



Solihull Metropolitan Borough Council
Licensing, Central Depot, Moat Lane, Solihull, B91 2LW
Telephone No. 0121 704 6830

**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 Richard Staveley

(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

Tiwana
101-103 Alder Drive
Chelmsley Wood
Birmingham
B37 7QG

Post town Solihull

Post code (if known) B37 7QG

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

Mr Niranjan Sivarajah

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

005691

Part 2 - Applicant details

I am

Please tick ✓ yes

- 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)
- 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 ✓ yes

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 Richard Staveley Trading Standards & Environmental Compliance Safer Communities (Regulation & Enforcement) Economy & Infrastructure Directorate The Core, Homer Road, Solihull B91 3RG
Telephone number (if any) 0121 704 8124
E-mail address (optional) rstaveley@solihull.gov.uk

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

- Please tick one or more boxes
- 1) the prevention of crime and disorder
 - 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 2):

I am submitting this review on the grounds of actions or in actions which are contrary to the licensing objectives: the protection of children from harm and the prevention of crime and disorder.

S.146(1) Licensing Act 2003

Sales of alcohol to individuals under the age of 18

The Trading Standards Service of Solihull MBC enforces the law regarding the sale of alcohol to a person under 18. Periodically the Service carries out test purchasing exercises at premises that we have received intelligence about in relation to the sale of age restricted products to children.

In August 2022, Trading Standards received a complaint about Tiwana Supermarket; it was alleged that a 15-year-old child had been able to purchase alcohol from the premises and was subsequently admitted to hospital suffering the effects of excessive alcohol consumption. Following this allegation an officer visited Tiwana Supermarket on 3 occasions to discuss the sale of alcohol to children. This matter was investigated by Garry Brown, Senior Trading Standards Officer and an extract from his statement is included as part of this application.

On 17th September 2022 officers from Trading Standards undertook a test purchase operation with the assistance of volunteers who were under the age of 18. On this date a person under the age of 18 was instructed to enter Tiwana Supermarket and attempt to buy alcohol. The test purchaser was able to purchase a pack of 4 cans of cider. This purchase was covertly observed by Carrie Morris, Senior Trading Standards Officer.

Immediately after the sale was made, I, accompanied by Carrie Morris entered the premises and informed the seller that a sale had been made. As well as the seller there was one other member of staff present. I requested to see the "refusals book" or "refusals register" for the shop. Neither member of staff was able to produce such a document and the behaviour of the seller suggested to me that he had no understanding what was being requested. In addition, there was no signage relating to the sale of alcohol to under 18's or any age challenge signage e.g. Challenge 21 or Challenge 25.

This review is therefore being sought due to a sale of alcohol being made to an individual under 18. It is a criminal offence to sell alcohol to persons under 18 contrary to the Section 146(1) of the Licensing Act 2003. Therefore, there has been a breach of the licensing objective relating to the prevention of crime and disorder.

This sale was made to a person under 18 and therefore, by definition, to a child (Children Act 2004). Therefore, there has been a breach of the licensing objective of the protection of children from harm.

Investigations continue in relation to potential offences committed by the seller of the alcohol during the test purchase. However, due to the time this could take and the consequences of no change in the management of the premises, I feel the license review should take commence as soon as possible.

Please provide as much information as possible to support the application
(please read guidance note 3)

Extract from the statement of Garry Brown, Senior Trading Standards Officer and Investigating Officer for the allegation relating to the sale of alcohol to a 15 year old male.

I am a Senior Trading Standards Officer authorised under the Licensing Act 2003 to conduct work in connection with the investigation and prosecution of offences in relation to the underage sale of alcohol. On Friday 5 August 2022 I was in the office when I took a phone call. The call was from a grandmother who said that her grandson, who was 15 years old, had been hospitalised after drinking an excessive amount of alcohol. She said that her grandson had bought the alcohol himself from Tiwana's on "Greenlands Road". She said that he had bought the alcohol on 4 August 2022 between the hours of 7pm to 7.30pm. She said that he had bought two bottles of vodka and some 'Shots'. Later that day, I again spoke with the grandmother who said that her grandson had bought: two bottles Summer Fruit Vodka, a large bottle of Sourz and lots of little 'Shots'. She also said that her grandson was not asked for identification when he bought the alcohol. During the afternoon of 5 August 2022 I visited Tiwana Supermarket, 101 – 103 Alder Drive, Birmingham, accompanied by my colleague James Shore and two police officers from West Midlands Police. We met with a man who gave his name as Niranjana Sivarajah and who said he was the owner of the shop. I explained the reason for our visit. When CCTV was mentioned, he said we could view last night's footage. At 7.11pm on the CCTV clock, the footage showed a young man in the shop. The footage suggested the young man was attempting to buy alcohol. Mr Sivarajah could be seen refusing to serve him. A few minutes later, the CCTV footage showed a young woman enter the shop. She left without making a purchase. We discussed the issue of underage sales and Mr Sivarajah said that they do not sell age restricted products to children. He said that they had recently had a test purchase from those who run the national lottery and had passed. On 9 August 2022 I rang the grandmother. I described the young man who had been refused alcohol and she said that it could be her grandson. I also described the young woman and she said that could be a friend of her grandson's. She then went on to tell me that her grandson had actually bought the alcohol on Wednesday 3 August 2022. She also confirmed that her grandson had attempted to purchase alcohol from the same shop on 4 August 2022 and been refused. She said that her grandson had told her that it had been the same person serving him on both nights. On 12 August 2022 I visited the store with PC Luke Prescott. We asked the member of staff present if we could view the footage from 3 August. He said that his boss was not there and he couldn't use the CCTV system as it was password protected and he did not know the password. I was present as PC Prescott rang Mr Sivarajah. The latter said that he would not be able to meet us at the store until 17 August. We agreed to meet then. On 16 August 2022 I received an email from Mr Sivarajah. He wrote that because of an emergency he would not be able to meet us the following day. On 24 August 2022 I visited Tiwana Supermarket and met with Mr Sivarajah. He accessed the CCTV system. I asked to view footage from 3 August. He said that that

date was not available. He pointed to the calendar on the bottom right-hand corner of the CCTV screen. It had dates on it with a blue line running through them - the earliest date available appeared to be Friday 12 August 2022. I informed Mr Sivarajah that we would be continuing to investigate this matter and that the result could be that he be prosecuted or his premises licence may be reviewed.

Extract from statement of Richard Staveley, Trading Standards & Environment Manager, in relation to test purchase on 17th September.

I am Richard Staveley and I am employed by Solihull Metropolitan Borough Council as the Trading Standards and Environment Manager. I am an Inspector of Weights and Measures for the purposes of the Weights & Measures Act 1985 and I am an authorised officer for the purposes of the Licensing Act 2003.

On Saturday 17th September 2022 I took part in a test purchase exercise in relation to age restricted products along with Trading Standards Officers Caroline Morris and James Shore. For this exercise we asked two 17 year old female volunteers to enter premises, as usual customers, and attempt to purchase age restricted products. Throughout the exercise the volunteers were identified as volunteer 1 and volunteer 2. At the start of the exercise I briefed the volunteers: they were instructed to tell the truth if they were asked how old they are and to say that they did not have any if they were asked if they had any identification.

At approximately 14:40 I asked the volunteers to attempt to purchase alcoholic drinks from Tiwana, 101-103 Alder Drive, Chelmsley Wood, B37 7QG. I gave volunteer 2 a £10 note and, accompanied by volunteer 1, asked her to enter the shop and attempt to purchase an alcoholic drink. Mrs Morris was also asked to enter the shop as an unrelated customer to observe the activity in the premises.

When she came out of the shop volunteer 2 handed me a pack of 4 x pint cans of Strongbow Dark Fruit cider and £3.25 in change.

Mrs Morris and I re-entered the premises and there were two male members of staff in the shop. Mrs Morris identified the member of staff who had made the sale to volunteer 2. I approached him, identified myself and took down his details. I asked if I could see the refusals register or book and neither the seller nor the other member of staff appeared to have any knowledge about such a record. I looked around the shop and could not see any signage relating to the sale of alcohol to those under the age of 18. I took down the details of the licensee from the license.

Extract from statement of Caroline Morris, Senior Trading Standards Officer in relation to test purchase on 17th September.

I am Caroline Morris, and I am employed by Solihull Metropolitan Borough Council a Senior Trading Standards Officer.

On Saturday 17th September 2022 I took part in a test purchase exercise in relation to age restricted products along with Trading Standards Officer James Shore and Trading Standards and Environmental Compliance Manager, Richard Staveley.

For this exercise we asked two 17-year-old female volunteers to enter premises, as usual customers, and attempt to purchase age restricted products. Throughout the exercise the volunteers were identified as volunteer 1 and volunteer 2.

At 14.37 I entered Tiwana, 101-103 Alder Drive, Chelmsley Wood, B37 7QG. I witnessed the volunteers enter the same shop and walk towards the open fridge which contained alcoholic drinks. I selected two chocolate bars from a nearby shelf. I witnessed the volunteers walk from the fridge to the counter and volunteer 2 placed 4 cans of Strongbow dark fruits on the counter by the till.

I then stood behind the volunteers whilst they paid for the goods. The cashier placed a blue bag on the counter, he only spoke to quote the price of the goods. He did not ask for identification or ask the age of the volunteers. Volunteer 2 gave the cashier a £10 note and received change. She picked up the Strongbow and left the shop. I paid for my chocolate and left the shop shortly after the volunteers.

I would describe the cashier as; male, approximately 50 years old, of a black Caribbean origin, wearing a black T-shirt.

Approximately 10 minutes after leaving, I re-entered Tiwana with Richard Staveley. There were two male members of staff in the shop. I identified the member of staff who had made the sale to volunteer 2. Mr Staveley spoke to him and explained what had happened and took down his name, address and date of birth.

I looked around the shop and I could not see any notices about the sale of alcohol to over 18's only or any age challenge posters.

Mr Staveley and I then left the shop.

Comment

The Licensing Act 2003

It is a mandatory requirement for licensees to implement an age verification policy for their premises.

The evidence provided by Mr Brown and the test purchase suggests that the application of any procedures relating to the sale of alcohol to minors is patchy at best. Further, it was more than a month between Mr Sivarajah being made aware of the allegation investigated by Mr Brown and the test purchase. I would suggest that this would have been an appropriate time to ensure all staff are reminded of the law and the use of things such as the refusals book.

While this is an application for a review of the alcohol licence and not criminal proceedings I believe that reference to Section 146 (6) of the Licensing Act 2003 would assist in providing context around this matter. This section says 'Where a person is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.'

In this case, as licensee, Mr Sivarajah could be charged as a result of the actions of his employee and so would be able to avail himself of the defence of due diligence.

To 'exercise all due diligence' a person must ensure that there is a system in place and that that system is working. What constitutes due diligence will

depend on the size of the business with bigger, national companies being required implement more stringent standards than small independent businesses. However, this is likely to be dependent on the risk posed by the business: the higher the risk the more sophisticated the system.

On top of an age challenge policy, in the case of age restricted products the sorts of measures that would need to be put in place in order to satisfy this requirement are likely to be, at least; documented staff training, a refusals book or register and notices in the shop. In bigger or more high risk premises tills which prompt the shop worker to carry out an age check when an age restricted product is scanned, and will not complete the transaction until the action is completed, are appropriate.

Age Challenge Policy, Signage & Training Records

Immigration case law indicates that it is not reasonable to expect an individual to accurately assess the age of another person. Especially when trying to determine whether someone is a child (under 18 years) or an adult (18 years and over). This is recognised by introducing a policy such as Challenge 25. Anyone attempting to purchase alcohol, or other age restricted products, who looks under the age of 25 should be challenged to provide evidence of their ability to legally purchase the product.

Notices should be posted in the premises informing customers that a Challenge 25 policy is in force and they should expect to be challenged if they look younger than 25.

Training is intended to give employees information about the age restrictions, what to look out for, what "Challenge" policy is used in the premises and what to do if faced with a purchaser they believe to be under age. Training records signed by the staff members provides evidence that this training took place.

Refusals Register

A refusals book or register is a record of the incidents when customers have been refused a sale of an age restricted product because they did not appear old enough.

On 17th September in Tiwanas there was no indication in the shop that a "Challenge 21" or "Challenge 25" policy was in force. There were no signs indicating that they do not sell alcohol to people under the age of 18. When requested the staff in the shop, including the seller of the cider, were not just unable to show us the refusals register, they did not appear to know what we were talking about. This then calls into question not only the existence of a refusals register but also the training they have received and indeed the existence of an age verification policy for the premises.

Intelligence suggests that this premises has a reputation for selling age restricted products, such as alcohol, tobacco and vapes to people under 18.

Recommendations

To help prevent further breaches of the licensing objectives, I recommend that the following license conditions be added to the premises licence for Tiwanas:

The prevention of crime and disorder

- CCTV covering the interior and exterior of the premises will be installed and shall be kept operational at all times the premises are open to the public.
 - It shall be capable of taking a head and shoulders shot of persons entering the premises, of recording images to an evidential standard in any light and be capable of storing images for a minimum of 31 days.
 - All staff who may work front of house shall be trained to operate the CCTV system and download images.
 - At least one member of staff trained to operate the CCTV system and download images shall be on duty at all times the premises are open to the public. Footage shall be shown to the police and screenshots provided to them on request. Copies of downloaded images shall be provided to the police on a USB stick, CD or other acceptable means as soon as possible and in any case within 24 hours of the request.
- All staff who work front of house will be trained for their role on induction, training must include their roles and responsibilities around the licensing objectives. They must be given refresher training every six months and sign to say they have received such training. Written training records will be kept for each staff member and be produced to police and authorised council officers on request. Training will include identifying persons under 25, making a challenge, acceptable proof of age and checking it, making and recording a refusal, avoiding conflict and responsible alcohol retailing.
- An incident book shall be kept at the premises, and made available to the police or authorised council officers, which will record the following:
 - All crimes reported,
 - Any complaints received,
 - Any faults in the CCTV,
 - Any refusal in the sale of alcohol,
 - Any visit by a relevant authority or emergency service.
- Notices will be prominently displayed by the entry/exit door and point of sale (as appropriate) advising customers:
 - That CCTV and Challenge 25 are in operation.

The protection of children from harm

- Challenge 25 shall be operated as the proof of age policy and only a valid passport, photo driving licence, HM Forces photographic ID card or proof of age card with the PASS logo or hologram on it may be accepted as proof of

age.

- All refusals of the sale of alcohol shall be recorded in the refusals section of the incident book (or electronically if available). The incident book shall be kept and produced to police and authorised council officers on request.
- Notices for Challenge 25 will be prominently displayed by the entry/exit doors and point of sale.
- Unless an epos system with an automatic proof of age check reminder incorporated in it is in use a manual prompt will be displayed by the till(s) to remind staff to check proof of age where appropriate.

I further recommend that the licence for the shop be suspended for a period of one month in order to allow the full implementation of the conditions.

Please tick ✓ yes

Have you made an application for review relating to the 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 the 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, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

Part 3 – Signatures (please read guidance note 4)

Signature of applicant or applicant’s solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature Richard Staveley

.....

Date 14th October 2022

.....

Capacity Responsible authority – Trading Standards.

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)
As above

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

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