

APPENDIX A

[Insert details including name and address of licensing authority and application reference if any (optional)]

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 Bill Masini (On behalf of Trading Standards)

(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

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description Best Food and Wine 171 Queens Road	
Post town London	Post code (if known) SE15 2ND

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

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

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 Southwark Council – Trading Standards Bill Masini Trading Standards Officer Community Safety & Enforcement 3 rd Floor Hub 1 PO Box 64529 London SE1P 5LX
Telephone number (if any) 0207 525 2629
E-mail address (optional) bill.masini@southwark.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 | <input checked="" type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | <input type="checkbox"/> |

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

Prevention of Crime and disorder –

- Duty evaded alcohol offered for sale – Customs and Excise Management Act 1979
- Duty evaded alcohol bearing counterfeit trade marks and “Duty stamp” – Trade Marks Act 1994 and Duty Stamp Regulations 2006
- Offer to supply alcohol that cannot be legally sold – Consumer Protection from Unfair Trading Regulations 2008

Since 1 January 2007 it has been a requirement of The Duty Stamp Regulations 2006 that retail bottles of alcohol of proof 30% ABV and higher and packaged in sizes of 35cl and larger have to carry a duty stamp to be legal for retail sale. The term “fake UK duty stamp” is used to describe a stamp that appears to comply with the design specification in the regulations but is not produced on behalf of HMRC or the product’s manufacturer or distributor. Where in the case of a manufacturer which has its trade mark on this label, the trade mark is also infringed because it has been used without the manufacturer’s consent and authorisation. This is an offence under The Trade Marks Act 1994.

The term “duty diverted” is used to describe alcohol produced in the UK for export but illegally placed on the UK market. Spirits produced for export are not subject to duty and must not have labels incorporating duty stamps. Duty diversion takes place when alcohol for export is relabelled with fake labels bearing fake UK duty stamps.

On 9 December 2016 Trading Standards carried out an inspection at the premise. This was for the purposes of inspecting goods for sale to ensure they complied with legislation enforced by Trading Standards and also to ensure there was also compliance with the conditions on the Premise Licence and The Licensing Act.

On close examination a large quantity of what is commonly referred to as “duty diverted spirits” were on offer for sale.

On the shelf at eye level behind the counter were:

- 7 x 70cl bottles of Glen’s vodka (37.5% ABV). The rear labels on all the bottles had been replaced with a fake label bearing a fake UK duty stamp.

On the lowest shelf behind the counter were:

- 2 x 70cl bottles of Glen’s vodka (37.5% ABV). The rear labels on both bottles had been replaced with a fake label bearing a fake UK duty stamp.

On another shelf were:

- 4 x 70cl bottles of High Commissioner blended Scotch whisky (40% ABV). The rear labels on all the bottles had been replaced with a fake label bearing a fake UK duty stamp.

On another shelf were:

- 2 x 70cl bottles of High Commissioner blended Scotch whisky (40% ABV). The rear labels on both bottles had been replaced with a fake label bearing a fake UK duty stamp

On another shelf were:

- 5 x 70cl bottles of Smirnoff vodka (37.5% ABV). The rear labels on all the bottles had been replaced with a fake label bearing a fake UK duty stamp

On another shelf was:

- 1 x 1 litre bottle of Smirnoff vodka (37.5% ABV). The rear label on the bottle had been replaced with a fake label bearing a fake UK duty stamp

On another shelf were:

- 2 x 70cl bottles of Bells blended Scotch whisky (40% ABV). The rear labels on both bottles had been replaced with a fake label bearing a fake UK duty stamp.

In the basement of the shop was:

- 1 box containing 6 x 1 litre bottles of Glen's vodka. The box had the words "**UK DUTY STAMP**" printed on the side to indicate it was manufactured for the UK market. These words had been inked out with a black pen. This is an indication that an outer box of UK market stock was sold for export. The box also had evidence of having been opened and resealed with clear tape.(see photograph 1). On examination, it was evident the rear labels on bottles inside had been replaced with fake labels bearing fake UK duty stamp
- 1 box containing 12 x 70cl bottles of Glen's vodka. The box had the words "**UK DUTY STAMP**" printed on the side to indicate it was manufactured for the UK market. Once again these words had been inked out with a black pen. This is an indication that an outer box of UK market stock was sold for export. The box also had evidence of having been opened and resealed with clear tape. On examination, it was evident the rear labels on bottles inside had been replaced with fake labels bearing fake UK duty stamp.
- 2 boxes each containing 6 x 70cl bottles of Bells blended Scotch whisky. The box had the words "**UK DUTY STAMP**" printed on the side to indicate it was manufactured for the UK market. Again, these words had been inked out with a black pen. This is an indication that an outer box of UK market stock was sold for export. The box also had evidence of having been opened and resealed with clear tape. On examination, it was evident the rear labels of bottles inside had been replaced with fake labels bearing fake UK duty stamp. The box was very tatty indicating to anyone exercising any diligence that there were questions to be asked about the box's history (see photographs 2 and 3).

UK market alcohol sold for export is required to have any associated duty stamp

obliterated; this is done by exporters using either a non-removable round sticker or by the physical removal (scratching out) of the duty stamp. Having done this it is normal for the outer box to have the words “**UK DUTY STAMP**” obliterated, or simply not applied to the box in order to differentiate it from the regular UK market stock. This is relevant to the following stock also in the basement:

- 2 boxes each containing 6 x 70cl bottles of Smirnoff vodka. The boxes did NOT have the words “**UK DUTY STAMP**” printed on the outer box of alcohol. This is an indication that it was manufactured for the export market. The outer boxes also had evidence of having been opened and resealed with clear tape. The rear labels of the bottles had been replaced with fake labels bearing a fake UK duty paid stamp. (see photographs 2 & 3)

In total, seized for being non-duty paid duty diverted alcohol (and therefore illegal to be sold) were

- 21 x 70cl bottles of Glen’s vodka
- 17 x 70cl bottles of Smirnoff vodka
- 14 x 70cl bottles of Bells whisky
- 6 x 70cl bottles of High Commissioner whisky
- 1 x 1 litre bottle of Smirnoff vodka
- 6 x 1 litre bottles of Glen’s vodka

The rate of alcohol duty on a 70cl 37.5% ABV spirit was £7.41 (£8.89 inc VAT) up to 23 March 2015 and is currently £7.26 (£8.71 inc VAT).

The rate of alcohol duty on a 70cl 40% ABV spirit was £7.90 (£9.48 inc VAT) up to 23 March 2015 and is currently £7.74 (£9.29 inc VAT)

The rate of alcohol duty on a 1 litre 37.5% ABV spirit was £10.58 (£12.70 inc VAT) up to 23 March 2015 and is currently £10.37 (£12.45 inc VAT)

The rate of alcohol duty on a 1 litre 40% ABV spirit was £11.29 (£13.55 inc VAT) up to 23 March 2015 and is currently £11.06 (£13.27 inc VAT)

The duty and VAT therefore evaded for these spirits (taking the current lower duty rates) totals:

38 x 8.71 = £330.98 [Glens & Smirnoff 70cl bottles]

20 x 9.29 = £185.80 [Bells & High Commissioner 70cl bottles]

1 x 13.29 = £13.29 [1 litre Smirnoff]

6 x 12.45 = £149.40 [1 litre Glen’s]

Total = £679.47

These items were seized because it was not legal for them to be sold. It is not clear how many other similar such items had been previously sold. Bottles that were legitimate, as can be seen in the photographs, were left in the shop

Also offered for sale were so called super strength beers. These drinks are almost exclusively consumed by people who have a serious alcohol addiction problem and contain a high number of units of alcohol per can. These people often have mental health issues and live a chaotic lifestyle. This in turn can mean they become so called "street drinkers". In doing so they may create a public nuisance and commit anti-social behaviour type offences such as aggressive begging and urinating in public places.

The duty payable including VAT on these beers with an ABV of 8% sold in 500ml cans is £1.15. This premise had quantities of such beers (Tennents Super, Skol Super, Carlsberg Special Brew and Kestrel Super) priced for sale at £1.50 (see photograph 4); a difference of 35 pence to account for all the manufacturers' costs, their transportation costs and profit, the wholesalers' mark up and the retailer's mark up. Suspicious these drinks were also subject to some form of evaded duty or other illegality, Trading Standards required the owner to produce his invoices for these drinks. Invoices that were later produced showing drinks of these brands purchased, indicated a price of £36.99 plus Vat (i.e £44.39) or £1.85 per can.

The premise licence holder was required to produce his purchase invoices for the spirits seized and the super strength beers. It is an offence to fail to produce traceable invoices (alcohol falling within the definition of food) under The General Food Hygiene Regulations 2013.

On 30 January 2017 Nuresh Kumar was interviewed under caution and in accordance with the requirements of The Police and Criminal Evidence Act. He brought with him purchase invoices stating these related to the products he had sold or had offered for sale, presumably expecting Trading Standards to simply accept these to be the complete records for his purchases.

Those invoices indicated the following purchases in 2016 up to the date of the visit:

- Glen's vodka (70cl) - 60 bottles

30 January 2016 – 12

27 February 2016 – 18

21 October 2016 – 12

19 November 2016 – 18

- Smirnoff vodka (70cl) – 36 bottles

20 February 2016 – 12 [price marked £13.79]

21 February 2016 – 12 [price marked £13.79]

19 November 2016 – 12

- Bells whisky (70cl) – 12 bottles

19 November 2016 – 12

- High Commissioner whisky – 6 bottles

19 November 2016 – 6

- Smirnoff (1 litre) – 0

- Glen's (1 litre) – 6 bottles

19 November 2016 – 6

Taking into account items seized and legitimate products left in the shop, this indicated at face value that in 2016 Mr Kumar had sold very few of these brands. Trading Standards say he had sold a significant but unknown quantity because he bought the items seized (and sold an unknown number before the inspection) from an unauthorised source either knowing they were illegal in some form or simply closed his eyes to that fact. Trading Standards say it is important to note the time gaps between when legitimate drinks were purchased.

For example the invoices show no 70cl bottles of Smirnoff appear to have been purchased over a 9 month period between 21 February and 19 November.

The paperwork indicates no 70cl bottles of Glen's vodka were bought over an eight month period between 27 February and 21 October.

During a long interview, Mr Kumar stated that a man [purporting to be] from a Cash & Carry in East London had visited the shop around mid/late August. He had not previously heard of that Cash & Carry. He went on to say the man offered him the alcohol that was subsequently seized. The man had apparently shown him a business card from this Cash and Carry which Mr Kumar (who said he does all the buying for the business) took to confirm he was from this particular Cash and Carry. Apparently this man was unable to give an invoice or paperwork to show this Cash

and Carry to be the seller of these items and what Mr Kumar had paid (including VAT of course). Mr Kumar said he paid cash and the seller assured him that these items would be shown on a future invoice when he made future purchases from that business. Mr Kumar said he has bought goods from that Cash & Carry direct in later months but no one ever put these items on any future invoice.

Mr Kumar was not able to say exactly what he bought from this person back in August 2016 and could offer no explanation as to how he was going to account for these items when completing his business records for the likes of HMRC.

Asked how much he paid for the alcohol on that occasion he said it was “£300 to £400 or something like that”. It is not clear how much alcohol he bought but as stated earlier, the duty evaded alone of the seized drink came to nearly £700. Trading Standards say, assuming Mr Kumar has given a true account of how the alcohol came to be in the shop, that in itself indicates Mr Kumar must have known he was buying illegal alcohol.

Throughout the interview, not unreasonably, Mr Kumar said he found the competition from the National supermarket chains near to him had made it very difficult for him to compete. With that in mind in relation to the “Super Strength Beers”, Trading Standards question the legitimacy of why he would then seek to sell these drinks for below his cost price and barely above the duty payable. Trading Standards does not accept an explanation that it is a “loss leader” in the same way a product such as milk or bread may be. People who buy these drinks typically just buy these and very little else. Trading Standards believe that whilst some product has been bought legitimately (with paperwork to demonstrate this), other such drinks have been acquired from a similar or indeed perhaps the same source as the spirits referred to in this review. Somewhere along the supply chain duty has been evaded. The paperwork for the legitimate product makes it appear that he has sold the drinks below cost whereas he has sold an unknown quantity for an unknown profit.

Trading Standards say Mr Kumar has learnt nothing since the last review of his Premise Licence. The facts this time are very similar to when he offered for sale a significant quantity of counterfeit Jacobs Creek Wine. He was not able to demonstrate where he had bought that wine from and produced no paperwork. Once again he took the same gamble of buying from an unreliable and unknown source and failed to ensure he obtained proper paperwork on receipt of those goods. If his account is true, he took the previously unknown “white van man” at face value by accepting him to be from a Cash and Carry somewhere in East London that, at the

time, he had never heard of. Mr Kumar is an experienced retailer and has previous dealings in counterfeit alcohol. Whilst this alcohol was not counterfeit, he did not know that at the time and took the risk of potentially exposing his customers to the dangers of cheap and dangerous alcohol. Trading Standards say it is through good luck that he did not buy alcohol that could have been highly injurious to health.

Further, whilst never recommended to buy from such a source, Trading Standards say an experienced shopkeeper like Mr Kumar, could (and should) have carried out simple checks to prevent this problem. The cardboard boxes were either very tatty in appearance and/or the **“UK DUTY STAMP”** writing had been crossed through with a black marker pen thereby indicating something was illegal about the products. It would appear the purchase price was too tempting for him.

In view of this matter and the previous Premise Licence review (which also included underage sales of alcohol to children), Trading Standards does not have confidence in Mr Kumar’s management of the business. The option of a change of DPS is not recommended because Mr Kumar acts as a sole trader, does all the buying and would still retain control. The Licensing sub- committee is therefore invited to revoke the Premise Licence.

Please tick yes

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

If yes please state the date of that application

May 2011

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

Protection of children from harm –

Alcohol and cigarettes sold on two separate occasions over a 6 month period to 15 year old children. Between the first and second sales the premise licence holder attended free training given by Southwark Trading Standards. The seller on both occasions was the Premise Licence Holder.

Prevention of Crime and disorder –

41 bottles of counterfeit Jacob's Creek wine offered for sale.

Please tick yes

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

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

Part 3 – Signatures (please read guidance note 3)

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

Signature

.....

Date

.....

Capacity Trading Standards Officer acting on behalf of Southwark Council

.....

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

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. 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.







