



WBC Licensing and Control Committee 'B'

Date: 6 November 2013

Time: 6.00 pm

Venue: Gordon Room, Town Hall, Chapel Road, Worthing

Councillors John Rogers (Chair), Vicky Vauhan (Vice-Chair), Noel Atkins, Roy Barraclough, Keith Bickers, Christine Brown, David Chapman, Norah Fisher, Paul Howard, Diane Jones, Roger Oakley, David Potter, Val Turner, Nicky Waight, Vic Walker

Agenda

Part A

1. Declarations of Interest

Members and Officers are invited to make any declarations of disclosable pecuniary interests that they may have in relation to any items on this Agenda. The declaration should refer both to the nature of the interest as well as its existence.

Members and Officers may seek advice upon any relevant interest from a Legal Officer prior to the meeting.

2. Public Question Time

To receive any questions from Members of the public in accordance with Standing Order 3.12.

(**Note:** Public Question Time will last for a maximum of 15 minutes)

3. Items Raised Under Urgency Provisions

To consider any items the Chairman of the meeting considers to be urgent.

4. Licensing Act 2003 - Application for a Review of a Premises Licence under Section 51

Premises - 'Premier Supermarket Express' - 4-6 South Street, Tarring, Worthing BN14 7LH

To consider a report by the Executive Head of Housing, Health and Community Safety, copy attached as item 4

Part B - Not for Publication – Exempt Information Reports

None

For Democratic Services enquiries relating to this meeting please contact:

Chris Cadman-Dando
Democratic Services Officer
01903 221 364
chris.cadman-dando@adur-worthing.gov.uk

For Legal Services enquiries relating to this meeting please contact:

Caroline Perry
Solicitor
01903 221086
caroline.perry@adur-worthing.gov.uk

Licensing Act 2003
Application for a Review of a Premises Licence under Section 51

‘Premier Supermarket Express’
4-6 South Street, Tarring, Worthing BN14 7LH

Report by the Executive Head of Housing, Health & Community Safety

1. Recommendation

- 1.1** That the full Licensing & Control Committee “B” consider and determine the application from
West Sussex County Council Trading Standards Service
for a ‘Review’ of Premises Licence No. LN/000001461 which authorises the sale of alcohol, for consumption off the premises, at the above store.

2. Reasons for the Hearing

- 2.1** An application for the Review of the above Premises Licence held by
Mr Hassan Radwan El Samad
on the grocery store & off licence known as ‘Premier Supermarket Express’ has been received from Philip Lipscomb, Operations Manager, on behalf of West Sussex County Council Trading Standards Service - a Responsible Authority as defined in the Act..
- 2.2** Worthing Borough Council is the Licensing Authority that granted the above licence and it therefore falls to members to determine this application.

3. Background

- 3.1** Mr Lipscomb made application for review to Worthing Borough Council on 10 September 2013.
- 3.2** Mr Hassan El Samad is the holder of the premises licence and has held it since February 2009. He is also currently named on the licence as the Designated Premises Supervisor. He holds a Personal Licence issued by Arun District Council.
- 3.3** West Sussex County Council Trading Standards Service has applied to Worthing Borough Council on a previous occasion for a Review of this Premises Licence - on

the 10 February 2012. The application was made on the grounds that the licensing objectives:

- The prevention of crime & disorder
- Public Safety

had been seriously undermined by the carrying on of licensable activities at this premise. The application included evidence that counterfeit alcohol had been offered for sale at the store. A hearing by this committee, on 2 April 2012, imposed a three month licence suspension and additional conditions to the licence. The authority's decision was upheld, but the suspension was reduced to 2 months, on appeal to the magistrates' court.

- 3.4 Mr Hassan El Samad is seeking to transfer the premises licence and the DPS duties to his brother Mr Fakher El Samad and these applications have been duly made and were due to be heard on 24 October. However, the hearing was deferred at the request of Mr El Samad until such time as this matter has been dealt with.
- 3.5 A plan of the area is attached. (Appendix A)
- 3.6 A plan of the store is attached. (Appendix B)
- 3.7 The application is for a review of the licence due to representations made regarding the following licensing objective:
- Prevention of Crime & Disorder
 - Protection of Children from Harm
- (Appendix C)
- 3.8 The current Premises Licence allows:
- a) Sale of alcohol between:
- 07.00hrs and 23.00 Monday to Saturday
08.00hrs and 22.00hrs Sunday
- b) Hours the premise can open to the public:
- 07.00hrs and 23.00 Monday to Saturday
08.00hrs and 22.00hrs Sunday
- (Appendix D)
- 3.9 A copy of the mediated agreement reached between applicant and licence holder is attached. (Appendix E)

4. The Application

- 4.1 The Application for Review is attached at **Appendix C**.
- 4.2 The application is made on behalf of West Sussex Trading Standards Service, a responsible authority as defined in Section 13 of the Act, and includes detailed information supporting their case that the licence holder is undermining the Licensing Objectives:
- Prevention of Crime & Disorder
 - Protection of Children from Harm

by selling tobacco to a person under 18 years of age in contravention of the Children & Young Persons Act 1933 (amended) and issues/offences under the Food Labelling Regulations 1996 and Trade Marks Act 1994.

- 4.3 The application requests members consider:
- Suspension of the licence and/or
 - Imposition of a number of specific conditions to the premises licence.

5. Promotion of the Licensing Objectives

- 5.1 The Licensing Act 2003 and its regulations require that the Council, as local licensing authority, carries 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.

According to the Home Office Guidance each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.

- 5.2 In carrying out its licensing functions, the licensing authority must also have regard to the aforementioned Guidance issued by the Home Secretary and its own Statement of Licensing Policy. Members are advised that the following sections of the Worthing Borough Council's Policy may be particularly relevant to consideration of this matter, though of course the Policy in its entirety must be considered. Sections indicated relate to paragraph numbers in the Policy itself:

Prevention of crime and disorder

- 4.2 *The Council places huge importance on the prevention of crime and disorder. A high standard of control is, therefore, expected to be exercised over licensed premises.*
- 4.3 *In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself, the Guidance issued under section 182 to the Act and this policy. The Council will give "due regard" to all possible implications and its Licensing & Control Committee will always consider all the information available and relevant representations made, including those from interested parties and the responsible authorities, particularly the Police.*

Protection of Children from Harm

- 4.28 *It is an offence to sell alcohol to an individual aged under 18. Licence holders are required to consider carefully ways to ensure that the sale of alcohol is restricted to those over the age of 18. Popular schemes include the 'Challenge 25 scheme' whereby if the individual looks under 25; they are required to prove that they are over the age of 18 when buying alcohol or tobacco. Acceptable forms of proof are: a photo card driver's*

licence, passport or PASS. PASS is the national guarantee scheme for proof-of-age, which is fully supported by the Home Office. Applicants are encouraged to introduce such schemes and detail them in operating schedules. The council may impose conditions requiring such schemes if relevant representation is received. Special care should be exercised and the licensed trade should be alert to counterfeit IDs and their fraudulent use.

Off sales of alcohol – Stores & Supermarkets

- 7.1 *The Home Office Guidance to the Act recommends that shops, stores and supermarkets selling alcohol should generally be permitted to match the hours during which they may sell alcohol with their normal trading hours, unless there are exceptional reasons related to the licensing objectives, in particular ‘the prevention of crime and disorder’ and ‘the prevention of public nuisance’.*
- 7.4 *Selling alcohol to a person who is drunk or to a person who is under the age of 18 are both offences under the Licensing Act. The council recognises that the vast majority of licensees are very aware of their responsibilities and the duty of care they have selling alcohol to the public. However, the council takes both these issues extremely seriously.*
- 7.5 *The Council considers it vital that licence holders provide formal and effective training to all staff involved in the sale of alcohol to recognise members of the public who are drunk or underage and give their staff the ability and confidence to refuse service. The council will expect operating schedules to demonstrate that the licence holder has considered such matters and addressed them as far as possible and that formal training records are kept on the premise and are to be made available for inspection by Police and/or Licensing Unit officers on request.*
- 7.6 *Over recent years problems associated with street drinking have been experienced across the borough but particularly in the town centre, on the promenade, the beach and Worthing’s public parks & gardens. While there are some areas with recurring problems with regard to street drinking groups they also crop up in different areas at different times. These individuals and the shops that supply them can be a focus of antisocial behaviour, disorder and disturbance. The supply of alcohol to individuals involved in the day-long consumption of alcohol on the street and in open spaces can directly lead to these groups of drinkers causing various types of crime, public nuisance and anti-social behaviour.*
- 7.11 *When requested by the police, or other authorities, the Licensing Authority may impose on new applications, or on existing licences at review, conditions requiring:*
- *No sales of alcoholic beverages over a specified limit of alcohol by volume or of specified quantities (e.g. of beers, lagers and ciders over 6.0% alcoholic content by volume).*
 - *No sales of single cans or bottles of beer, lager and cider in containers containing less than 500ml.*
 - *No sales of miniature bottles of wine or spirit in units of less than 35cl.*
 - *Other conditions may be imposed directed at reducing problematic street drinking.*
 - *Conditions stopping irresponsible drink promotions that do not follow best practice, that would appeal to underage drinkers or street drinkers or encourage excessive consumption.*
 - *Conditions relating to the positioning of alcohol within the shop and the types of displays of alcohol within the store. Particularly those displays that might appeal to younger consumers.*

- 7.12 *From October 2010 it became a mandatory condition that all licence holders selling alcohol put in place an age verification policy for the premises. In some circumstances the Council will impose, where necessary to promote the licensing objectives, implicit conditions on the checking of the age of those who appear under 21 or 25 to ensure that alcohol is not sold to those under 18 years of age.*
- 7.13 *Licence holders need to have sufficient day to day control of operations at their premise. They will be held responsible for breaches of the licence and ensuring there is adequate staffing and training. The authorities will continue to use young people for the 'test purchasing' of alcohol and CCTV evidence, which has proved its usefulness in prosecutions for unlawful sales of alcohol. The likely consequences of a review of licence for underage sales include the imposition of additional conditions such as the attendance of a personal licence holder, licence suspensions and in some cases revocation to act as deterrence.*

Enforcement

- 9.1 *Once licensed, it is essential premises are maintained and operated so as to ensure the continued promotion of the licensing objectives and compliance with the specific requirements of the 2003 Act and the Council will make arrangements to monitor premises.*

Reviews

- 10.9 *The 2003 Act provides a clear focus on the promotion of the four statutory licensing objectives which must be addressed when licensing functions are undertaken. The Act provides tough powers, in the form of the review procedure, to enable licensing authorities to bring the minority of badly managed premises, which are failing to promote the licensing objectives, into line with the best.*
- 10.11 *When considering an application for a Review the priority of the Licensing Authority will be to establish the cause or causes of the concerns and failures and to take necessary and proportionate remedial action.*
- 10.12 *However, when considering applications for Review arising in connection with crime (this includes underage alcohol sales) deterrence is an appropriate objective. Whilst punishment may not strictly be a valid tool on an application for Review in cases where there has been activity in connection with crime, deterrence can be. The Licensing Authority will not confine its decision simply to considerations of remedying. To simply re-emphasise conditions which clearly have not been adhered to in the past will not in most cases prevent further breaches of the law in the future and consequently would not promote the Licensing Objectives.*

6. Consultation

- 6.1 The application has been subject to the statutory consultation and statutory public advertisement arrangements in accordance with the provisions of the Act, in respect of which representations have been received from the following:
- Members of the public – None
 - Responsible Authorities – None

7. Relevant Representations

- 7.1 As a result of consultation the application received no further representations to add to the Trading Standard Service's application.

8. Mediation

- 8.1 As part of the review process the Licensing Act encourages, where possible, mediation.
- 8.2 Mediation between West Sussex Trading Standards Service and the licence holder, Mr Hassan El Samar, has taken place and been successful. An agreement has been reached between the parties.
- 8.3 The agreement proposes that the following would be appropriate measures to promote the licensing objectives and invite members to impose these as enforceable conditions of licence:
- The premises licence should be suspended for a period of 3 weeks.
 - Mr Hassan El Samar should be removed as DPS.
 - A "Challenge 25" policy will be introduced and operated at the store whereby any person attempting to buy alcohol or other age restricted products who appears to be under 25 will be asked for photographic ID to prove their age. The only form of ID that will be accepted are passports, driving licences with a photograph or Portman Group, Citizen card or validate proof of age cards bearing the "PASS" mark hologram. Suitable and sufficient signage advertising the "Challenge 25" policy will be displayed in prominent locations in the premise.
 - All staff members engaged, or to be engaged, in selling alcohol or other restricted products on the premise shall receive full training pertinent to the Licensing Act and other appropriate legislation, specifically in regard age-restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs.
 - Induction training must be completed, and fully documented, prior to the sale of alcohol and other age restricted products by the staff member and refresher training thereafter at intervals of no less than six months. Written records of all restricted sales training and refresher training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to the Sussex Police, Licensing Authority and Trading Standards officers upon request.
 - The store shall at all times maintain and operate a sales refusals book and an incident log which may be electronically recorded, and shall be kept on the premise to record all refusals and incidents of crime or disorder. The DPS shall review the logs regularly. These records will be made available to

Sussex Police, Licensing Authority and Trading Standards officers upon request.

- A suitable till prompt is introduced to remind staff to check and confirm that the customer is over 18 before selling alcohol or any other age restricted product. In the absence of this facility a sticker on the front of the till reminding all staff that ID must be asked for if customers are buying age related products.
- Details of the legal entity are to be clearly displayed in a prominent position and kept up to date.
- All food products sold within the store, including all alcohol, must have full labelling as required by the relevant legislation.

8.4 Mr El Samad has requested that if members are of a mind to impose the mediated agreement that the period of suspension does not take place during the festive period as this would significantly affect the business and even endanger its viability. He has requested that members consider imposing the suspension sometime in the New Year.

8.5 Trading Standards have not expressed opposition to the proposal but feel it should be left to the committee's discretion.

9. Consideration

9.1 The legislation provides a clear focus on the promotion of four statutory objectives, listed at 5.1 above, which must be addressed when licensing functions are undertaken. Each objective is of equal importance and it is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times.

9.2 But members should note that the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- *Necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment;*
- *Introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers' expectations;*
- *Greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
- *Encouragement of more family friendly premises where younger children can be free to go with the family;*
- *Further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;*
- *Regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.*

9.3 When determining this application members need to carefully consider the following:

- The four statutory licensing objectives
- Worthing Borough Council's 'Statement of Licensing Policy'
- 'Guidance issued under Section 182' by the Home Secretary
- The application, relevant representations, the testimony of the parties and the mediated agreement reached.

9.4 These are the only matters to be addressed by the authority when considering this review application. The statutory licensing objectives are the only grounds on which representations can be made, and the only grounds on which an authority will be able to refuse an application, suspend or revoke a licence or impose conditions.

9.5 When considering an application for a review, pursuant to s51 of the Act, the following options are available to the Committee to ensure promotion of the Licensing Objectives:

- Take no action.
- Issue an informal warning to the licence holder and/or recommend improvement within a particular period of time.
- Modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition).
- Exclude a licensable activity from the scope of the licence.
- Remove the designated premises supervisor because they consider the problems are the result of poor management.
- Suspend the licence for a period not exceeding three months
- Revoke the licence.

9.6 In this case particularly consideration should be given to the agreement arrived at between the applicant and licence holder (see paragraphs 8.3 – 8.5). Members should satisfy themselves that if the measures and conditions proposed by the parties were imposed on the licence they would allow the Licensing Objectives to be met and act as a suitable deterrent.

9.7 If members are satisfied then it is recommended that the measures and conditions are noted and imposed on this Premises Licence. If, however, members are not satisfied and of a mind to impose a different decision then the importance of paragraph 9.10 of this report must be emphasised in that the committee must give clear and precise reasons for their decision so that it can be defended in a court of law if necessary.

9.8 In determining an application for a review the following sections of the Home Secretary's **Guidance issued under section 182 of the Licensing Act 2003** (Amended – June 2013) should be taken into account,

Powers of a licensing authority on the determination of a review

11.16 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence

holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

- 11.18 *However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.*
- 11.19 *Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:*
- modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;*
 - exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);*
 - remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;*
 - suspend the licence for a period not exceeding three months;*
 - revoke the licence.*
- 11.20 *In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.*
- 11.21 *For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.*
- 11.22 *Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.*
- 11.23 *Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems*

at the premises and, where other measures are deemed insufficient, to revoke the licence

9.9 Members should also have regard to relevant case law - Crown (Bassetlaw District Council) v Worksop Magistrates' Court – 2008

The judgment by Mrs Justice Slade in the High Court in a Judicial Review applied for by Bassetlaw District Council regarding a judgement of a District Judge sitting at Worksop Magistrates' Court in respect of a Licensing Act Appeal for Select & Save has established a number of principles.

1. *The general approach of Licensing Authorities on a Review is to establish the cause or causes of the concerns and to take remedial action which is necessary and proportionate.*
2. *However, when considering Reviews arising in connection with crime (and underage sales are included) deterrence is an appropriate objective and one contemplated by the Secretary of State in the Guidance.*
3. *Whilst punishment may strictly not be a valid tool on a Review, in Reviews where there has been activity in connection with crime, deterrence could be.*
4. *The Licensing Authority and courts should not confine their decision simply to considerations of remedying. Deterrence should be considered.*
5. *To simply re-emphasis conditions which clearly haven't been adhered to in the past is not going to prevent further underage sales in the future, and therefore will not promote the Licensing Objectives.*

9.10 In all cases members are required to give reasons for their decision.

10. Legal Implications

10.1 Under Section 181 and Schedule 5 of the Act, rights of appeal to the Magistrates' Court in respect of applications for review of an existing licence include:

- (1) The applicant or licence holder may appeal against any decision to modify the conditions of the licence, suspend or revoke a licence.
- (2) The applicant may appeal against a rejection in whole or part of an application to review.
- (3) Those that have made relevant representations may appeal against a review being granted, rejected, or against the modification or lack of modification of any conditions.

10.2 The Act allows for the local licensing authority to undertake a review following the grant of a premises licence, when requested to do so by a responsible authority, such as the police or the fire authority, or an interested party, such as a resident living in the vicinity of the premises. The government's guidance states:

"The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with licensing objectives are occurring after the grant or variation of a premises licence".

"At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the licensing authority to review the

licence because of a matter arising at the premises in connection with any of the four licensing objectives”.

- 10.3 In determining this application, the principles of the Human Rights Act 1998 must be taken into consideration and the convention rights of both individuals and businesses will be given due weight.
- 10.4 Members must consider each application on its own merits, and in accordance with the principles of natural justice as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 10.5 All applications before Committee must be considered against the backdrop of anti-discriminatory legislation, such as the Equality Act 2010 and also in accordance with the Council's stated policy on Equal Opportunities.
- 10.6 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from the public and the responsible authorities particularly the Police.

11. Other Implications

- 11.1 Any decision taken will have regard for the local environment and, in particular, any conditions attached for the purposes of preventing public nuisance will take this principle into account. There are no significant direct race relations or equal opportunity implications that have been identified.

12. Recommendation

- 12.1 **Members are requested to determine the application by West Sussex County Council Trading Standards Service for a Review of the Premises Licence, held by Mr Hassan El Samad at his store, 'Premier Supermarket Express' situated in South Street Tarring, Worthing. Members are requested to give reasons for their determination.**

Paul Spedding
Executive Head of Housing, Health and Community Safety

Principal Author and Contact Officer:

Simon Jones, Senior Licensing Officer
Telephone 01273 263191.

Background Papers:

- Licensing Act 2003
- Guidance issued under section 182 of the Licensing Act 2003 (October 2010)
<http://webarchive.nationalarchives.gov.uk/+http://www.homeoffice.gov.uk/publications/alcohol/guidance-section-182-licensing?view=Binary>
- Worthing Borough Council's Statement of Licensing Policy
<http://www.worthing.gov.uk/worthings-services/environmentalhealth/licensing/licensingact2003/wbcsstatementoflicensingpolicy/>

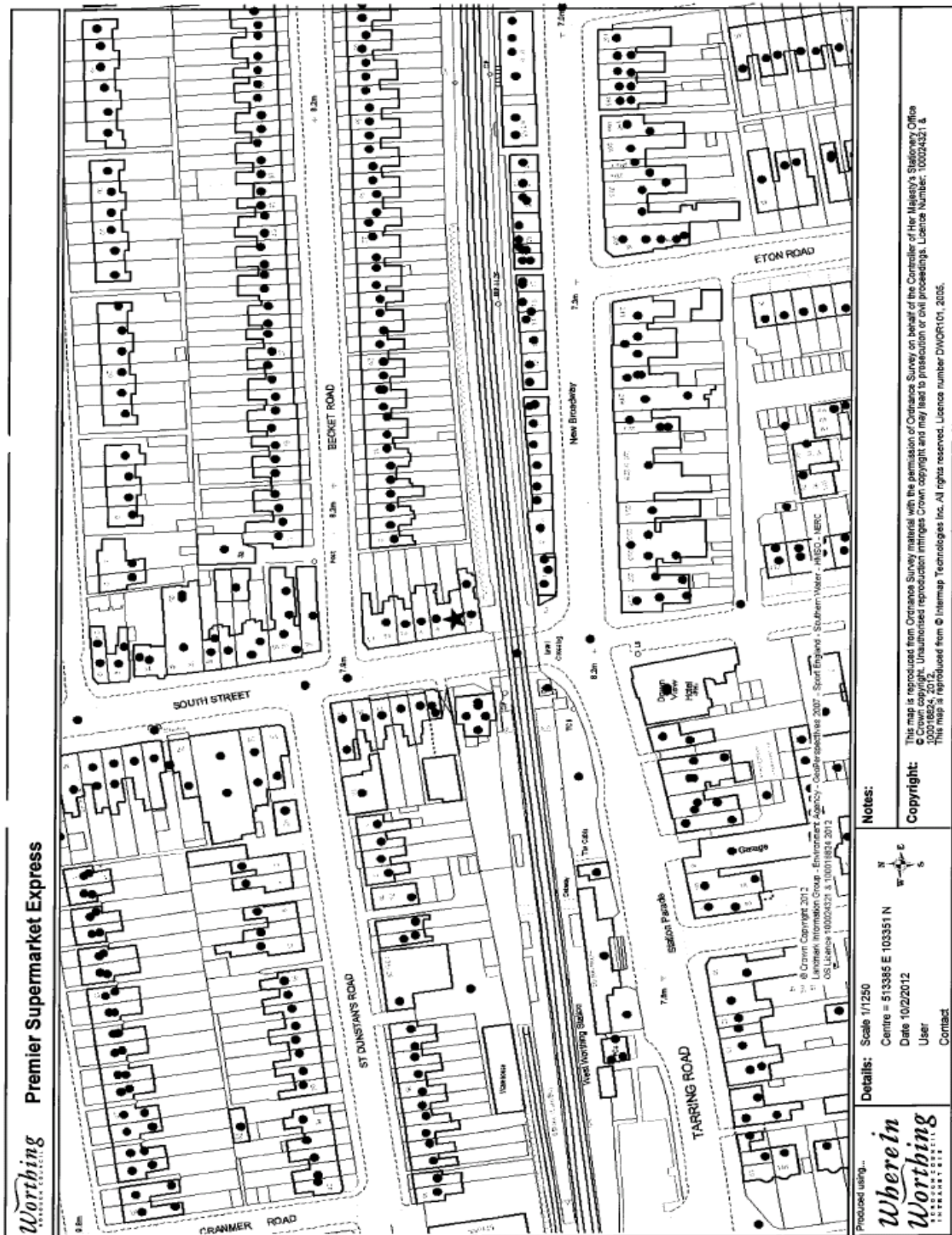
Appendices:

- Appendix A - A plan of the area.
- Appendix B - A plan of the store.
- Appendix C - A copy of the Review Application.
- Appendix D - A copy of the store's current Premises Licence.
- Appendix E - Copies of the mediation correspondents

The Licensing Unit, Commerce Way, Lancing

Ref: SJ/Lic.U/LA03/Review – Premier Supermarket Express.
Date: 25 October 2013.

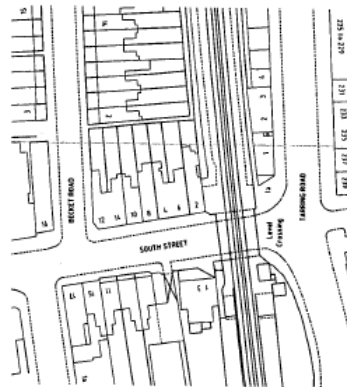
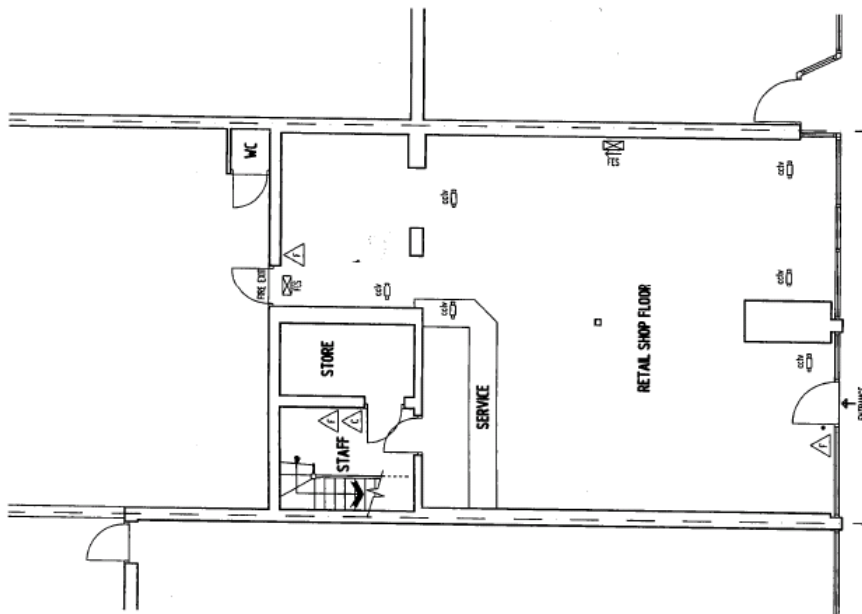
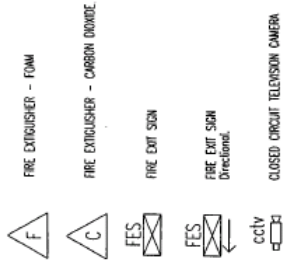
Appendix A - Plan of Area



Appendix B - Plan of Premises

the contractor should check all dimensions on site
no dimensions are to be scaled from this drawing
it is the contractors responsibility to ensure that all
works are in compliance with the building regulations

Legend



LOCATION PLAN (1/1250 scale)

creoscent designs architecture ainston house chesternfield road, goring-by-sea, worthing, west sussex, BN12 6BY TEL 01903 698290 FAX 01903 502334 <small>© Copyright Crescent Designs (Sussex) Ltd</small>	client RAJAH AJITHKUMAR	drawing no. 05077/01	revision
	project PREMIERE SUPERMARKET 4-6 SOUTH STREET TARRING LICENCE PLAN	scale 1/100	date NOV. 2005

Appendix C - Review Application

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 PHILIP LIPSCOMB, TRADING STANDARDS OPERATIONS MANAGER, WEST SUSSEX COUNTY COUNCIL TRADING STANDARDS SERVICE

(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 Premier Supermarket Express 4-6 South Street, West Tarring, Worthing, West Sussex	
Post town Worthing	Post code (if known) BN14 7LH

Name of premises licence holder or club holding club premises certificate (if known) Mr Hassan El Samad

Number of premises licence or club premises certificate (if known) [REDACTED]

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) ☒

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Mr Peter Aston Trading Standards Team Manager West Sussex County Council County Hall North Chart Way Horsham West Sussex RH12 1XH FOR & ON BEHALF OF THE APPLICANT:
Telephone number (if any) 0330 222 7661
E-mail address (optional)

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 checked="" type="checkbox"/> |

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

West Sussex County Council Trading Standards Service contends that the above licensing objective, the protection of children from harm and the prevention of crime and disorder has been seriously undermined by the carrying on of licensable activities at these premises. Full particulars in support of the application are to be found in the next section, but in summary the following issues/offences have been uncovered as a result of routine enforcement work:

Sale of a tobacco product to a person under 18 - non compliant with the Children and Young Persons Act 1933 (as amended).

Food Labelling Regulations 1996 - 80 Cans of beer on sale with no English Labelling which is a requirement of the Food Labelling Regulations 1996.

Trade Marks Act 1994 - 18 Bottles of Vodka which potentially have had a counterfeit customs stamp applied to the bottles.

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

On 18th February 2013, a 15 year old child, under instruction and supervision by this Service, visited Premier Supermarket Express, 4-6 South Street, Worthing. During that visit Mr Fakhar El Samad sold a pack of 10 Mayfair Cigarettes to this child. No questions were asked about the child's age and he did not ask the child for any identification to prove their age. A Trading Standards officer witnessed the sale.

The sale of cigarettes to a person under the age of 18 is a criminal offence under section 7 (1) of Children and Young Persons Act 1933 (as amended). The offence is punishable by way of a fine of up to £2,500.

An Officer within this service, Miss Laura Sanders has formally interviewed Mr Fakhar El Samad to ask him about this incident. Mr Fakhar goes by the name of Sam El Samad and he advised us at interview the legal entity of the store at the time of the incident was Samad Trading Ltd which his brother Mr Hassan El Samad was a joint director of with Mr Fakhar El Samad. Mr Fakhar El Samad advised us that his brother is the current Designated Premise Supervisor but he is away in Lebanon setting up a new business there and he will be out of the country for some time. Mr Fakhar has advised us that he is in process of taking over the store and that he will be applying to take over as the Designated Premise Supervisor.

Miss Laura Sanders has since found out that the legal entity in existence at the time of this incident was Hanin Trading Ltd of which Mr Fakhar El Samad is the only Director listed.

At the interview Mr Fakhar El Samad advised Miss Sanders that he is aware of the legislation in relation to cigarette and alcohol sales and that he knows that is an offence to sell cigarettes to anyone under the age of 18. Mr Fakhar El Samad advised Miss Sanders that he was provided training when he first started working at the shop by his brother and that he had written records to confirm this at the shop. The till prompts you to ask for identification and if a sale is refused then the till prints of a refusal slip. Mr Fakhar El Samad does not have a refusal log book because he he was told that having the till slips is sufficient and therefore he just keeps the slips instead.

Miss Sanders showed Mr Fakhar El Samad photographs of Child A, the child who purchased the cigarettes, at the interview and Mr Fakhar El Samad advised that she thought she looked 20/21 years of age but he accepts that he sold the cigarettes and he was sorry. Mr Fakhar El Samad further advised that in the 8 years of working at the store that he has never done this before. Mr Fakhar El Samad told Miss Sanders that he is now planning on adopting a 'Think 25' policy from now on.

Mr Fakhar El Samad has further advised that at the time he was the only person working at the store but that he has since taken on a new staff member and he has advised him on the legislation in relation to age restricted sales.

Mr Fakhar El Samad has provided Miss Sanders since the interview with a copy of the training record dated the 13th April 2009 and examples of the refusal slips that the till prints out.

Since this incident, on the 6th June 2013, Miss Laura Sanders has been back to the premise with a Sussex Police Licensing Officer, PC David Whitcombe, and her colleague, Mr Gavin Peard, after our Service received a complaint in relation to the store selling alcohol very cheaply. Miss Sanders did find 80 cans of foreign labelled beer which had no English labelling on, on sale at the premise which she got Mr

Fakhar El Samad to remove from sale whilst she was there. It is a requirement under the Food Labelling Regulations 1996 that where labelling is required, it should be in a language 'easily understood by the purchaser'. In the UK, this is accepted as being in English, and it is therefore an offence for retailers or wholesalers to supply food without English labelling. The Regulations require certain compulsory information, which must be in English and appear either on a label on, or attached to, the packaging, or on a label clearly readable through the packaging. By not having any English labelling on the product it could also be a possible safety issue because most purchasers would be unable to determine from the labelling what the product contains.

During this visit, Miss Sanders also took 18 bottles of Metropolis Vodka from the store because they had concerns with the Customs label. However this is currently being followed up with Customs and we are currently waiting for confirmation that there is an issue with the Customs Label. Mr Fakhar El Samad was able to provide us with an invoice for the Vodka confirming that it was purchased from a Cash and Carry based in Hampshire.

We have also received information from a Police Community Support Officer, PCSO Christina Smith, who has been advised by children at a local Childrens Home that they often buy alcohol and cigarettes underage from Premier Supermarket Express. Although we are unable to confirm this to be correct.

This service has issued a Warning letter to Mr Fakhar El Samad in relation to the sale of the cigarettes and we have asked him to sign a Informal Assurance with our service where he has promised in future not to sell cigarettes to anyone under the age of 18. Mr Fakhar El Samad is aware that if found to be in breach of similar legislation in the future then more formal action may be taken against him. In relation to the Vodka that was taken from the store since; this is still an on-going investigation and a further licence review application may be made upon the outcome of this investigation.

It is our understanding that Mr Hassan El Samad is still the current Designated Premise Supervisor for the premise and when Miss Sanders checked with Worthing Borough Council Licensing Department, they had not yet received an application from Mr Fakhar El Samad for him to become the Designated Premise Supervisor. However Mr Fakhar El Samad is adamant that he is in the process of applying to become the new Designated Premise Supervisor.

It is contended that the sale of cigarettes to the Child that was underage breach the licensing objective 'the protection of children from harm' and that the licensee has failed in their responsibilities in promoting said licensing objective. It is also contended that by having advertised for sale Beer without any English Labelling and by having advertised for sale Vodka which there may be an issue with the Customs Stamp on the label is a breach the licensing objective 'the prevention of crime and disorder' and the licensee has also failed in their responsibilities in promoting said licensing objective.

In view of the above, West Sussex County Council Trading Standards Service no longer have confidence that the licensing objectives will be promoted by the carrying on of licensable activities at these premises and deem it both proportionate and necessary to invite the licensing authority to review the Premise Licence of Premier Supermarket Express and determine if it is appropriate to either suspend the licence for a period up to 3 months, remove the current DPS and/or invoke specific conditions to the current licence to act as a deterrent to further criminal activity by this licence holder and to other operators considering such illegal conduct.

Additional specific conditions could include:

A 'Challenge 25' to operate in store

The premises will operate a Challenge 25 policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic I.D. to prove their age.

Acceptable forms of proof of age

The only form of ID that will be accepted are passports, driving licences with a photograph or Portman Group, Citizen Card, or Validate Proof of Age cards bearing the PASS mark hologram.

Challenge 25 material displayed

Suitable and sufficient signage advertising the Challenge 25 policy will be displayed in prominent locations in the premises.

All staff members engaged in sales of alcohol to be trained and training to be formally documented

All staff members engaged, or to be engaged, in selling alcohol or other restricted products on the premises shall receive full training pertinent to the Licensing Act and other appropriate legislation, specifically in regard to age restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs. Induction training must be completed, and fully documented, prior to the sale of alcohol by the staff member and refresher training thereafter at intervals of no less than six months.

All restricted sales training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Authorised Licensing Authority Officers, Sussex Police and authorised Trading Standards Officers upon request.

Refusals book to be kept and used and checked by DPS

The premises shall, at all times, maintain and operate a sales refusals book which shall be reviewed by the designated premises supervisor at intervals of no less than three months and feedback given to staff as relevant.

The refusals book shall be available to Authorised Licensing Authority Officers, Authorised Trading Standards Officers and Sussex Police.

A suitable till prompt is introduced to remind staff to check and confirm over 18 before selling alcohol or any other age restricted product. Details of the legal entity are clearly displayed in a prominent position and kept up to date.

Details of the legal entity are to be clearly displayed in a prominent position and kept up to date.

All food products sold within the store including all alcohol must have full labelling as required by the relevant legislation and be in English.

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

11 01 2012

If you have made representations before relating to this premises please state what they were and when you made them

The Trading Standards Service made an application in relation to Premier Supermarket Express on 10th February 2012 and a hearing took place on the 23rd April 2012. The application was made in relation to 8 bottles of Vodka that were found being sold which were non-compliant with Food Labelling Regulations 1996, Food Safety Act 1990, and the General Food Regulations 2004.

The Vodka did not display on its labelling a name and address of manufacturer/importer as required by Regulation 5 of the Food Labelling Regulations 1996. A single portion formal food sample was taken of the Vodka and the remaining bottles were taken as a single portion sample. The sample was sent to Worcestershire Scientific Services for analysis. The Public Analyst reported that propan-2-ol and t-butanol were present in the Vodka which is indicative of the alcohol being of industrial origin and therefore not genuine vodka. Therefore offences had potentially been committed under section 14(1) which states that any person who sells to the purchaser's prejudice any food which is not of the nature or substance or quality demanded by the purchaser shall be guilty of an offence.

It was contended that the sale of illegal alcohol not only breaches the licensing objective 'the prevention of crime & disorder' but the products being sold could potentially be unfit for human consumption or even hazardous.

It was decided at this review that the premises licence should be suspended for a period of three months which was later reduced to two months at an appeal and the following condition was imposed on the licence:

Copies of invoices are to be immediately available for inspection in the store by authorised officers of responsible authorities for current alcoholic stock being sold on the premises and to be kept at the premises for a period of six months from the date of purchase

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate ☒
- I understand that if I do not comply with the above requirements my application will be rejected ☒

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

.....

Date

..... 5th September 2013

Capacity Trading Standards Team Manager

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)
Miss Laura Sanders
Trading Standards Service
County Hall North
Chart way

Post town
Horsham

Post Code
RH12 1XH

Telephone number (if any) 03302227655

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) laura.a.sanders@westsussex.gov.uk

Notes for Guidance

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



**Licensing Act 2003 – Sections 16 and 18
Premises Licence – Part A**

Housing, Health & Community Safety
Civic Centre
Ham Road
Shoreham-by-Sea
BN43 6PR

Premises Licence Number - LN/000001461

Part 1 – Premises Details

Postal address of premises or, if none, ordnance survey map reference or description	
Premier Supermarket Express 4 South Street Worthing BN14 7LH	
Telephone number	01903 234338

Licensable activities authorised by the licence
See attached Schedule

The times the licence authorises the carrying out of the licensable activities
See attached Schedule

Opening hours of the premises		
Location : Convenience Store		
Day	Start	Finish
Sunday	08:00	22:00
Monday	07:00	23:00
Tuesday	07:00	23:00
Wednesday	07:00	23:00
Thursday	07:00	23:00
Friday	07:00	23:00
Saturday	07:00	23:00
Non Standard Timings & Seasonal Variations		

Where the licence authorises supplies of alcohol whether these are on and/or off supplies
OFF

Part 2 – Premises Licence Holder Details

Name
Mr Hassan Radwan <u>El Samad</u>

Registered Address
<div><div></div><div></div><div></div></div> <div>Telephone Numbers : <div></div></div> <div>E-mail : <div></div></div>

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

Designated Premises Supervisor Details (Where the premises licence authorises for the supply of alcohol)

Name
Mr Hassan Radwan <u>El Samad</u>

Registered Address	
<div>██████████ ██████ ██████ ██████</div>	
Telephone Numbers :	██████████

Personal licence number and issuing authority of personal licence held by Designated Premises Supervisor where the premises licence authorises the supply of alcohol	
Personal Licence Number :	6653
Licensing Authority :	Arun District Council

Schedule 1 – Licensable Activities authorised by this Licence

Times the licence authorises the carrying out of the licensable activities

Location : Convenience Store		
Activities : Alcohol OFF Sales/Supply (M)		
Day	Start	Finish
Sunday	08:00	22:00
Monday	07:00	23:00
Tuesday	07:00	23:00
Wednesday	07:00	23:00
Thursday	07:00	23:00
Friday	07:00	23:00
Saturday	07:00	23:00
Non Standard Timings & Seasonal Variations		

Signed on behalf of the issuing licensing authority

Senior Licensing Officer

Date : 7 December 2012

Annexe 1 : Mandatory Conditions

A. Mandatory conditions where licence authorises supply of alcohol

1. No supply of alcohol may be made under the premises licence:-
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended
2. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

B. Mandatory conditions: Door supervision

When employed each such individual must be licensed by the Security Industry Authority.

C. Mandatory conditions: Age Verification

An age verification policy for the premises must be produced, implemented and details made available to authorised officers upon request.

D. Permitted Hours

Alcohol shall not be sold or supplied except during the premise's permitted hours.

E. Sales

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

Annexe 2 : Conditions consistent with the Operating Schedule

1. The sale of alcohol will be for consumption off the premises.
2. Management & staff trained in the Company Policy detailing the Licensing Act 2003 and particularly the Licensing Objectives.
3. That a refusals recording mechanism, book or computer, is maintained at the premises.
4. That all staff are subjected to training and regular re training regarding the prevention of sales to or on behalf of under age persons and to drunk persons. That these training inputs are recorded and signed for by the trainee and records made available to police and licensing officers.
5. CCTV installed, operated and maintained to a standard agreed with by Sussex Police and the Licensing Authority. Imaging storage and inspection to be in accordance with the Police's requirement.
6. Stocks of alcoholic drink, other than those on display, to be kept in a locked store.
7. All fortified spirit drinks other than pre-mixed drinks will be situated behind the service counter and not directly accessible to the public.
8. That all the recommendations of West Sussex Fire & Rescue Service's Report File No. 8/A/0590 are implemented.

Annexe 3 : Conditions imposed after a review hearing by the Licensing Authority

1. Copies of invoices are to be immediately available for inspection in the store by authorised officers of responsible authorities for current alcoholic stock being sold on the premises and to be kept at the premises for a period of six months from the date of purchase.
2. Licence Suspended from 24 August 2012 to 24 October 2012.

Annexe 4 : Plans

See attached plan dated Nov 2005.

Appendix E - Mediation Agreement

Trading Standards Service
Customers and Communities Directorate
(01243) 642124
(01403) 249987
tradingstandards@westsussex.gov.uk
www.westsussex.gov.uk/tradingstandards

Trading Standards
County Hall North
Chart Way
Horsham
West Sussex
RH12 1XH
(01243) 642124



I **Mr Hassan El Samad**, (date of birth) [REDACTED] of [REDACTED] in my capacity as a the Designated Premise Supervisor of **Premier Supermarket Express, 4-6 South Street, West Tarring, Worthing, West Sussex**, agree to the following:

- Suspend the current licence for a period of.....³ Weeks/~~Months~~: *and removal of myself as the DPS*

And/or the following conditions to be added to the alcohol licence:

- Challenge 25 to operate in store

The premises will operate a Challenge 25 policy whereby any person attempting to buy alcohol who appears to be under 25 will be asked for photographic I.D. to prove their age.

- Acceptable forms of proof of age

The only form of ID that will be accepted are passports, driving licences with a photograph or Portman Group, Citizen Card, or Validate Proof of Age cards bearing the PASS mark hologram.

- Challenge 25 material displayed

Suitable and sufficient signage advertising the Challenge 25 policy will be displayed in prominent locations in the premises.

- All staff members engaged in sales of alcohol to be trained and training to be documented

All staff members engaged, or to be engaged, in selling alcohol or other restricted products on the premises shall receive full training pertinent to the Licensing Act and other appropriate legislation, specifically in regard to age restricted sales, and the refusal of sales to persons believed to be under the influence of alcohol or drugs.

- Induction training must be completed, and fully documented, prior to the sale of alcohol by the staff member and refresher training thereafter at intervals of no less than six months.

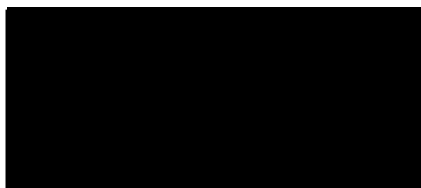
All restricted sales training undertaken by staff members shall be fully documented and recorded. All training records shall be made available to Authorised Licensing Authority Officers, Sussex Police and authorised Trading Standards Officers upon request.

- Refusals book to be kept and used and checked by DPS

The premises shall, at all times, maintain and operate a sales refusals book which shall be reviewed by the designated premises supervisor at intervals of no less than three months and feedback given to staff as relevant.

- The refusals book shall be available to Authorised Licensing Authority Officers, Authorised Trading Standards Officers and Sussex Police.
- A suitable till prompt is introduced to remind staff to check and confirm over 18 before selling alcohol or any other age restricted product. Details of the legal entity are clearly displayed in a prominent position and kept up to date.
- Details of the legal entity are to be clearly displayed in a prominent position and kept up to date.
- All food products sold within the store including all alcohol must have full labelling as required by the relevant legislation and be in English

SIGNED



Mr Hassan El Samad

DATE

23/10/2013