

## LICENSING HEARING PANEL

6 OCTOBER 2015

### LICENSING ACT 2003 APPLICATION FOR REVIEW OF A PREMISES LICENCE

### KUBUS CONVENIENCE, 88 HIGH STREET, CHATHAM, KENT ME4 4DS

Report from: Perry Holmes, Assistant Director Legal and Corporate Services

Author: Mandy Francis, Senior Licensing and Enforcement Officer

#### Summary

In accordance with Section 51 of the Licensing Act 2003, the Council has received an application from Kent Police, as a responsible authority, for a review of the existing premises licence in respect of Kubus Convenience, 88 High Street, Chatham, Kent ME4 4DS

#### 1. Budget and Policy Framework

- 1.1 Medway Council has published its Statement of Licensing Policy, which it takes into account in all applications relating to the Licensing Act 2003. Paragraph 3 specifically deals with the question of crime and disorder, which is the objective raised in respect of this review application.

#### 2. Background to the application & relevant representations

- 2.1 An application for review was received from Kent Police, as a responsible authority, in respect Kubus Convenience, 88 High Street, Chatham, Kent ME4 4DS. The premises currently operates by way of a premises licence granted in accordance with the Licensing Act 2003, a copy of which is attached at Appendix A. A copy of a plan showing the location of the premises is at Appendix B.
- 2.2 A copy of the review application is at Appendix C and the Panel's attention is drawn to the grounds for the review, related to the licensing objectives of the Licensing Act 2003. No representation has been received from the Premises Licence Holder.

- 2.3 The application has been correctly advertised by way of the display of notices at and around the premises and on the Council's website for the required period, in accordance with regulations made under the Licensing Act 2003. Also, in accordance with the legislation, notice of the application (and the application itself) was served on the licence holder and the other responsible authorities.
- 2.4 Before determining the review application, the Council as licensing authority must hold a hearing to consider it and any relevant representations received.
- 2.5 Following the advertising of the review application, we have received a representation from Public Health, as a responsible authority, supporting the review. This representation is attached at Appendix D. No other relevant representations have been received from interested parties, any of the other responsible authorities or the premises licence holder.

### **3. Advice and analysis on determination of review application**

- 3.1 At the panel hearing, Members must, having regard to the review application and the relevant representations received, take any of the following steps considered necessary to promote the licensing objectives of the Act:-
- (a) 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;
  - (b) 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);
  - (c) remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
  - (d) suspend the licence for a period not exceeding three months;
  - (e) revoke the licence
- 3.2 Paragraph 11.16 – 11.18 of the revised guidance issued by the Home Office on 27 June 2013 under Section 182 of the Licensing Act 2003 states " 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. 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. 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.

#### **4. Risk Management**

4.1 The Council has to consider and determine this application, which is a function relating to licensing and registration as set out in Schedule 1 to the Functions Regulations, the Licensing Act 2003, Gambling Act 2005 and other licensing functions reserved by law to the Council's Licensing and Safety Committee and its Sub-Committees, in accordance with the law (both statutory and case law), relevant statutory guidance and statements of policy.

#### **5. Financial and legal implications**

5.1 There are no direct financial requirements at this time.

5.2 This hearing is regulated by The Licensing Act 2003 (Hearings) Regulations 2005 (as amended).

5.3 There is the possibility of a challenge by way of appeal to the decision by either the applicant or objector. Legal advice will be given to members as appropriate at the hearing. However, whatever the decision of the panel members, this must be based on the evidence placed before it and the panel must decide what weight to attribute to this information.

#### **6. Decision Required**

6.1 Having regard to Licensing Act 2003, the statutory guidance issued under S182, the Council's Licensing Policy and all matters before it, both written and oral, the steps that the licensing authority may consider taking are outlined in paragraph 3.1.

**Lead officer contact:** Mandy Francis, Senior Licensing and Enforcement Officer  
Telephone: 01634 331922  
Email: [mandy.francis@medway.gov.uk](mailto:mandy.francis@medway.gov.uk)

#### **Appendices:**

Appendix A – Copy of current premises licence  
Appendix B - Plan showing the location of the premises  
Appendix C - Copy of the Review Application  
Appendix D – Copies of the representation from Public Health

#### **Background documents**

None





## MEDWAY COUNCIL

Licensing Authority, Gun Wharf, Dock Road, Chatham, Kent ME4 4TR

### Premises Licence

Premises Licence Number

**Medway/14/00749/PREM**

#### Part 1 - Premises Details

Postal address of premises, or if none, ordnance survey map reference or description	
<b>Kubus Convenience 88 High Street</b>	
Post town	<b>Chatham, Kent</b>
Post code	<b>ME4 4DS</b>
Telephone number	<b>Not Known</b>
Where the licence is time limited the dates: <b>Not Applicable</b>	
Licensable Activities authorised by the licence <b>Sale of Retail of Alcohol</b>	
The times the licence authorises the carrying out of licensable activities. <b>Monday to Sunday 08:00 to 23:00.</b>	
The opening hours of the premises <b>Monday to Sunday 08:00 to 23:00.</b>	
<b>The premises may open outside authorised hours for non-licensable activities subject to planning or other legislation.</b>	
Where the licence authorises supplies of alcohol whether these are on and/or off supplies <b>Off Supplies</b>	

#### Part 2

Name, (registered) address, telephone number and e-mail (where relevant) of holder of premises licence <b>Mr Harem Haji Berot</b>
Registered number of holder, for example company number, charity number (where applicable) <b>Not Applicable</b>
Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol <b>Mr Harem Haji Berot</b>

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises the supply of alcohol

Medway/14/00362/PERS

Medway Council

## Annex 1 – Mandatory Conditions

### Condition 1

No supply of alcohol may be made under this licence:-

- (a) At a time when there is no designated premises supervisor in respect of it or
- (b) At a time when the designated premises supervisor does not hold a personal licence or his/her personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

### Condition 2

- (1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol
- (2) 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 a holographic mark.

## Annex 2 – Conditions consistent with the Operating Schedule

### Condition 3

CCTV will be provided in the form of a recordable system, capable of providing pictures of evidential quality in all lighting conditions particularly facial recognition. Cameras shall encompass all ingress and egress to the premises, outside the premise, fire exits and all areas where the sale and supply of alcohol occurs. Equipment must be maintained in good working order, be correctly time and date stamped, recordings MUST be kept on the hard drive and kept for a period of 31 days and handed to Police on demand. The premises licence holder must ensure at all times a DPS or appointed member of staff is capable and competent at downloading CCTV footage in a recordable format to the Police and Local Authority on demand. The recording equipment and hard drive shall be kept in a secure environment under the control of the DPS or other responsible named individual. In the event of technical failure of the CCTV equipment the premises licence holder or DPS must report the failure to the Police Licensing Officer immediately at [licensing.north.division@kent.pnn.police.uk](mailto:licensing.north.division@kent.pnn.police.uk)

### Condition 4

The licence holder and/or designated premises supervisor shall ensure that at least one personal licence holder is available on the licensed premises while the sale or supply of alcohol is being undertaken at the premises.

### Condition 5

The License Holder will maintain auditable refusal/incident records. These records will detail the following:- (a) Day, Date and Time of Refusal/Incident (b) Nature of Refusal/Incident and reason (c) Details of or description of the individual. Each entry is to be checked and signed by the D.P.S on the day of the event. These records will be made available for inspection to any Police Officer, Police Licensing Officer, and Officer of the Local Authority immediately upon demand.

### Condition 6

All persons that sell or supply alcohol to customers must have licensing training. Training should take place within six weeks of employment and any new employees will be supervised until the training has taken place. Training must include:- (a) Avoiding sales of

alcohol or age restricted products to those under the age of 18 (b) recognising customers who appear drunk and refusing sale or supply of alcohol (c) knows the licensing objectives and have read and understood licence conditions (d) can produce licences / certificates / permits relevant to the premises in the absence of licence holder/DPS. Refresher training should be repeated a minimum of every six months or earlier if required due to changes of legislation. Training records must be kept on the premises and shall contain the nature, content and frequency of all training. Records must be made available for inspection by Police, Police Licensing Officer and authorised officers from the Local Authority on demand either electronically or hard copy.

Condition 7

No beers, lager or cider will be sold above 5.5% ABV.

Condition 8

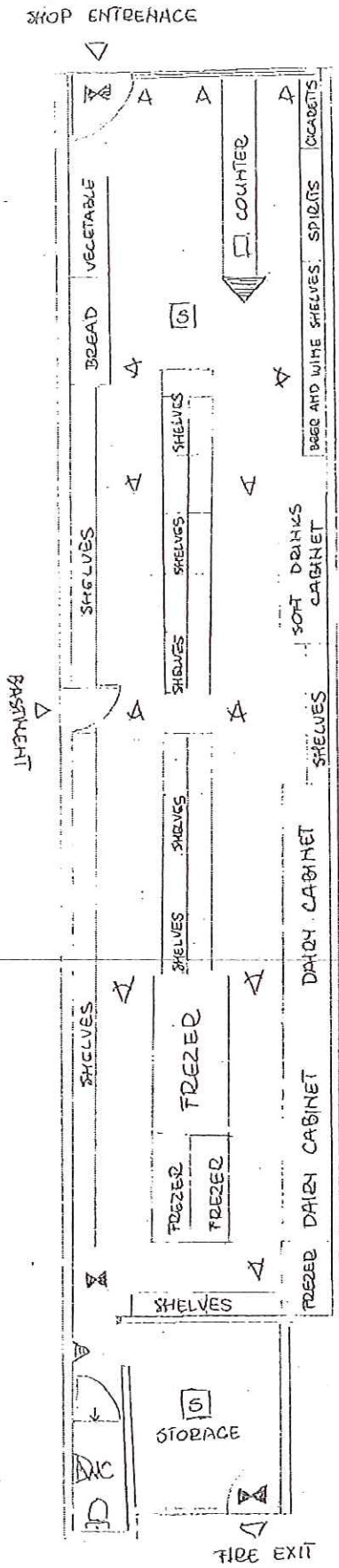
No single cans of beer or cider shall be sold, displayed, or offered for sale from the premises.

Condition 9

Notices to be prominent displayed to remind customers to leave quietly.

Annex 3 – Conditions attached after a hearing by the licensing authority

Not Applicable

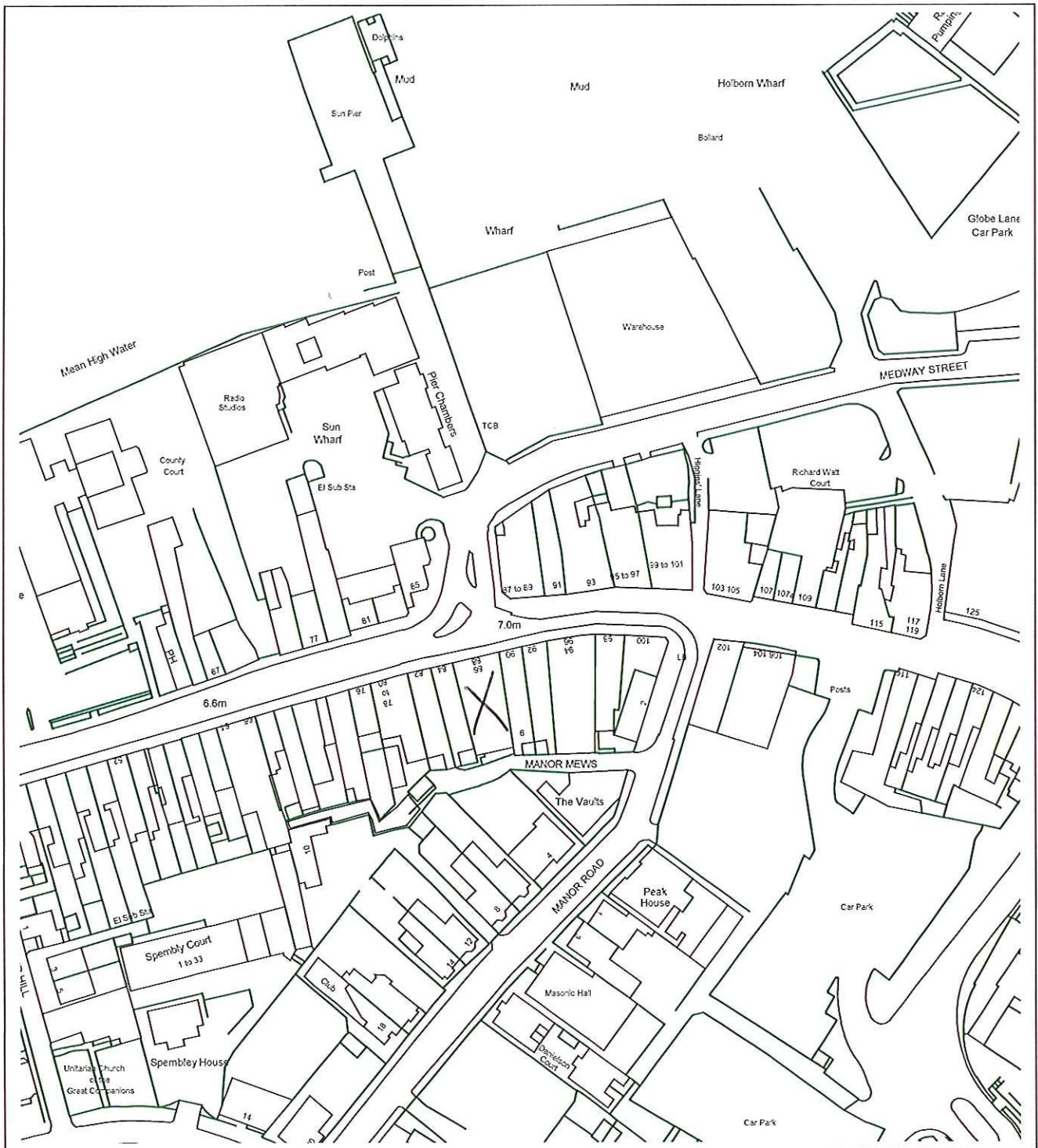


LEGEND

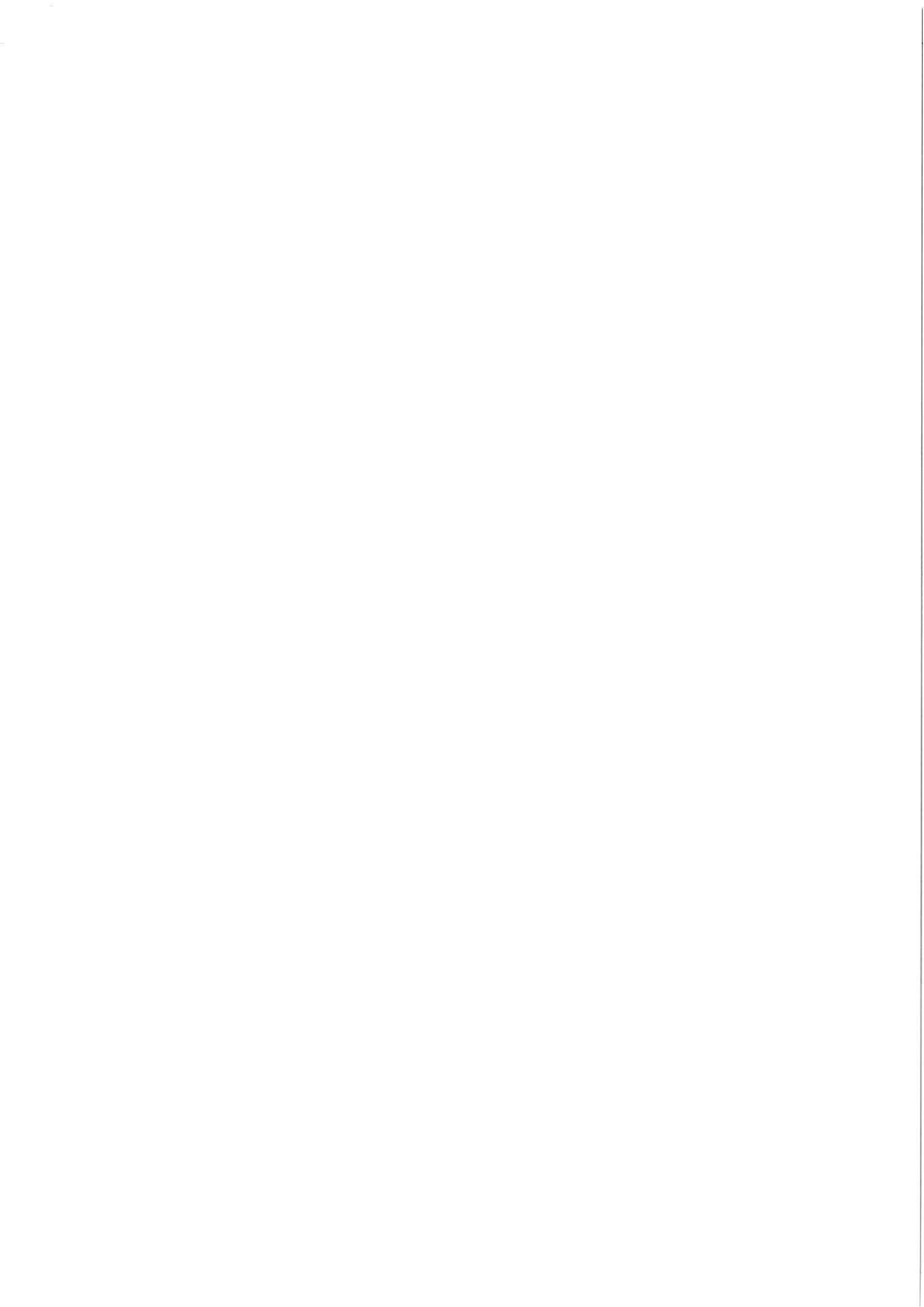
- ▲ SAFETY LIGHTS
- S SMOKE DETECTOR
- ▲ CARBON DIOXIDE FIRE EXTINGUISHER
- ▽ CCTV



# NORTHGATE SE GIS Print Template



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Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

10 AUG 2015

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 PC 10399 Holroyd

(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 Kubus Convenience 88 High Street	
Post town Chatham, Kent	Post code (if known) ME4 4DS

Name of premises licence holder or club holding club premises certificate (if known) Mr Harem Haji Berot
---

Number of premises licence or club premises certificate (if known) MEDWAY/14/00749/PREM
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Part 2 – Applicant details

I am

Please tick yes

- 1) an interested part (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)

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

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

Please tick

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

Surname

First names

Please tick yes

I am 18 years old or over

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)

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address <b>PC 10399 Holroyd Medway Police Station Purser way Gillingham Kent, ME7 1NE</b>
Telephone number (if any) <b>01634 792733</b>
E-mail address (optional) <b>10399@kent.pnn.police.uk</b>

**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)

Kubus Convenience stores have failed to promote the following licensing objectives, the prevention of crime and disorder, Public Safety and the prevention of public nuisance.

Kent Police and Her Majesty's Customs and Excise visited the store on the 29th of July 2015, whilst carrying out the checks breaches of conditions were found and non-duty paid cigarettes.

## Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

### Please provide as much information as possible to support the application

(please read guidance note 2)

On Wednesday the 29th July 2015 at approximately 10:25 hrs police attended Kubus Convenience Store, 88 High Street, Chatham, Kent, ME4 4DS. At this premises there was alcohol over the 5.5% ABV found on display this is in breach of the licensing conditions. Also found were a quantity of non-duty paid cigarettes.

The premise is a terraced off licence store located in Chatham High Street. It is a convenience store selling food, alcoholic and non-alcoholic beverages, household goods and tobacco. It is located in an immediate area that has a high number of Licensed Premises; however the majority are dynamically different businesses.

The circumstances of the incident are as follows:

Police Licensing Officers PC Holroyd, PC Cossar and three members of Her Majesty's Customs and Excise (HMRC) attended Kubus Convenience Store, to carry out a licensing visit.

On entering the store, the Premise Licence Holder and Designated Premises Supervisor (DPS), Haji Berot HAREM was behind the counter and in the store alone. All officers identified themselves and immediately PC Cossar asked him if he should be in the store on his own, as she thought that his conditions meant that there had to be two at any time when alcohol was being sold. He said that he was on his own but his conditions did allow this. (His conditions were checked and he was correct) Janet CALLANEN from HMRC went to look at the rear of the store and immediately came back with a large black sack of non-duty paid cigarettes; she then had a further discussion with him about them.

PC Cossar and PC Holroyd started checking the alcohol in the chilled section and immediately noticed cans of Desperados; upon closer inspection it became clear that it has an ABV of 6%. Several more were checked and three more found ranging from 5.7% up to 7.0%, four different brands in total.

One of the conditions of the premises licence is no beers, lager or cider to be sold over 5.5% ABV. When PC Cossar asked him why he was selling this, he stated that two ladies from the council said that he could. PC Cossar made contact with Lyndsey Keen, Council enforcement officer who stated that they had been in and issued him with a warning for the very same breach on the 28th April 2015 therefore he was fully aware that he should not be selling any beers, larger or cider over 5.5% ABV. (When the paperwork was checked in relation to the information from Lyndsey KEEN it clearly showed that one of the Lagers found was exactly the same one that he had been warned not to sell previously). He was then asked to remove all items that did not comply with his conditions from display, to prevent any further sales being in breach of the licence conditions.

The reason that the 5.5% ABV was originally placed on the conditions are due to the fact that this area of Chatham High Street where this premises is located has had a long history of problems with street drinkers, which is escalated by its close proximity to premises such as Caring Hands, Job Centre, Anchorage House Court and HM Probation Service. Kubus Convenience Store is extremely close to Manor Road, Chatham which is currently the biggest problem location for people sleeping rough. This location is monitored closely by officers from Kent Police and most persons found there are usually alcohol abusers. Alcohol abusers and street drinkers are known to favour stronger forms of alcohol, particularly beers, lagers and ciders because this allows them to become drunk at a cheaper cost.

It is the opinion of Kent Police that this store is not promoting the licensing objective, under the prevention of crime and disorder, Public Safety or the prevention of public nuisance. This is demonstrated by the breaches of conditions on the premises licence, i.e. the continued selling of various brands of alcohol over the agreed ABV. Also having non-duty paid cigarettes in the store.

It is apparent that Mr Harem shows a blatant disregard, and lack of understanding of the law and his responsibilities under the licensing act as a personal licence holder. By lying to police in relation to the warning given by council enforcement officers, he has eroded any trust with both the police and council licensing officers.

**Application for the review of a premises licence or club premises certificate under the Licensing Act 2003**

Having considered all the options, Kent Police seek revocation of the licence, as strict conditions have already been placed which have been ignored and removal of the DPS is not viable as Mr Berot is also the holder of the premises licence, therefore still remain in control of the premises. We therefore ask the Licensing Committee to consider that the premise licence is revoked due to the seriousness of this case. Should the panel decided not to revoke then we would seek to suspend the licence for up to three months to allow the premises to reset and also to remove the DPS.

**Application for the review of a premises licence or club premises certificate under the Licensing Act 2003**

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
<input type="text"/>	<input type="text"/>	<input type="text"/>

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



Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

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 ..... PC10399

Date ..... 06/08/15

Capacity ..... Licensing Officer.

<b>Contact name (where not previously given) and postal address for correspondence associated with this application</b> (please read guidance note 5)	
<b>Post town</b>	<b>Post code</b>
<b>Telephone number (if any)</b>	
<b>If you would prefer us to correspond with you using an e mail address your e mail address (optional)</b>	

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.



SWIATOWA JAKOŚCI BROWAR SIERPC



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Grill



**Kasztelan**

Niepasteryzowane



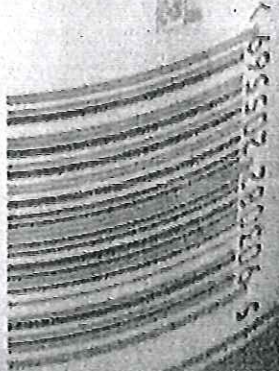
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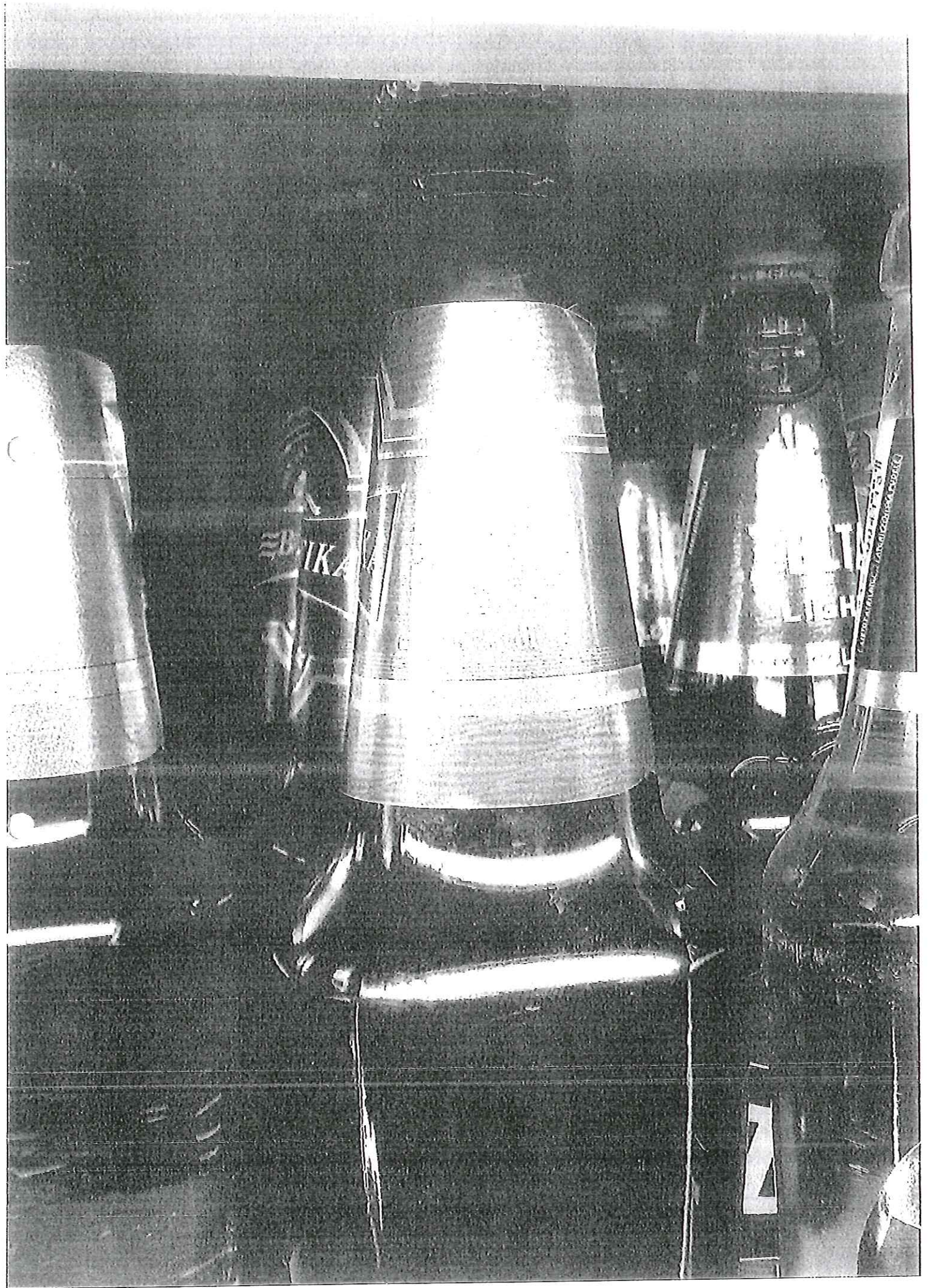
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Director of Public Health  
Public Health Directorate  
Medway Council,  
Gun Wharf,  
Dock Road,  
Chatham, Kent. ME4 4TR  
August 2015

**LICENSING ACT 2003 – Representations in support of review application  
by Kent Police**

**Name and address of premises**

**Kubus, 88 High Street, Chatham, Kent ME4 4DS**

**Reference:**

The Director of Public Health would like to make a representation under the following licensing objectives in support of the review application by Kent Police

- The prevention of crime and disorder
- Protection of children from harm

The review application by the police has arisen following the discovery of a quantity of non UK duty paid tobacco at the premises by HMRC on 29<sup>th</sup> July 2015.

In 2010 a study was carried out in Medway looking at tobacco control in Medway<sup>1</sup>. Part of the study involved looking at children, smoking and their knowledge and use of illicit tobacco. There were several points that came out of the study:

- The children who were part of the study were aware of illicit tobacco, whether that was non duty paid, foreign brands or counterfeit
- 41% of those questioned had smoked a 'fake' brand
- 56% of those questioned had smoked 'foreign' brands
- There was a preference for illicit tobacco products as they were seen as cheap
- The supply of illicit tobacco products was identified by the study as an 'enabler', allowing children to start and continue smoking

The most recent Tobacco Control Survey for Medway, which is produced by Public Health England, shows that 10% of 15 year olds in Medway are classed as 'current smokers'<sup>2</sup>.

Children in Medway are aware of illicit tobacco. They seek it out, buy and use it, as illicit tobacco is cheap and easy to obtain. A person who is prepared to sell illicit tobacco may be less likely to worry about supplying children, as they are already engaging in illegal activity.

There is evidence that suggests the buying rates among children of illicit tobacco is higher than adults, and that about half of tobacco consumed by children is illicit, compared to a third by adults.<sup>3</sup>

NICE states that

*'Illicit tobacco products make tobacco more accessible to children and young people...'*

Research cited by NICE also provides evidence that children access and use illicit tobacco as it is unregulated, cheap and relatively easy to obtain.<sup>4</sup>

The sale of illicit tobacco puts children at harm, breaching the protection of children from harm objective. The sale of illicit tobacco is unlawful and therefore breaches the prevention of crime objective.

These premises has also come to the notice of Public Health staff on a previous occasion, where a breach of the premises licence was witnessed, which again shows a disregard of the law and shows a failure to promote the prevention of crime objective.

On the 28<sup>th</sup> April 2015 a member of my staff, Barbara Murray, accompanied Medway Council Senior Licensing Enforcement Officer, Lynsey Keen during a licensing visit at these premises. While Ms Keen was inspecting paper work Mrs Murray saw there was a selection of beers being offered for sale in one of the alcohol fridges. All the beers were over 5.5% ABV. Mrs Murray was aware these premises have a condition on the premises licence which stops the sale of any beer or cider which has an ABV over 5.5%. She pointed out the beers to both Ms Keen and the man who was serving behind the counter.

In total seven products were identified as being offered for sale and which exceeded 5.5% ABV. Please see appendix A attached to these representations.

Mrs Murray witnessed Ms Keen issuing a written warning to the shop assistant for breach of the condition on the premises licence and clearly telling him the products had to be removed from sale and that he could not continue to sell them, or any other beer or cider which had an ABV in excess of 5.5%.

It is clear that the premises licence holder is not promoting the prevention of crime and protection of children from harm licensing objectives due to the breaches of the licensing conditions placed on the premises licence and by having non UK duty paid cigarettes in the shop.

Paragraph 11.27 of the Section 182 Guidance states that there are certain criminal activities that are considered as particularly serious, with the sale and storage of smuggled tobacco listed as one of these activities. Paragraph 11.28 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 view of the breaches of the premises licence and the finding of illicit tobacco on more than one occasion I would ask the Licensing Committee to revoke this licence as I do not consider that placing additional conditions on the licence would promote the licensing objectives.

Dr Alison Barnett

Date 12<sup>th</sup> August 2015

**Director of Public Health**

For all communication please contact **Barbara Murray**, Public Health Project Coordinator at the address at the head of this representation or by the following:

Tel: 01634 332637

E mail: [Barbara.murray@medway.gov.uk](mailto:Barbara.murray@medway.gov.uk)

References

1. Medway Insights:
2. Local Tobacco Control Profile. Public Health England. Available at <http://www.phoutcomes.info/search/smoking%20way#gid/1/pat/6/ati/102/page/1/nr//par/E12000008/are/E06000035>
3. North East Illicit Tobacco Survey 2013. Available at <http://ash.org.uk/localtoolkit/docs/cldr-briefings/Illicit.pdf>
4. Preventing the Uptake of Smoking by Children – Focus Group Report  
The prevention of uptake of smoking by children and young people, with reference to the areas of mass media and the sale of tobacco products:  
findings from a multi-method primary research study. Available at <https://www.nice.org.uk/guidance/ph14/evidence/preventing-the-uptake-of-smoking-by-children-and-young-people-focus-group-report2>

**Appendix A**

Photographs of the products exceeding 5.5% ABV being offered for sale in Kubus on 28/04/2015

