

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee A
Report of:	Interim Assistant Director of Regulation & Enforcement
Date of Meeting:	Monday 28th June 2021
Subject:	Licensing Act 2003 Premises Licence – Review
Premises:	Spar, 5 Lindsworth Approach, Kings Norton, Birmingham, B30 3QH
Ward affected:	Druids Heath and Monyhull
Contact Officer:	David Kennedy, Principal Licensing Officer, licensing@birmingham.gov.uk

1. Purpose of report:

To consider an application to review a Premises Licence.

2. Recommendation:

To consider and determine the review application.

3. Brief Summary of Report:

Review application received on 30th April 2021 from the Chief Inspector of Weights & Measures in respect of Spar, 5 Lindsworth Approach, Kings Norton, Birmingham, B30 3QH.

A representation has been received from West Midlands Police, as a responsible authority.

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

The report complies with the City Council's Statement of Licensing Policy and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

5. Relevant background/chronology of key events:

The Chief Inspector of Weights & Measures applied on 30th April 2021 for a review of the Premises Licence under Section 51 of the Licensing Act 2003 for Spar, 5 Lindsworth Approach, Kings Norton, Birmingham, B30 3QH.

A representation has been received from West Midlands Police, as responsible authority, which is attached at Appendix 1.

Review application is attached. See Appendix 2.

The Premises Licence is attached at Appendix 3.

Site location plans are attached at Appendix 4.

When carrying out its licensing functions, a licensing authority must have regard to Birmingham City Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003.

The Licensing Authority is also required to take such steps as it considers appropriate for the promotion of the licensing objectives, which are: -

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of public nuisance; and
- d. The protection of children from harm.

6. List of background documents:

Copy of the representation as detailed in Appendix 1.

Review Application Form, Appendix 2.

Copy of Premises Licence, Appendix 3.

Site location plans, Appendix 4.

7. Options available

Modify the conditions of Licence

Exclude a Licensable activity from the scope of the Licence

Remove the Designated Premises Supervisor

Suspend the Licence for a period not exceeding 3 months

Revoke the Licence

No Action

Where the authority takes a step to modify conditions or exclude a licensable activity, it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

From: Christopher Jones

Sent: 07 May 2021 18:45

To: Licensing

Subject: Premises Licence 1746 - Spar Supermarket, 5 Lindworth Approach, Kings Norton. B30 3QH

Good Evening Licensing,

West Midlands Police support the representations made by Birmingham Trading Standards regarding Spar Supermarket, 5 Lindworth Approach, King Norton B30 3QH – Premises licence number 1746.

The representation is supported under the prevention of crime & disorder and public safety licensing objectives.

The evidence submitted by Trading Standards clearly shows that this premises are supplying counterfeit wine, selling it to the public and passing it off as a legitimate product.

On 23rd February 2021 Trading Standards received intelligence from the Food Standards Agency informing that these premises were involved in the sale of counterfeit wine.

On 26th February 2021 Trading Standards received a complaint via Citizens Advice that a member of the public had purchased a bottle wine from this premises and didn't think it tasted as it should. She stopped drinking this first bottle and purchased a second from the shop when she noticed a difference in the two bottles of wine.

On 3rd March 2021 I visited the premises in company with Trading Standards Officers who seized a total of 16 bottles of suspected counterfeit wine from the premises. All the wine was of the same brand.

The bottles of wine seized on 3rd March have since been confirmed as counterfeit by the brand owners of the wine.

Therefore there is no possible way that this counterfeit wine could have been purchased through the normal legitimate supply chain.

More often than not the illegitimate purchase and sale of counterfeit alcohol is made by cash transactions with no traceability and therefore no UK duty being paid. Such transactions are unlikely to be shown on the company accounts avoiding the payment of taxes.

Traders acting unscrupulously purchasing counterfeit alcohol more likely than not 'off the back of a lorry' cannot have any idea where the wine has originated from or even if it was fit for human consumption.

The only intention for these traders is to maximise profit, seemingly without a thought for the consequences and impact on the victims – with making money being the only driving factor.

Trading Standards have stated that the wine seized was in fact not harmful to health but this is more by luck than judgement as the premises would not have known this when they were selling the counterfeit wine to the public.

The victims of this are not only the public but the brand itself. In fact the brand are that concerned by the negative publicity this counterfeiting operation is having on their brand image and related sales they have especially asked that the brand name of the product not be mentioned in these representations.

Trading Standards have indicated that the brand owner and Food Standards Agency believe after some investigation that the counterfeiting of this wine is a large scale international criminal enterprise, using organised criminal gangs in the UK to distribute it. The money generated by this criminal black market

activity normally goes straight back to fund other organised crime which has a further negative on its victims and the wider community.

There was only 16 bottles of wine seized from these premises but when the bigger picture is looked at this criminal activity becomes more disturbing. The below information was taken from the Crimestoppers Website (a guest blog from The Wine and Spirit Trade Association) states that alcohol duty fraud costs the British public £600 Million per year.

The article goes on to quote very similar findings to that Trading Standards and West Midlands Police have stated in their representations:

- *The best estimate for duty fraud is that it costs about £600m per year across wines, beers and spirits. This is money that should be going towards boosting public services and not to criminal gangs. The negative impacts reach much further than taking money away from the taxman:*
- *It puts money into the pockets of criminals, who use it to fund other activity such as people trafficking;*
- *It directly damages your business in the communities it operates, by siphoning customers away;*
- *More widely, it damages the reputation of the industry as a whole by associating it with criminal activity.*
- *The fake alcohol menace is another level of threat altogether. It may be inferior liquid posing as a premium product. More worryingly, it may not be fit for human consumption at all and contain methanol or other harmful substances. At worst, this could lead to death for a consumer. Illicit alcohol and duty fraud are a direct threat to the reputation of the industry and, in some cases, consumer health.*

<https://crimestoppers-uk.org/campaigns-media/blog/2019/sep/alcohol-fraud-costs-the-british-public-%C2%A3600-million-every-year>

West Midlands Police have no confidence in the management of this premises.

The purchase of this counterfeit wine could have only been made outside the recognised legitimate supply chain, with the premises knowingly crossing that threshold and being prepared to put the safety of its customers in jeopardy.

The premises is unlikely to have paid UK duty on the wine or paid tax as this sort of illegal black market activity is unlikely to go through the company accounts.

Furthermore by circumventing the legitimate supply chain the premises have more than likely gone on to fund organised criminal gangs and damage the reputation of a popular household brand in the process without caring about the consequences to the public, the brand or victims of these organised crime gangs.

The premises have totally disregarded the licensing objectives with money making and profit their primary objective superseding public safety and prevention of crime & disorder.

Regards

Chris Jones 55410

Birmingham Central Licensing Team West Midlands Police

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 Paul Ellson (on behalf of Donna Bensley Chief Inspector of Weights & Measures)

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	
Spar Supermarket 5 Lindsworth Approach Kings Norton	
Post town BIRMINGHAM	Post code (if known) B30 3QH

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

Number of premises licence or club premises certificate (if known) 1746
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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)

YES

Spar Supermarket, 5 Lindsworth Approach , B30 3QH. 9967277

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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; Paul Elkon Birmingham Trading Standards 1-3 Ashted Lock Way Aston Birmingham B7 4AZ Our Ref: 9967277
Telephone number (if any)
E-mail address (optional)

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

- | | |
|---|---------------------------------|
| | Please tick one or more boxes ✓ |
| 1) the prevention of crime and disorder | Yes |
| 2) public safety | Yes |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | Yes |

Please state the ground(s) for review (please read guidance note 2)

On 23 February 2021 Birmingham Trading Standards Service received an Intelligence report from the Food Standards Agency (FSA), National Food Crime Unit stating that Spar Supermarket, 5 Lindsworth Approach, Kings Norton, Birmingham, B30 3QH, was selling counterfeit white wine, and they supplied specific Lot Codes for the product.

On 26 February 2021 a complaint was received via the citizen advice consumer service from a lady who had purchased a bottle of Chardonnay from Spar Supermarket; after opening the bottle and tasting it, she believed "it did not taste right". She stopped drinking it and purchased a second bottle and noted that the two bottles were different.

On 3 March 2021 a team of officers from Birmingham Trading Standards and West Midlands Police Licensing officers visited the premises. The visit took place at 12.10hrs. Mr DHALIWAL was present at the time of the visit. A total of 16 bottles of wine (chardonnay, shiraz, merlot and cabernet sauvignon). Apart from 3 bottles that were found in the stockroom the remainder were on the shop floor. These bottles were seized for further examination.

On 11 March 2021 Trading Standards were advised by the brand holder of the seized wine; Casella, that the bottles of wine were counterfeit. Casella has been working with the wine inspectorate section of the FSA to trace the source of these products.

A bulletin was issued that stated that many of the counterfeit varieties have been sent for analysis and "although the traceability of the suspect wines is unclear, there are currently no specifically identified concerns for health regarding the consumption of these products"

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

In total 16 bottles of various varieties of counterfeit wine were seized from the shop on 3 March 2021. There was no other counterfeit product found at the premises. It has to be assumed that a number of counterfeit bottles of wine had already been sold to the public, like the one sold to the consumer who complained, but how many this was is unknown. It is a criminal offence to be found in possession of and to supply counterfeit goods under the Trade Marks Act 1994.

In joint working with the FSA and Casella it would appear that this is a large-scale operation, (probably originating abroad) using organised crime gangs in the UK to distribute and sell the products. Such products can not be purchased through traceable or legitimate means, and thus have no provenance. It is fortunate to some degree in this case that the wine was not detrimental to health. However, the action of the owner and licence holder Mr Manjinder DHALI WAL was designed to circumvent the legal and more usual supply chain.

There are requirements under food legislation to ensure traceability of food products; this includes alcohol. It is only by luck that this wine was not injurious to health.

The PLH is Mr Manjinder DHALI WAL and DPS is Mr Kulbinder ATH WAL

Previous history of this shop.

There is no previous history of similar issues at this shop in recent years.

Recommendations.

Counterfeit alcohol is worse than non-duty as it is specifically manufactured to look like genuine brands and mislead customers into making purchases of usually substandard products which may even be harmful. In this case the product is not harmful but that is likely in order to avoid detection and so prolong the scam. Benefiting only the counterfeiters and others associated with this criminal endeavour. Apart from the tax duty would have been avoided the legal controls on supply are placed there for good reason, especially if a product proved to be harmful.

We do not know how long this has gone on for or how many other innocent members of the public were affected. In this way it is obvious to see how a brand's image can be damaged by such action, and that is why the brand holder Casella have requested that the product name not be mentioned in this review document. The public assumes that they can buy products in complete confidence, such actions as these corrode and diminish that belief. Plus, it should be remembered the multitude of retailers who act responsibly have their livelihood threatened by such underhand activity.

The Licence that the Council issues is a privilege not a right. That privilege should ensure that the citizens of Birmingham have confidence in the management of the shop and that they do not engage in illegal activity. Buying goods from unknown sellers and sources without traceability is at best showing complete lack of concern and at worst highly dangerous.

We invite Committee to consider all available options in relation to this request for a review. Although only 16 bottles found on inspection, it is unknown how many have been sold. Enquiries are ongoing in relation to any criminal offences in relation to this matter.

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

No

If yes please state the date of that application

Day	Month	Year

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

N/A

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 **YES**
- I understand that if I do not comply with the above requirements my application will be rejected **YES**

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

.....

Date

30/4/2021

.....

Capacity Trading Standards Enforcement Officer

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

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.

LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

1746 / 2

Part 1 - Premises details:**Postal address of premises, or if none, ordnance survey map reference or description**

Spar
5 Lindsorth Approach
Kings Norton

Post town:

Birmingham

Post Code:

B30 3QH

Telephone Number:**Where the licence is time limited the dates**

N/A

Licensable activities authorised by the licence

M2 Sale of alcohol by retail (off the premises)

The times the licence authorises the carrying out of licensable activities

Monday- Saturday	08:00	-	23:00	M2
Sunday	10:00	-	22:30	M2
Good Friday	08:00	-	22:30	M2
Christmas Day	12:00	-	15:00	M2
	19:00	-	22:30	M2

The opening hours of the premises

Not Specified

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

Off Supplies

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Mr Manjinder Dhaliwal	
Post town:	Post Code:
Telephone Number:	
Email	

Registered number of holder for example company number or charity number (where applicable)
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Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Kulbinder Singh Athwal	
Post town:	Post Code:
Telephone Number: N/A	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number 18050112	Issuing Authority BROMSGROVE

Dated 14/11/2013

Carolyn Bennett
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

a. On weekdays, other than Christmas Day, 8 am. to 11 pm. b. On Sundays, other than Christmas Day, 10 am. to 10.30 pm. c. On Christmas Day, 12 noon to 3 pm. and 7 pm. to 10.30 pm. d. On Good Friday, 8 am. to 10.30 p.m. The above restrictions do not prohibit: (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel; (b) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered; (c) the sale of alcohol to a trader or club for the purposes of the trade or club; (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces;

Alcohol shall not be sold in an open container or be consumed in the licensed premises.

No supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his 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.

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:- 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 operating schedule

2a) General conditions consistent with the operating schedule

No enforceable conditions identified from operating schedule.

2b) Conditions consistent with, and to promote the prevention of crime and disorder

No enforceable conditions identified from operating schedule.

2c) Conditions consistent with, and to promote, public safety

No enforceable conditions identified from operating schedule.

2d) Conditions consistent with, and to promote the prevention of public nuisance

No enforceable conditions identified from operating schedule.

2e) Conditions consistent with, and to promote the protection of children from harm

No enforceable conditions identified from operating schedule.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

N/A

3b) Committee conditions to promote the prevention of crime and disorder

N/A

3c) Committee conditions to promote public safety

3d) Committee conditions to promote the prevention of public nuisance

N/A

N/A

3e) Committee conditions to promote the protection of children from harm

N/A

Annex 4 – Plans

The plan of the premises with reference number **84396-1746/2** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection between the hours of 9am – 4pm Monday, Tuesday and Thursday, 10am – 4pm Wednesday and 9am – 3.30pm Friday (excluding Bank Holidays etc) at the Licensing Service, Crystal Court, Aston Cross Business Village, 50 Rocky Lane, Aston, Birmingham B6 5RQ.



