

Licensing Act 2003

Application for the Review of the Premises Licence under Section 51

**Om Food & Wine (also known as Clifton Food & Wine)
123 Clifton Road, Worthing
West Sussex
BN11 4DP**

Report by the Director for Communities

1. Recommendation

- 1.1 That the full Licensing & Control Committee "B" considers and determines the application from:

West Sussex County Council's Trading Standards Service

for a Review of the premises licence at the above store under section 51 of the Licensing Act 2003.

2. Reasons for the Hearing

- 2.1 An application for a Review of premises licence [REDACTED] held by

[REDACTED]
has been received from Peter Aston, Operations Manager, on behalf of WSCC Trading Standards. Trading Standards being a Responsible Authority as defined under 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 Premises Licence no. [REDACTED] authorises the sale of alcohol for consumption off the premises at the store. It has been held by [REDACTED] since October 2018.
- 3.2 Om Food & Wine is situated in a parade of terraced shops in a mixed commercial & residential area. The parade consists of various small retail units situated on the west side of Clifton Road. Opposite residential dwellings.
- 3.3 The area is densely populated with residential dwellings including flats above most of the shops.
- 3.4 Om Food & Wine occupies a ground floor mid terrace unit and has been used as a newsagents/convenience store both licensed and unlicensed for many years.
- 3.5 This Review application, made by WSCC Trading Standards, was received on 22 March 2022.
- 3.6 The current DPS of the venue is [REDACTED]. He has been in post since October 2019. He holds a Personal Licence issued by Worthing Borough Council.
- 3.7 A plan & photos of the area are attached. (Appendix A)
- 3.8 A plan of the premises is attached. (Appendix B)
- 3.9 The application is for a review of the licence due to representations made that the licence holder is undermining the licensing objectives. The application is attached. (Appendix C)
- 3.10 The current Premises Licence allows:
- Sale of alcohol between:
 - 08.00hrs and 23:00 hrs Monday - Saturday
 - 10:00 hrs and 22:30 hrs Sunday
 - Hours the premise can open to the public:
 - 06.00hrs and 01:00 hrs (of the following morning) Monday - Sunday

(Appendix D)

4. The Application

- 4.1 The Application for Review is attached at Appendix C.
- 4.2 The application is made on behalf of WSCC Trading Standards, a responsible authority as defined in Section 13 of the Act.

4.3 The applicant has included detailed information in the application supporting their case that the licence holder is undermining the Licensing Objectives:

- Prevention of Crime & Disorder
- Protection of Children from Harm

Following the failure of a test purchase operation involving the purchase of alcohol by a 15 year old trading standards volunteer.

4.4 Trading Standards are requesting that members consider the revocation of the premises licence.

5. Promotion of the Licensing Objectives

5.1 The Licensing Act 2003 and 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 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

4.8 The Licensing Authority places huge importance on the prevention of crime and disorder. A high standard of control is, therefore, expected to be exercised over licensed premises.

4.10 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.

- 4.11 *In their role as a responsible authority, Sussex Police are an essential source of advice and information on the impact and potential impact of licensable activities in the borough, particularly on the crime and disorder objective. The police have a key role in managing the night-time economy and usually have good working relationships with those operating in the local area. The council recognises that Sussex Police are the licensing authority's main source of advice on matters relating to the promotion of the crime and disorder, but may also be able to make relevant representations with regards to the other licensing objectives if they have evidence to support such representations. The Council will accept all reasonable and proportionate representations made by the police unless the authority has evidence that to do so would not be appropriate for the promotion of the licensing objectives. However, it remains incumbent on the police to ensure that their representations can withstand the scrutiny to which they would be subject at a hearing.*
- 4.12 *Licensed premises, especially those offering late night/early morning entertainment, alcohol and refreshment for large numbers of people, can be a source of crime and disorder problems. The Council will expect Operating Schedules to satisfactorily address these issues from the design of the premises through to the daily operation of the business, including, where appropriate, the arrangements proposed in respect of prevention of both alcohol and drug misuse.*
- 4.15 *In addition to the requirements for the Council to promote the licensing objectives, it also has a duty, as detailed in para. 4.10, under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the Borough. The Council will consider attaching Conditions to licences and permissions to deter and prevent crime and disorder within the vicinity if relevant representations are received. Whether or not incidents can be regarded as being in the vicinity of licensed premises is a question of fact and will depend on the particular circumstances of the case."*

Public Safety

- 4.18 *The 2003 Act covers a wide range of premises that require licensing, including cinemas, concert halls, theatres, nightclubs, public houses, hotels, cafes/restaurants, shops and fast food outlets/takeaways.*
- 4.19 *Each of these types of premises present a mixture of risks, with many common to most premises and others unique to specific operations. It is essential that premises are constructed or adapted and operated so as to acknowledge and safeguard occupants against these risks.*
- 4.23 *The Council will consider attaching conditions to licences and permissions to promote public safety. In attaching conditions the Council will seek to avoid duplication with the requirements of other regulatory regimes, for example legislation covering health and safety at work and fire safety.*

Enforcement

- 12.1 *Once licensed, it is essential that 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

- 12.5 *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.*
- 12.10 *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.*
- 12.11 *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 advertising arrangements in accordance with the provisions of the Act.

7. Relevant Representations

- 7.1 The application received 1 representation from a Responsible Authority - Sussex Police. There were no representations from the public.
- 7.2 Sussex Police have in their representation included details of their enforcement efforts regarding this premises. Highlighted the issues and failings they have witnessed and their attempts to help the premises comply with the terms of the licence. The Police contend that the premises licence should be revoked. (Appendix E)
- 7.3 Both the applicant and licence holder have been invited to provide any information supporting their cases and the applicant, licence holder and those that have made

relevant representation have been invited to attend the Committee meeting. All parties have the right to address members.

7.4 WSCC Trading Standards have supplied a number of documents supporting their application (Appendix F)

8. Mediation

8.1 As part of the review process the Licensing Act encourages, where possible, mediation.

8.2 Officers are unaware if any mediation has been conducted. Any developments will be reported as soon as received or at the hearing.

9. Consideration

9.1 The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken. These being the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm. 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'
- The 'Guidance issued under Section 182' by the Home Secretary
- The application & relevant representations
- The testimony and any relevant information supplied by the licence holders.

- 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:
- To take no action.
 - 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.

The committee could also issue an informal warning to the licence holder and/or recommend improvement within a particular period of time.

- 9.6 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 – April 2018) should be taken into account:

11.17 The licensing authority may decide that the review does not require it to take any further steps appropriate to promoting 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.

11.20 In deciding which of these powers to invoke (see section 9.5 of this report), it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary 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 which 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 or preventing illegal working. 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 and for the prevention of illegal working in licensed premises. 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.*

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, the sale of firearms, or the sexual exploitation of children. 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 and the prevention of illegal working 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 drugs controlled under the Misuse of Drugs Act 1971 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 employing a person who is disqualified from that work by reason of their immigration status in the UK;*
- *for unlawful gambling; and*
- *for the sale or storage of smuggled tobacco and alcohol.*

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

9.9 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:

- The applicant or licence holder may appeal against any decision to modify the conditions of the licence, suspend or revoke a licence.
- The applicant may appeal against a rejection in whole or part of an application to review.
- 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 any other 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 any other person, 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 the 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 WSCC Trading Standards for a Review of the Premises Licence, held by [REDACTED] [REDACTED] at the Om Food & Wine store situated in Clifton Road. Members are requested to give reasons for their determination.**

Tina Favier

Interim Director for Communities

Principal Author and Contact Officer:

Simon Jones

Public Health & Regulation – Team Leader Licensing

Telephone 01273 263191.

Background Papers:

- Licensing Act 2003
<https://www.legislation.gov.uk/ukpga/2003/17/contents>
- Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018)
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf
- Worthing Borough Council's Statement of Licensing Policy
<https://www.adur-worthing.gov.uk/media/Media.98561.smx.pdf>

Appendices:

- Appendix A - A plan & photos of the area.
- Appendix B - A plan of the premises.
- Appendix C – WSCC Trading Standard's Review Application
- Appendix D – Om Food & Wine Premises Licence.
- Appendices E – Sussex Police Representation
- Appendix F - Supporting Evidence supplied by Trading Standards

Adur & Worthing Public Health & Regulation Licensing Unit

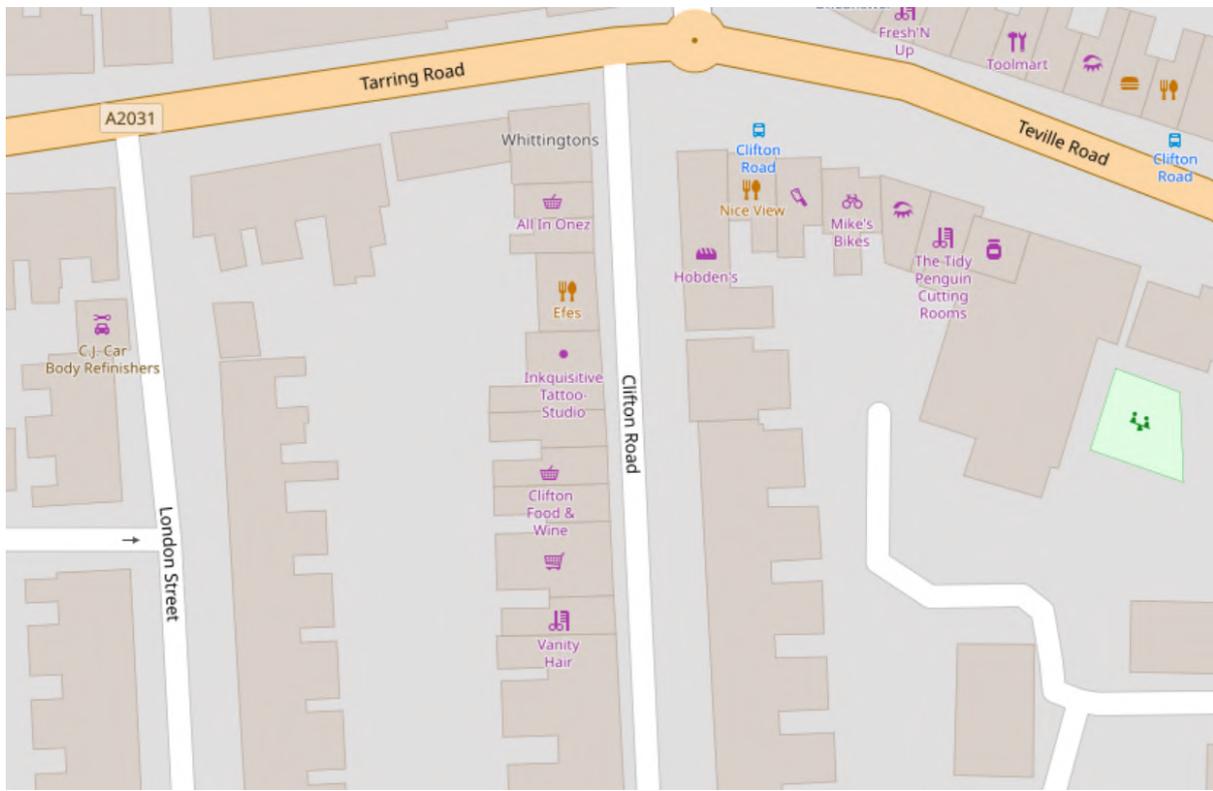
Portland House, Worthing

Ref: SJ/Lic.U/LA03/Review – Om Food & Wine

Date: 23 May 2022.

Appendix A

Plan of Area

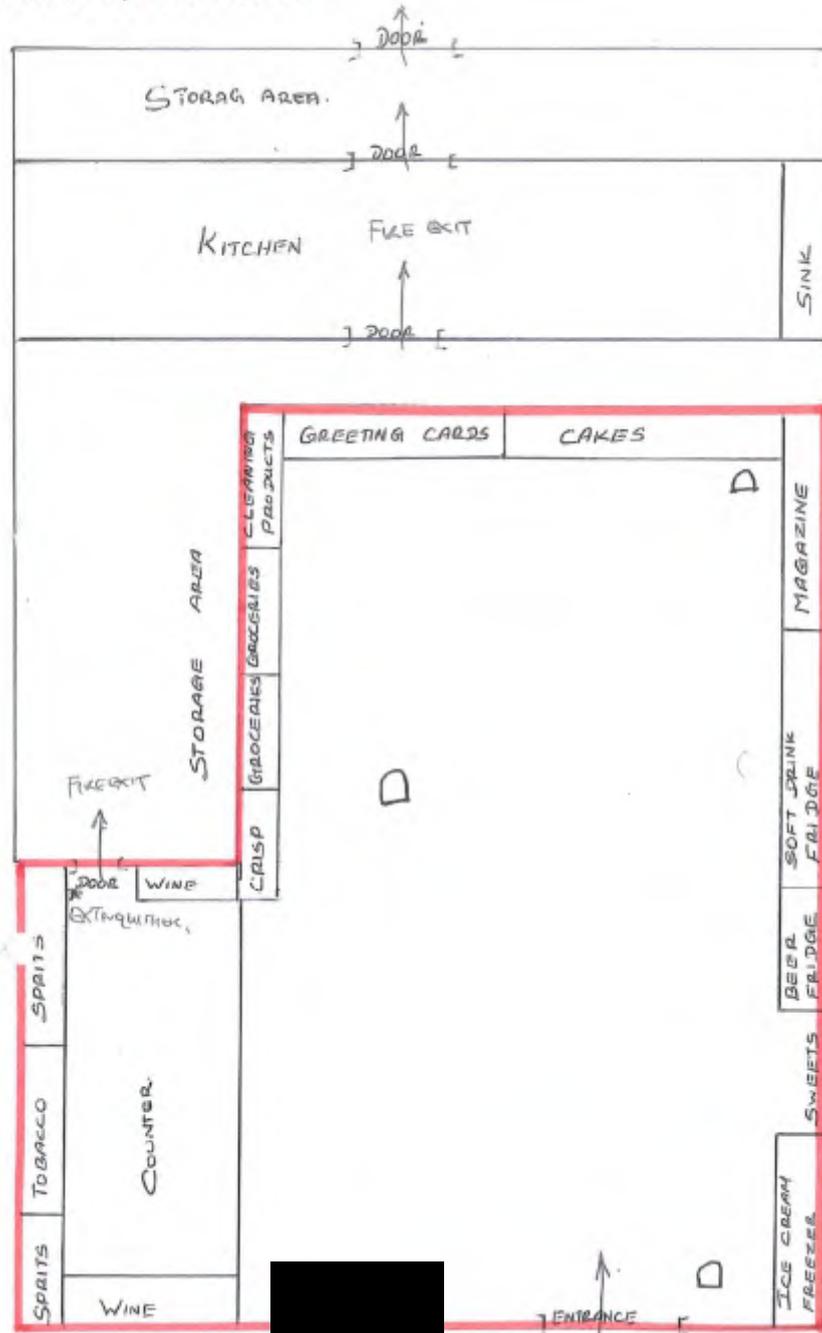




Appendix B

Plan of Premises

Om Food & Wine
Premises Licence LN/1000001480 Plan



0 CCTV

Worthing
Licensing Unit

CLIFTON FOOD & WINE
23 CLIFTON ROAD, WORTHING,
WEST SUSSEX, BN11 4DP