

REPORT OF CORPORATE DIRECTOR FOR COMMUNITIES

REVIEW OF PREMISES LICENCE

Premises concerned	Open All Hours 38 George Street Nottingham NG1 3BG Please see attached Premises Licence
Premises licence holders	Peter Shearstone and Harmesh Kareer
Party submitting review	Jane Bailey for and on behalf of Nottingham City Council Trading Standards Service on the grounds of Public Safety, Prevention of Public Nuisance and Protection of Children from Harm. Please see attached application.
Date application Received: Last date for representations:	3 November 2010 1 December 2010 The Licensing Officer displayed public notice of this application in accordance with the Licensing Act 2003 (Premises Licence) Regulations 2005 from 3 November 2010 to 1 December 2010 inclusive.
Relevant representations received	Peter Shearstone has made a representation as joint licence holder on the grounds of all four licensing objectives. See representation for details
Matters which the Authority has asked the parties to clarify	1. Identification of all issues (both factual legal) which are in dispute. 2. Identification of all areas of law, Guidance and Policy upon which they intend to rely.
Issues	
Issue 1	Whether it is necessary and proportionate to take any one or more of the steps identified below in order to promote (1) the prevention of crime & disorder (2) public safety (3) the prevention of public nuisance and (4) the

	protection of children from harm or whether no action is necessary to promote the licensing objectives.
Relevant Legislation	S51 – 53, 181, Sch5 para 8 and para 9 Licensing Act 2003
Relevant Policy	Paragraphs 9.26 to 9.28 of the Statement of Licensing Policy
Relevant Guidance	Paragraphs 1-27, Chapter 11 of the guidance issued under section 182 of the Licensing Act 2003.
Steps which the Licensing Authority may take	<ol style="list-style-type: none"> 1. To modify the conditions of the licence permanently or for a temporary period of up to 3 months; and/or 2. To exclude a licensable activity from the scope of the licence permanently or for a temporary period of up to 3 months; and/or 3. To remove the designated premises supervisor; and/or 4. To suspend the whole premises licence for a period not exceeding 3 months; or 5. To revoke the licence. 6. To take no action and thereby maintain the status quo.
Published documents referred to in compiling this report	Licensing Act 2003 Guidance issued under Section 182 of the Licensing Act 2003. Statement of Licensing Policy issued by Nottingham City Council.

Andrew Errington
Director of Community Protection
Central Police Station, North Church Street, Nottingham NG1 4BH

Contact Officer: Sue Bowler, Assistant Licensing Officer 0115 9156777

7 December 2010



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

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I, **Jane Bailey**, for and on behalf of **Nottingham City Council Trading Standards Service**, is applying for the review of a premises licence under section 51 of the Licensing Act 2003 for the premises described in Part 1 below

Part 1 – Premises details

Postal address of premises or, if none, ordnance survey map reference or description Open All Hours, 38 George Street		Community & Culture - Licensing
		Time received _____ 3 - NOV 2010
Post town Nottingham	Post code (if known) NG1 3BT-	
		£ _____
Name of premises licence holder or club holding club premises certificate (if known) Mr Peter Shearstone And Mr Harmesh Kareer		
Number of premises licence 037070		

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
 - a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises
 - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

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

Please tick

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

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address
Telephone number (if any)
E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Nottingham City Council Trading Standards Service Lawrence House, Talbot Street, Nottingham, NG1 5NT
Telephone number (if any) 0115 9156161
E-mail address (optional) jane.bailey@nottinghamcity.gov.uk

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

Please tick one or more boxes

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input type="checkbox"/> |
| 2) public safety | <input checked="" type="checkbox"/> |
| 3) the prevention of public nuisance | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

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

The Licensing Objectives of Public Safety, Prevention of Public Nuisance and Protection of Children from Harm have been seriously undermined in that:

On 30th June 2010 a test purchase volunteer aged 13 years was sold alcohol by a person from Open All Hours.

2) Public Safety

Sales of alcohol to children under the age of 18 can cause concerns of public safety. This could cause intoxicated underage children to be generally engaging in unsafe behaviour putting themselves, and others at risk. An example of unsafe behaviour due to underage children drinking alcohol could be they could walk into the path of a moving vehicle putting themselves and the motorist at risk.

3) The Prevention of Public Nuisance

It is alleged that the sale of alcohol to underage children could also cause a public nuisance due to empty cans/bottles being left in the surrounding area as well as possible noise nuisance made by intoxicated underage children.

4) The Protection of Children from Harm

The sale of alcohol to children can expose them to a risk to their health and wellbeing, either from the direct effects of consuming alcohol, or either by making them more likely to be the victims, or perpetrators, of violent or sexual crimes. In this case it is of particular concern that a child aged 13 was sold a product with a high alcohol percentage (a bottle of 20cl vodka) as the higher the alcohol percentage of alcohol the more likelihood there is that a child's health and wellbeing will be detrimentally affected.

On 30th June 2010 S146 (1) of the Licensing Act 2003 was breached in that Mr Craddock (the seller) sold alcohol to a person under 18 years of age. This sale was witnessed by a member of Trading Standards and has given rise to a Prosecution Report in which both Mr Peter Shearstone, the Premise License Holder and Designated Premises Supervisor and Mr Harmesh Kareer, the Premise Licence Holder are separate Defendants. Mr Craddock, was given a fixed penalty notice shortly after the sale as at the time it was thought that Mr Craddock was simply an employee of the business, it was later discovered that Mr Craddock was also a partner in the business, along with Mr Shearstone and Mr Kareer, however no further action could be taken against Mr Craddock as he had already been issued with a fixed penalty notice, Mr Craddock was not a Premise Licence Holder or Designated Premises Supervisor.

Both Mr Shearstone and Mr Kareer, of Open All Hours, clearly did not have the necessary systems in place on the date in question in order to prevent a breach of the S146 (1) of the Licensing Act 2003.

Furthermore, Mr Shearstone, as the Designated Premises Supervisor and the only Personal Licence Holder is responsible for breaching a mandatory condition of the premises licence, namely S19 (3) of the Licensing Act 2003, in that every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence. Mr Shearstone confirmed in his interview that Mr Craddock was in the shop alone when the sale took place, therefore Section 19 (3) clearly was not adhered to on the date in question.

Summary

By reason of the matters aforesaid, it is felt that it would be a necessary and proportionate response of the Nottingham City Council Trading Standards Service to make an application for a review of the premises licence.

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

At approximately 18:30pm on 30th June 2010, Trading Standards undertook an under-age test purchase exercise to buy alcohol within the area of Nottingham City. A test purchase was carried out at the premises of Open All Hours, 38 George Street, Nottingham, NG1 3BT and a bottle of 20cl Glens Vodka was sold to our test purchase volunteer. The test purchaser volunteer was aged 13 years. During the test purchase exercise nine other premises were visited, but no other sales were made.

On checking our records, we have received a previous complaint on 16th March 2009 from a member of the public who wished to report Open All Hours for selling alcohol to persons under the age of 18. Further we have also received information from a Special Constable who recently seized some fake ID from a 15 year old male, he was advised by the male that he has used the fake ID to purchase alcohol successfully from city centre shops and he named Open All Hours as one outlet.

Both Mr Shearstone and Mr Kareer were formally interviewed on the 28th July 2010. Under caution, Mr Shearstone and Mr Kareer stated that they do not have any written training records and in addition whilst both Mr Shearstone and Mr Kareer advised that they have an upto date refusals book, immediately following the sale Melvyn Smith a Senior Trading Standards Officer attended the store and recorded that whilst the store did have a refusals book for age restricted products, there were loose pages falling out, the refusals book only went up to 26th June 2010 and then there was no more room for any new entries to be made. It is our view that these documents are an essential part of systems designed to prevent sales of alcohol to under age persons. This is relevant to three of the four Licensing Objectives.

Mr Shearstone further advised that approximately 90% of the time the shop is staffed by one person who works alone. Mr Shearstone is the only member of staff that has a personal licence. In addition to Mr Kareer, there are two other members of staff who work within the shop who do not appear to hold a personal licence. If this is the case then S19 (3) of the Licensing Act 2003, in that every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence is not being adhered to.

In addition Mr Shearstone is the Designated Premise Supervisor and is therefore responsible for authorising all sale or supply of alcohol on the Premises. Mr Shearstone stated in his interview that he is in full time employment as a taxi driver. Given that Mr Shearstone has overall responsibility for the sale or supply of alcohol at Open All Hours it is concerning that he appears to be the member of staff that works in the shop the least out of the partners (Mr Craddock and Mr Kareer) and that adequate steps do not seem to have been put in place to prevent the sale of alcohol to a person under the age of 18.

Both Mr Shearstone and Mr Kareer have been reported for consideration of prosecution for the sale of alcohol on 30th June 2010 as mentioned above

which gives rise for this application for review.

Please tick yes

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

If yes please state the date of that application

Day Month Year

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

No previous representations made.

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate

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

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

Part 3 – Signatures (please read guidance note 3)

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

Signature

John Bailey

Date

3rd November 2010

Capacity Trading Standards Manager
For and on behalf of Nottingham City Council

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

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.



Representation under the Licensing Act 2003

1. Name **Peter Shearstone**
- Address **105 Bannerman Road
Bulwell
Nottingham
NG6 9JA**

2. Capacity in which this representation is made

Joint Licensee and Designated Premises Supervisor of the premises subject to the review.

Application the representation is about.

Name and address of application premises
**"Open all hours"
38 George Street
Nottingham
NG1 3BE**

Nature of application

Review

3. Licensing objectives the representation relates to

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

4. Representations.

- a) ***Peter Shearstone is one of three partners involved in the business operating the premises licence at 38 George Street Nottingham. He is a joint licensee and Designated Premises Supervisor***
- b) ***He accepts that on 30th June 2010 a test purchase was made when a 13 year old was sold alcohol. This sale was made by his business partner Mr Craddock when Mr Shearstone was not present in the premises.***
- c) ***Mr Shearstone passed the Personal Licence Holder's test and was granted a personal licence when the premises first opened for business. He became the DPS. Thereafter he trained his 2 business partners in the operation of licensed premises. He shared the running of the premises with his partners and they all took turns in working in the premises.***

- d) *The shop has operated a premises licence for 5 years. It is understood that there was an anonymous complaint in March 2009. Mr Shearstone denies that on that occasion there was a sale to anyone under 18 years.*
- e) *It is further understood that a Special Constable received information that a fifteen year old was sold alcohol by producing fake I.D. This was reported to the shop and Mr Shearstone upgraded the CCTV system to provide evidence in the future if it were required. It is believed that this was 2.5 to 3 years ago. Mr Shearstone was and is concerned that a juvenile was using fake i'd.*
- f) *Mr Shearstone has recently (at the beginning of 2010) attended a Trading Standards training course. After that he shared the information that he had received with his 2 partners.*
- g) *Mr Shearstone was disappointed to be told of the present failed test purchase There had been a refusals book used. Unfortunately this had been completed two days before the test purchase and Mr Craddock had not used the new one. .*
- h) *He has taken steps to alter the way the business is managed. He has paid each of his partners to buy out their share of the business. He has given notice to leave his full time employment and intends to devote his whole time to running this shop.*
- i) *The conditions set out below address the licensing objectives and it is represented that the addition of these proposed conditions to the licence is a proportionate response to the incident referred to.*
- j) *In addition Mr Shearstone has / will apply for the transfer of the licence into his sole name.*

5. **Conditions suggested to be attached to the licence.**

- a) *A challenge 21 scheme shall operate at the premises. Any person who appears to be under 21 years shall not be sold alcohol unless they produce an acceptable form of identification [Passport, driving licence & PASS accredited card.]*
- b) *Challenge 21 notices shall be prominently displayed.*
- c) *A bound and sequentially paginated refusals book shall be kept to record all refusals to sell alcohol. This book to be made available for inspection and copying by the Police and other officers of Responsible Authorities immediately upon request, and all such books to be retained at the premises for at least 12 months.*
- d) *All sales of alcohol shall be made by a Personal Licence holder.*
- e) *A CCTV system with recording equipment shall be maintained at the premises and operated with cameras in positions agreed in writing with the Police. All recordings used in conjunction with CCTV shall:*
 - *Be of evidential quality in all lighting conditions*
 - *Indicate the correct time and date*
 - *Be retained for a period of 31 consecutive days**Sufficient staff will be trained to use the system and the images will be made available for inspection & downloading immediately upon request to officers of responsible authorities.*

6. As you have made a representation the Application may need to be determined at a hearing of the Licensing Committee or one of its Panels. At this stage would you intend to attend such a hearing⁵? Please circle as appropriate.

Yes

8. If you intend to attend any hearing that may be held it would be helpful at this stage if you could give an indication as to how long you think you would need to make your representation(s).

One hour

Date: 30th November 2010

Peter Shearstone will be represented by:

**Tony Wilkinson
Young and Pearce
58 Talbot Street
Nottingham
NG1 5GL**

Telephone: 0115 8525813

Email: tpw@youngandpearce.com

Licensing Act 2003

City Development

Lawrence House
Talbot Street
Nottingham
NG1 5NT
Tel: 0115 915 5555
Fax: 0115 915 6145

Premises Licence

Premises licence number: 037070

Part 1 – Premises details

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

Open All Hours
38 George Street

Post town	Nottingham
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Post code	NG1 3BG
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Telephone number	
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Where the licence is time limited the dates

Not applicable

Licensable activities authorised by the licence

Sale by retail of alcohol;

The times the licence authorises the carrying out of licensable activities

Alcohol Sales

Monday	from 10.00 hrs to 24.00 hrs
Tuesday	from 10.00 hrs to 24.00 hrs
Wednesday	from 10.00 hrs to 24.00 hrs
Thursday	from 10.00 hrs to 24.00 hrs
Friday	from 10.00 hrs to 24.00 hrs
Saturday	from 10.00 hrs to 24.00 hrs
Sunday	from 10.00 hrs to 24.00 hrs

The opening hours of the premises

Monday	from 06.30 hrs to 24.00 hrs
Tuesday	from 06.30 hrs to 24.00 hrs
Wednesday	from 06.30 hrs to 24.00 hrs
Thursday	from 06.30 hrs to 24.00 hrs
Friday	from 06.30 hrs to 24.00 hrs
Saturday	from 06.30 hrs to 24.00 hrs
Sunday	from 07.00 hrs to 20.00 hrs

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

Alcohol - Off the premises

Part 2

Name, (registered) address, telephone number and e-mail (where relevant) of holder of premises licence

Mr Peter David Shearstone
105 Bannerman Road
Bulwell
Nottingham
NG6 9JA

Mr Harmesh Kareer
54 Watnall Road
Nuthall
Nottingham
NG16 1DU

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

Not applicable

Name, address and telephone number of designated premises supervisor where the premises licence authorises the supply of alcohol

Peter David Shearstone

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

036766 issued by Nottingham City Council

Signed:.....
Licensing Officer

Dated: 26 November 2005

Annex 1 - Mandatory conditions

S.19 Licensing Act 2003

1. No supply of alcohol may be made under this licence
 - a. At a time when there is no designated premises supervisor in respect of it or,
 - b. At a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended
2. Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

Annex 2 - Conditions consistent with the Operating Schedule

1. A CCTV system shall be installed and maintained in accordance with the recommendations of Police Licensing Officers. Images shall be retained for 31 days and made available to the Police or other authorised Officers.

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

Not applicable

Annex 4 – Plans

Plan received with the application on 26 October 2005
Drawing number CDS029-03/1
Plan applicable from issue date of the licence

26 November 2005