

Agenda

Licensing Sub Committee 1

Monday, 4 July 2022 at 10.00 am
At Committee Room 1 - Sandwell Council House, Oldbury

This agenda gives notice of items to be considered in private as required by Regulations 5 (4) and (5) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1 Apologies for Absence

Members to declare any interests in matters to be discussed at the meeting.

2 Declarations of Interest

Members to declare any interests in matters to be discussed at the meeting.

3 Application to review a premises licence known as Top Tak, situated at 74 - 76 Cape Hill, Smethwick, B66 4PB

5 - 32



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Councillor Allen (Chair)
Councillors Fenton and Gavan

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Report to Licensing Sub Committee

04 July 2022

Subject:	Application to review a premises licence known as Top Tak, situated at 74 - 76 Cape Hill, Smethwick, B66 4PB.
Director:	Director – Borough Economy – Alice Davey
Contact Officer:	Balbir Dhugga (Licensing Officer) licensing_team@sandwell.gov.uk

Recommendations


- 1 Consider an application to review the Premises Licence submitted by Trading Standards department at Sandwell Metropolitan Borough Council under Section 51 of the Licensing Act 2003. In respect of premises known as Top Tak, situated at 74 - 76 Cape Hill, Smethwick, B66 4PB.
2. Each application must be considered on its merits taking into account, the evidence presented at the hearing, and the Guidance issued under Section 182 of the Licensing Act 2003 and the Council’s Licensing Policy. The options that can be considered once evidence has been heard are detailed at section 6.

1 **PURPOSE OF THE REPORT**

- 1.1 To advise members of an application made under section 51 of the Licensing Act 2003 to review a Premises Licence in respect of premises known as Top Tak, situated at 74 - 76 Cape Hill, Smethwick, B66 4PB.
- 1.2 The Licensing Sub Committee is required to consider this application and take such steps as it considers appropriate and proportionate for the promotion of the licensing objectives.



2 How does this deliver objectives of the Corporate Plan?

	<p>A strong and inclusive economy Investing in people and jobs. Licensed premises provide employment in the Borough and help to support the Borough's economy.</p> <p>It is the Authority's aim to offer a wide choice of high quality and well managed entertainment and cultural venues within a safe, orderly and attractive environment; valued by those who live here, work here and come to visit. We want to ensure that businesses operate responsibly and safely so that our residents live in decent neighbourhoods and have a good quality of life.</p>
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3 Context and Key Issues

- 3.1 Under the Licensing Act 2003, a responsible authority or any other person may make representations in respect of the application which must be relevant to one or more of the four licensing objectives, namely:
- The Prevention of Crime and Disorder
 - Public Safety
 - The Prevention of Public Nuisance
 - The Protection of Children from Harm

4 CURRENT POSITION

- 4.1 An application was made by Trading Standards at Sandwell Metropolitan Borough Council on 18th May 2022 for a review of the premises licence.
- 4.2 The application has been made on the grounds of 'The prevention of crime and disorder'. Trading Standards conducted an inspection on 10 August 2021 and found some illicit alcohol and tobacco concealed at the premises. All seized goods were found to be either counterfeit or duty evaded. It is an offence under Section 144 of the Licensing Act 2003 to keep any goods on a licensed premises that have been imported without payment of duty
- 4.3 A copy of the application is attached at Appendix 1.



- 4.4 The location and proximity to neighbouring premises can be seen on the location map provided which is attached at Appendix 3.
- 4.5 One representation has been received from the Public Health department at Sandwell Metropolitan Borough Council in support of the review application made by Trading Standards. This is attached at Appendix 4.

Background on current licence

- 4.6 The licence was granted 25th April 2015.
- 4.7 The Premises licence holder is Mrs Azar Ebrahimi, who has held the licence since 18th January 2017. Ms Nastaran Khanoie is the Designated Premises Supervisor since 18th January 2017.
- 4.8 The hours permitted for licensable activities are 08:00 – 23:00 Monday to Sunday.
- 4.9 The hours the premises are open to the public are 08:00 – 23:00 Monday to Sunday.
- 4.10 A copy of the premises licence is attached at Appendix 2.
- 4.11 A location map of the premises is attached at Appendix 3.

5 Consultation (customers and other stakeholders)

- 5.1 The Licensing Team have displayed a public notice on or near the premises outlining the application and inviting comments/representations to be sent to the Licensing Authority, detailing a closing date for these to be received. Details of the application were also published on the Council's website.



6 ALTERNATIVE OPTIONS

The options available to the Licensing Sub-Committee having considered all the relevant information are as follows:

- 6.1 To modify the conditions of the licence.
- 6.2 To exclude a licensable activity from the scope of the licence.
- 6.3 To remove the designated premises supervisor.
- 6.4 To suspend the licence for a period not exceeding three months.
- 6.7 To revoke the licence.
- 6.8 Additional conditions or restrictions to licensable activities and/or times should only be imposed if considered appropriate for the promotion of the licensing objectives. If other law already places certain statutory responsibilities on a premise, it would not be appropriate to impose similar duties.
- 6.9 Conditions may be altered or omitted, or any new condition added.
- 6.10 Members of the Sub Committee should be advised that the applicant, or any other person who made relevant representations in relation to the application, may appeal against the decision made to the Magistrates' Court within 21 days of the date on which they were notified.

7 Implications

<p>Resources:</p>	<p>There are no direct strategic resource implications associated with this review a premises licence application.</p> <p>In respect of a review of a premises licence, we do not foresee any issues in respect of sustainability of proposals.</p>
<p>Legal and Governance:</p>	<p>Members of the Licensing Sub Committee when making their decision on the review application must</p>



	<p>take into account the four licensing objectives, the Guidance issued under Section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy. The applicant and those who have made relevant representations have the right to appeal the decision made by the Licensing Sub Committee to the Magistrates Court, so the Committee are asked to give reasons for their decision wherever possible.</p> <p>Members of the Sub-Committee should not allow themselves to predetermine the review application or to be prejudiced in favour or opposed to the applicant and/or the licence holder and shall only determine the application having had an opportunity to consider all relevant facts.</p>
Risk:	<p>The Police are a statutory consultee for all Licensing Act 2003 applications. Prevention of Crime and Disorder is one of the four licensing objectives and applicants have to demonstrate how they will achieve this objective by volunteering measures in the operating schedule submitted with the Licence application.</p> <p>The Police have not made a representation to this review a premises licence application.</p> <p>Whilst full details of the review application and any representations have been shared with the committee members, only information that is in the public domain has been made available for the reports that have been made public online, in line with data protection protocols.</p>
Equality:	<p>The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society.</p> <p>The operators of this premises are responsible for complying with all relevant legislation.</p>
Health and Wellbeing:	<p>This is not applicable to review applications for premises licences submitted under the Licensing Act 2003.</p>



Social Value	This is not applicable to review applications for premises licences submitted under the Licensing Act 2003.
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8 Appendices

- Appendix 1 – Review Application
- Appendix 2 – Premises Licence
- Appendix 3 – Location Plan
- Appendix 4 – Representation

9 Background Papers

- Sandwell Metropolitan Borough Council Licensing Policy
- Guidance issued under Section 182 of the Licensing Act 2003
- The Licensing Act 2003 (Hearings) Regulations 2005



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 Mr Jaswinder Singh Matoo of Sandwell Metropolitan Borough Council
(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 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 Top Tak 74-76 Cape Hill Smethwick B66 4PB	
Post town SMETHWICK	Post code (if known) B66 4PB

Name of premises licence holder or club holding club premises certificate (if known) MRS AZAR EBRAHIMI
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Number of premises licence or club premises certificate (if known) ██████████ Licence number 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)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address
Telephone number (if any)
E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address

Mr Jaswinder Singh Matoo, Area Trading Standards Officer
Sandwell M.B.C.
Trading Standards
Oldbury Council House
Freeth Street
Oldbury

Telephone number (if any)

██████████

Telephone number redacted

E-mail address (optional)

██████████

@sandwell.gov.uk Email address redacted

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

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

On the 10 August 2021 officers from Sandwell Trading Standards conducted an inspection at Top Tak, 74-76 Cape Hill, Smethwick, B66 4PB. The inspection was undertaken as part of an operation targeting the sale/supply of counterfeit wine. Officers found 5 bottles of counterfeit Yellowtail wine on sale in the store which had been mixed in with genuine bottles on the shelves. During the course of the inspection officers also found a total of 31 pouches of counterfeit hand rolling tobacco, 5 pouches of non-duty paid hand rolling tobacco, and 7,160 cigarettes of which 2,460 were counterfeit. All seized goods were found to be either counterfeit or duty evaded which did not comply with the Tobacco and Related Products Regulations 2016 in that they failed to carry the appropriate health warnings on their packaging. The cigarettes were found hidden underneath the counter and on sale in the tobacco gantry behind the counter. During the visit numerous customers came into the store asking for cheap cigarettes/tobacco and were turned away by the member of staff on the sales counter. The total retail value of the seized goods is estimated at being £6066.

The sale of illicit/counterfeit tobacco products has a serious impact on the economy. Legitimate traders cannot compete with the small minority of dishonest traders who operate within the black market. These dishonest traders are making large profits by selling cheap and potentially dangerous counterfeit products without any regard to public safety and tax avoidance.

More worryingly, national intelligence suggests that the trade in illegal tobacco is often linked to more serious crime such as terrorism, human trafficking, prostitution and the sale of drugs. The trade in illegal tobacco is believed to be accepted as a low risk method of generating income to fund more serious criminality.

It is an offence under Section 144 of the Licensing Act 2003 to keep any goods on a licensed premises that have been imported without payment of duty.

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

Guidance under section 182 of the Licensing Act 2003 states that the licensing authority's role when determining a review where criminality is alleged is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective. 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. Furthermore, there is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously including the sale or storage of smuggled tobacco and alcohol. The guidance goes on to state that 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.

In the case of *The Crown (Bassetlaw District Council) V Worksop Magistrates Court 2008*, it was held the powers contained under section 52 of the Licensing Act 2003 to revoke an alcohol licence can be used as a deterrent when criminal offences have been committed.

It is a criminal offence under the Trade Marks Act 1994, the Tobacco and Related Products Regulations 2016 and the Fraud Act 2006 to store illicit tobacco with a view to supply. Furthermore under section 144 of the Licensing Act 2003, it is an offence to knowingly keep, or allow to be kept any goods on a licensed premises which have been imported without payment of duty.

The premises licence holder and proprietor of the store, Mrs Azra Ebrahimi, was interviewed under caution and failed to provide any credible explanation as to why the illicit goods were found in her store. Instead she concocted a fabricated story of how a stranger had entered her store and asked for the illicit tobacco/cigarettes to be looked after for him until he returned to collect them. She has not provided a name/address for this person. She has also failed to provide any credible explanation for the counterfeit wine found in the shop. Mrs Ebrahimi was asked if she knew of the licensing objectives being the premise licence holder for the business to which she responded that she did not.

The concealment of the cigarettes/tobacco and wine on the shelves demonstrates clear deception and a determination to engage in illegal activity. It is therefore of the opinion of Trading Standards to recommend that the premises licence is suspended for 3 months. Furthermore, it is also recommended that the current DPS is removed from the licence and a new DPS appointed. This is based on information gained from the current DPS, Nastaran Khanoie, who confirmed that she was only appointed DPS for the premises because her mother Mrs Azar Ebrahimi struggles to understand written/spoken English. Miss Khanoie also confirmed under caution that she did not work at the premises in question due to underlying health conditions.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

Day Month Year

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

Please tick yes

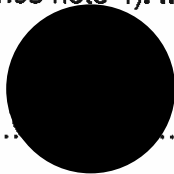
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

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

Part 3 – Signatures (please read guidance note 3)

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

Signature



Signature redacted

Date

16/05/2022

Capacity

Senior Trading Standards Officer

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

Sandwell M.B.C.
Trading Standards
Oldbury Council House
Freeth Street
Oldbury

Post town
Oldbury

Post Code
B69 3DB

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional) [redacted]@sandwell.gov.uk Email address redacted

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.



PREMISES LICENCE - LICENSING ACT 2003

PART A – TRANSFER & VARY DPS 18TH JANUARY 2017

DATE OF GRANT	25 April 2015	PREMISES LICENCE NUMBER:	 Licence number redacted
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Part 1 – Premises details

Postal address of premises	74 – 76 Cape Hill Smethwick B66 4PB
Telephone Number	-

Name of premises licence holder	Mrs Azar Ebrahimi
Address	 Postal address redacted
Telephone number	 Telephone number redacted
Email address	 Email address redacted
Registered number of holder (e.g. Company/Charity)	-

Name of Designated Premises Supervisor	Nastaran Khanoie
Address	 Postal address redacted
Telephone Number	-
Personal Licence Number	 Personal Licence number redacted
Issuing Authority	Sandwell Metropolitan Borough Council

Where the licence is time limited the dates	-
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State whether access to the premises by children is restricted or prohibited	-
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PROTECT

Part 2

LICENSABLE ACTIVITIES	
Licensable activities authorised by the licence	The times the licence authorises the carrying out of licensable activities
Supply of alcohol for consumption <u>off</u> the premises	0800 – 2300 every day
Hours premises are open to the public	0800 – 2300 every day

**Trading Standards and Licensing
Homes and Communities Directorate
Sandwell Council House
PO Box 2372
Oldbury B69 3BS**

Mandatory Conditions

Section 19 Licensing Act 2003

Where this licence authorises the supply of alcohol,

(1) No supply of alcohol may be made under the licence:

(a) at a time when there is no designated premises supervisor (DPS) in respect of the licence, or

(b) at a time when the DPS does not hold a personal licence or that licence is suspended

(2) Every supply of alcohol under the licence must be made or authorised by a person who holds a personal licence

Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010 as amended by the Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014

These conditions apply to all relevant premises licences and all relevant club premises certificates authorising consumption of alcohol on the premises.

1. (1) The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

(2) In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises—

(a) games or other activities which require or encourage, or are designed to require or encourage, individuals to—

(i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or

(ii) drink as much alcohol as possible (whether within a time limit or otherwise);

(b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective;

(c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective;

(d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner;

(e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

PROTECT

2. The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

3. (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

- (a) a holographic mark, or
- (b) an ultraviolet feature.

4. The responsible person must ensure that—

(a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures—

- (i) beer or cider: ½ pint;
- (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and
- (iii) still wine in a glass: 125 ml;

(b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and

(c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

These conditions apply to all relevant premises licences and all relevant club premises certificates only authorising consumption of alcohol off the premises

1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.

(2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.

(3) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—

- (a) a holographic mark, or
- (b) an ultraviolet feature.

PROTECT

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2014

This applies to all premises where alcohol is sold or supplied for consumption on or off the premises.

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

PROTECT

Annex 2

Steps premises licence holder proposes to take to promote the licensing objectives :

General

CCTV shall be installed with 31 day recording. There shall be on the premises at all times at least one person who is able to download copies when requested by and authorised officer of the police or licensing authority. CCTV shall record images of person entering the premises of at least head and shoulders. CCTV cameras shall record alcohol display areas and point of sale.

Staff training shall be recorded and updated every 6 months Training shall cover the requirement for ID as part of age verification, how to detect proxy sales, the consequences of underage sales (fines and punishment) and other relevant matters relating to the licensing objectives, and the responsibilities of staff.

The licence holder shall ensure that a refusals register is kept on the premises and that this shall be immediately available upon request of an authorised officer. The register shall record any refused sale (including intoxicated person, under 18's) The refusal register shall be inspected on a regular basis (at least weekly) by the DPS and signed by the DPS that they have checked the register. At least 12 months of refusal register details shall be retained and made available upon request by and authorised officer.

The premises licence holder shall ensure that a 'challenge 25' policy is adopted on these premises at all times. Signage of the 'challenge 25' policy shall be prominently displayed on the premises.

Acceptable identification accepted by the premises licence holder, DPS, or other staff members shall be a passport, photo driving licence or PASS accredited identity card. Signage shall be displayed in a prominent position on the premises requesting that customers leave quietly. Signage shall be prominently displayed warning customers of the legal penalties for purchasing alcohol for any person under the age of 18 years.

The prevention of crime and disorder.

As above in General

Public Safety

As above in General

The prevention of Public Nuisance

As above in General

The protection of children from harm

As above in General

Conditions consistent with the Operating Schedule

NONE

Annex 3

Conditions attached after a hearing by the licensing authority

NONE

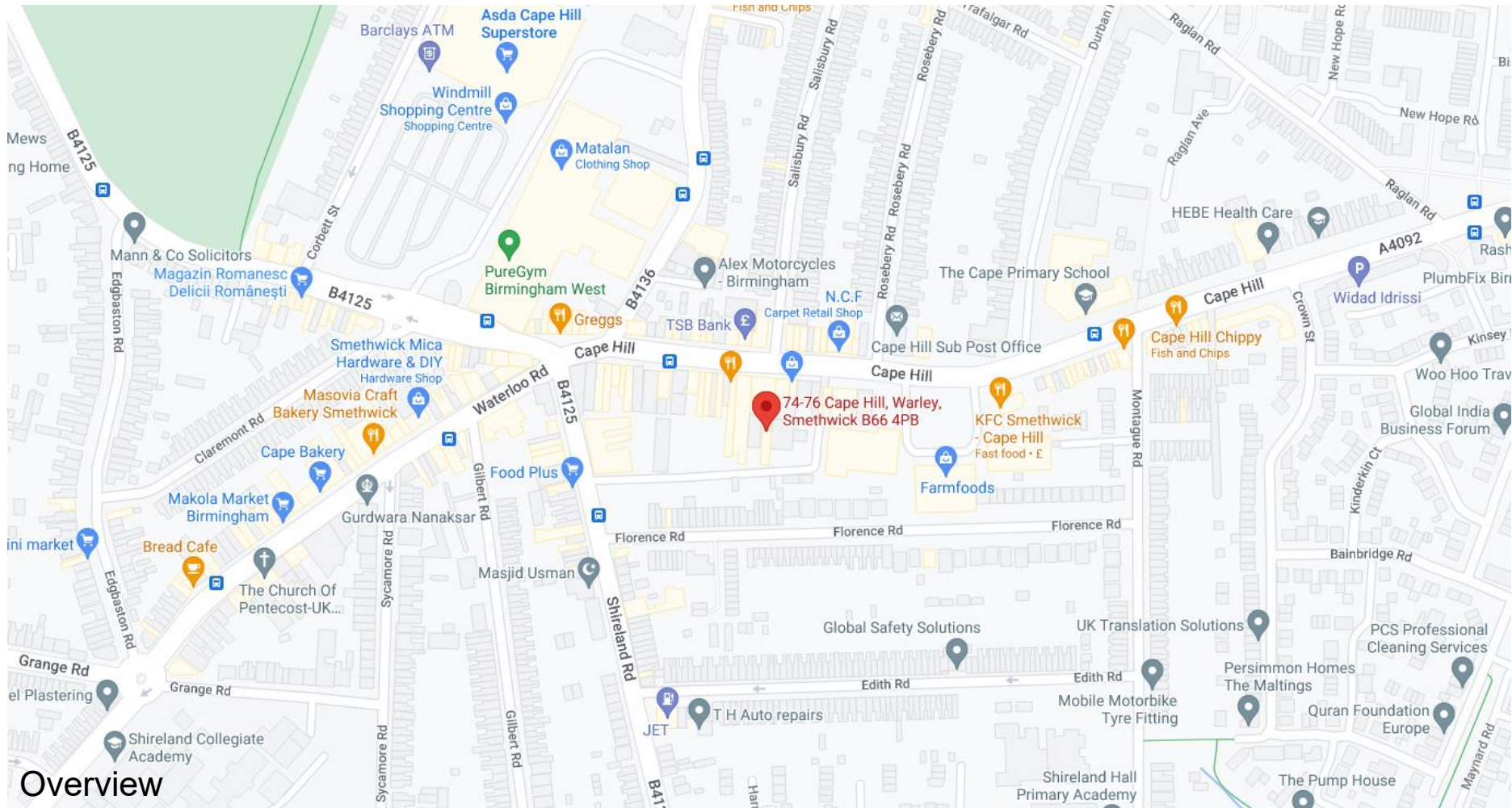
Annex 4

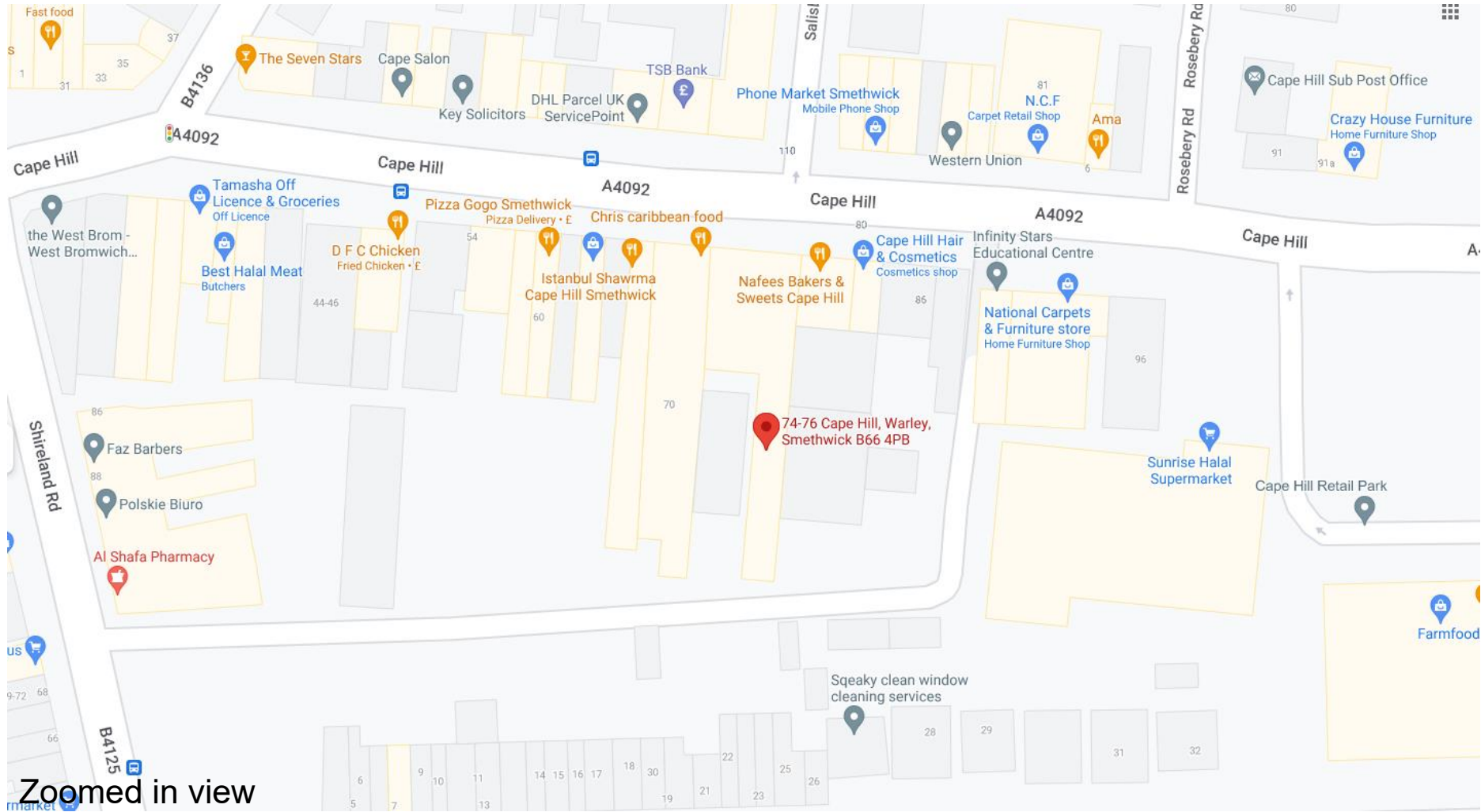
Plans

The plan attached to this licence is held by Sandwell Metropolitan Borough Council

Appendix 3 – Location Plan

Top Tak, 74 - 76 Cape Hill, Smethwick, B66 4PB





Zoomed in view

Evidence to inform licensing decisions in respect of: Top Tak, 74 - 76 Cape Hill, Smethwick, B66 4PB. Submitted by Public Health Sandwell MBC the Responsible Authority for Health.

Public Health, Sandwell MBC is presenting the following information in support of the representation made by Trading Standards in accordance with the Licensing Act 2003 on the grounds of the following:

Objective 1: The prevention of Crime & Disorder

This representation is made to support the review application made by Trading Standards to ensure that this licensed premise is operated in such a manner which upholds all licensing objectives. This is in response to Trading Standards inspection on 10 August 2021 which found some illicit alcohol and tobacco concealed at the premises.

Harms of Illicit Tobacco:

Introduction

Cigarettes contain over 4000 chemicals, some of them are known to be cancer-causing. Smoking has been firmly established as the leading cause of ill health and death in the United Kingdom (UK) and around the worldⁱ. It is also established that the more exposure and access people (especially young people) have to cigarettes and tobacco products, the more they are likely to become addicted to nicotine. Illicit tobacco undermines measures to reduce the level of smoking in the UK.

Health Harm of Smoking

Smoking causes heart and circulatory diseases, cancer and respiratory problem and these are the leading causes of death and disability in the UK. To tackle problems caused by tobacco use, UK adopted a comprehensive tobacco control approach and elements of that include the control of illicit tobacco and having heavy taxation on tobacco products.ⁱⁱ

Heart and circulatory disease account for 150,000 deaths each year deaths in the UK and that is 26% of all deaths. Smoking is responsible for up to 33% of all deaths from heart and circulatory diseases.ⁱⁱⁱ

Smoking causes at least 15 different types of cancer: lung, larynx, oesophagus, oral cavity, nasopharynx, pharynx, bladder, pancreas, kidney, liver, stomach, bowel, cervix, leukaemia, and ovarian cancers. It is responsible for 15% of cancer deaths in the UK – being the largest cause. Some researchers, from the American Cancer Society, even estimated that roughly, half of deaths from 12 smoking-related cancers may be linked directly to cigarette use.^{iv}

The proportion of deaths in the United Kingdom, from respiratory diseases, is considerably higher than the EU-28 average, at 13.4 %. Smoking is responsible for at least 80% of Chronic Obstructive Pulmonary disease (COPD).^v

Illicit Tobacco Undermines Revenue Generation

The UK's heavy taxation on tobacco products is because high prices are known to be the most effective policy instrument to encourage smokers to quit. This is however undermined by illicit tobacco on which no taxes are paid. Evading taxes on tobacco products this way undermines the effectiveness of tobacco control strategies as it maintains and encourages tobacco use at very low costs.

There is always a tobacco tax gap; made up of the illicit markets in cigarettes and hand-rolling tobacco and this was estimated to be £2.4 billion in 2015-16. Of this £1.9 billion was lost in tobacco duties and a further £0.5 billion in VAT.^{vi}

Illicit tobacco reduces the public health impact of tobacco tax rises and increases demand for tobacco products. Criminal networks distribute smuggled cigarettes locally, and the loss of tax revenue means less money spent on local services. HM Revenue & Customs estimated, for 2015/16, that 13% and 32% of cigarettes hand-rolled tobacco (respectively) in the UK market were illicit.^{vii}

Illicit Tobacco Undermines Public Health

Research carried out by the Tobacco Manufacturers Association (TMA), found 71% of consumers were buying products illegally^{viii}. Such findings highlight the continued widespread availability of illicit tobacco, promoting a perception among many consumers that it is 'acceptable' to trade or buy illicit tobacco.

Research from 2017 showed that more than half of all teenage smokers in had bought illegal tobacco. These figures, from the North East Illegal Tobacco Survey, found that 55% of children aged 14 and 15 who smoked bought illegal tobacco from shops and 73% had been offered illegal tobacco at some point.^{ix}

Also, although all cigarettes are harmful, illicit ones (e.g. counterfeit cigarettes) can be more harmful as there is often no control whatsoever on the content or quality of illicit smoking material. Products frequently lack adequate health warnings, increase the potential for young people to start smoking through unregulated sales, and contribute to crime and criminalisation at local, regional, national and international levels.

Illicit cigarettes often contain poor quality ingredients and some very dangerous ingredients that are not found in genuine products. They contain higher levels of tar, nicotine and carbon monoxide than cigarettes that are legally sold in the UK. Counterfeit cigarettes can

also be a fire risk as they do not self-extinguish when left to burn as legitimate cigarettes do.^x

Illicit Tobacco is linked to Criminal Activities

Although the illicit tobacco market in the UK is complex and fast-changing, many cases that come to the courts are linked to other activities such as drug dealing, alcohol and even people trafficking. Illicit tobacco has also been linked to organised crime and even the funding of terrorism. In this way illicit tobacco sales bring criminal activity right onto people's streets and doorsteps.

Illicit Tobacco is Poison

Counterfeit cigarettes, sold in packets looking almost identical to genuine brands, contain higher quantities of known carcinogens than normal ones. Dangerous heavy metals, dust, excessively high tar levels, asbestos, rat droppings and tea leaves have all been found in tested products. They are sold cheaply and tax is not paid, while the criminals who supply them make huge profits.^{xi}

Just to demonstrate how dangerous illicit tobacco can be, some counterfeit products have been found to have up to five times more cadmium; nearly six times as much lead; and very high levels of arsenic.

- Cadmium is a known carcinogen and there is no safe margin of cadmium exposure and the need to lower human exposure is desperate.
- Lead is extremely toxic to humans and affects the liver, kidneys, reproductive system, and nervous system. Lead causes permanent problems, especially to the brain and children are the most at-risk for lead exposure with its worst effects effect on motor skills and cognitive impairment.
- Arsenic is an element that is extremely toxic to human health. Arsenic poisoning or *arsenicosis* occurs when someone is exposed to high levels of arsenic.

Harms of Illicit Alcohol:

The risks of drinking more than the recommended unit limit include cancer, liver disease, stroke, heart disease and many other illnesses^{xii}. In Sandwell we have the second highest mortality rate due to alcohol^{xiii}. Illicit alcohol further undermines our efforts to reduce the harms caused by alcohol.

Illicit alcoholic products are a significant health challenge, especially where adulterants, such as methanol, have the potential to cause harm. Methanol is commonly added to illicit beverages to make them stronger. It causes blindness and other health problems, and is often lethal.^{xiv} Also, some drinks are contaminated during production with toxic chemicals

and animal products that may be added to speed up fermentation. When these drinks are consumed, they pose a high risk of poisoning and infection.^{xv} Using such extraneous, substandard or inferior ingredients is often undeclared to the purchaser.

Illicit alcohol production is often carried out in unhygienic and uncontrolled conditions beyond the safeguards of the official control of imported foodstuffs. Workers in facilities producing illicit alcohol, and the general public in the area, can be exposed to the risk of industrial accidents, e.g., explosion. By allowing sales of illicit alcohol the licensee not only causes health damage direct to consumers but indirectly to those communities who may live nearby production facilities.^{xvi}

Illicit alcohol therefore remains a serious public health harm which needs to be addressed by action at regulatory and market levels.

Signed by Director of Public Health for Sandwell: _____

A black rectangular redaction box covering the signature of the Director of Public Health for Sandwell.

Date: 07/06/2022_____

Written delegated authority for Mary Bailey, Addictive Behaviours Programme Manager to represent Public Health evidence on your behalf:

A black rectangular redaction box covering the signature of the person providing delegated authority.

ⁱ <https://www.who.int/news-room/fact-sheets/detail/tobacco>

ⁱⁱ <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>

ⁱⁱⁱ <https://www.gov.uk/government/publications/smoking-and-tobacco-applying-all-our-health/smoking-and-tobacco-applying-all-our-health#harm-to-health-caused-by-smoking>

^{iv} <https://www.gov.uk/government/publications/smoking-and-tobacco-applying-all-our-health/smoking-and-tobacco-applying-all-our-health#harm-to-health-caused-by-smoking>

^v <https://ec.europa.eu/eurostat>

^{vi}

<https://webarchive.nationalarchives.gov.uk/ukgwa/20170623160050/https://www.gov.uk/government/statistics/tobacco-tax-gap-estimates>

^{vii}

<https://webarchive.nationalarchives.gov.uk/ukgwa/20170623160050/https://www.gov.uk/government/statistics/tobacco-tax-gap-estimates>

^{viii} <http://the-tma.org.uk/tma-publications-research/research-and-polls/ait-research/>

^{ix} <http://www.freshne.com/in-the-news/pr/item/2182-illegal-tobacco-hooking-teens.html>

^x <https://icc-ccs.org/index.php/360-counterfeit-cigarettes-contain-disturbing-toxic-substances>

^{xi} <https://icc-ccs.org/index.php/360-counterfeit-cigarettes-contain-disturbing-toxic-substances>

^{xii} https://www.who.int/health-topics/alcohol#tab=tab_1

^{xiii} <https://fingertips.phe.org.uk/profile/local-alcohol-profiles>

^{xiv} Ashurst, J.V. and T.M. Nappe. Methanol toxicity. 2019

^{xv} https://scholar.google.co.uk/scholar_url?url=https://www.mdpi.com/2304-8158/10/7/1625/pdf&hl=en&sa=X&ei=Y82QYt6oGbaTy9YPtq6ciAk&scisig=AAGBfm1tJD0slwrQ0mAtPZ2DsvZ-5vBv1Q&oi=scholar

^{xvi} https://scholar.google.co.uk/scholar_url?url=https://www.mdpi.com/2304-8158/10/7/1625/pdf&hl=en&sa=X&ei=Y82QYt6oGbaTy9YPtq6ciAk&scisig=AAGBfm1tJD0slwrQ0mAtPZ2DsvZ-5vBv1Q&oi=scholar

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