tahar Mohammed several times throughout that day.

On 10 June 2015 officers from Newport Trading Standards executed a warrant of entry 31 Hawthorne Close, Pucklechurch, the home of Tahar Mohammed. On this occasion 508,020 illegal cigarettes and 194.8 kg of illegal hand-rolling tobacco was found in the garage associated with the premises and a vehicle which was parked immediately in front of the garage. In addition, links to the business based at 155 Commercial Road in Newport were found and over £40,000 in cash was discovered under Mohammed's bed.

On 15 September 2015 officers from Newport Trading Standards executed a warrant on the residential flat situated immediately above the shop at 155 Commercial Road. When floorboards were removed in the corner of one of the rooms a chute was found which connected directly down into the stock room of the shop below. Next to the chute was a baby monitor. On this occasion 13,308 illegal cigarettes and 8 kg of illegal hand-rolling tobacco was discovered in the wardrobe of the room where the chute was situated.

The owner and landlord of the flat was Tahar Mohammed; the occupant of the flat was Richard Jendrejczak, an employee of Maleek (NPT) Ltd trading as Eastern European Foods.

On 13 May 2015; 21 July 2015; and 23 July 2015 illegal tobacco was purchased from Maleek (NPT) Ltd trading as Eastern European Foods at 155 Commercial Road, Newport. On each occasion a video recording was made of the sale taking place; Feryad Mohammed Abdul-Kadir made one of these sales and Burham Karim made 2 sales.

Overall the investigation revealed a total of 747,148 illegal cigarettes and 315.8 kg of illegal hand rolling tobacco. The estimated retail price of this tobacco if it was genuine would be £427,251.92. The amount of excise duty and VAT which has been evaded has been calculated to be £308,986.82.

On 9 December 2016, Feryad Mohammed Abdul-Kadir, Richard Jendrejczak & Burham Karim were sentenced for their part in participating in a fraudulent business, namely the supply, and possession for supply, of illegally labelled and/or imported tobacco products, contrary to Section 9 of the Fraud Act 2006;

Feryad Mohammed Abdul-Kadir was sentenced to 20 months in custody (suspended for 24 months), 250 hours unpaid work, 8 days rehabilitation activity, £100 victim surcharge and £1000 towards prosecution costs;

Burham Karim was sentenced to 12 in custody (suspended for 24 months), 200 hours unpaid work, £100 victim surcharge and £1000 towards prosecution costs; and

Richard Jendrejcek was sentenced to 8 months in custody (suspended for 24 months), 200 hours unpaid work, 30 days rehabilitation activity, £100 victim surcharge and £1000 towards prosecution costs.

On 25 January 2017, Tahar Mohammed was sentenced to 3 years imprisonment.

When passing sentence HHJ David Wynn Morgan, stated that this was a lucrative business; he emphasised he was passing sentence on the evidence which the prosecution had proved however he acknowledged that this was significantly less than the amount of actual business which had taken place (i.e. the amount of tobacco and duty evaded figures which had been taken into account were based on the tobacco found "in stock" but, in reality, the criminal benefit from the actual sales was bound to be far higher).

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

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 R. Morris

Date 14 February 2017

Capacity Principal Trading Standards officer

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

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.

Copy of Blue Notice to advertise the application for review

LICENSING ACT 2003 - SECTION 51

NOTICE OF APPLICATION FOR THE REVIEW OF A PREMISES LICENCE

The Licensing Authority of Newport City Council, Information Station, Old Station Building, Queensway, Newport, NP20 4AX

HEREBY GIVE NOTICE THAT on 15 /2/ 2017 an application under section 51 of the Licensing Act 2003 was received by Newport City Council, Licensing Authority, to review the Premises Licence in respect of

**International Food Market Maleek (NPT) LTD
155 Commercial Road, Newport, Np20 2PJ.**

**This application has been served by Newport City Council Trading Standards Department on the grounds that the licensing objectives of,(a) the prevention of crime and disorder, are being undermined.
(Due to supply of illegal tobacco)**

Any of the responsible authorities under the Licensing act 2003 or any other person who wishes to make representation in respect of this review may do so in writing to:

**The Licensing Section, Newport City Council, PO BOX 883, Civic Centre, Newport, NP20 4UR, or by email to:
environment.licensing@newport.gov.uk**

**Representations in writing should be received before midnight on
15 March 2017**

The full application may be viewed at, Information Station, Old Station Building, Queensway, Newport, NP20 4AX between the hours of 8.30 am and 5.00 pm Monday to Friday.

Under section 158 of the Licensing Act 2003, it is an offence to knowingly or recklessly make a false statement in connection with an application. The maximum fine for which a person is liable of conviction is up to £5,000 (level 5 on the standard scale).

Copy of representation from Licensing Authority supporting the application for review.

Newport City Councils Licensing Authority

RELEVANT REPRESENTATIONS

Application for the review of Premises Licence
Licensing Act 2003

Representations by Newport City Council Licensing Authority (acting as a responsible authority) to be made within 28 Days of receipt of the a premises licence review.

Date representations sent to Licensing Authority: 1/3/2017

Name of authority: Newport City Council Licensing (acting as a responsible authority)

Premises Name and Address:

Maleek (NPT) Ltd trading as Eastern European Food, 155 Commercial Road, Newport, NP20 2PJ.

Applicant Address: As above

Under the provisions of The Police Reform and Social Responsibility Act 2011, which allows Licensing Authorities to engage in the role as a responsible authority under the Licensing Act 2003 Newport City Council Licensing Authority wish to make representation in support of the application for review made by Newport City Council Trading Standards in respect of a Premises Licence issued to Maleek (Npt) Ltd at 155 Commercial Road, Newport.

The application has been made as a consequence of the criminal activity as advised by Trading Standards and previous matters pertaining to Licensing Enforcement activities undertaken by the Licensing Department that provide evidence of an undermining the Licensing Objectives of:

- Prevention of crime and disorder
- Public Safety

In June 2013 the Home Office Published "Amended Guidance issued Under Section 182 of the Licensing Act 2003. In the section "Reviews arising in connection with crime" at Paragraph 11.27 it states that there "is certain criminal activity that may arise in connection with licenced premises which should be treated particularly seriously. These are the use of licenced premises for the sale of smuggled tobacco and alcohol.

Paragraph 11.28 directs licensing authorities and law enforcement agencies acting as responsible authorities to use review procedures effectively to deter such a crime where "reviews arise and the Licensing authority determines that a crime prevention objectives is being undermined through the premises being used to further crime, it is expected that revocation of the licence-even if the first instance-should be seriously considered.

Virtually all illicit cigarettes failed fire safety tests conducted by trading standards officers in the first national study to consider the potentially deadly issue. The findings form part of the National Tobacco Control Survey, published by the Chartered Trading Standards Institute stipulated:

"During the tests 98 per cent of the samples failed to self-extinguish when left unattended posing an increased risk of furniture, bedding and even clothes catching fire. More than a third of fire deaths in

homes were caused by smokers' materials, but it is not known how many of these are caused by illicit cigarettes.

All cigarettes, legal or otherwise can have a significant impact on a person's health, though counterfeits tobacco are not governed or controlled and may contain further products that can be further detrimental to a person's health"

It clear from the Trading Standards conviction that the licence holder (who is also the Designated Premises Supervisor) is clearly not promoting the Licensing Objectives.

This was also apparent when Licensing Officers visited the premises on the 15 September 2015, A Licensing Act 2003 compliance check was undertaken at the premises and it was noted the premises was failing to comply with the following conditions attached to the premises licence operating schedule:

2SO01 CCTV cameras shall be installed and in place at the premises which record the entire premises.

2SO02 All CCTV cameras shall be operational at all times whilst the premises is trading. All recordings shall be kept for a minimum of 31 days and made available to an Authorised Officer on request.

And the following condition which was attached by Licensing Sub-Committee at a review hearing on 26th September 2013:

A documented training scheme shall be introduced for all staff. The scheme shall be made available for inspection at the request of any Responsible Authority under the Licensing Act 2003. Staff members will not be permitted to serve alcohol until they have received the training.

Mr Feryad Mohammed Abdul-Kadir was informed it would be unlawful for him to sell alcohol unless he complied with all the conditions attached to the premises licence and the alcohol was also required to be "covered up", this was also translated to Mr Abdul Kadir by member of staff.

On the 3rd October 2015 at 21:20 a test purchase was undertaken at the premises by Licensing Officer and was able to purchase a bottle of echo falls wine for £4.49. After the sale was made an inspection was undertaken at the premises to determine if the sale of alcohol was in compliance with premises conditions.

The DPS Mr Abdul-Kadir was not present at the shop and when the member of staff (who sold the wine) was questioned if he had received training, he stipulated he had not. He was also asked to demonstrate that the CCTV was working in accordance with the licence condition. He was unable to do so.

Licensing Officers returned to the premises on the 5th October 2015 and determined that CCTV was not working on the evening of the 3rd October 2015. Further visits took place on the 15th October 2015 and again it was evident that the CCTV was not working and that no staff training had taken place. The shop was revisited on the 19th October 2015 and the CCTV was still not working. It was not until the 26th October 2015 that the CCTV was demonstrated to be working.

It is clear that despite being warned by Officers not to sell alcohol until such time the premises complied with his premises conditions Mr Abdul-Kadir simply ignored this advice, demonstrating clear disregard to Licensing Laws.

- The Licensing authority (acting as responsible authority) respectfully requests that the Licensing Committee considers the revocation of the premises licence. Though if this is not the case the committee to consider attaching the below conditions so as to promote the Licensing Objectives:
- CCTV will be installed inside and outside the premises. The cameras will cover all internal areas accessible to the public and any storage/stock rooms. The outside camera will cover the area immediately outside the premises. The date and time settings on the system must be correct at all times and the CCTV system must be capable of recording images to a suitable medium that allows replay. Recordings must be retained for a minimum of 31 days. All Staff shall be trained in the maintenance and operation of the CCTV system with a record kept of the date and name of person trained. A trained member of staff should be on duty to operate the system whenever the premises are open. Recordings shall be made available for inspection and copies provided to the police and other responsible authorities as reasonably requested.
- Whenever a Designated Premises Supervisor is not at the premises, another person (who is the holder of a Personal Licence) shall be nominated by the Designated Premises Supervisor as a Responsible Person. This information identifying the nominated person shall be displayed on a notice prominently displayed at the sales counter and that person must have the contact details of the designated premises supervisor.
- Clear notices shall be prominently displayed throughout the premises that provide the time during which alcohol can be sold is restricted to between 09:00 hours and 23:00 hours on any day.
- Alcohol shall not be displayed for sale between the hours of 23:00 and 09:00hrs on any day, by the use of shutters or blinds which shall cover all alcohol products displayed in the shop premises.
- A clear audit record of tobacco products acquired for the purpose of sale in the shop shall be kept for a minimum of 2 years. This audit record shall include the quantity and product details of tobacco bought, the person or company the tobacco was bought from and full invoice of the tobacco products acquired. These audit records shall be provided for immediate inspection by any Officer the Licensing Authority or any Responsible Authority.
- The Designated Premises Supervisor/Responsible Person or any other member of staff shall record details in an incident log of any person who enters the premises and attempts to sell or deliver illegal tobacco products and this must be reported to Newport City Councils Trading Standards or Newport City Council licensing team as soon as is practicable and in any case within 14 days of the occurrence.
- All staff should be trained in respect of the laws governing the trade of illegal tobacco and the consequences of the selling of illegal tobacco products. This training should be documented and approved by the Licensing Authority. All members of staff will be required to sign and date that they been trained and refresher training shall be given every 6 months.

Yours Sincerely

Alastair Dearling
 Prif Swyddog Trwyddedu / Principal Licensing Officer
 Y Gyfraith a Rheoleiddio / Law & Regulation
 Cyngor Dinas Casnewydd / Newport City Council
 01633656656 / 01633851328
 Alastair.Dearling@newport.gov.uk

Copy of the Premises Licence 14/02733/LAPVPT

Schedule 12

Part A

(THIS PART OF THE LICENCE
MUST BE KEPT AT THE
PREMISES AT ALL TIMES AND
PRODUCED UPON REQUEST OF
AN AUTHORISED OFFICER)

**Premises Licence
City of Newport**



Premises Licence Number	14/02733/LAPVPT
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Part 1 – Premises Details

Postal address of premises, or if none, ordnance survey map reference or description, including Post Town, Post Code	
International Food Market 155 Commercial Road Newport South Wales NP20 2PJ	
Telephone number	01633 256058

Where the licence is time limited the dates
Not Applicable

Licensable activities authorised by the licence
Sale by retail of Alcohol

Times the licence authorises the carrying out of licensable activities
Sale by retail of Alcohol Monday to Sunday inclusive 09:00 - 23:00

The opening hours of the premises
Monday to Sunday inclusive 09:00 - 23:00
Where non standard timings are authorised, the opening times shall be as those authorised for licensable activities with an additional 30 minutes on the terminal hour.

Where the licence authorises supplies of alcohol whether these are on and / or off supplies
Alcohol is supplied for consumption off the Premises

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence

Maleek (Npt) Ltd
155 Commercial Road
Newport
South Wales
NP20 2PJ

Business Phone Number 01633 256058

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

Registered Business Number 09333558

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

Mr Feryad Abdul-Kadir
44 Beeches Road
Trevethin
Pontypool
NP4 8HJ

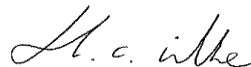
Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol

Party Reference: PA0763

Licensing Authority: Torfaen County Borough Council

This Premises Licence is issued by Newport City Council as Licensing Authority under Part 3 of the Licensing Act 2003 and regulations made thereunder.

Dated this 19th December 2014



Helen Wilkie
Public Protection Manager

Mandatory conditions

1. No supply of alcohol may be made under the premises licence:
 - i. at a time when there is no designated premises supervisor in respect of the premises licence; or
 - ii. 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. Where at specified times one or more individuals may be at the premises to carry out a security activity, each individual must be licensed by the Security Industry Authority.

For the purposes of this section:

- i. "security activity" means an activity to which paragraph 2(1)(a) of that Schedule applies; and
 - ii. paragraph 8(5) of that Schedule (interpretation of references to an occasion) applies as it applies in relation to paragraph 8 of that Schedule.
4. (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 licence 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.

New Mandatory condition for on and off sales from 28 May 2014

(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) In this condition:-

- a. "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;
- b. "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979
- 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 would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.

(4) Where the permitted price 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, 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.

Conditions consistent with the Operating Schedule

5. CCTV cameras shall be installed and in place at the premises which record the entire premises.
6. All CCTV cameras shall be operational at all times whilst the premises is trading. All recordings shall be kept for a minimum of 31 days and made available to an Authorised Officer on request.
7. All spirits and tobacco products shall be located behind the counter area. All other alcohol products shall be located opposite the counter at all times.
8. All fire safety equipment and features as indicated on the plan reference number P/08/02118/3/LAPRE shall be provided and maintained in good working order. All fire fighting equipment shall be located so as to be readily available for use and shall be tested annually by a competent person.
9. The means of escape provided for all persons on the premises shall be maintained unobstructed, immediately available and clearly identifiable and all exit doors which may need to be used by the public shall be kept unlocked at all times whilst the premises are in use. All exit signs shall be maintained in good repair and shall be properly illuminated.

Conditions attached after a hearing by the licensing authority

1. A 'Challenge 21' policy shall be operated at the premises at all times. All staff shall check identification of all people who appear to be less than 21 years old. This check shall be made by examining either a passport, photographic driving licence or a PASS approved proof of age card. No other form of identification shall be accepted.
2. Publicity materials notifying customers of the operation of the Challenge 21 scheme shall be displayed at the premises, including a Challenge 21 sign of at least A5 size at each point of sale.
3. The Premises Licence Holder shall operate and maintain an up-to-date Register of Refusals of Sale of Alcohol, indicating the date, time and reason for refusal which shall be made available for inspection by any Responsible Authority under the Licensing Act 2003. The DPS shall check the book once a week ensuring that it is complete and up to date. The DPS will sign the book each time it is checked.
4. A documented training scheme shall be introduced for all staff. The scheme shall be made available for inspection at the request of any Responsible Authority under the Licensing Act 2003. Staff members will not be permitted to serve alcohol until they have received the training.

Plans

Please see attached plans (reference number 08/02118/LAPRE)