

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

LICENSING

11 MAY 2009

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 John Malone

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 J & P Off Licence, 119 King Street, Wallasey, Wirral, CH44 0BZ	
Post town Wallasey	Post code (if known) CH44 0BZ

Name of premises licence holder or club holding club premises certificate (if known) Mr James Arthur Bennett
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Number of premises licence or club premises certificate (if known) LN/206000599
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1) a responsible authority (please complete (C) below)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Wirral Trading Standards Wallasey Town Hall Brighton Street Wallasey CH44 8ED
Telephone number (if any) 0151 691 8640
E-mail address (optional) Johnmalone@wirral.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 1)**

Licence representations made by Trading Standards follow a protocol agreed between the local authority and Merseyside Police and considered by Wirral's Environment Overview and Scrutiny Committee on the 28<sup>th</sup> January 2009. A copy of the protocol is attached at 1.

There has been one sale of alcohol from the premises to a 14 year old volunteer.

On 15<sup>th</sup> April 2009 a sale of a 700ml bottle of WKD Iron Brew was made to an underage volunteer acting on the instructions of Trading Standards. The volunteer had to specifically ask for the alcohol, which is stored behind the till. The volunteer was not asked for any identification nor asked their age. The seller, Mr Bennett, was interviewed following the sale and it transpired that he is the Designated Premises Supervisor and is the Premises Licence Holder.

The store does not operate a refusals log nor is there any training in place. Mr Bennett has failed to produce any due diligence as a means of proving his statutory defence. There do not appear to be any posters relating to a Think 21 or 25 policy.

The 14 year old volunteer was used for test purchasing alcohol for three days during the Easter school holidays. A total of nineteen premises were tested across the Wirral and only one sale, at J&P Off Licence, was made to the volunteer. On the day of the sale two other premises were tested and they both asked the volunteer for identification and subsequently refused to serve alcohol. A copy of the interview with Mr Bennett is attached at 2.

Mr Bennett has been reported for prosecution for a breach of section 146 of the Licensing Act 2003.

#### **SEEKING A LICENCE REVIEW WHILST OFFENCES ARE BEING INVESTIGATED**

The following advice is available at page 85 of the guidance issued by the DCMS under section 182 of the Licensing Act 2003 (attached at 3)

11.24 As explained above, it is not the role of a licensing authority to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. There is therefore no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. As stated above, at the conclusion of a review, it will be for the licensing authority to determine on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing objectives in respect of the licence in question, regardless of any subsequent judgment in the courts about the behaviour of individuals

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

## **LICENSING OBJECTIVE - THE PROTECTION OF CHILDREN FROM HARM**

The purpose of prohibiting the sale of alcohol to under 18s is to protect young people from harm and to protect the wider community from anti-social behaviour.

The DCMS guidance (attached at 4) states;

11.25 There is **certain criminal activity** that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:

for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people

### **Harm to young people**

In 2007 Trading Standards Northwest, an umbrella organisation for Trading Standards authorities, commissioned research into the alcohol purchasing and drinking habits of 15 and 16 year olds. In total 11,724 questionnaires were returned and the following results were noted;

29% who drank alcohol admitted to having been violent whilst drunk - this figure rose to 32% amongst young males.

15% claimed to have been in a car with a young person who had been drinking.

12% stated that they had regretted having sex after drinking alcohol

### **EXERCISE OF DUE DILIGENCE WITHIN THE PREMISES**

The store does not operate a refusals log nor is there any training in place for any other members of staff. Mr Bennett has failed to produce any due diligence as a means of proving his statutory defence. There do not appear to be any posters relating to a Think 25 policy.

A suspension of the licence for a short period of time may be a justified action until such time as staff undergo sufficient training.

### **PROPOSED LICENCE CONDITIONS**

In view of these gaps in good practice Trading Standards ask that the following conditions be attached to the licence;

- 1 The Premises adopt a Think 25 policy and display of the appropriate posters.
- 2 The Premises only accept a passport, a photo driving licence or PASS

accredited identification in support of age checks.

- 3 The Premises maintain a refusal log to be made available on request to authorised officers under the Licensing Act 2003.
- 4 Staff must attend training on underage sales provided by Trading Standards.
- 5 All staff working at the premises must receive regular updated training in respect of preventing the sale of alcohol to persons under 18 years of age and training records kept and maintained.
- 6 Records of training must be to be made available on request to authorised officers under the Licensing Act 2003.
- 7 That the Designated Premises Supervisor successfully complete BIIAB Level 2 National Certificate for Designated Premises Supervisors

Please tick yes

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

If yes please state the date of that application

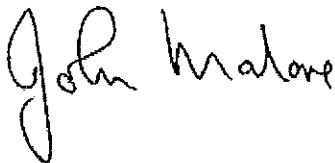
**If you have made representations before relating to this premises please state what they were and when you made them**

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

Date 17<sup>th</sup> May 2009

Capacity Trading Standards Manager

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

## **Licence review application**

**J & P Off Licence, 119 King Street, Wallasey, Wirral, CH44 0BZ**

### **CONTENTS**

Licence review application

#### **Attachments**

- 1 Licence review protocol
- 2 Copy of PACE interview with James Arthur Bennett
- 3 Paragraph 11.24 of DCMS guidance
- 4 Paragraph 11.25 of DCMS guidance

## SCHEDULE 1

### REGULATION OF THE SALE OF ALCOHOL TO PERSONS UNDER 18

#### INTRODUCTION

The Department of Culture, Media and Sports have issued guidance concerning the application of licensing procedures. In relation to the licensing objective for the protection of children from harm this guidance states:

*There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises: for the purchase and consumption of alcohol by minors, which impacts on the health, educational attainment, employment prospects and propensity for crime of young people.*

(Paragraph 11.25 Guidance issued under section 182 of the Licensing Act 2003 by The Department of Culture, Media and Sports)

In view of the importance of this stated public policy objective the following indicates the framework for the regulation of the sale of alcohol to minors.

#### CRIMINAL PROCEEDINGS - AN OFFENCE UNDER SECTION 146 OF THE LICENSING ACT 2003

Decisions to prosecute for offences of selling alcohol to under 18s will be taken in accordance with Wirral's enforcement policy. (Currently under review). A decision to issue a penalty notice for disorder will be taken on a case by case basis.

All our decisions will have regard to current statutory guidance and codes of practice, particularly the Regulators' Compliance Code, the Code for Crown Prosecutors and the Human Rights Act.

Test purchasing activity will follow guidance issued by LACORS.

(A practical guide for those organisations involved in the conduct of test purchasing operations involving young people and the sale of age-restricted products Date of issue: April 2006)

#### APPLICATION FOR A REVIEW OF A PREMISES LICENCE – ESCALATION PROCESS

The purpose of the Licence review escalation process is to provide an internal framework to ensure that licence reviews are sought in a proportionate and consistent manner.

The function of the licensing authority is not only remedial but where, crime is involved, wider considerations come into play, including the prevention of crime, and, if not punishment, at least deterrence.

(R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350



All licence review applications will have regard to the guidance issued under section 182 of the Licensing Act 2003 by The Department of Culture, Media and Sports.

<b>Licence review escalation process</b>		
<b>Sale of alcohol to a minor</b>	<b>Application of diligence in the premises</b>	<b>Use of premises licence review procedure</b>
1 <sup>st</sup> sale	Good diligence in place	Warning/advisory letter to the premises licence holder outlining licence review process
1 <sup>st</sup> sale	Poor application of diligence or no diligence in place	Review of the premises licence to consider the addition of conditions to ensure good practice
2 <sup>nd</sup> sale in a 12 month period	Good diligence in place	Review of the premises licence to consider the addition of conditions to ensure good practice
2 <sup>nd</sup> sale in a 12 month period	Poor application of diligence or no diligence in place	Review of the premises licence to consider suspension or revocation for breach of conditions



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UNDERAGE INTOXICATING LIQUOR SALES

Premises Visited: J & P

Name: \_\_\_\_\_

Address: 119 KING STREET, WALLASEY  
WALLASEY.

Post Code: CH44 0BZ

Date of Visit: 15/04/09 Time: 12:15

Item(s) Purchased: 1 x 700ml WKD

Price: £ 3.10

I am (name): ANDREW BUSHELL from <sup>TRADING STANDARDS,</sup> Merseyside Police. You have

just sold this 14 year old child (show photograph Ref

~~No:~~ ) intoxicating Liquor (enter details) 1 x 700ml WKD.

Date and Place of Birth: \_\_\_\_\_

It is an offence to sell intoxicating liquor to someone under 18 years of age. I therefore need to speak to you about this matter.

Age Check material displayed? Yes / No

Q Are you the licensee of this shop?

- Response Yes Go to YELLOW sheets (licensee made sale)
- Yes Go to GREEN sheets (employee made sale but licensee interview)
- No Go to PINK sheets (employee made sale)

This is PAGE interview with seller  
 Ref. No. \_\_\_\_\_  
 Exhibit No. AB/TS965/002  
 Referred to in my statement  
 Signed A. Bell Dated 22/04/2009

LICENSEE OF PREMISES/LICENSEE MADE SALE

OWNER DETAILS

Full Name: JAMES BENNETT

Home Address: 1 CANTERBURY ROAD

WALLASEY

Post Code: CH44 9BN

Telephone Number: 0151 630 6185 (HOME) 0151 630 4021 (WORK)

Date and Place of Birth: 03/11/56 WALLASEY

Ownership Details: Sole Trader/Partnership/Ltd Company

Name(s): JIMMY'S OFF LICENCES

Home Address/ Registered Office: \_\_\_\_\_

At this point, I must caution you and tell you that you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in Court. Anything you do say may be given in evidence. You are not under arrest, and are free to leave at any time, you may obtain legal advice before answering any questions. Do you understand that?

Response YES

Q If, at any time during the interview you wish to take legal advice, please tell me and the interview will be stopped. Do you understand?

Response YES

Time Of caution: 12:35 pm

Persons present: JAMES GARRETT

Q What is your position in the business?

Response OWNER

Q Did you know it was an offence to sell intoxicating liquor to persons under the age of 18?

Response YES

Q Why did you sell intoxicating liquor to this child?

Response UNFORGIVABLE MISTAKE. BEEN HERE NEARLY 14 YRS, NEVER HAPPENED BEFORE.  
BAD JUDGEMENT.

Q Did you make any enquiries regarding the age of the purchaser on this occasion?

Response NO

If yes, what enquiries took place? If no, why not?

/

Q Do you have a refusals book?

Response NO. ONLY BEEN BACK SINCE NOVEMBER. PLACE WAS SHUT FOR 14 MONTHS.

Q How long have you been trading from these premises?

Response NOVEMBER 2005. THIS TIME ROUND.

It is an offence to sell intoxicating liquor to any person under the age of 18 years and you will be reported for the offence. Do you wish to make any comment?

NO. I APOLOGISE THAT'S ALL.

Declaration:

I have read the above information and agree that it is a fair and balanced account of what was said.

Signed: J. Bennett Time: 12:39 Date: 15/04/09

Witnessed:

Name: A. Bell Time: 12:39 Date: 15/04/09

Name: J. A. Connell Time: 12:39 Date: 15/04/09

## REVIEWS ARISING IN CONNECTION WITH CRIME

- 11.22 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure that the crime prevention objective is promoted. Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.
- 11.23 Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licensee and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any necessary steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.
- 11.24 As explained above, it is not the role of a licensing authority to determine the guilt or innocence of individuals charged with licensing or other offences committed on licensed premises. There is therefore no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. As stated above, at the conclusion of a review, it will be for the licensing authority to determine on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing objectives in respect of the licence in question, regardless of any subsequent judgment in the courts about the behaviour of individuals.
- 11.25 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
  - for the sale and distribution of illegal firearms;
  - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;

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- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

11.26 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered. We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

11.27 It should be noted that it is unlawful to discriminate or to refuse service on grounds of race or by displaying racially discriminatory signs on the premises. Representations made about such activity from responsible authorities or interested parties would be relevant to the promotion of the crime prevention objective and justifiably give rise to a review.

## REVIEW OF A PREMISES LICENCE FOLLOWING CLOSURE ORDER

11.28 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order. The relevant time periods run concurrently and are as follows:

- when the licensing authority receives notice that a magistrates' court has made a closure order it has 28 days to determine the licence review. The determination must be made before the expiry of the 28th day after the day on which the notice is received;
- the hearing must be held within 10 working days, the first of which is the day after the day the notice from the magistrates' court is received;
- notice of the hearing must be given no later than 5 working days before the first hearing day. There must be five clear working days between the giving of the notice and the start of the hearing.

01517772939  
**Police - Notification of Representation**

Date: 180509

Name	Sgt D Peers
Title	Licensing Sergeant
Postal address	Licensing Section, Manor Road Police Station, Manor Road, Wallasey CH44 1DA
Contact telephone number	0151 777 2944

Premises	J & P off licence
Address	119 King Street, Wallasey CH44OBZ

Which of the four licensing Objectives does representation relate to? Please state yes or no.	Yes Or No	Please detail the evidence supporting the representation. Or the reason for the representation. Please use separate sheets if necessary
The protection of children from harm	Y	<p>Merseyside Police support the review application dated 11<sup>th</sup> May 2009 from Trading Standards in respect of the above premises.</p> <p>This area has been test purchasing at off licences across Wirral for several years and this off licence has refused sales in the past. Trading standards and the Police continue to offer advice and guidance to all licensed premises in respect of their responsibilities and particularly in relation to due diligence. The standards of due diligence produced across the Area differs greatly among premises but clearly the due diligence offered on this occasion is nil and it is particularly alarming that the seller also proved to be the DPS.</p> <p>The sale of alcohol to underaged persons can lead to serious health problems and can also make young persons more likely to become a victim of crime. It is known that the consumption of alcohol by young persons can lead to increased anti social behaviour and this Area of Wallasey does suffer with anti social behaviour.</p>
Public safety		
The prevention of crime and disorder		
The prevention of public nuisance		

01517772939

<p><b>Suggested condition(s) that could be added to the licence to remedy the representation.</b></p> <p><b>OTHER</b></p>	<p>Merseyside Police support all conditions suggested by Trading Standards.</p>
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*DPG SF600*



# Licensing Act 2003 Premises Licence

## J & P Off Licence

119 King Street, Egremont, Wirral, CH44 0BZ

*Licensable Activities Authorised by this Licence and the hours permitted are as follows:*

	• Sale by Retail of Alcohol
Monday	08:00 to 23:00
Tuesday	08:00 to 23:00
Wednesday	08:00 to 23:00
Thursday	08:00 to 23:00
Friday	08:00 to 23:00
Saturday	08:00 to 23:00
Sunday	10:00 to 22:30

The Licence authorises supplies of alcohol for consumption off the premises.

*Opening hours of Premises:*

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*Non-Standard Timings:*

Christmas Day 12:00 to 15:00 and 19:00 to 22:30 Good Friday 08:00 to 22:30
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*Wirral Licensing Authority, Wirral Metropolitan Borough Council, hereby grants this Premises Licence to:*

<b>James Arthur Bennett</b> 1 Canterbury Road Wallasey Wirral CH44 9BN	Telephone Number: 0151 630 6185
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*Details of Designated Premises Supervisor:*

<b>James Arthur Bennett</b> 1 Canterbury Road Wallasey Wirral CH44 9BN	Telephone Number: 0151 630 6185 Personal Licence number: LN/205000779
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Alan Stennard  
Director of Regeneration  
(Authorised Officer)

*Annexe 1 – Mandatory Conditions*

<p><b>Mandatory conditions where licence authorises supply of alcohol</b></p>	<p>(1) Where a premises licence authorises the supply of alcohol, the licence must include the following conditions.</p> <p>(1) The first condition is that no supply of alcohol may be made under the premises licence-</p> <ul style="list-style-type: none"><li>a) at a time when there is no designated premises supervisor in respect of the premises licence, or</li><li>b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.</li></ul> <p>(2) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.</p>
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