



NOTICE OF MEETING

LICENSING SUB-COMMITTEE

THURSDAY, 2 NOVEMBER 2017 AT 10AM

THE EXECUTIVE MEETING ROOM - THIRD FLOOR, THE GUILDHALL

Telephone enquiries to Jane Di Dino 023 9283 4060

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If any member of the public wishing to attend the meeting has access requirements, please notify the contact named above.

Committee Members Councillors Lee Mason (Chair), Hannah Hockaday (Vice Chair), Dave Ashmore, David Fuller, Colin Galloway, Paul Godier, Scott Harris, Steve Hastings, Ian Lyon, Leo Madden, Stephen Morgan, Gemma New, Steve Pitt, David Tompkins and Gerald Vernon-Jackson.

The panel today consists of: Councillors Lee Mason, Hannah Hockaday and Leo Madden
The reserve member is Councillor Steve Pitt.

(NB This agenda should be retained for future reference with the minutes of this meeting).

Please note that the agenda, minutes and non-exempt reports are available to view online on the Portsmouth City Council website: www.portsmouth.gov.uk

Licensing Sub Committee meetings are digitally recorded.

A G E N D A

- 1 **Appointment of Chair.**
- 2 **Declarations of Interest.**
- 3 **Licensing Act 2003 - review application - Loco Om Sai, 139 Queen Street, Portsmouth, Hants. (Pages 3 - 88)**

Purpose.

The purpose of this report is for the committee to consider and determine a review application pursuant to section 52 of the Licensing Act 2003 ('the Act') and in respect of the following premises:

Loco Om Sai, 139 Queen Street, Portsmouth, Hants.

The committee is asked to determine this matter.

Members of the public are now permitted to use both audio visual recording devices and social media during this meeting, on the understanding that it neither disrupts the meeting or records those stating explicitly that they do not wish to be recorded. Guidance on the use of devices at meetings open to the public is available on the Council's website and posters on the wall of the meeting's venue.

Agenda Item 3

REPORT TO: LICENSING SUB-COMMITTEE 2 November 2017

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: Derek Stone

Licensing Act 2003 - Review Application - Loco Om Sai, 139 Queen Street, Portsmouth, Hants

1. PURPOSE OF REPORT

The purpose of this report is for the committee to consider and determine a review application pursuant to section 52 of the Licensing Act 2003 ("the Act") and in respect of the following premises:

Loco Om Sai, 139 Queen Street, Portsmouth, Hants.

The holder of the authorisation is recorded as Mrs Naynaben Patel.

2. THE REVIEW APPLICANT

The application and grounds for the review are attached as **Appendix A** and has been submitted by Trading Standards and relates to the following licensing objectives:

- Protection of children from harm

This follows the identified poor history of management at the premises together with breaches of the premises licence conditions and test purchase failures where alcohol has been served to persons under 18 years of age.

3. BACKGROUND INFORMATION

Om Sai aka Loco is a small convenience store with a premises licence permitting off sales of alcohol Monday to Sunday from 07:00 to 23:00. A copy of the current authorisation is attached as **Appendix B**.

In accordance with the act and prescribed regulations, public notice of the review application was given both at the premises and also at the Civic Offices. In addition, a notice of the review application was also posted on the council website.

The review application was also served on the responsible authorities.

4. REPRESENTATIONS BY RESPONSIBLE AUTHORITIES AND OTHER PERSONS

Following receipt of the review, Mrs Nickii Humphreys Portsmouth City Council Licensing manager has submitted a representation adding the prevention of crime and disorder licensing objective together with the protection of children from harm, as grounds for concern at these premises due to the history of poor management. Mr Rob Anderson-Weaver Public Health has also made a representation supporting this review. These representations are attached at **Appendix C**

Attached at **Appendix D** is the Licensing Sub-Committee report regarding a review

hearing in relation to these premises. This was held on the 20th January 2010 where concerns were raised by Trading Standards regarding the ability for the venue to operate in support of preventing crime and disorder, the prevention of public nuisance and the protection of children from harm. The minutes of this hearing are also attached which resulted in the DPS Mrs Naynaben Patel being removed, the premises licence suspended for three months and additional conditions were also added to the premises licence.

5. POLICY AND STATUTORY CONSIDERATIONS

When determining the review application, the committee must have regard to:

- Promotion of the licensing objectives which are;
 - Prevention of crime and disorder
 - Public safety
 - Prevention of public nuisance
 - Protection of children from harm
- The Licensing Act 2003;
- The adopted Statement of Licensing Policy;
- Judgements of the High Court, (your legal adviser will give you guidance should this become necessary);
- The current statutory guidance issued by the Home Secretary in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.

The Statutory Guidance provides advice in relation to the consideration of review applications. In particular, members should have regard to the following advice:

Paragraph 11.1 - *"The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate."*

Paragraph 11.2 - *"At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives."*

Paragraph 11.10 - *"Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews*

should not be used to undermine this co-operation."

Paragraph 11.16 - "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."

In reaching a decision upon a review application, the guidance offers assistance to the licensing authority as follows:

Paragraph 11.17 - "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."

Paragraph 11.18 - "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. Similarly, licensing authorities may take into account any civil immigration penalties which a licence holder has been required to pay for employing an illegal worker."

Paragraph 11.19 - "Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- 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;
- 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);
- remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- suspend the licence for a period not exceeding three months;
- revoke the licence."

Paragraph 11.20 - "In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review."

Paragraph 11.21 - "For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor

may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual."

Paragraph 11.22 - *"Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives."*

Paragraph 11.23 - *"Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives or preventing illegal working. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again."*

However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence."

A copy of the Statement of Licensing Policy, current statutory guidance and the Act has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

6. APPEALS

An appeal against any punitive sanctions may be made within 21 days of the authorisation holder being notified of the licensing authority's decision to a Magistrates' court. An appeal may be made by:

- The applicant for the review;
- the holder of the premises licence or club premises authorisation; or
- any other person who made relevant representations in relation to the application.

The decision of the committee, following the review hearing, will not have effect until the end of the period allowed for appeal, or until any submitted appeal is disposed of.

7. APPENDICES

- A.** Copy of the redacted review application together with any supporting documents

- B. Copy of the current authorisation
- C. Copies of any other relevant representations received
- D. Report to Licensing Sub-Committee 20th January 2010 and minutes of this hearing.
- E. Representation from venue.

THE COMMITTEE IS REQUESTED TO DETERMINE THE REVIEW APPLICATION



For Licensing Manager
And on behalf of Head of Service

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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 or typed in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

I Tracey GREAVES

.....
 (Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable).

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description

Om Sai aka Loco
 139 Queen Street
 Portsmouth

Post town

Hampshire

Post code

PO1 3HY

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

Mrs Naynaben PATEL

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

11/04365/LAPRMV

Part 2 – Applicant details	
I am	Please tick <input checked="" type="checkbox"/> 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)	X
3) a member of the club to which this application relates (please complete (A) below)	

(A) INDIVIDUAL APPLICANTS (fill in as applicable)										
Please tick <input checked="" type="checkbox"/> yes										
Mr		Mrs		Miss		Ms		Other title (for example, Rev)		
Surname					First names					
I am 18 years old or over								(Please tick <input checked="" type="checkbox"/> yes)		X
Current postal address if different from premises address										
Post town						Post code				
Daytime contact telephone number										
Email address (optional)										
Post Town					Post Code					

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

Email address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Tracey GREAVES
 Trading Standards
 Portsmouth City Council
 Civic Offices
 Guildhall Square
 Portsmouth
 PO1 2AL

Telephone number (if any)

023 9243 7977

E-mail address (optional)

tracey.greaves@portsmouthcc.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

X

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

I am seeking a review of the Premises Licence currently held by Om Sai (aka Loco) at 139 Queen Street, Portsmouth, PO1 3HY on the following grounds:

Protection of children from harm

This is due to serious and continued breaches of the premises licence conditions and juvenile Test Purchase failures which call into question the ability of the premises management to support the Protection of children from harm licensing objective.

Om Sai (aka Loco) have failed to adhere to a mandatory condition on its licence Annex 1 -

03. Also to conditions stated in Annex 2 - Conditions consistent with the Operating Schedule Annex 2 - 02, 03, 04 and 05 and likewise to those conditions attached after a review in 2009, stated in Annex 3 - Conditions attached after a hearing by the licensing authority 01, 02, 03 and 04:-

Annex 1 - Mandatory conditions

03. 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 the Operating Schedule

02. The licence holder must ensure that all staff selling alcohol have received adequate training which must incorporate a process of assessment and refresher training to a recognised national standard on the law with regard to age restricted alcohol sales and that this has been properly documented and records kept.

03. The licence holder will operate Proxy Watch.

04. The licence holder will operate a Challenge 25 policy.

05. The licence holder will operate a refusal log.

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

01. Operate Challenge 25 including prominent display in store windows and proper use of ID checks.

02. Operate Proxy Watch scheme and promote to customers, including window display and till cards. The Designated Premises Supervisor (DPS) to phone or email any suspected activities in store vicinity to Trading Standards Proxy Watch on a weekly basis.

03. To keep and use refusal log to record attempted underage sales, proxy sales and anti-social behaviour near store.

04. No sale of alcohol shall be made unless a personal licence holder is present on the premises.

History

An application initially had representations submitted and a premises licence refused at this location by the Licensing Sub-Committee in October 2008.

The premises was granted a Premises Licence at the second application in May 2009 with conditions agreed by the Police, Trading Standards and the applicant Mrs Naynaben PATEL.

A review of the Premises Licence was held on 20th January 2010 following 2 failed juvenile alcohol test purchases, 2 other incidents of underage sales and under age sales training inadequacies.

Trading Standards had asked at the last review for suspension of the Premises Licence for 3 months be considered.

Also, at the last review Trading Standards requested the change of the current DPS due to failure of that DPS to support the Licensing Objectives. The Licensing Sub-Committee imposed the condition 'To remove the Designated Premises Supervisor as she is not capable of running the premises on a day to day basis'. At that time the DPS referred to was Mrs Naynaben PATEL.

As part of this review hearing Mrs PATEL offered in a copy witness statement, section 6 'In agreeing to a Challenge 25 condition we would also agree that it incorporates a condition to display relevant notices, which we will place at the entrance to the premises, in the alcohol display area and at the point of sale'. In another section of the witness statement, section 7, Mrs PATEL stated with regard to missing notices 'I know that this is no excuse and to ensure it cannot happen again either my husband or I now do a daily check of all notices displayed to make sure they remain in place and can be clearly seen'. However, since this statement was made to the Committee, it is quite clear from our investigations that Mrs PATEL has failed consistently to comply with this undertaking.

The Premises Licence was not suspended for 3 months but instead conditions were attached by the Licensing Sub-Committee and on 4th February 2010 the DPS was varied to Mr Satishchandra PATEL.

However, the DPS role was then varied back to Mrs Naynaben PATEL on 29th March 2012.

The premises has again failed to uphold the licensing objective 'The Protection of Children from Harm' and has failed to adhere to the conditions on the Premises Licence.

During a Licensed Premises Check on 07/03/2017 when several breaches of the Premises Licence became apparent, [REDACTED] during discussions said that Mrs Naynaben PATEL was hardly ever there, had undergone an operation so was recuperating. This was reiterated on 10/03/2017 by [REDACTED] when she said that Akash owned the store but the DPS was Naynaben PATEL "but don't see her very often", "retired now", "has hip problems".

A Designated Premises Supervisor is the person who has the day to day responsibility for the running of the premises; they are the main point of accountability and should ensure the premises operates legally. In this case it is apparent that the DPS is not fulfilling their responsibility.

To support this view on 09/03/2017 an adult alcohol test purchase was carried out at Om Sai aka Loco at the request of Portsmouth City Council Trading Standards Service. A sale was made by [REDACTED] to Mr Rob Anderson-Weaver an adult male employee of Portsmouth City Council when no personal licence holder was present on the premises thus breaching a licence condition attached to the Premises Licence after a hearing by the licensing authority.

Juvenile test purchase operation relating to under age sales carried out at Om Sai aka Loco on 10/03/2017, failed juvenile alcohol test purchase as a sale was made to an underage person by [REDACTED], who was subsequently issued with a £90 fixed penalty notice. In fact [REDACTED] tried to up-sell alcohol by offering the young person 3 bottles for £5.

23/04/2017 Trading Standards carried out juvenile test purchase for alcohol. Premises passed but it was a poor refusal.

14/07/2017 Trading Standards carried out juvenile test purchase for alcohol. Premises failed.

This premises has sold alcohol to a child twice in just over 4 months and is non-compliant on a number of the conditions required of it, even the simplest matter, such as displaying Challenge 25 and Proxy Watch posters in the store window.

It can be evidenced that throughout this period no due diligence measures were in place to help prevent the sale of alcohol to a minor.

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

Om Sai (aka Loco) at 139 Queen Street, Portsmouth is a convenience store which currently has a Premises Licence to sell alcohol for consumption off the premises Monday to Sunday from 07.00 until 23.00

The Premises Licence holder is currently Mrs Naynaben PATEL.

The Designated Premises Supervisor (DPS) is currently Mrs Naynaben PATEL.

01/03/2017 - email received into the Trading Standards inbox from Police Constable 22367 Joanne LOCKTON wanting contact to discuss the Loco shop 39(sic) Queen Street, Portsmouth.

06/03/2017 - email forwarded to Mrs Tracey GREAVES and Mrs GREAVES emailed PC LOCKTON with her direct contact telephone numbers. In a subsequent telephone call with Mrs GREAVES, PC LOCKTON raised concern that a young female had been supplied alcohol and the selling of alcohol to under age persons. Mrs GREAVES advised that a visit was due to the premises to carry out a licensed premises inspection and that Trading Standards had a test purchasing operation due later that week and so could add the premises to the operation list. (A copy of PC LOCKTONs statement can be seen at **Exhibit 1** of the Trading Standards Bundle).

07/03/2017 - Visit made by Mrs GREAVES at approximately 9.45am spoke with a male who identified himself as [REDACTED] who said that he didn't work there, he was just doing a 2 - 3 hour shift and the regular staff would be there in half an hour. He said the other 2 staff were [REDACTED] and her brother [REDACTED], he also said that Mrs PATEL had undergone an operation so was not working at the moment. Mrs GREAVES worked though the Licensed Premises Inspection Summary form. A copy page was left with [REDACTED] for the DPS (A copy of this page is available see **Exhibit 2** in the Trading Standards Bundle) and found non-compliance of:-

Premises Licence Summary - on display, but only 1 page. Mrs GREAVES advised that the 2 pages should be on display. [REDACTED] said he would tell the manager when he came in and ask for another plastic wallet to display it. This is a legal requirement 2003 Licensing Act, section 57 - duty to keep and produce licence.

Full Premises Licence - [REDACTED] could not produce the document and did not know where it was. This is a legal requirement 2003 Licensing Act, section 57 - duty to keep and produce licence.

Challenge 25 - There was no prominent display in the store windows. This was breaching Annex 3 - 01 conditions attached after a hearing by the licensing authority. Mrs PATEL

offered in a witness statement (A copy of this statement is available see **Exhibit 3** in the Trading Standards Bundle) dated 18/12/2009, in section 6 she stated 'In agreeing to a Challenge 25 condition we would also agree that it incorporates a condition to display relevant notices, which we will place at the entrance to the premises, in the alcohol display area and at the point of sale'. In another section of the witness statement, section 7 Mrs PATEL stated with regard to missing notices 'I know that this is no excuse and to ensure it cannot happen again either my husband or I now do a daily check of all notices displayed to make sure they remain in place and can be clearly seen'.

Proxy Watch - there was no poster displayed in the window and no Proxy Watch cards at the till. [REDACTED] said they had been displaying it on the front door glass but it was not there now. This was breaching Annex 3 - 02 conditions attached after a hearing by the licensing authority. I refer again, to the above paragraph regarding Challenge 25, the previous assurance in Mrs PATEL's statement that she or her husband 'now do a daily check of all notices displayed to make sure they remain in place and can be clearly seen'.

Refusal Register - [REDACTED] could not show me a refusal register, he said that the owner Mr AKASH comes in every day to collect the refusal register and he had had no refusals that day so far, so could not show me a page of refusals. This is in breach of Annex 3 - 03 conditions attached after a hearing by the licensing authority.

Training Records - [REDACTED] could not produce any training records. He said they were maybe in the back office. Breach of Annex 2 - 02 conditions consistent with the Operating Schedule.

On the same visit Mrs GREAVES noted that behind the sales counter on a lower shelf were bottles of Magnum Tonic Wine. This product was on a retailer alert bulletin issued by the Portman Group (A copy page of the bulletin is available at **Exhibit 4** in the Trading Standards Bundle) as being found in breach of the Portman Group's code of Practice on the naming, packaging and promotion of alcoholic drinks. In the summary of decision the panel noted that the product packaging featured an image of a naked couple embracing and a reference to Vigorton, a vitamin ingredient marketed for improving stamina, which linked the drink to the improvement of sexual capabilities the panel said. Licensees were asked not to place orders for stocks of Magnum Tonic Wine (in that packaging) after 15th April 2012. Portman Group stated the following should be borne in mind: when reviewing a liquor licence, a licensing authority may enquire about licensees' compliance action with regards to products that breach the Code.

The premises was also openly displaying for sale packets of blunts in 3 flavours (this is a ready-made, ready to roll sheet of tobacco with a flavour). This is a tobacco product and should not have been openly displayed. Offences contrary to s.7A(1) of Tobacco Advertising and Promotions Act 2002, prohibition of tobacco display. On this occasion Mrs GREAVES pointed out the offence, explained what warnings indicated it was a tobacco product and requested the boxes be placed in the tobacco gantry immediately. Whilst not a licensing matter it is felt it should be brought to the committees attention and included as the licensing objective Protection of children from harm not only concerns the physical safety of children but also their moral and psychological well-being. Section 22.37 of Portsmouth's Statement of Licensing Policy.

Following the licensed premises inspection on 07/03/2017 when a summary sheet was left at the premises highlighting breaches of the Premises Licence conditions there was no contact from the DPS Mrs Naynaben PATEL, her husband, or Mr AKASH to Trading Standards or to, Portsmouth City Council Licensing Section to offer any explanation for the Premises Licence

breaches, that they had now rectified them or how they intended to rectify them even though a direct dial telephone number for Trading Standards was provided on the summary sheet.

09/03/2017 - Adult alcohol test purchase visit made at approximately 10.02am by an adult male employee of Portsmouth City Council Mr Rob ANDERSON-WEAVER (A statement by Mr ANDERSON-WEAVER is available see **Exhibit 5** of the Trading Standards Bundle). The visit to test purchase alcohol by an adult was made because of a concern following the visit by Mrs GREAVES on 07/03/2017 that alcohol would be sold without a Personal Licence Holder being present on the premises. Mr ANDERSON-WEAVER purchased a 1 litre plastic bottle of Frosty Jacks apple cider at 7.5% vol from sales assistant [REDACTED] at approximately 10.04am. No other person was seen working at the premises. No personal licence holder present on the premises and a sale of alcohol was made. Breaching condition Annex 3 - 04 conditions attached after a hearing by the licensing authority.

09/03/2017 - Visit made at approximately 10.12am made by Trading Standards Officer Mrs GREAVES (A copy of notebook page can be seen at **Exhibit 6** of the Trading Standards Bundle) spoke with same male as the visit on 07/03/2017 that had identified himself as [REDACTED]. Mrs GREAVES asked [REDACTED] if he now had a refusal register. [REDACTED] said he didn't have a refusal register but had mentioned it to Mr AKASH. Mrs GREAVES asked if Mr AKASH was there, [REDACTED] said he would telephone him as Mr AKASH was not on the premises. Mrs GREAVES said no, it was ok. Mrs GREAVES provided the premises with a refusal register booklet and explained how to fill in each box, what type of products were age restricted and examples of when you might refuse a sale, such as no ID and [REDACTED] said, or drunk. Mrs GREAVES said the manager and DPS ideally would check this each week and sign off. Mrs GREAVES also provided the premises with Challenge 25 poster and Proxy Watch poster and discussed the siting on the door so could be seen going in and out. Mrs GREAVES asked [REDACTED] if he was the only person there. [REDACTED] first said no that his mother was there. Mrs GREAVES asked what that lady pointing to the photo (Personal Licence Card of Mrs Naynaben PATEL) in the plastic wallet containing a page of the Licence Summary. [REDACTED] said yes. Mrs GREAVES asked 'That lady is here?' [REDACTED] then said 'No she was, but she's just gone out now'. Mrs GREAVES left premises at approximately 10.15am.

I refer again to the statement of Mrs PATEL dated 18/12/2009 who stated that 'It is our practice to have two people working in the shop when it is open. That will usually be myself and my husband, but may also be my son or my daughter. My daughter is a personal licence holder; my son holds the NCPLH qualification and is in the process of applying for his personal licence. My husband has recently passed the NCPLH qualification and he too is in the process of applying for his personal licence. We have not employed other people at present'.

10/03/2017 - Trading Standards carried out a juvenile test purchase for alcohol at approximately 17.20pm using a young person aged 16 years and 10 days. The young volunteer was sold 2 bottles of Bulmers 500ml crushed berries and lime flavour cider by a member of staff at the premises and as such the member of staff committed an offence under Section 146 (1) of the Licensing Act 2003 the sale of alcohol to an individual aged under 18. The sale was observed by a plain clothed Police Constable. PC 512 Jason PEARCE witnessed the sale without any challenge being made. (A copy of PC PEARCE witness statement can be seen at **Exhibit 7** of the Trading Standards bundle). The seller offered to up-sell, telling the test purchaser that they could get 3 bottles for £5.00. This sale would have meant the young person leaving the premises with 9 units of alcohol. PC PEARCE and Mrs GREAVES spoke with the seller who was [REDACTED]. [REDACTED] said she thought the purchaser looked exactly like another customer who she had seen ID for on a previous visit. [REDACTED] said she had been on duty since 13.00pm and that she had

been the only person in the shop since then. PC PEARCE reported and cautioned the seller for the offence of selling alcohol to a person under the age of eighteen. PC PEARCE issued a fixed penalty notice of £90 to [REDACTED]. [REDACTED] said she had received training and it was her first job. She also said Akash PATEL owned the shop and that the DPS was Naynaben PATEL, that she didn't see her very often; she was retired now as she has hip problems. Mrs GREAVES asked if Naynaben was Satish's wife. [REDACTED] said no, his mother. Left premises approximately 17.45pm. (*Sensitive material - copy photographs of the juvenile test purchase volunteers are available if required).

Following the test purchase failure on 10/03/2017 there was no contact from the DPS Mrs Naynaben PATEL, her husband or Mr Akash PATEL to Trading Standards, Police Licensing or Portsmouth City Councils Licensing Section to offer any explanation for test purchase failure, how the test purchase failure was to be addressed and what measures they would put in place to prevent further sales.

23/04/2017 - at approximately 11.40am Trading Standards performed a second Test Purchase operation for alcohol. This retest was carried out using a different volunteer a young person of 16 years, 9 months and 28 days. A plain clothed Police Officer; PC 512 Jason PEARCE witnessed a poor pass. (Copy witness statement of PC PEARCE available at **Exhibit 8** in the Trading Standards Bundle) The server an Asian male with a short beard took the payment, scanned the alcohol plastic bottle of Frosty Jacks, took the change from the till and then asked how old the Test Purchaser was. The young person replying that they didn't have any ID. The seller asked the Test Purchaser again How old are you? The server cancelled the sale, returning the money and telling the young person '....to be careful next time'.

04/05/2017 - follow up visit by Mrs GREAVES with PC PEARCE. (Arranged via two telephone calls with Mrs Naynaben PATEL's daughter). Attended Om Sai aka Loco at approximately 10.55am. The DPS Mrs PATEL was present at the premises although apart from introductions took no active role in the pre-planned meeting. Also present were Mr Akash PATEL and Mrs PATEL's daughter. When it was established that they knew about the Test Purchase failure Mrs GREAVES asked the family why no one had been in touch with Trading Standards, Police Licensing or Portsmouth City Councils Licensing Section. Mr Akash PATEL said that after the explanation from [REDACTED], the seller) that he had rung a number he had but the number was dead. He said he didn't know what to do next. We went to a rear storeroom with Mr Akash PATEL to view 23/04/2017 CCTV footage. Whilst searching for the footage Mr Akash PATEL said it was likely to have been a friend working there on 23/04/2017, helping, as it was a family/a first cousins wedding and they had been in and out. Mr Akash PATEL said that the male serving was his cousin [REDACTED] and the other male his cousin's brother [REDACTED]. Mr Akash PATEL advised, when asked by PC PEARCE, that neither men were Personal Licence holders. When Mr Akash PATEL was advised and shown a copy of the Premises Licence that we had taken to the store that a condition of the Premises Licence required a Personal Licence holder to be on site for sales of alcohol, he seemed surprised at this and said he didn't realise the Premises Licence had that condition. He said that he couldn't keep staff if he trained them up, that it would cost £250 to £300 each and couldn't afford that. He said he would pay and then they would leave. PC PEARCE stated it was a problem if people didn't understand their licence. Mr Akash PATEL said he could not be there all the time. He was asked who held Personal Licences. Mr Akash PATEL said himself, his father but his English was poor, his mother but her English was borderline and his sister. Mrs GREAVES asked if his sister lived in London. Mr Akash PATEL confirmed this but said she pops in and out. He said he couldn't be there seven days. Mr Akash PATEL was advised that there needed to be himself or another Personal Licence holder on site and if other family members couldn't be there then other staff would

need to be trained as Personal Licence holders. Mr Akash PATEL was asked for his Personal Licence, the Full Premises Licence, training records and the refusal register. A refusal register was available but only had entries from when Mrs GREAVES had delivered it on 09/03/2017. Mr Akash PATEL was asked for the refusal register previous to this date, he said they were at home on daily sheets of paper. The training records could not be supplied as Mr Akash PATEL said they too were at home and that he didn't have his Personal Licence card, he thought that was at home also. Mr Akash PATEL located the Full Premises Licence and within the wallet was his Personal Licence card. He was asked if the address on the card was his current address but he advised that no he had moved from there eighteen months ago. The holder of a Personal Licence must, as soon as is reasonably practicable notify the relevant Licensing Authority of any change in his name or address as stated in the Person Licence (2003 Licensing Act - Part 6 - Personal Licences - 127 Duty to notify certain changes). Mr Akash PATEL said he wanted to get the condition of the Personal Licence holder having to be present on the premises for sales of alcohol removed. He was advised he would need to contact Portsmouth City Councils Licensing Section. (PC PEARCE witness statement available at Trading Standards Bundle **Exhibit 8** Notepad of Mrs GREAVES can be seen at **Exhibit 9** of the Trading Standards Bundle).

14/07/2017 - at approximately 17.10 Trading Standards carried out another juvenile Test Purchase for alcohol. This was carried out by a different volunteer, a young person of 16 years, 7 months and 3 days. Mr Rob ANDERSON-WEAVER observed the young test purchase operative being sold a 500ml bottle of Kopparberg Strawberry and Lime Cider of 4.0% vol by the sales assistant [REDACTED]. No challenge was made and no ID asked for. PC 512 Jason PEARCE cautioned and issued [REDACTED] with a fixed penalty notice of £90 for committing offences under Section 146 of the Licensing Act 2003, the sale of alcohol to a person under 18 years of age. [REDACTED] told PC PEARCE that she held a Personal Licence, however she could not produce the card as she did not have it with her. The aim of the Personal Licence qualification is to ensure that licence holders are aware of licensing law and the wider social responsibilities involved in the sale of alcohol. It is the Licence Holders duty to produce that licence card for examination (Licensing Act 2003 - Part 6 Personal Licences - Production of a licence 135). A copy witness statement of Mr ANDERSON-WEAVER can be found at **Exhibit 10** of the Trading Standards Bundle and the copy witness statement of PC PEARCE can be seen at **Exhibit 11** in the Trading Standards Bundle.

Since the failed test purchase on 14/07/2017 there has been no contact from the DPS Mrs Naynaben PATEL, her husband or Mr Akash PATEL to offer any explanation for the failed test purchase or how they would address the issue.

There are 213 off licence premises in Portsmouth and the majority comply and do their utmost to uphold the licensing objectives.

This family owned store has consistently failed to maintain even the minimum of requirements and only address them when picked up by a responsible authority. This is despite a previous review hearing in 2010.

Management fail to keep to previous promises and statements made and cannot demonstrate any improvement or ability to maintain required standards.

Concerns raised in the review hearing in 2010 have not been heeded. The history of this premises, the DPS and Licence Holders evidence that these failures cannot be as a result of ignorance on the part of the Licence Holders. On the contrary this can only be explained by wilful neglect under the Licensing Act 2003.

As the facts in this application illustrate it would be futile to recommend further conditions as a means of seeking compliance.

Therefore, Trading Standards would respectfully ask the Licensing Committee to consider:-

Revocation of the premises licence - This will undoubtedly prevent any further sales of alcohol to under 18s and further breaches of the Premises Licence conditions. Indeed, the guidance provided under the Licensing Act 2003 would ask you to seriously consider this in the first instance, due to the holders overall failings to operate the premises in line with the licence requirements, licensing objectives and Portsmouth's licensing policy. Should the Committee decide to revoke the licence it is both proportionate and necessary to the problems that are reoccurring at the premises.

Please tick <input checked="" type="checkbox"/> yes							
Have you made an application for review relating to the premises before? TS have							x
If yes, please state the date of that application							
Day		Month		Year			
0	4	1	1	2	0	0	9

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

Please tick <input checked="" type="checkbox"/> yes	
<ul style="list-style-type: none"> 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. 	X
<ul style="list-style-type: none"> I understand that if I do not comply with the above requirements my application will be rejected. 	X

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 4)

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

Signature

Date	18/09/2017
Capacity	Trading Standards Officer (Alcohol & Tobacco Harm Reduction)

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)			
Tracey Greaves Trading Standards Section Floor 2, Core 2 Civic Offices Guildhall Square			
Post town	Portsmouth	Post code	PO1 2AL
Telephone number (if any) 023 9243 7977			
If you would prefer us to correspond with you by email, your email address (optional) tracey.greaves@portsmouthcc.gov.uk			

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.

Exhibit Record Sheet

Om Sai (aka Loco) 139 Queen Street, Portsmouth, Hampshire, PO1 3HY

Exhibit 1 - Copy witness statement PC 22367 Joanne LOCKTON 01/03/2017

Exhibit 2 - Copy page of Licensed Premises Inspection Summary from visit 07/03/2017

Exhibit 3 - Copy of Mrs Naynaben PATEL statement dated 18/12/2009 to licensing authority

Exhibit 4 - Copy of Portman Group alert bulletin

Exhibit 5 - Copy of witness statement Rob Anderson-Weaver re adult purchase alcohol on 09/03/2017

Exhibit 6 - Copy page of Tracey Greaves notebook entry of visit 09/03/2017

Exhibit 7 - Copy of witness statement PC 512 Jason PEARCE regarding juvenile alcohol test purchase 10/03/2017, juvenile alcohol test purchase re-test 23/04/2017 and follow up visit 04/05/2017

Exhibit 8 - Copy notepad of Tracey Greaves re follow up visit on 04/05/2017

Exhibit 9 - Copy of witness statement Rob ANDERSON-WEAVER re juvenile test purchase alcohol 14/07/2017

Exhibit 10 - Copy of witness statement PC 512 Jason PEARCE re juvenile test purchase alcohol 14/07/2017

*Sensitive material - copy photographs of 3 juvenile test purchase volunteers

Loco aka Om Sai

139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 1

Copy witness statement PC 22367 J Lockton

RESTRICTED (when complete)

MG11T

Witness Statement

Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Court Act 1980. s.5B

Statement Of: Joanne Lockton

URN:

Age (If Under 18): Over 18

Occupation: Police Officer

1 30/05/2017 13:25:

I am Police Constable 22367 Joanne Lockton working for Hampshire Constabulary currently based at Parkgate Police Station, Hampshire.

5 On Wednesday 1st March 2017 I was on duty and I was asked by DS 24194 Leeson to review some intelligence that Police had received stating that a 17 year old female had been given wine by one of the members of staff at Loco shop, 139 Queen Street, Portsmouth. On the same date I put a referral into Trading Standards with the above information and concerns around selling alcohol to under-age persons. On Monday 6th March 2017 I received an email from Tracey Greaves, Trading Standards, asking me to contact her about this

10 intelligence. I spoke with Tracey Greaves and we discussed this intelligence and Tracey agreed that Trading Standards would carry out a test purchase at the location in the next few days.

On Tuesday 14th March 2017 I was informed by Tracey Greaves that staff at Loco had failed the test purchase.

15 I had no further involvement in this matter after this time.

This statement is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true

Signature Witness: Digitally signed

Date: 30/05/2017 13:40

Witness To Signature: N/A

Date: N/A

Statement Started

30/05/2017 13:25

Statement Completed

30/05/2017 13:40

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 2

Copy page of Licensed Premises Inspection Summary from visit
07/03/2017

Licensed Premises
inspection summary

more on top window (boxes blinds)

11/04365

TEL: 02392 752222 LIC - LAPRMV

Premises trading name: LOCO (om sm)

Premises address: 139 QUEEN STREET

PORTSMOUTH PO1 3HY

Time & date of inspection: 20.7 7th March

Staff name: SATISH KUMAR

Officer's name: TARLET GREENES

Premises licence summary displayed (legal requirement - 2003 licensing act) YES NO

Is a copy of the full premises licence available on site (legal requirement - 2003 licensing act) YES NO

Is the premises licence holder on the licence still the business operator? YES NO

Is the designated premises supervisor on the licence correct and are they still employed at the premises? (legal requirement - 2003 licensing act) YES NO

Does the premises have the following notice displayed in a prominent position: **it is illegal to sell tobacco products to anyone under the age of 18?** (legal requirement) YES NO

Challenge 18/21/25 poster visible (do they currently operate an age verification policy - mandatory condition) YES NO

Does the premises operate proxy watch - (off sales only) YES NO

Does the premises operate a refusals log YES NO

Can staff at the premises demonstrate under age sales training Portsmouth licensing policy requirement) YES NO

Can the staff member converse regarding the 4 licensing objectives YES NO

If no, please give opinion below as to why this was

he called / check clearly & takes not above 18-21-25

How do you feel about the quality of service offered to you by trading standards? Poor Average Good Excellent N/A

Trading Standards can be contacted at Magnum wine

023 9283 4689 or trading_standards@portsmouthcc.gov.uk

437977

EXHIBIT 2

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 3

Copy of Mrs Naynaben Patels witness statement dated 18/12/2009

WITNESS STATEMENT**Name :** Naynaben Patel**Occupation :** Shop Owner

This statement (consisting of 5 pages signed by me) is true to the best of my knowledge and belief.

Signed

Dated 18/12/09

1. My name is Naynaben Patel and I jointly own the premises Om Sai with my husband. I make this statement in respect of the application by Portsmouth City Council Trading Standards Department to review the premises licence for Om Sai. I am the premises licence holder and designated premises supervisor.
2. I have had sight of: the application form issued by Craig Copland and subsequent witness statements of PS Clinton, PC Montague, PCSO Rolfe (2) and Neil Fitzpatrick; the letter of representation from the police with witness statements from PC Montague, PCSO Rolfe, PCSO Gibson and Stephen Keech; the letter of representation from Portsea Action Group and the letter of representation from "the Hairdresser" (Janeen Davis).
3. At the outset I think it is important to acknowledge that both I and my husband accept the evidence relating to the 2 sales of alcohol to persons under the age of 18. One was a test purchase conducted by Trading Standards and the other was a youth who was apprehended by the police. My husband and I are extremely sorry that this occurred and very shocked. We both want to apologise to the Committee, Police and Trading Standards, as well as the parents of the youth. We have passed two subsequent tests by Trading Standards in October 2009.
4. On both occasions we believed the person was over the age of 18 but we both accept that we should have applied the Challenge 21 policy that we had in place at the time. That was where we failed. We have considered the conditions proposed by Craig Copland and we agree that the Committee should impose a condition to change the policy to Challenge 25, with the supporting conditions in relation to ProxyWatch, the refusals log and to have a premises licence holder on the premises at all times.
5. I must point out the background set out in the application is not entirely accurate. The shop did not open on the 5th May 2009. The premises licence was not granted until the hearing on the 20th May 2009. We then opened the store to the public on the 2nd June 2009. My solicitor received written notice of the decision on the 17th June 2009 and whilst I do not recall the exact date we received the premises licence it was certainly after the 17th June. I mention that because that was the reason the summary was not displayed on the officers' visit of the 15th June 2009.

6. The premises licence is endorsed with a condition stating that we should operate Challenge 25 but this is an error. In our application we stated in the operating schedule that we would operate Challenge 21. There was no request from Trading Standards to alter that. I have asked my solicitor to confirm that and he can produce the relevant correspondence if need be to prove that this is an error. We should have returned the licence to the Council for amendment but in the early days of setting up the new business this regrettably was overlooked. There was no condition to display public notices about the Challenge 21 policy. We do accept now that it would be best practice to have the notices displayed and following that visit we did put up notices. In agreeing to a Challenge 25 condition we would also agree that it incorporates a condition to display relevant notices, which we will place at the entrance to the premises, in the alcohol display area and at the point of sale.
7. I accept that on the visit on the 15th June the tobacco notice was not on display. When we opened the shop we had the notice displayed correctly. Following the first two weeks of opening we decided to change things around, where goods were being displayed and how they were being displayed. This resulted in the notice being taken down over the weekend of 12th and 13th June when the shop was closed whilst we made some changes. We genuinely forgot to put the notice back. I know that is no excuse and to ensure it cannot happen again either my husband or I now do a daily check of all notices displayed to make sure they remain in place and can be clearly seen. It was of course immediately rectified following the visit on the 15th June 2009.
8. I have not been contacted by the police or Trading Standards Officers regarding the youths who are approaching adults for alcohol and cigarettes outside our premises. It is our practice to have two people working in the shop when it is open. That will usually be myself and my husband, but may also be my son or my daughter. My daughter is a personal licence holder. My son holds the NCPLH qualification and is in the process of applying for his personal licence. My husband has recently passed the NCPLH qualification and he too is in the process of applying for his personal licence.
9. We have not employed any other people at present. It is not always possible to observe what is happening outside the shop other than immediately outside. We do have an external cctv camera but its range is limited to the shop doorway. If the youths were identified to us we would not hesitate to ban them from our premises.
10. Mr Copland refers to an email from PC Montague on the 24th August 2009. My solicitor asked for disclosure of this email and I have read it. That email confirms what I believe to be the case which is that the Spar on Queen Street is selling cigarettes and alcohol to children. I attach the email as Exhibit NP1.

11. When I made the application for an off licence interested parties opposed the application. In their letters of representation it was stated there were a number of local issues relating to youths congregating in the area and causing a nuisance. I attach the Committee Report for the application, which contains those letters as Exhibit NP2.
12. There are some general comments made about the premises selling alcohol after 11pm. Our shop has never been open after 11pm. There are also very serious allegations regarding drug dealing in the shop doorway. This is totally denied and this has never been raised with us before. This allegation is now in the public domain and could have a serious impact on our business. We do not run a "tab" for local youths and neither do we run a "tab" for adults. We do not know who [REDACTED] is and neither the police nor Trading Standards Officer has pointed him out to us. We have never knowingly sold alcohol to an adult who then passed it to children.
12. I have viewed the cctv in which it is alleged my son was involved in throwing eggs at the Spar as I could not believe the statement that he was involved. My son did not throw any eggs at the Spar store and nor was he involved in any anti-social behaviour. He is outside the premises cleaning and spraying WD40 on the door to the shop. He was talking to the youths outside the shop. The youths did not get eggs from our store and I am not able to give the Committee any other information regarding this incident other than to confirm contrary to the police assertion it involved my son.
13. I do accept, as does my son, that he should have reported this to the police. I have made it clear to him that we must ask the youths, if they are immediately outside of our shop, to move away from our premises. If they refuse to do so I have instructed him to telephone the police. We have asked them to move away from the shop before and received racist abuse and threats from them. We accept that we must not ignore this behaviour in future and telephone the police.
14. I have telephoned the police once when someone threw a firework into our premises. I have not seen any other anti-social behaviour outside our premises. Therefore in 6 months we have witnessed two acts of anti-social behaviour and on occasions abuse when I or my family have asked youths to move on.
15. I cannot refute there are youths who congregate in the local area, from the representations received, but cannot comment on their behaviour or whether they have been drinking because we have not witnessed it, other than those times I have just stated. I do not accept that those youths are buying their alcohol from our shop.
16. I recall one occasion where an adult female came into the shop and wanted to buy alcohol. I refused her service. I later saw her leave the Spar premises with alcohol. I know we have done wrong in selling alcohol to those young people and agree we need to have tighter controls

on the sale of alcohol but what I cannot accept is that all the anti-social behaviour in Queen Street is being attributed to our premises because the Trading Standards Officer has filed an application to review the premises licence.

17. I now deal with the meeting on the 11th September. We are extremely sorry we did not attend that meeting. The officer was dealing with my son in arranging the meeting which was fixed at very short notice. My son had asked to have the meeting before he returned to University. I was aware of the date of the meeting because I received a letter two days before the meeting. I did not however, appreciate the importance of it. On the day in question I had already arranged to take my daughter back to University and visit a sick relative in London on the return journey. I left Portsmouth very early and did not arrive back until late evening.
18. As I was unaware how important the meeting was I gave priority to my family commitments, which in hindsight of course I should never have done. I recall speaking to the police officer on the telephone on that day and asking her to fix another date. I believed following that call that whilst the meeting would still take place, another meeting would be arranged. I apologise that I did not attend and want to stress that I have not deliberately frustrated the working relationship with the police and trading standards. I see that working relationship as vital in trying to reduce the local issues which are apparent from the police representations.
19. In respect of the cctv I can assure the Committee that all four members of the family know how to operate the cctv and can provide relevant footage if requested. I do not accept the statement by PS Clinton that I did not know how to operate it regarding the incident on the 27th September. I was of course very upset and was not thinking very clearly. I was in a bit of a panic. I accidentally pressed the wrong function key. I then had some problems with the remote. I did telephone my daughter not to ask her how to operate the device but to remind me of how to overcome the issue with the remote. Once told I then produced the CCTV as requested.
20. I have stated that we agree to the Committee imposing conditions on the premises licence as a resolution to the review application and to promote the four licensing objectives. I would respectfully ask the Committee not to suspend the premises licence as a period of suspension would lead to the loss of the business in its entirety.
21. Om Sai is a convenience store and as such being able to sell a full range of products is vital to its success. Whilst the level of alcohol sales is not considerable, if we were not able to sell alcohol we would lose a good % of our other sales, as customers would go elsewhere to do a "one stop" shop. Trade is not as we hoped and as a consequence we now close the premises no later than 10pm and on most days of the week it is 9.30pm. In the last two months our turnover has only been at a level which has met all the expenses of the business. It has not even provided a salary for me and family who have worked there.

22. That should not lead the Committee to think that in those circumstances we would just sell age restricted products to anyone to make ends meet. We have invested [REDACTED] in this business and know exactly how crucial having a premises licence is to its longer term success. If we lost the licence, even for a very short period of time, we would lose the shop and our investment. The financial incentive is therefore not to do anything to jeopardise the licence.

Signed .

Dated 18/12/09

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 4

Copy page of Portman Group alert bulletin



Portman
Group

RETAILER ALERT BULLETIN

HEALEY'S HARD CYDER

Producer: The Cornish Cyder Farm

SUMMARY OF DECISION

The Panel concluded that the term 'hard' in the context of an alcoholic drink had direct associations with strong alcohol, thereby making the alcoholic strength of the drink the dominant theme of the packaging. Accordingly, it found the product in breach of Code paragraph 3.2(a). *The company has said it will consult with the Portman Group's Advisory Service.*

LICENSEE ACTION AND TIMETABLE FOR IMPLEMENTATION

Licenseses are asked not to place orders for stocks of Healey's Hard Cyder, as shown in the picture here, after 15 April 2012. Licenseses who place orders before this date should consider limiting the order to the quantity that would normally be sold by this date.



MAGNUM TONIC WINE

Producer: J Wray & Nephew (Jamaica) on behalf of Lascelles Ltd

SUMMARY OF DECISION

The Panel noted that the product packaging featured an image of a naked couple embracing and a reference to Vigorin, a vitamin ingredient known for improving stamina. Accordingly, it found the product in breach of Code paragraph 3.2(d) and (j). *The company asserted that it would continue its Portman Group responsibility policy of not importing into the UK the product in its current packaging.*

LICENSEE ACTION AND TIMETABLE FOR IMPLEMENTATION

Licenseses are asked not to place orders for stocks of Magnum Tonic Wine, as pictured here, after 15 April 2012. Licenseses who place orders before this date should consider limiting the order to the quantity that would normally be sold by this date.



FEBRUARY 2012

The products opposite have been found in breach of the Portman Group's Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks.

Licenseses who currently stock the products shown opposite should take careful note of the Licensee Action and Timetable for Implementation sections.

The following should be borne in mind:

- manufacturers are not legally bound to buy back stock from retailers even if the current stock infringes the Code;
- licenseses should continue to honour any existing purchase orders and not sell existing stock other than by normal retail trade;
- when reviewing a liquor licence, a licensing authority may enquire about licenseses' compliance action with regards to products that breach the Code, so it would be advisable to keep any relevant records, for example the date of new orders placed.

If you have any questions or wish to receive a copy of the Code or additional copies of this Bulletin, please contact: Portman Group, 4th Floor, 20 Conduit Street, London W1S 2XW. Tel: 020 7290 1460; or email info@portmangroup.org.uk

The Portman Group Code is supported by over 140 Code Signatories representing the overwhelming majority of the drinks industry. The Secretary of State's Guidance under the Licensing Act 2003 commends the Code to licensing authorities and recommends that they commend it in their statements of licensing policy.

www.portmangroup.org.uk

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 5

Copy witness statement of Robert Anderson-Weaver re adult purchase of alcohol on 09/03/2017



WITNESS STATEMENT

(Criminal Procedure Rules, Rule 27.1(1);
Criminal Justice Act 1967, Section 9; Magistrates Courts Act 1980, Section 5B)

STATEMENT OF: Robert ANDERSON-WEAVER

AGE: Over 18 **OCCUPATION:** Public Health Project Officer

This statement (consisting of 1 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signature: **Date:** 7.8.17

I am employed as a Public Health Project Officer by Portsmouth City Council, Civic Offices, Guildhall Square, Portsmouth, PO1 2AL. On 9th March 2017 I entered the shop Loco at 139 Queen Street, Portsmouth, PO1 3HY at approximately 10.02. I selected a 1 litre plastic bottle of Frosty Jacks white cider and purchased it at approximately 10.04. I was served by a male sales assistant. I did not see or hear any other member of staff at the premises. I left the premises at approximately 10.05 passing the bottle of Frosty Jacks to Mrs Tracey GREAVES a Trading Standards Officer.

Signature: **Page 35** **Date:** 7.8.17

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 6

Copy pages of TG notebook entry of visit 09/03/2017

9th March 2017 approx
10.04 Rob Anderson -
Weaver purchased 1ltr
bottle Frosty Jacks
from male assistant
on visit to Loco (om sai)
139 Queen Street PO13HY.
at approx 10.12 I visited same
Loco (om sai) store to ask
for Refusal Register that
same male who told me
he was called [REDACTED]
[REDACTED] on previous visit
7th March 2017 when I carried
out Licensed Premises Inspection
Summary said was unavail

able as owner Mr Akash¹¹
takes away every day. [REDACTED]
[REDACTED] said he still didn't
have a register but he had
mentioned it to Mr AKASH.
I gave him a refusal register
from PCC stock and asked
if Mr AKASH there as [REDACTED]
[REDACTED] said he would ring
him [REDACTED] said no
MR AKASH was not at the
premises I said don't bother
him then it was ok. I
explained how to fill in each
box of the refusal register
what type of products were
age restricted and examples
of whom I might refuse
such as no id and [REDACTED]
[REDACTED] said or drunk. I
said that the manager
DRS ideally would check
refusal register and sign
off weekly. [REDACTED] added
if I had any posters I
had a Challeng 25/Proxy
Wata poster in my briefcase
so provided this to [REDACTED]
he said he would put on door
I agreed the positioning as
glass door & 2 sided poster
could be viewed in and out
of shop. I asked if he was
the only person there [REDACTED]
first said no, my mother is

here. I said that lady 12
pointing to the card with
photo in the license Summary
wallet, Mrs Naynaber PATEL
he said yes. I said that
lady is here. [REDACTED]
then said no she was but
she's just gone out now.
We spoke about the poster
and the old style, colour and
picture. I left Loco at
approximately 10.15

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 7

Copy witness statement of PC 512 J Pearce re juvenile test purchase
alcohol re-test 23/04/2017 and follow up visit 04/05/2017

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

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Statement of: Jason Pearce

Age if under 18: over 18 (if over 18 insert 'over 18')

Occupation: Police Officer

This statement (consisting of 3 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: (witness) Date: 01/05/2017

I am Police Constable 512 Jason Pearce. I work as part of the Police Alcohol Licensing team with my primary responsibility to ensure that licensed premises are monitored, managed and compliant with requirements in order to reduce crime and disorder.

On Friday 10th March I was working in the company of Tracey Greaves (Trading Standards) and Rob Anderson-Weaver (Council / Health) on a joint operation in Portsmouth. This operation sought to test a number of off licensed premises to assess if they were operating a challenge 25 age verification policy with regards to selling alcohol and to see if they were ensuring that ID was requested for customers who looked under this age.

Tracey Greaves had obtained the services of a 16 year old girl to assist us with our tests.

The procedure is quite straight forward whereby one of us enters the premises before the juvenile enters. The person then monitors the attempted transaction at the till. The juvenile is instructed to say they have no ID if asked so there is no intent to trick the premises staff. If the staff member sells alcohol to the juvenile without requesting ID then refusing the sale, they fail the test and commit the offence of selling alcohol to a person under 18 (section 146 (1) of the Licensing Act 2003.

For information a Police Officer or a Weights and Measures Inspector has a legal exemption under section 149 part2 (a&b) of the Licensing Act 2003 to allow a person under 18 to purchase the alcohol.

At approximately 1720 hours on Friday 10th March I entered Loco store at 139 Queens Street, Portsmouth in plain clothes. A few minutes afterwards the 16 year old juvenile test purchaser entered the shop and selected 2 x bottles of 500ml Bulmers crushed red berries and lime cider.

The staff member serving who I now know to be [REDACTED] engaged with the test purchaser and informed her that she could buy 3 bottles for £5 to which the test purchaser declined. [REDACTED] then sold the bottles of cider to the test purchaser without any request for ID, taking the money then passing the change and alcohol to the test purchaser.

Signed Signature witnessed by

I then took possession of the alcohol and the child left the shop. I identified myself as a Police Officer and showed my warrant card. I was shortly joined by Tracey Greaves.

█████ said that she thought the girl looked like a girl that had come in the other day.

I reported and cautioned her for the offence of selling alcohol to a person under 18. I then explained and offered the option of a 'fixed penalty fine' (£90) which was accepted. I then issued her with a fixed penalty fine which gave her 21 days to pay.

█████ said that she had worked at the shop since November 2016.

█████ confirmed that she was and had been the only person working at the shop since 1300 hrs that day and when asked confirmed that she was not a 'personal licence holder'. She advised that Akash Patel was her boss and that she didn't see Naynaben Patel (DPS) very often due to her having 'hip problems'.

On Sunday 23rd April 2017 myself, Tracey Greaves and Rob Anderson- Weaver conducted a similar operation with an intention to re-test Loco store.

Another 16 year old was used as the test purchaser and I was again the officer that was in the store monitoring the transaction. The server was an Asian male with a short beard. Whilst the test was passed, it was a poor pass. The server took the money from the test purchaser without requesting ID, scanned the alcohol, took out the change from the till then said 'how old are you'? The test purchaser responded something to the effect of not having any ID. The server again asked 'how old are you'? The server then cancelled the sale and told the test purchaser to 'be careful next time'.

In my opinion there was no purpose of him asking for the age of a person, it is ID or no sale. The question to be posed is, 'Had the test purchaser said '18' would the alcohol have been sold'?

Tracey Greaves and I did a follow up visit to the shop on the 4th May 2017 for a pre-planned meeting with the shop management. The DPS Naynaben Patel was present although her son Akash Patel was the person who spoke to us.

We discussed the test purchase failure on 10th March and also the poor pass on 23rd April. We also viewed the CCTV of the incident on 23rd April.

Akash Patel stated that it was his cousin who was helping out on 23rd April who had served the test purchaser.

It was explained to Akash Patel that the premises licence required a Personal Licence Holder to be present at the premises when alcohol is available for sale. He was asked if his cousin was a personal licence holder (we already knew that ██████ was not).

Akash was surprised by this condition and wasn't aware of it. He went on to ask how he was going to resolve it as it is only him that is available for this role and he would struggle to achieve compliance. He said there are 4 personal licence holders in the family. He said that his mother (DPS Naynaben Patel) was not well, his father did not speak good English and his sister lives in London.

Signed Signature witnessed by

It was explained to him that he should be aware of the conditions of the premises licence and it was for the premises management (not the authorities) to ensure compliance. He was advised that he could make contact with the Council Licensing Dept to discuss this.

During the conversation I asked Akash for his personal licence. He could not find it initially but did find it along with the premises licence which was at the shop. The wording regarding personal licence holder presence was clearly written on the licence he had possession of.

Whilst we were at the shop Akash was also asked to show us staff training records and the refusals log.

Akash said that staff training records were at home and showed us the refusals log behind the counter. There were documented refusals from March 2017 but nothing prior to this. Again Akash said these were at home.

In summary the follow up enquiries indicated that the test purchase failure and poor pass were probably avoidable. They were assisted by lack of compliance with a key premises licence condition – a personal licence holder to be present on site when alcohol is available for sale.

It is not simply appropriate to resolve the issue of the 'personal licence holder' requirement by taking the condition away. The circumstances on 10th March and 23rd April indicate that there is good reason for the condition. There was nothing to show that the staff selling alcohol (10th March and 23rd April) were adequately trained for the role. Good documented, training and well documented refusals logs may have helped to show an effort (albeit not legally compliant) to have robust staff present to prevent such offences as selling alcohol to children.

2016/08

Signed Signature witnessed by

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 8

Copy of notes made by TG re follow up visit on 04/05/2017

10.55 in daw
son Akash.
Mother Naynaben

TP FOLLOW UP REVISIT
THURS 4/5/17
EXHIBIT 8

after exp from [redacted] (still works here)
rang but number dead - policy to ring up saying
why no contact to Pol Lic - Lic dept no ID...
didn't know what to do

asked for CCTV

friend on 23/4 as family 1st cousin
wedding he was helping were been
in & out

CCTV operate ok found 23/4

JP discussed poor challenge

J: prob if people dont understand Lic
train all up £250 300 each pay they leave
7 day knackerig. You be on site yourself
waste ref register 11.26

looking at 28th
no could be
my ~~and~~ + [redacted]

anyone there a
PLH?

No

You Lic require it
I cant keep staff if
not trained by us.

Training records.

3 new all
[redacted] how should be
didn't keep her on

- PLH A
- Sgt ? London UK
- M. Borderline Eng.
- D. Poor Eng

at home
my ref prior to my del
at home did sheet
daily JP all on site.

Full lic was on site card but was with full lic
didn't know if had Pol Lic card but was with full lic
changed add of 1.5 years per lic

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 9

Copy of witness statement Robert Anderson-Weaver re juvenile test
purchase for alcohol 14/07/2017



WITNESS STATEMENT

(Criminal Procedure Rules, Rule 27.1(1);
Criminal Justice Act 1967, Section 9; Magistrates Courts Act 1980, Section 5B)

STATEMENT OF: Robert ANDERSON-WEAVER

AGE: Over 18 **OCCUPATION:** Public Health Project Officer

This statement (consisting of 1 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signature: **Date:** 7.8.17

I am the above named person and I am currently employed as a Public Health Project Officer for Portsmouth City Council at the Civic Offices, Guildhall Square, Portsmouth, PO1 2AL. I present this statement in relation to a Trading Standards test purchasing operation carried out on Friday 14th July 2014 at the Loco store (aka Om Sai) at 139 Queen Street, Portsmouth, PO1 3HY.

On 14th July 2017 I was working in the company of Police Constable 512 Jason PEARCE and Mrs Tracey GREAVES a Trading Standards Officer. Mrs GREAVES had obtained the services of a female volunteer of 16 years old to assist with the juvenile alcohol test purchase. I entered the premises ahead of the young person at approximately 17.10 shortly after this the test purchaser entered the shop and selected one 500ml bottle of Kopparberg strawberry and lime cider. I observed the transaction at the till, the female staff member serving did not challenge the young person or ask for identification, engaging with the test purchaser to confirm the cost of the cider. The staff member who I now know to be [REDACTED] took the money and passed the change and alcohol to the test purchaser. The test purchaser then left the store and I followed her out. I spoke with PC 512 PEARCE outside the Loco shop regarding the sale of alcohol to the test purchaser and we both went back into the Loco shop whereupon I explained to [REDACTED] what I had witnessed. PC 512 PEARCE cautioned [REDACTED] for the offence of selling alcohol to a person under 18 and issued her with a 'fixed penalty fine' of £90. I left Loco (aka Om Sai) at approximately 17.25.

Signature: **Page 47** **Date:** 7.8.17

Loco aka Om Sai
139 Queen Street, Portsmouth, PO1 3HY

Trading Standards Review Exhibits

Exhibit 10

Copy of witness statement PC 512 J Pearce re juvenile test purchase for
alcohol 14/07/2017

WITNESS STATEMENT

Criminal Procedure Rules, r 27. 2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

URN

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Statement of: Jason Pearce

Age if under 18: over 18 (if over 18 insert 'over 18')

Occupation: Police Officer

This statement (consisting of 3 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: (witness) Date: 03/08/2017

I am Police Constable 512 Jason Pearce. I work as part of the Police Alcohol Licensing team with my primary responsibility to ensure that licensed premises are monitored, managed and compliant with requirements in order to reduce crime and disorder.

On Friday 14th July 2017 I was working in the company of Tracey Greaves (Trading Standards) and Rob Anderson-Weaver (Council / Health) on a joint operation in Portsmouth. This operation sought to test a number of off licensed premises to assess if they were operating a challenge 25 age verification policy with regards to selling alcohol and to see if they were ensuring that ID was requested for customers who looked under this age.

Tracey Greaves had obtained the services of a 16 year old girl to assist us with our tests.

The procedure is that one of us enters the premises before the juvenile enters. The person then monitors the attempted transaction at the till. The juvenile is instructed to say they have no ID if asked so there is no intent to trick the premises staff. If the staff member sells alcohol to the juvenile without requesting ID, they fail the test and commit the offence of selling alcohol to a person under 18 (section 146 (1) of the Licensing Act 2003.

For information a Police Officer or a Weights and Measures Inspector has a legal exemption under section 149 part2 (a&b) of the Licensing Act 2003 to allow a person under 18 to purchase the alcohol.

At approximately 1710 hours on Friday 14th July Rob Anderson- Weaver entered Loco store at 139 Queens Street, Portsmouth. A few moments later the 16 year old juvenile test purchaser entered the shop.

Shortly afterwards I was advised that the staff member inside had sold alcohol to the test purchaser who had by now left the shop. I entered the shop and Rob Anderson- Weaver explained what he had seen in front of myself and the serving staff member who I know to be [REDACTED] She had sold a 500ml bottle of Kopparberg Cider (Strawberry & Lime) 4% abv at a cost of £2.49 to the test purchaser.

Signed Signature witnessed by

I was aware that the premises has a challenge 25 policy whereby anyone looking under 25 should be asked for ID when attempting to buy alcohol.

I asked [REDACTED] if she was a personal licence holder. She said that she was but did not have her personal licence on her.

I then 'reported' and 'cautioned' her for the offence of selling alcohol to a person under 18. I then explained and offered the option of a 'fixed penalty fine' (£90) which was accepted. I then issued her with a fixed penalty fine which gave her 21 days to pay.

2016/08

Signed Signature witnessed by

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

Premises Licence Number:	11/04365/LAPRMV
---------------------------------	-----------------

Part 1 - Premises details

Postal address of premises, or if none, ordnance survey map reference or description:
Om Sai 139 Queen Street Portsmouth Hants PO1 3HY
Telephone Number: 9275 2229
Where the licence is time limited, the dates:
Licensable activities authorised by the licence:
Sale by retail of alcohol
The times the licence authorises the carrying out of licensable activities:
Sale by retail of alcohol Monday to Sunday: 07:00 until 23:00
The opening hours of the premises:
Monday to Sunday: 07:00 until 23:00
Where the licence authorises supplies of alcohol, whether these are on and/or off supplies:
Alcohol is supplied for consumption off the premises

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence:
Mrs Naynaben Patel [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Telephone number: [REDACTED]
Email:

Registered number of holder, for example company number, charity number (where applicable):

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol:
Mrs Naynaben Patel [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
Telephone Number: [REDACTED]

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

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

Personal licence Number: 11/04365/LAPERS

Issuing licensing authority: Portsmouth City Council



Date Licence Granted: 20.05.2009

Authorised Officer
Licensing Section

Date last Amended: 13 October 2011
Type: Variation

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

Annex 1 – Mandatory conditions

01. 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/her personal licence is suspended.

02. Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

03. 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.

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

Annex 2 - Conditions consistent with the Operating Schedule

01. The licence holder will comply with the following requirements concerning the use of CCTV at the premises.

Operation and Storage.

The CCTV system will be installed and fully operational whilst the venue is open to the public.

The recording equipment will be stored and operated in a secure environment with limited access, to avoid damage, theft, unauthorised viewing and maintain the integrity of the system.

A record will be kept of any access made to information held on the system.

The system will be regularly maintained and serviced.

The system clock will be checked regularly for accuracy taking account of GMT and BST.

Tapes will be changed daily and kept for 31 days before being re used. Tapes should be replaced after 12 usages i.e. annually.

Digital systems will have sufficient storage capacity for 31 days good quality pictures.

The images produced will be date and time stamped.

The CCTV system will be approved by the Police prior to the venue operating under a premises licence.

Access

It is important that the Police are able to access data from the systems quickly and easily and therefore provision will be made for someone to have access to the secure area and also be able to operate the equipment.

Ensure all operators receive training from the installer when equipment is installed and that this is cascaded down to new members of staff.

A simple operator's manual will be available to assist in replaying and exporting data (particularly important with digital systems).

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

02. The licence holder must ensure that all staff selling alcohol have received adequate training which must incorporate a process of assessment and refresher training to a recognised national standard on the law with regard to age restricted alcohol sales and that this has been properly documented and records kept.
03. The licence holder will operate proxy watch.
04. The licence holder will operate a challenge 25 policy.
05. The licence holder will operate a refusals log.
06. Only photo ID is acceptable as proof of age namely passport, driving licences or any form of ID with the PASS logo.

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

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

01. Operate Challenge 25 including prominent display in store windows and proper use of ID checks.
02. Operate Proxywatch scheme and promote to customers, including window display and till cards. The Designated Premises Supervisor to phone or email any suspected activity in store vicinity to Trading Standards Proxywatch on a weekly basis.
03. To keep and use refusals log to record attempted underage sales, proxy sales and anti-social behaviour near store.
04. No sale of alcohol shall be made unless a personal licence holder is present on the premises.

LICENSING ACT 2003

PREMISES LICENCE

Granted by Portsmouth City Council, as licensing authority pursuant to the Licensing Act 2003 and regulations made thereunder.

Annex 4 - Plans

See attached.

Licensing Sub-Committee
Portsmouth City Council
Civic Offices
Guildhall Square
Portsmouth
Hants
PO1 2AL

Licensing Service

Civic Offices
Guildhall Square
Portsmouth
PO1 2AL

Phone: 023 9283 4604

Our Ref: 17/03844/LAREVI

Date: 27 September 2017

Dear Members of the Licensing Sub-Committee

**Re: Licensing Act 2003 - Application for the review of a premises licence
Om Sai (aka Loco) 139 Queen Street Portsmouth PO1 3HY**

I refer to the recent application by Trading Standards for the review of a premises licence in respect of the premises known as Om Sai (aka Loco) and situated at 139 Queen Street, Portsmouth, PO1 3HY.

On behalf of the Licensing Authority, I would wish to make formal representations in relation to the application on the following grounds:

- Prevention of crime and disorder; and
- Protection of children from harm.

The review application comprehensively sets out the poor history of management and supervision of these premises in respect of alcohol sales and without wishing to repeat the information contained within the review application, I have set out below the timeline of problems associated with these premises to evidence the concerns of the Licensing Authority.

29 October 2008	Application for the grant of a premises licence made to the Licensing Authority by Naynaben Patel. Application refused by the Licensing Sub-Committee following relevant representations from Trading Standards and residents living in the vicinity of the premises.
20 May 2009	Further application by Naynaben Patel for the grant of a premises licence. Further representations made by residents living in the vicinity of the premises. Application granted by the Licensing Sub-Committee.

20 January 2010	Application for the review of the premises licence submitted by Trading Standards following 2 failures of test purchases in respect of the sale of alcohol to children, 2 other incidents of underage sales and deficiencies associated with under age sales training. The review application was considered by the Licensing Sub-Committee who determined: <ul style="list-style-type: none"> • Removal of the DPS (Naynaben Patel); • Suspension of the licence for 3 months; • Attach further conditions as proposed by Trading Standards.
4 February 2010	Application to vary the DPS to Mr Satishchandra Patel received and granted as per the 2003 Act;
28 September 2011	Application for a minor variation to the premises licence to amend conditions on the licence - Approved;
28 March 2012	Application to vary the DPS back to Mrs Naynaben Patel. Application granted as no objections from the Police;
9 March 2017	Alcohol sale made to an adult without a personal licence holder present on the premises - BREACH OF CONDITION;
10 March 2017	Failed test purchase in respect of the sale of alcohol to children;
23 April 2017	Further test purchase in respect of the sale of alcohol to children - premises passed but defined as a "poor refusal";
14 July 2017	Failed test purchase in respect of the sale of alcohol to children;

In addition to the above evidence, there have been significant attempts by Trading Standards to engage with the licence holder to ensure compliance with the licence conditions and the Licensing Act 2003 but without due success.

It is of grave concern that there has been an extremely poor history of test purchase failures, breaches of conditions and lack of engagement by the licence holder (who is also the DPS) in respect of the sale of alcohol at these premises.

Despite the best efforts of the Trading Standards Service to educate and inform the licence holder, it would appear that this advice has gone unheeded and offences are still being committed.

Paragraph 11.30 of the Statutory Guidance issued in accordance with section 182 of the 2003 Act provides specific guidance to licensing authorities in respect of a review of a premises licence following persistent sales of alcohol to children. It states:

"The Government recognises that the majority of licensed premises operate responsibly and undertake due diligence checks on those who appear to be under the age of 18 at the point of sale (or 21 and 25 where they operate a Challenge 21 or 25 scheme). Where these systems are in place licensing authorities may wish to take a proportionate approach in cases where there have been two sales of alcohol within very quick succession of one another (e.g., where a new cashier has not followed policy and conformed with a store's age verification procedures). However, where persistent sales of alcohol to children have occurred at premises, and it is apparent that those managing the premises do not operate a responsible policy or have not exercised appropriate due diligence, responsible authorities should consider taking steps to ensure that a review of the licence is the norm in these circumstances. This is particularly the case where there has been a prosecution for the offence under section 147A or a closure notice has been given under section 169A of the 2003 Act. In determining the review, the licensing authority should consider revoking the licence if it considers this appropriate".

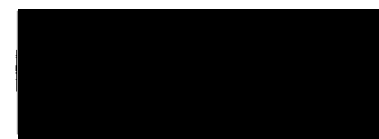
The Licensing Authority has a range of powers at its disposal which it may exercise on determining a licence review where it considers them appropriate for the promotion of the licensing objectives. However, paragraph 11.18 of the statutory guidance advises:

"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"

In considering what steps are appropriate in respect of this particular application, members should take into account that on the previous review in 2010, additional conditions were added to the licence, a suspension was put into effect, the DPS was removed.

Despite these sanctions and further efforts by the Trading Standards Service to bring about improvements, this has not happened and, taking all relevant factors into account, it is respectfully proposed that these premises are trading irresponsibly and that the Licensing Sub-Committee should not hesitate to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient (and in accordance with paragraph 11.23 of the Guidance), should revoke the licence.

Yours sincerely



**Nickii Humphreys
Licensing Manager**

Email: licensing@portsmouthcc.gov.uk

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Licensing Office
 Directorate of Culture & City
 Development
 City Development - Licensing
 Portsmouth City Council
 Civic Offices
 Guildhall Square
 Portsmouth
 Hants
 PO1 2AL

Public Health

Portsmouth City Council
 Civic Offices
 Guildhall Square
 Portsmouth
 PO1 2AL

Phone: [REDACTED]
 Ref: 17/03844/LAREVI

Dear Mr Stone

Re : LICENSING ACT 2003 - REVIEW APPLICATION - LOCO OM SAI

This is a representation in support of the Licensing Review instigated by Portsmouth City Council Trading Standards service in regard of Loco/Om Sai 139 Queen Street Portsmouth.

This representation is made on behalf of the Director for Public Health at Portsmouth City Council in his role as a responsible authority under the Licensing Act 2003.

The Public Health team in Portsmouth works closely with Trading Standards in the City, to reduce underage sales and undue harm caused by the sale and consumption of alcohol. One of the methods used to insure compliance with the Act and high standards of due diligence is conducting juvenile test purchases. I have been involved in several of these operations this year including the failures relating to LOCO Om Sai provided as evidence in Mrs Greaves review application.

I can also confirm that I took part in the licensing condition compliance test Mrs Greaves mentions in her review on 09/03/2017, and that I was sold high strength, white cider by the staff member Mr Satish Kumar who had no personal licence, and when no personal licence holder was present on the premises thus breaching a licence condition attached to the premises licence after a hearing by the Licensing authority.

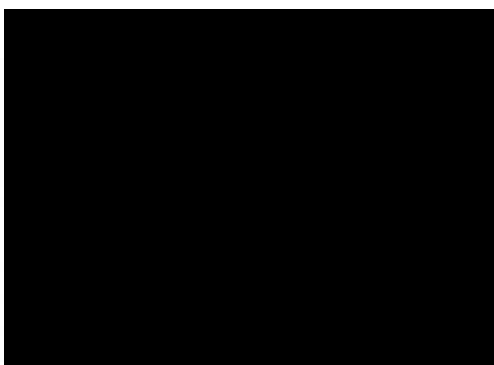
Public Health's role as a responsible authority is to support or apply a review of a premises licence or club premises certificate, where problems associated with one or more of the licensing objectives arise - the evidence provided by Trading Standards and witnessed in person by myself constitute a serious failure to support or promote the licensing objectives and I would recommend that the stores licence be revoked as previous conditions attached by committee have not been effective.

In addition to the large amount of evidence provided by Trading Standards to support their review, I also attach several images taken inside the premises after one of the failed test purchases (appendix .a).

These photos show the point of sale materials that promote a 'Challenge 25' policy that is not adhered to, Cannabis grinders and paraphernalia that is permanently on display for sale providing a moral threat in an already irresponsible environment and a shelf of products that I believe are targeted at street drinkers or those with little money looking for the strongest alcoholic products available - children. These products include Buckfast in different size servings, Frosty Jacks Cider in different size servings, White Strike Cider, Lambrini , 3 Hammers White Cider, Desperados - a strong lager featuring tequila and large discounted bottles of Strongbow Cider. This 'Budget Shelf' is low enough to be seen and reached by all and is located outside of the large area already given over to alcohol sales.

The problems with LOCO/Om Sai are both historical and recent and illustrate serious problems with both the management and day to day operation of the store. Attempts to address these problems through conditioning and engagement have failed repeatedly; it is with this in mind that I would ask the committee to revoke the stores licence in line with recommendations form Portsmouth City Council Trading Standards Service

Yours sincerely



Rob Anderson-Weaver PCC Public Health Project Officer

On behalf of the Director for Public Health at Portsmouth City Council Dr Jason Horsley

Email: Robert.anderson-weaver@portsmouthcc.gov.uk

APPENDIX C

LOCO Representation Public Health

Appendix a

Signage



Drug Paraphernalia

Page 67



Cheap and strong shelf



**REPORT TO: LICENSING SUB-COMMITTEE - WEDNESDAY
20 JANUARY 2010**

REPORT BY: LICENSING MANAGER

REPORT AUTHOR: RICHARD CHALMERS

**Licensing Act 2003 – Application for the review of a premises licence
Om Sai, 139 Queen Street, Portsmouth PO1 3HY**

1. PURPOSE OF REPORT

The purpose of this report is for the Committee to consider an application for the review of a premises licence by Craig Copland, on behalf of Portsmouth City Council, Trading Standards as a responsible authority.

2. THE APPLICATION

The application and grounds for review are attached as Appendix A to this report and relate to the following licensing objectives:

- Prevention of crime and disorder.
- The prevention of public nuisance.
- The protection of children from harm.

The grounds for the review are based on the belief that the premises licence holder and designated premises supervisor (DPS), Mrs Naynaben Patel, has failed to promote the licensing objectives, and has failed, since the premises opened, to adhere to conditions of the premises licence.

3. BACKGROUND INFORMATION

Mrs Patel first applied for a premises licence at this location in September 2008. A Licensing Sub-Committee hearing into the matter on 29 October 2008 refused to grant a premises licence.

The second application was made by Mrs Patel on 24 March 2009 and at a committee hearing on 20 May 2009 the licence was granted. No additional conditions were added by the committee other than those previously agreed between the police and the applicant and those offered in the application.

Om Sai is currently authorised to sell alcohol daily from 0700 hours until 2300 hours with the shop being open for the same hours.

A copy of the premises licence is attached as Appendix B and a map of the area showing the location of the premises is attached as Appendix C.

There are three DVDs which show incidents inside and outside the shop. These are taken from the CCTV in the premises. These DVDs will be available for members to view at the hearing and the applicant, Mr Copland, will arrange this.

As a result of the review application, the premises licence holder, via her solicitor, responded by email on 4 December 2009. a copy of this response is shown as Appendix H.

Paragraph 4 of that response indicates an error on the premises licence whereby Challenge 25 adoption should not have been included on the licence and in paragraph 5, likewise, a condition relating to proxy watch should not have been included.

The Licensing Manager is in possession of copies of emails between Mr Copland and Mr Wallsgrove, the premises licence holder's solicitor. As part of a long email about another premises, Mr Copland wrote to Mr Wallsgrove on 21 April 2009 at 1803 hours. The email says "*Many thanks Jon, I will forward on to licensing. Did you need further info from me regarding Om Sai?*"

Mr Wallsgrove responded at 1807 hours that day and wrote "*No, clients will contact you direct to book the course. I think they want to book on next Monday. **Again Challenge 25 and proxy watch agreed** although in your email to Sarah you hadn't put those forward for Om Sai. Jon.*" [bold type by Licensing Officer]

The Licensing Manager took this to mean that the premises licence holder had amended her application for the grant of a premises licence and consequently these two conditions were added, with her consent, to the premises licence.

No questions were raised by the premises licence holder regarding this after the licence was sent to her solicitor. Accompanying the premises licence and the premises licence summary sent on 23 June 2009 was a letter in which the sender, Debra Robson, Senior Licensing Officer, wrote, at paragraph 3, "*Please ensure that you check the details concerned within your new licence and should you have any queries as regards any matter in relation to the new licence, please contact this office straight away*". No contact regarding this was made either by the premises licence holder or her solicitor.

On 30 December 2009 the licensing authority received a witness statement from the premises licence holder, Mrs Naynaben Patel. This statement is attached as Appendix J.

There are also witness statements relating to incidents which are attached as Appendix G. Your licensing officer has deleted the name of the bus driver who witnessed one incident on 2 November 2009. The other statements are from police or police community support officers and by a trading standards officer.

4. RELEVANT REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

In accordance with the procedure laid down in the Act, a public notice of the application for the review of the licence was advertised at the premises concerned and also in a prominent position at the Civic Offices. In addition a notice of the application was also posted on the website of Portsmouth City Council together with the grounds for the review. Mr Copland, for Trading Standards, as applicant for the review, was also statutorily required to serve a copy of the application on all of the responsible authorities.

As a result of the review application a relevant representation has been made by the Chief Officer of Police. It is on the grounds of:

- Prevention of crime and disorder
- Prevention of public nuisance
- Protection of children from harm

It relates to a sale of alcohol to an underage person on 2 November 2009.

The letter of representation is attached as Appendix D.

5. RELEVANT REPRESENTATIONS BY INTERESTED PARTIES

The Portsea Action Group 99 Ltd also made a relevant representation and this appears to be on the grounds of

- Prevention of crime and disorder
- Prevention of public nuisance
- Protection of children from harm

A copy of their letter of representation is attached as Appendix E.

There has also been a letter of representation from another interested party, Janeen Davis, a person involved in a business in the vicinity of the premises. Her letter is on the grounds of all four licensing objectives and relates to the violent and intimidating behaviour of youths who are customers of the premises.

A copy of this letter of representation is attached as Appendix F.

6. POLICY AND STATUTORY CONSIDERATIONS

When determining the application for review of the premises licence, the Committee must have regard to:

- Promotion of the licensing objectives which are;
 - prevention of crime and disorder
 - public safety
 - prevention of public nuisance
 - protection of children from harm
- The Licensing Act 2003;
- Judgements of the High Court.
- Its Statement of Licensing Policy;

- The statutory guidance issued by the Secretary of State in accordance with section 182 of the Act; and
- The representations, including supporting information, presented by all the parties.

The Statutory Guidance (revised in June 2007) provides advice in relation to the consideration of review applications.

In particular, members should have regard to the following advice:

Paragraph 9.8 - *A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.*

Paragraph 9.11 - *Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgement. This may be difficult for ward councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.*

Paragraph 11.1 - *“The proceedings set out in the Act for reviewing premises licences represent a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of a premises licence.”*

Paragraph 11.2 – *“ At any stage, following the grant of a premises licence, a responsible authority, or an interested party, may ask the Licensing Authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives.”*

Paragraph 11.6 - *“ In every case, the representation must relate to the particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. After a licence or certificate has been granted or varied, a complaint relating to a general (crime and disorder) situation in a town centre should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.”*

Paragraph 11.7 – *“Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.”*

Paragraph 11.8 - *“It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of co-operation. It is good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review”.*

Paragraph 11.11 - *Relevance, vexation and frivolousness were dealt with in paragraphs 9.8 – 9.13 above. A repetitious representation is one that is identical or substantially similar to:*

- *a ground for review specified in an earlier application for review made in relation to the same premises licence which has already been determined;*
or
- *representations considered by the licensing authority when the premises licence was first granted; or*
- *representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement;*

and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or the grant of the licence.

Paragraph 11.16 – *“The Licensing Authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary 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 warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where*

responsible authorities like the Police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their stepped approach to concerns, licensing authorities should not merely repeat that approach”.

In cases where the Licensing Authority considers that action under its statutory powers are necessary and after having regard to the representations, the Committee may take such steps, if any, as it considers necessary for the promotion of the licensing objectives which are:

- **modify the conditions of the licence, which could include altering, omitting or adding conditions;**
- **to exclude a licensable activity from the scope of the licence;**
- **to remove the designated premises supervisor;**
- **to suspend the licence for a period not exceeding three months;**
- **to revoke the licence.**

Paragraph 11.18 – *“In deciding which of these powers to invoke, it is expected that the Licensing Authority should so far possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response”.*

Paragraph 11.19 – *“For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual”.*

Paragraph 11.20 – *“Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems which impact upon the licensing objectives”.*

Paragraph 11.21 - *“Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again.*

However, it will always be important that any detrimental financial impact that may result from a Licensing Authority’s decision is necessary and proportionate to the promotion of the licensing objectives”.

Where an application for the review of a premises licence has been made in accordance with section 51 of the Act, the authority must hold a hearing to consider the application and any relevant representations.

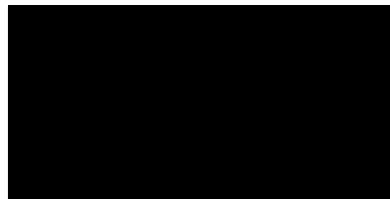
Schedule 5, part 1, of the Act sets out the appeal provisions in relation to the determination of a review of a premises licence. An appeal may be made against the decision of the Licensing Authority by:

- the applicant for the review;
- the holder of the premises licence; or
- any other person who made relevant representations in relation to the application.

A copy of the Statement of Licensing Policy, statutory guidance, the Act and the pool of model conditions has been supplied to each of the Members' Rooms and further copies will be available for reference at the hearing.

7. APPENDICES

- A. Copy of the application for review of the premises licence and the grounds submitted by Craig Copland on behalf of Trading Standards;
- B. A copy of the current premises licence;
- C. Map of the locality within which the premises are situated.
- D. Copy of letter of representation from Chief Officer of Police.
- E. Copy of letter of representation from Portsea Action Group 99 Ltd.
- F. Copy of letter of representation from Janeen Davis.
- G. Copies of witness statements.
- H. Copy of response by premises licence holder to review application.
- J. Copy of Witness Statement of Naynaben Patel.



Deputy Licensing Manager

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LICENSING SUB COMMITTEE

MINUTES OF A MEETING of the Licensing Sub Committee held on Wednesday 20 January 2010 at 9.30am in the executive meeting room of the Guildhall, Portsmouth.

Present

Councillors Les Stevens (chair)
Andy Fraser
David Fuller

5. Appointment of Chair (AI 1)

Councillor Les Stevens was appointed chair for the meeting.

6. Declaration of Members' Interests (AI 2)

There were no declarations of interest.

7. Licensing Act 2003 – Application for the review of a premises licence – Om Sai, 139 Queen Street, Portsmouth, PO1 3HY (AI 3)

(TAKE IN REPORT BY THE LICENSING MANAGER)

Craig Copland (Trading Standards), the applicant, was in attendance.

PC Montague (representing the Chief Officer of Police) was also in attendance as a responsible authority.

Jon Wallsgrove (solicitor representing the premises licence holder) and Mrs Naynaben Patel (the premises licence holder and designated premises supervisor) were in attendance.

Mr Thurston (chair of the Portsea Action Group 99 Ltd) and Mrs Janeen Davis (of The Beauty Experience, Queen Street) were also in attendance as interested parties.

The Deputy Licensing Manager introduced the report and explained to members that an application for the review of the premises licence at Om Sai had been made by Trading Standards, as a responsible authority. The grounds for the review are based on the belief that the premises licence holder and designated premises supervisor, Mrs Patel, has failed to promote the licensing objectives and since the premises have opened has failed to adhere to conditions of the premises licence.

Representations have been received from the Chief Officer of Police, as a responsible authority and Mr Thurston and Mrs Davis, as interested parties.

The legal advisor explained to the committee that a relevant representation is only relevant if it related to one or more of the licensing objectives and members must be satisfied that this is the case for all representations. Members should also ignore paragraphs 9.8 and 9.11 on page 4 of the Licensing Managers report as these relate to the granting of a premises licence.

Craig Copland referred to paragraph 4 (page 59 of the report) of Mrs Patel's response to the application for a review and explained that he now accepted that conditions relating to Challenge 25 and proxywatch were not originally agreed on the premises licence. Jon Wallsgrove agreed that there had not been a breach of the conditions as they were not on the premises licence but said he would be putting them forward, as conditions to be added to the licence, during his representations.

The Deputy Licensing Manager apologised for the error on the premises licence and explained that it had been a matter of interpretation from emails between Trading Standards and the premises licence holders firm of solicitors, Blake Laphorn.

Craig Copland, Trading Standards, made the following points during his representations:

- The Patel family have not co-operated with Trading Standards;
- Referred to paragraph 24/8/09 on page 12 of the report and asked that this be removed from the application as it related to a different premises;
- Agreed that the store actually opened on 2 June 2009 and not 5 May 2009 as mentioned in the application;
- 27/4/09 Mrs Patel attended and failed Under Age Sales training with a mark of 63%, at the Civic Offices. Asked to attend the training again not just to re-sit the exam;
- 18/5/09 a training/guidance pack was delivered to Om Sai and Mrs Patel was asked to look at the areas in which she failed;
- 20/5/09 Mrs Patel re-sat the test and again failed. Mrs Patel was asked to retrain in her own time and send the test via the post;
- 22/5/09 emailed Jon Wallsgrove as concerned about Mrs Patel's knowledge of licensing objectives;
- 4/6/09 3rd test was marked which was sent via the post and 95% pass achieved. No certificate was issued because test not taken place under exam conditions and Mrs Patel was asked to keep test paper in the shop training pack;
- 15/6/09 regular compliance visit undertaken to the store. No statutory signs in place;
- 7/8/09 proxy operation undertaken in Queens Street. Group of males witnessed outside Om Sai approaching passersby for alcohol and cigarettes. No call from Om Sai regarding this date or any other;
- Now review procedure instigated receiving calls from Om Sai re minors attempting to obtain alcohol by proxy;
- 27/8/09 concerned about Akash Patel's behaviour with regards to an egg-throwing incident. Clear breach of licence;
- Remove paragraph 3/9/09 on page 13 from the application;
- 11/9/09 representatives from Om Sai failed to attend Action Plan meeting with Police and Trading Standards;
- 15/9/09 visited Om Sai; on checking the refusals log only 10 under age sales had been entered in a 4-month period. Very low result and would expect to see between 5 and 25 refusals per week;
- During visit looked at training log. No training logged so Akash and his sister still not trained;
- 17/9/09 test purchase undertaken and failed. Mrs Patel failed to ask for ID;
- 27/9/09 sale of alcohol to a known minor;

The committee was shown CCTV footage of the underage sales on 2/11/09 as reported by the bus driver and the 'egg throwing' incident, which occurred on 17/8/09. Footage of the sale of alcohol to 'a known' underage person on 26/9/09 was not shown as the premises licence holder did not dispute that the incident had taken place.

- Staff are using tactics to avoid failure of underage sales, as seen in the footage;
- No ID is being asked for, as seen in the footage;
- Have consistently tried to offer training;
- Refusals log does not reflect the number of attempts made to buy alcohol particularly in an ASB area. Would expect the number to be higher than average;
- Either not logging the refusals or not challenging the customers;
- No calls have been made to the proxy watch number;
- Would expect regular calls due to the number of youths congregating outside of the premises. None have been received;
- Only received a call from Mrs Patel with regards to suspected drug dealing outside the premises after the review procedure had been instigated;
- If during Mrs Patel's training the instructions in the manual were understood she should have known the conditions of the premises licence and the responsibility of the premises licence holder from day one of operating;
- Mrs Patel did not feel it important to train her son, despite him working in the store;
- Have been trying to work with the Patels since 2008;
- Have made numerous visits and telephone calls to the premises and tried to assist with training;
- Have tried to engage with the Patels but failed;
- Underage sales and refusals log not being completed properly are all breaches of conditions;
- Anti-social behaviour clearly seen outside the premises. Akash did not report or deal with it appropriately;
- All staff should be trained and the training should be logged. Again this is a breach of the premises licence;
- Very concerned about the sale of alcohol to underage persons. Have witness statements and CCTV.

Mr Thurston, chair of the Portsea Action Group 99 Ltd ("PAG"), spoke as an interested party and made the following points during his representations:

- PAG meets monthly and is made up of ward councillors, reps from schools and churches in the area, residents, Police and Portsmouth City Council;
- PAG objected to the original application on the grounds of underage sales and anti-social behaviour;
- The premises have proved to be an unnecessary burden for the Portsea community to bear;
- Don't want anti-social behaviour on our streets;
- Want to protect children from harm and curb this anti-social behaviour and underage sales.

Mrs Janeen Davis, from 'the hairdresser' in Queen Street, also spoke as an interested party and made the following points during her representations:

- Have been trading in Queen Street for 22 years and the last year has been the worst ever;

- Had to escort our clients out of the shop, often through the rear exit, because of the gangs of youths hanging around outside;
- Have counted up to 30 youths aged between 8 and 25years old;
- Objecting on the grounds of the prevention of crime and disorder;
- Youths throw things at passing cars, pedestrians, at shop windows;
- Have seen youths go into Om Sai to buy alcohol only to drink it outside. They then throw the cans or bottles;
- Unacceptable noise from youths. Have to move clients into quieter rooms for their treatments;
- Spar has now moved further down the road but the youths remain because of Om Sai;
- Gangs, youths, anti-social behaviour – unbearable;
- Have to ask youths to be quiet and get spat at and verbal abuse.
- Pubs are not allowed to serve drunks so why does this not apply to Om Sai as well?
- Have seen older youths go into the store quite clearly drunk, falling all over the place, and come out with more cans;
- Feel the opening of Om Sai have caused problems for my shop;
- Last couple of years have been quite quiet, now awful;
- Not had extent of problems we are now experiencing;
- Feel owners have total disregard for the residents in the area.

Jon Wallsgrove, solicitor representing Mrs Patel, made the following points during his representations:

- Anti-social behaviour, underage sales and potential for proxy sales is the cause of the review;
- Need to sort out facts of the case from hearsay;
- Mrs Patel does not accept that the youths bought the eggs from the store or that Akash gave them. The eggs were stolen;
- Mrs Patel does accept that the youths did throw eggs outside the premises;
- Mrs Patel also accepts that Akash should not have been outside the premises and that this was behaviour was not promoting the licensing objectives;
- Akash did not encourage the youths and did not give them the eggs;
- Mrs Patel does agree that they should have called the Police and reported the incident;
- Have had anti-social behaviour and racial abuse;
- Akash foolishly tried to go along with the incident rather than challenge the situation;
- Mrs Patel agreed that Akash did not look stressed by what was happening;
- Mrs Patel did give Akash 'a telling off' after the incident and told him the Police should have been called;
- Mrs Patel stressed that Mr Patel did not give the girls the cans of Fosters (referring to the CCTV footage previously seen). They only purchased the chewing gum;
- Need to look at the quality of evidence submitted. The bus driver is not here today;
- Perhaps his view had been obscured;
- The Police did not take a statement from the girls and yet they knew who they were;
- If persistent and deliberate selling of alcohol to underage girls then where is the evidence?
- Do not agree with Craig Copland and his expert view with regards to the number of refusals;

- Mrs Patel needs to have a closer relationship with the Police and have the confidence to ring them;
- Revoking the premises licence will finish the shop. Only just making ends meet now;
- Expect to build trade over the first year;
- The anti-social behaviour is affecting their trade and have been fearful of repercussions;
- Mrs Patel wants the opportunity to show Trading Standards and the Police that she will get this right;
- Haven't seen any evidence of how the Police are trying to address the anti-social behaviour;
- Mrs Patel apologies for not attending the 'action plan' meeting and realises now that the meeting was 'crunch' time;
- Mrs Patel did not know about the action plan which the Police proposed to suggest at that meeting and has never seen the document;
- The Police at that time thought there was hope to work with Mrs Patel to address those issues;
- Mrs Patel knows that if conditions are imposed today and they do not adhere to them then a further review is inevitable;
- If the premises licence is revoked, the store will struggle and do not feel that it would address the anti-social behaviour;
- Would revoking the licence have an impact on the youths who hang around outside the premises?
- Mrs Patel did not realise her responsibility in terms of ringing the Police;
- Mrs Patel admits that she buried her head in the sand and should have dealt with it by calling the Police;
- Ignoring the situation is not the solution;
- Om Sai is not the magnet causing the anti-social behaviour, it is part of the jigsaw. Mrs Patel realises this;
- Would ask that if conditions are imposed that they are deemed to be necessary and proportionate;
- Allow the premises to operate as is.
- With regards to the conditions as suggested by Trading Standards on page 15 of the report, Jon Wallsgrove made the following comments:

Condition	Comment
1	Not necessary and proportionate and would affect the business.
2	Not necessary. Mr Patel could become the DPS as he has undertaken the NCPLH course.
3	Agree.
4	Agree.
5	Agree.
6	Will continue to be kept.
7	Not worthwhile and will not combat the problem.
8	Would follow if imposed.
9	Agree.
10	Agree.
11	Would ask to be removed.

- Anti-social behaviour there before Om Sai opened up;
- Interested parties made representations about anti-social behaviour on the original application;
- Mrs Patel has agreed to engage in a different manner now;
- The only incident up for questioning is the egg-throwing one;
- Cannot expect the Patels to have a constant eye on activity outside the store when they are working;
- Do not know the motivation behind the 'key' witness;
- Please allow the premises to continue to trade.

DECISION: that the application for the review of a premises licence at Om Sai, 139 Queen Street, Portsmouth, PO1 3HY was considered and the following conditions were imposed:

- To remove the Designated Premises Supervisor ("DPS") as she is not capable of running the premises on a day to day basis;
- To suspend the licence for a period of 3 months to give the premises licence holder the opportunity to recruit a new DPS and to address training issues of all staff.
- To attach the following additional conditions as suggested by Craig Copland on page 15 of the report and agreed by the premises licence holder:
 - Operate challenge 25 including prominent display in store windows and proper use of I.D checks.
 - Operate ProxyWatch scheme and promote to customers, including window display and till cards. Designated Premises Supervisor to phone or email any suspected activity in store vicinity to Trading Standards ProxyWatch on a weekly basis.
 - To keep and use refusals log to record attempted underage sales, proxy sales and anti-social behaviour near store.
 - That no sale of alcohol take place unless all containers are labelled with U.V stickers with name and address of store of origin.
 - No multi packs to be split and sold as singles.
 - No sale of alcohol shall be made unless a personal licence holder is present on the premises.

REASONS: the committee had regard to its Statement of Licensing Policy, statutory guidance, the promotion of the licensing objectives and the judgement of the High Court. The committee also had regard to the representations submitted both attached to the report and heard at the meeting. The committee agreed that an underage sale did take place on 2/11/09. They accepted the bus driver's evidence and could see no reason why he would make a statement which was not true and he signed a statement of truth. PCSO Rolfe identified the 2 girls involved as aged 15 and 16. However the committee did accept that it was not clear from the video that Mr Patel carried cans outside the premises or that he handed them to the girls outside. There were two previous underage sales which are accepted by the premises licence holder. The training of staff has been totally inadequate. Much help has been offered by Trading Standards but not always accepted. What training was done is not documented. Little importance has been attached to training and Mrs Patel had no real understanding of who had to be

trained and did not realise her family who worked in the shop were staff. There is therefore a clear breach of the condition relating to training. The refusals log has not been maintained. The committee accept Craig Copland's view as an experienced officer and are satisfied that less than one entry per week is not realistic. Mrs Patel admits it may not have been completed on every occasion, which is a breach of the condition. The committee accept there is anti-social behaviour in the general area not all of which is attributable to Om Sai and is out of their control. However the video of the egg-throwing incident clearly shows neither Mrs Patel or her son reacted to the incident by calling the Police. The committee also accepted the evidence from Mr Thurston on behalf of PAG and Mrs Davis that anti-social behaviour in the vicinity of Om Sai has increased since they opened. The human rights of the local residents were taken into account, specifically Article 8 in relation to the right of a private and family life and that of the applicant under Article 1 of the First Protocol in that the interference with the licence which constitutes property is justified. The committee believe the conditions to be both necessary and proportionate to address the problems occurring at the premises.

The Deputy Licensing Manager advised that all parties have the right of appeal to the Magistrates' Court within 21 days of the Notice of Decision being received by them.

The meeting concluded at 1.45pm.

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Signed by the chair of the meeting.

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Representations following an application to review the premises licence for Loco Om Sai,

Mrs Patel would like to apologise to the Licensing Committee and the Responsible Authorities that it has been necessary to review the premises licence.

Following the review of the premises licence in 2009 there has been compliance with the licence conditions and promotion of the licensing objectives. Until March 2017 there has been an uninterrupted period of 8 years trading where there no evidence of concerns have been raised with the premises licence holder, from any of the responsible authorities, about selling alcohol to persons under the age of 18.

There have been visits from Licensing, Police and trading Standards since the last review. It is accepted that officers from Trading Standards have raised issued about the notices in the shop, particularly with regard to tobacco. However, notices have certainly been on display for Challenge 25 and Proxy watch and have been checked. Not all the issues in the review application have been brought to the attention of the premises licence holder.

Following a request for disclosure of any visits by PCC Licensing officers they have advised there was a visit on 30th November 2012 and the following note is recorded:

Visit to Om sai by Ross and Les. Saw Akash Patel, holder of a personal licence. Summary on display and premises licence found. Challenge 25 posters evident and Mr Patel demonstrated a very good understanding of the licence, objectives and the law generally. No adverse comment to make.

Disclosure was also requested from the Trading Standards officer regarding all test purchases for the store and the following was disclosed.

15/10/09 Test purchase – Pass
22/10/09 Test purchase - Pass
10/02/10 Test purchase - Pass
31/05/10 Test purchase - Pass
15/07/10 Test Purchase - Pass
04/10/11 Test Purchase – Pass

The police were also asked whether they had carried out any test purchases. PC Rackham emailed that there was no record of a test purchase at the premises but his recollection was that in late 2014 test purchases were carried out by the police on off licences in the local area and he believed that Loco Om Sai was tested and passed the test.

Following the review of the licence Mr Patel and her son Akash became personal licence holders. The licence was varied to name Mr Patel senior as the DPS. Mrs Patel remained as the premises licence holder.

All the measures required by the conditions of the licence were implemented.

In September 2011 Mrs Patel applied to vary the licence to remove the condition requiring all alcohol products to have UV labels. This was a considerable burden to the business but they had agreed to do it at the last review as it would assist in proving that their shop was not the target of the under-age drinkers in the locality. However, after nearly 18 months with no concern about under-age drinking/purchases there was no objection to that variation and so the condition was removed.

Unfortunately in early 2012 Mr and Mrs Patel's marriage broke down and the licence was varied to name Mrs Patel as the DPS again. The premises had been trading without issues for 3 years and the police did not object to that application. Mr Patel has worked at the premises since, on an infrequent basis, but has now moved abroad and no longer has any involvement in the business.

In 2013 Akash Patel came home from University and worked in the shop full time. He is a personal licence holder. Mrs Patel works in the morning from opening until around 2pm and then Akash works from about 2pm until the shop closes. As it is a small business it is not possible to have more than 2

people working at the shop at the same time. Often the business only requires one person to be there. When the alcohol was purchased by Mr Anderson-Weaver from Mr Kumar, as Mr Kumar told him, Mrs Patel had been at the shop. She had left the premises temporarily to go to the cash and carry and came back to the shop within an hour of his visit.

Mrs Patel accepts this is a breach of the premises licence as a personal licence holder should be present. It was only for a short period of time and Mrs Patel knew Mr Kumar was trained and could trust him in her absence. She had no alternative but to leave the shop and Akash was not available to cover for that temporary absence. In hindsight she accepts she should have told Mr Kumar that while she was gone he should not sell alcohol.

All staff working in the premises have been trained in their responsibility in selling alcohol and that includes using a refusal book, which has been available for their use and is checked by Akash. The shop is not targeted by young persons for either alcohol or cigarettes.

Both Amy and Kimberley had been trained. Amy explained she made a mistake as she was convinced the test purchaser was a regular customer who had previously satisfied her with ID that she was over the age of 18. There is nothing more the premises licence holder could have done to prevent that from happening. Amy works in the afternoon and evenings and therefore very rarely sees Mrs Patel as she works with Akash.

Kimberley who failed the other test purchase is a personal licence holder and has worked at other licensed premises in the City. She is experienced and she had been trained at Loco Om Sai before starting work there. She explained that she thought the person looked over 18 but she accepts she made a mistake in not applying the challenge 25 policy as she agreed the purchaser did not look over 25.

Both have been issued them with warnings about their future conduct but have not to dismiss them from their employment. They have been punished by having to pay a £90 fine which is a significant amount of money for them and Mrs Patel is satisfied they have learned from their mistake and will not do it again.

Since the second failed test purchase all staff have been booked to undertake the Award for Personal Licence holders course with the intention of them all having personal licences. This is a significant financial commitment for a small business such as Loco Om Sai, particularly bearing in mind that there is a high risk of them leaving shortly after getting a personal licence.

If the Committee do not revoke the licence it is intended to transfer the licence to Akash Patel who would then also be named as the DPS.

Revocation of the premises licence would lead to severe financial hardship. This is the only source of income for Mrs Patel and her son Akash. They also employ 4 other people who rely on that wage and would lose their jobs.

This business operates as a convenience store and alcohol is a core product in convenience store retailing to give customers the "one stop" shop offer. If a convenience store did not sell fresh dairy, such as milk customers would go somewhere else. If it did not sell tobacco, customers would go elsewhere. If they did not sell newspapers people would shop elsewhere. The same is equally true of being able to buy alcohol. A customer's loyalty and use of a shop is based entirely around the prospect of getting what they want when they want it.

If the licence is revoked the business cannot survive and it will leave the family with debts. In 2015 £60 000 was invested in a refit for the shop the repayments for which are £1,100 per month. Originally when the family purchased the shop they re-mortgaged the family home and accordingly if the shop does not survive they will lose their home as well.

16th October 2017

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