

FOR CHAIR AND MEMBERS
OF THE LICENSING SUB COMMITTEE
FOR 27 MARCH 2014

APPENDIX 1

APPLICATION FOR PREMISES LICENCE

Applicant: AMER AHMED KHEDIR Ref No: DL14/00173/PREMIS

Premises: DARLINGTON SUPERMARKET
35 BONDGATE
DARLINGTON, DL3 7JJ

Requested Licensable Activities SALE OF ALCOHOL FOR CONSUMPTION OFF THE PREMISES

Requested Hours: 08.00 to 23.00 EVERY DAY

Premises opening hours 08.00 to 23.00 EVERY DAY

Notification to Responsible Authorities:

Chief Constable	Environmental Health Manager (Public Safety and Nuisance)
Local Health Board	Licensing Authority
Primary Care Trust	Trading Standards
Chief Fire Officer	Safeguarding Children's Board
Planning Manager	

Information on Council's Website: 04 February 2014
Advertisement in Darlington & Stockton Times 07 February 2014

LEGISLATION:

The Licensing Act 2003 requires the Licensing Authority to carry out its functions with a view to promoting the four Licensing Objectives:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

The Licensing Authority must also have regard to its Licensing Policy and any guidance issued by the Secretary of State. The Licensing Authority may depart from its own Policy or the Secretary of State's Guidance if it has good cause but must be able to give full reasons for such a departure.

DESCRIPTION OF PREMISES

The Applicant Company has described the premises as:

“Grocery Store, licensed to sell alcohol.”

THE APPLICATION

On 03 February 2014, an application was properly made by the Applicant in accordance with Section 17 of the Licensing Act 2003 for a Premises Licence to enable the sale of alcohol for consumption off the premises. All Responsible Authorities received a copy of the application and it was properly advertised in the press and on the premises. As a result of the consultation a representation has been received from one Responsible Authority, namely Trading Standards. In addition an anonymous letter, purporting to have been written by “5 concerned residents”, was also received on 03 March 2014 (the last day on which representations could be made).

THE REPRESENTATIONS

On 27 February 2014 a representation was received from the Principal Trading Standards Officer based on the prevention of crime and disorder. In summary the Officer reports on 4 test purchases of cigarettes from the premises during September and October 2013 where on each occasion the cigarettes were found to be counterfeit. The representation has been reproduced in full at **Appendix 1A (i)**

On 03 March 2014 an anonymous representation was received based largely on the same information provided by the Trading Standards Department. The letter purports to come from 5 residents and alleges that the sale of counterfeit cigarettes has continued. The representation has been reproduced in full at **Appendix 1A (ii)**. The Statutory Guidance at sections 9.22 to 9.26 does make provision for the withholding of personal details if the Licensing Authority considers that the person has a genuine and well-founded fear of intimidation; however that is based on the assumption that the person has already provided their details to the Licensing Authority. As the authors of the representation have not provided any such details, Members should consider what weight, if any, should be given to this representation before proceeding with the hearing.

Members are reminded that only those elements of any representation that relate to the four licensing objectives should be considered when determining this application.

THE APPLICANT'S RESPONSE

On 27 February 2014 the Trading Standards representation was sent to the Applicant's agent to provide an opportunity for either the Applicant or his agent to respond to the concerns expressed. The anonymous representation was also sent on 07 March 2014. At the time of writing this report a response had not been received. The report has therefore been prepared without the benefit of comment from the Applicant

THE OPERATING SCHEDULE

In the section of the application dealing with the operating schedule, i.e. the additional steps that will be taken to promote the four licensing objectives if this application is granted, the Applicant has stated the following:

a) **General:**

"We will work closely with all Responsible Authorities to reduce alcohol related crime, disorder and nuisance. CCTV will be in operation, recordings available to police. Refusals register will be maintained"

b) **Prevention of Crime and Disorder:**

"All stock of alcohol will be secured and closely monitored. CCTV recordings of shop activity. Age verification Scheme will be 'challenge 25'."

c) **Public Safety:**

"The premises will conform to all health, safety and hygiene statutory requirements."

d) **Prevention of Public Nuisance:**

"Customers will not be allowed to consume their alcohol purchases directly outside the premises."

e) **Protection of Children from Harm:**

"Challenge 25 age verification scheme and refusals register will be maintained."

Members are aware that the information contained within the operating schedule is to be converted into conditions that will be attached to any grant of a licence.

THE LICENSING POLICY

Members are referred to the following relevant sections of the Council's Licensing Policy which are reproduced at **Appendix 1C**

Section 10-10.4.	Prevention of Crime and Disorder	Effect in Vicinity/Personal Licence holder to be on premises
Section 12.7	Off Sales	

THE GUIDANCE

Members are referred to the Secretary of State's Guidance in relation to the prevention of crime and disorder, placing of conditions, dealing with representations and guidance relating to shops, stores, petrol stations and supermarkets. Members should also note the information relating to reviews arising in connection with crime. Although this application is not a review much of the information is directly relevant to this application. The Guidance has been reproduced at **Appendix 1D**

ADDITIONAL INFORMATION

A map of the premises will be produced at Committee for the benefit of Members.

POINTS FOR CLARIFICATION

Members are referred to the notice of hearing **points for clarification** (See **Appendix 2**).

The **Applicant** has been asked to clarify his position in relation to the following:

- Details of Mr Khedir's role within the premises i.e. how long he has been involved in the premises and whether he is the owner, the manager or another employee.
- Details of any measures that will be taken to discourage the consumption of alcohol outside of the premises.
- Details of any measures that have been/will be taken to ensure that only legitimate goods are available for sale within the store.

Trading Standards have been asked to update the Sub Committee in respect of any action taken against the Applicant

MEMBERS' OPTIONS

Members may consider the following options:

1. **Grant** the application subject to the mandatory conditions for sale of alcohol and the additional conditions drawn from the operating schedule as follows:
 - A digital CCTV system covering the areas where alcohol is displayed within the store shall be maintained and in operation at all times whenever alcohol is available for sale. Recordings shall be securely stored and kept for a minimum of 31 days. The recordings shall be made available to the Police and/or authorised officer of the Council on request. (operating schedule condition)
 - The Challenge 25 scheme shall be implemented at the premises requiring photographic proof of identity from any person who attempts to purchase alcohol and who appears to be under the age of 25 years. Notices shall be displayed within the premises advertising this scheme. All staff shall be trained in respect of the operation of this policy and such training shall be documented and produced to the Police and/or authorised officer of the Council on request. (operating schedule condition.)
 - A refusals book shall be kept with details of all refusals of alcohol sales. All staff shall be trained in its use and such training shall be documented. It shall be produced to the Police and/or authorised officer of the Council on request. (operating schedule condition.)
2. Place any **additional conditions** on the licence that Members consider are necessary to address any concerns relating to, the prevention of crime and disorder, the prevention of public nuisance, public safety and protection of children from harm.

3. **Reject** all or part of the application

Members are reminded that any aggrieved party (ie Applicant or Trading Standards) may appeal any decision of the Licensing Sub Committee to the Magistrates' Courts.

Contact Officer: Pam Ross
Ext 2647

Richard Alty
Director of Economic Growth

Date of Sub Committee: 27 March 2014

For admin use only:

Sub Committee Decision:

**GRANT ALL/PART OF APPLICATION/REJECT ALL/PART OF APPLICATION/ PLACE
CONDITIONS**

Reasons:

APPENDIX 1A

REPRESENTATIONS IN RESPECT OF APPLICATION

Appendix 1A(i)

Representor: N Green, Principal Trading Standards Officer

Comments: Based on the prevention of crime & disorder

"I object to the granting of a Premises Licence for Darlington Supermarket, 35 Bondgate, Darlington, as I believe that the business is not operating in a fit and proper manner due to the reasons listed below.

Trading Standards received intelligence that Darlington Supermarket, 356 Bondgate, were selling counterfeit/illicit cigarettes. Three test purchases of counterfeit cigarettes were made from the premises on 11 September 2013, 4 October 2013 and 18 October 2013. Following these test purchases, the premises of Darlington Supermarket were inspected by Trading Standards and HMRC on 18 October 2013. Whilst no counterfeit/illicit tobacco products were found on the premises, the three test purchases of counterfeit cigarettes were brought to the attention of Darlington Supermarket.

After this inspection by Trading Standards and HMRC on the 18 October 2013, a further test purchase of counterfeit cigarettes was made on 31 October 2013 from Darlington Supermarket. The cigarettes from all four-test purchases have been confirmed as counterfeit by the Brand Holder.

Trading Standards are currently investigating offences as a result of these four test purchases of counterfeit cigarettes. The offences being investigated are under the Trade Marks Act 1994 as the products are counterfeit and under the Tobacco Products (Manufacture, presentation and Sale)(Safety)Regulations 2002 as the cigarettes were not labelled within the required health warning.

As the cigarettes are counterfeit, they are completely unregulated, with no quality control checks and as such would pose a health risk to consumers

During the investigation, under caution on the 10 December 2013, a Mr Jalal Hassan claimed to be the sole owner of Darlington Supermarket. On the premise licence application, a Mr Amer Ahmed Khedir claims to be the owner/partner.

The above actions show that the business has a complete disregard for complying with relevant legislation, even after it has been brought to their attention. If a premise licence was granted, given the business propensity for not complying with legislation, there is a danger of the business not complying with legislation relating to the sale of alcohol ie the sale of counterfeit alcohol or sale to children under the age of 18."

Representor: Anonymous

Comments:

“To the members of the licensing committee.

We are writing to you as a collective of five concerned residents regarding an application for the retail of alcohol from a premises on Bondgate in Darlington known as Darlington Supermarket. Our concerns on this matter are that already the shop is selling under the counter tobacco products without any regards of the law, they have had visits from HMRC (Her Majesties Customs and Excise) which have resulted in seizures of no duty paid tobacco and this can be checked by yourselves with the HMRC. This confiscation however has still not stopped the sale of these products as they are still available to the customers they want to give to. We feel that as these regards of law are already in place at these premises what would they do with the sale of alcohol. Regards to the safety of children and adults to the nature of what they are buying as cheap under the counter products might be cheap but what harmful ingredients do they contain. We have decided to write this letter to yourselves as we are scared of repercussions if we were to disclose our names and addresses but we are residents nearby and concerned residents at that. We will leave it in your hands and all that we ask is that you take some time in reading and looking at our concerns which we feel you can do so by contacting the relevant authorities.

Yours concerned residents ”

EXTRACTS FROM LICENSING POLICY**10.0 CRIME AND DISORDER**

This section should be read in conjunction with the section on Prevention of Nuisance with which it is directly cross-referenced.

10.1 Policy: The Licensing Authority will expect the applicant to indicate in his operating schedule the steps proposed to prevent crime and disorder on and in the vicinity of their premises and/or events.

Reason: Prevention of crime and disorder is both an objective of the Licensing Act 2003 and a responsibility of the Licensing Authority under the Crime and Disorder Act 1998. It is important, therefore, that the applicant be able to demonstrate to the Licensing Authority the practical steps that will be taken to further this objective in the operating schedule. The factors that impact on crime and disorder may include:

- a. Underage drinking
- b. Drunkenness on premises
- c. Public drunkenness
- d. Drugs
- e. Violent behaviour
- f. Anti-social behaviour

10.2 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule, having regard to their particular type of premises and/or activities:

- a. Effective and responsible management of premises.
- b. Training and supervision of staff.
- c. Adoption of best practice guidance (eg Safer Clubbing, the National Alcohol Harm Reduction Strategy Toolkit and other Voluntary Codes of Practice, including those relating to drinks promotions eg The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA).
- d. Acceptance of accredited means of age identification e.g. DVLA photo driving licence or "PASS" approved proof of age' cards
- e. Provision of effective digital CCTV in and around premises.
- f. Employment of Security Industry Authority licensed door-staff.
- g. Provision of plastic or shatter resistant glasses.
- h. Provision of secure, deposit boxes for confiscated items.
- i. Procedures for assessing risk associated with promotions and events such as "happy hours" for the potential to cause crime and disorder, and plans for minimising such risks.
- j. Measures to prevent the use or supply of illegal drugs.
- k. Employment of licensed door supervisors and other appropriately trained staff.
- l. Installation of non-retrievable bottle bins at exits and ensuring that patrons do not leave with bottles or glasses (on licence sales).
- m. Provision of litterbins and other security measures, such as lighting, outside premises.
- n. Membership of Darlington 'Pubwatch' scheme.

10.3 The Licensing Authority will expect the operating plan to include a risk assessment into the use of door-staff, in terms of the actual need for such a service and also the ratio of such personnel to patrons based on capacity of the premises.

10.4 **Policy: The Licensing Authority will normally require a Personal Licence holder to be on the premises at all times when alcohol is being sold.**

Reason: It is important that there is an accountable, responsible person present at all times when alcohol is being sold. This is to ensure that alcohol is not sold to persons who have had too much to drink and to ensure that alcohol is only sold to persons over the age of 18 years. In terms of crime and disorder, there is a need for an identified person with whom the Licensing Authority and Police can discuss any problems/issues arising from the licensable activities offered on the premises.

12.7 **OFF SALES**

In accordance with DCMS guidelines the Licensing Authority will not normally seek to limit the hours during which alcohol can be sold for consumption off the premises. The Council does, however, expect that a responsible attitude be adopted in relation to the sale of alcohol to and/or for persons under the age of 18 years. Operating schedules should therefore include the following:

- a. Staff training, particularly in relation to refusal of sales.
- b. Proof of age requirements.
- c. Records of refusal of sales.
- d. Consideration of display of posters advertising the illegality of purchasing alcohol on behalf of persons under 18 years of age.

NB this list is not exclusive

Test purchasing exercises will be undertaken in a partnership arrangement between the Council's Trading Standards Service and South Durham Police. Sales of alcohol to or on behalf of persons under 18 years of age may result in a request to review a licence with a view to revocation.

In addition to the above, the operating schedule should also address issues of anti social behaviour that may give rise to crime and disorder and public nuisance. This is particularly the case in relation to gangs of youths congregating outside of premises. Measures such as CCTV provision, both inside and outside of the premises and additional lighting outside of the premises should be considered to address this problem.

GUIDANCE ISSUED UNDER SECTION 182 OF THE LICENSING ACT 2003

(REVISED JUNE 2013)

PURPOSE

- 1.7 The Guidance is provided to licensing authorities in relation to the carrying out of their functions. It also provides information to magistrates' courts hearing appeals against licensing decisions and has been made widely available for the benefit of operators of licensed premises, their legal advisers and the general public. It is a key mechanism for promoting best practice, ensuring consistent application of licensing powers across the country and for promoting fairness, equal treatment and proportionality.
- 1.8 The police remain key enforcers of licensing law. The Guidance has no binding effect on police officers who, within the terms of their force orders and the law, remain operationally independent. However, the Guidance is provided to support and assist police officers in interpreting and implementing the 2003 Act in the promotion of the four licensing objectives.

LEGAL STATUS

- 1.9 Section 4 of the 2003 Act provides that in carrying out its functions a licensing authority must "have regard" to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent. However, the guidance cannot anticipate every possible scenario or set of circumstances that may arise and as long as licensing authorities have properly understood the Guidance they may depart from it if they have reason to do so as long as they are able to provide full reasons. Departure from the guidance could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.
- 1.10 Nothing in this Guidance should be taken as indicating that any requirement of licensing law or any other law may be overridden (including the obligations placed on any public authorities under human rights legislation). This Guidance does not in any way replace the statutory provisions of the 2003 Act or add to its scope and licensing authorities should note that interpretation of the 2003 Act is a matter for the courts. Licensing authorities and others using this Guidance must take their own professional and legal advice about its implementation.

GENERAL PRINCIPLES

- 1.15 If an application for a premises licence or club premises certificate has been made lawfully and there have been no representations from responsible authorities or other persons, the licensing authority must grant the application, subject only to conditions that are consistent with the operating schedule and relevant mandatory conditions. It is recommended that licence applicants contact responsible authorities when preparing their operating schedules.

LICENCE CONDITIONS – GENERAL PRINCIPLES

- 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as “must”, “shall” and “will”, is encouraged. Licence conditions:
- must be appropriate for the promotion of the licensing objectives;
 - must be precise and enforceable;
 - must be unambiguous and clear in what they intend to achieve;
 - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
 - must be tailored to the individual type, location and characteristics of the premises and events concerned;
 - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
 - should not replicate offences set out in the 2003 Act or other legislation;
 - should be proportionate, justifiable and be capable of being met, (for example, whilst beer glasses may be available in toughened glass, wine glasses may not);
 - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and
 - should be written in a prescriptive format.

Each application on its own merits

- 1.17 Each application must be considered on its own merits and in accordance with the licensing authority’s statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.
- 1.19 Whilst licence conditions should not duplicate other statutory provisions, licensing authorities and licensees should be mindful of requirements and responsibilities placed on them by other legislation.

CRIME AND DISORDER

- 2.3 Conditions should be targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

- 2.6 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. The designated premises supervisor is the key person who will usually be responsible for the day-to-day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.
- 2.7 It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. However, licensing authorities must ensure that they do not stray outside their powers and duties under the 2003 Act. This is important to ensure the portability of the personal licence and the offences set out in the 2003 Act and to ensure, for example, that the prevention of disorder is in sharp focus for all managers, licence holders and clubs.

APPLICATIONS FOR PREMISES LICENCES

RESPONSIBLE AUTHORITIES

- 8.6 “Responsible Authorities”— are public bodies that must be fully notified of applications and that are entitled to make representations to the licensing authority in relation to the application for the grant, variation or review of a premises licence. These representations must still be considered ‘relevant’ by the licensing authority and relate to one or more of the licensing objectives.

OTHER PERSONS

- 8.12 As well as responsible authorities, any other person can play a role in a number of licensing processes under the 2003 Act. This includes any individual, body or business entitled to make representations to licensing authorities in relation to applications for the grant, variation, minor variation or review of premises licences and club premises certificates, regardless of their geographic proximity to the premises. In addition, these persons may themselves seek a review of a premises licence. Any representations made by these persons must be ‘relevant’, in that the representation relates to one or more of the licensing objectives. It must also not be considered by the licensing authority to be frivolous or vexatious. In the case of applications for reviews, there is an additional requirement that the grounds for the review should not be considered by the licensing authority to be repetitious. Chapter 9 of this guidance (paragraphs 9.4 to 9.10) provides more detail on the definition of relevant, frivolous, vexatious and repetitious representations.
- 8.13 Whilst any of these persons may act in their own right, they may also request that a representative makes the representation to the licensing authority on their behalf. A representative may include a legal representative, a friend, a Member of Parliament, a Member of the Welsh Government, or a local ward or parish councillor who can all act in such a capacity.

WHERE REPRESENTATIONS ARE MADE

9.3 Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant, (see paragraphs 9.4 to 9.10 below) the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious (see paragraphs 9.4 to 9.10 below). Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

9.4 A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessperson about the commercial damage caused by competition from new licensed premises would not be relevant. On the other hand, a representation by a businessperson that nuisance caused by new premises would deter customers from entering the local area, and the steps proposed by the applicant to prevent that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at premises to support their representations, and in fact this would not be possible for new premises.

9.5 It is for the licensing authority to determine whether a representation (other than a representation from responsible authority) is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. A representation may be considered to be vexatious if it appears to be intended to cause aggravation or annoyance, whether to a competitor or other person, without reasonable cause or justification. Vexatious circumstances may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Licensing authorities can consider the main effect of the representation, and whether any inconvenience or expense caused by it could reasonably be considered to be proportionate.

9.6 Frivolous representations would be essentially categorised by a lack of seriousness. Frivolous representations would concern issues which, at most, are minor and in relation to which no remedial steps would be warranted or proportionate.

9.7 Any person who is aggrieved by a rejection of their representations on either of these grounds may lodge a complaint through the local authority's corporate complaints procedure. A person may also challenge the authority's decision by way of judicial review.

9.8 Licensing authorities should not take decisions about whether representations are frivolous, vexatious or relevant to the licensing objectives on the basis of any political judgement. This may be difficult for councillors who receive complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the sub-committee before any decision is taken that necessitates a hearing. Any councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.

- 9.9 It is recommended that, in borderline cases, the benefit of the doubt about any aspect of a representation should be given to the person making that representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it.
- 9.10 Licensing authorities should consider providing advice on their websites about how any person can make representations to them.

DISCLOSURE OF PERSONAL DETAILS OF PERSONS MAKING REPRESENTATIONS

- 9.22 Where a notice of a hearing is given to an applicant, the licensing authority is required under the Licensing Act 2003 (Hearings) Regulations 2005 to provide the applicant with copies of the relevant representations that have been made.
- 9.23 In exceptional circumstances, persons making representations to the licensing authority may be reluctant to do so because of fears of intimidation or violence if their personal details, such as name and address, are divulged to the applicant.
- 9.24 Where licensing authorities consider that the person has a genuine and well-founded fear of intimidation and may be deterred from making a representation on this basis, they may wish to consider alternative approaches.
- 9.25 For instance, they could advise the persons to provide the relevant responsible authority with details of how they consider that the licensing objectives are being undermined so that the responsible authority can make representations if appropriate and justified.
- 9.26 The licensing authority may also decide to withhold some or all of the person's personal details from the applicant, giving only minimal details (such as street name or general location within a street). However, withholding such details should only be considered where the circumstances justify such action

CONDITIONS

- 10.2 Conditions include any limitations or restrictions attached to a licence or certificate and essentially are the steps or actions that the holder of the premises licence or the club premises certificate will be required to take or refrain from taking in relation to the carrying on of licensable activities at the premises in question. Failure to comply with any condition attached to a licence or certificate is a criminal offence, which on conviction is punishable by a fine of up to £20,000 or up to six months imprisonment. The courts have made clear that it is particularly important that conditions which are imprecise or difficult for a licence holder to observe should be avoided.
- 10.3 There are three types of condition that may be attached to a licence or certificate: proposed, imposed and mandatory. Each of these categories is described in more detail below.

PROPOSED CONDITIONS

- 10.4 The conditions that are appropriate for the promotion of the licensing objectives should emerge initially from the risk assessment carried out by a prospective licence or certificate holder, which they should carry out before making their application for a

premises licence or club premises certificate. This would be translated into the steps recorded in the operating schedule or club operating schedule, which must also set out the proposed hours during which licensable activities will be conducted and any other hours during which the premises will be open to the public.

- 10.5 It is not acceptable for licensing authorities to simply replicate the wording from an applicant's operating schedule. A condition should be interpreted in accordance with the applicant's intention.

CONSISTENCY WITH STEPS DESCRIBED IN OPERATING SCHEDULE

- 10.6 The 2003 Act provides that where an operating schedule or club operating schedule has been submitted with an application and there have been no relevant representations made by responsible authorities or any other person, the licence or certificate must be granted subject only to such conditions as are consistent with the schedule accompanying the application and any mandatory conditions required under the 2003 Act.
- 10.7 Consistency means that the effect of the condition should be substantially the same as that intended by the terms of the operating schedule. If conditions are broken, this may lead to a criminal prosecution or an application for a review and it is extremely important therefore that they should be expressed on the licence or certificate in unequivocal and unambiguous terms. The duty imposed by conditions on the licence holder or club must be clear to the licence holder, club, enforcement officers and the courts

IMPOSED CONDITIONS

- 10.8 The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.
- 10.9 It is possible that, in certain cases, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions are appropriate to promote the licensing objectives.

PROPORTIONALITY

- 10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

HOURS OF TRADING

- 10.11 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.
- 10.12 Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.
- 10.13 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

REVIEWS ARISING IN CONNECTION WITH CRIME

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises; money laundering by criminal gangs, the sale of contraband or stolen goods, or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual licence holder

11.27 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 and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for knowingly employing a person who is unlawfully in the UK or who cannot lawfully be employed as a result of a condition on that person's leave to enter;
- for unlawful gambling; and
- for the sale of smuggled tobacco and alcohol

11.28 It is envisaged that licensing authorities, the police 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.

**LICENSING ACT 2003
NOTIFICATION OF HEARING
(Regulations 6 and 7)**

Date of Notification: 12 March 2014

Type of Hearing: Application for Premises Licence

Premises: Darlington Supermarket
35 Bondgate
Darlington,
DL3 7JJ

Hearing Details: 09.30 am Thursday 27 March 2014

Location: Darlington Borough Council,
Town Hall,
Darlington,
DL1 5QT

Copy of notice sent to: A A Khedir (Applicant)
Licensed – Inn – Tuition (Applicant's agent)
N Green (Responsible Authority –Trading Standards)

Attendance: All parties may attend this hearing. You may find it useful to be accompanied by your legal representative(s) or any other person who may be able to assist you. Please complete the attached form at **Appendix 2A** and return to the Licensing Section **no later than 12 noon on Wednesday 19 March 2014**

Non-attendance: If you notify the Licensing Authority that you will not be attending this hearing and that you will not be legally represented in your absence, the hearing may proceed in your absence. If you do not notify your non-attendance and then do not attend this hearing the Licensing Sub Committee will decide whether it is in the public interest to adjourn the hearing to enable you to attend or whether to hold the hearing in your absence. If the hearing does proceed in your absence your representations will still be considered.

Procedure at the Hearing: You will find attached, at **Appendix 2B**, the procedure that will be followed at the Hearing. The Hearing will take place in public unless it is deemed in the public interest to exclude the public or any party to the Hearing from all or part of the Hearing. If a party is excluded from the Hearing (s)he will be able to provide written information to cover any verbal representations (s)he may have made if (s)he had not been so excluded. The Hearing will take the form of a discussion and each party will be permitted an equal period of time to provide information, make comment and express their views.

Withdrawal of Representations: Anyone wishing to withdraw representations should do so as soon as possible. Although this can be done at the Hearing, you are requested, where possible, to give at least 24 hours notice as it may no longer be necessary for the Hearing to proceed.

Outcome of Hearing: A decision will be made at the end of the hearing, although this may take some time.

Points for Clarification: The Licensing Authority considers that the following matters will need to be clarified by **the Applicant** at the Hearing:

- Details of Mr Khedir's role within the premises i.e. how long he has been involved in the premises and whether he is the owner, the manager or another employee.
- Details of any measures that will be taken to discourage the consumption of alcohol outside of the premises.
- Details of any measures that will be taken to ensure that only legitimate goods are available for sale within the store.

The Licensing Authority considers that the following matters will need to be clarified by **Trading Standards** at the Hearing:

- to update the Sub Committee in respect of any action taken against the Applicant



Licensing
The Town Hall
Feethams
Darlington
DL1 5QT
Tel: 01325 388799
Fax: 01325 388555
Email: licensing@darlington.gov.uk

NOTICE OF ATTENDANCE

Please complete the following notice in block capitals and return to the address detailed below:

DATE OF HEARING: 09.30 am Thursday 27 March 2014

NAME OF PREMISES: Darlington Supermarket
35 Bondgate
Darlington
DL3 7JJ

YOUR NAME:

I WILL*/ WILL NOT* BE ATTENDING THE HEARING

I WILL*/ WILL NOT* BE LEGALLY REPRESENTED

NAME OF LEGAL REPRESENTATIVE (IF APPROPRIATE):

.....

I DO*/ DO NOT* CONSIDER A HEARING TO BE NECESSARY

(*delete as appropriate)

If you wish to be accompanied by any other person please provide details of their name and an outline of what they wish to say and how this will assist you:

Name:

Details:

.....

Please return to: Mrs P Ross
Licensing, Parking, TS & CCTV Manager
Darlington Borough Council
Town Hall
Feethams
DARLINGTON DL1 5QT

LICENSING SUB COMMITTEES

FULL HEARING PROCEDURE FOR APPLICATIONS FOR PREMISES LICENCES/CLUB PREMISES CERTIFICATES WHERE RELEVANT REPRESENTATIONS HAVE BEEN RECEIVED

1. The Chair will welcome all parties who are present and introduce the Members. The Chair will explain to the parties at the beginning of a hearing the procedure that it is proposed to follow. The hearing will take the form of a discussion. Cross-examination will not be permitted without the consent of the Chair.

Any Members who know the Applicant or any of the objectors will declare this fact and not take part in the hearing of the application. This is in addition to the declaration of any personal or prejudicial interest.

(NB The Secretariat will endeavour to ensure that Ward Members and Members that are personally known to the Applicant are not included on the Sub Committee).

All hearings will usually be in public. The Sub-Committee may, however, exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, or that part of the hearing, taking place in public.

The Licensing Manager will outline the application.

2. The Representor's Case

NB: Where representations come from "Other Persons", i.e. local residents or businesses or representatives of such groups, the Sub-Committee will expect that wherever possible a spokesperson be elected to speak on behalf of the group. This person will make the application. At the conclusion of the application the Chair will ask the group if there is any information which is additional to the application made by the spokesperson and if so will permit this information to be given.

- [1] The Representor or his/her representative will give their reasons for objecting to the application.
- [2] The Representor or his/her representative will then call any witnesses and/or give reasons for his/her objection.
- [3] The Applicant or his/her representative may then question the Representor [if he/she has given evidence] and any witnesses.
- [4] The Chair or any member of the Licensing Sub Committee, through the Chair, may ask questions of the Objector and any witnesses.

If several objections have been received and the Representors have not agreed to present their objection jointly, this procedure will normally be repeated for each individual Representor

3. **The Applicant's Case**

- [1] The Applicant or his/her representative presents his/her application for a licence
 - [2] The Applicant or his/her representative will then call any witnesses and/or give evidence in support of his/her application.
 - [3] The Representors may then question the Applicant if he/she has given evidence and any witnesses.
 - [4] The Chair or any Member of the Licensing Sub-Committee through the Chair will ask questions of the Applicant and any witnesses.
 - [5] The Applicant or his/her representative will then be given a final opportunity of asking any further questions of any witnesses to clear up any points raised in the earlier questioning.
4. The Applicant will be asked by the Chair of the Sub-Committee whether, in the light of the information heard in relation to the application, (s)he wishes to amend the application, as when they retire, Members will consider only the information before them at that time.

If the Applicant wishes to amend the application or indicates that (s)he is prepared for Members to consider an amended application if they are minded to refuse the original application, the Objectors will be given the opportunity to comment on the amended application.

5. **Closing Statement or Summary**

- [1] **By or on behalf of the Representors** - The Representors may summarise any points they wish to make and comment briefly on the Applicant's replies to questions. They cannot introduce new issues.
- [2] **By or on behalf of the Applicant** - The Applicant will be invited to summarise any points they wish to make and comment briefly on the Representors' replies to questions. They cannot introduce new issues.

6. **Conclusion**

ALL DECISIONS WILL BE MADE IN PRIVATE

If Members, when considering the application, are minded to grant on a different basis than that requested, the Applicant, the Responsible Authorities and Other Persons will be asked for their views, which will be taken into consideration.

The Legal Officer will repeat, in summary form, any legal advice given to Members when the public is re-admitted.

If the Licensing Sub-Committee has excluded the public, once a decision has been reached the press and public will be re-admitted to the meeting together with the Applicant, Responsible Authorities and Other Persons. At this stage, the Chair will announce the Sub-Committee's decision, will give reasons for the decision and advise all parties of rights of appeal. The decision will subsequently be formally notified to the Applicant(s), Responsible Authorities and Other Persons in writing, including their rights of appeal as soon as possible after the Hearing.