

Contact: Craig Hudson
Direct Tel:
email:
Your ref: COEP052
Our ref:



Licensing Section
Environment, Health and Consumer Protection
Durham County Council

DELIVERED BY HAND

Date: Thursday, 22nd November 2018

Dear Sir or Madam,

REPRESENTATIONS – REVIEW OF PREMISES LICENCE

I write in response to your invitation for representations into the review of a premises licence at: M & A General Stores (Lifestyle Express), 44 Middle Street, Blackhall Colliery, Hartlepool, TS27 4EA.

In response to this invite, I shall state the following: -

Trading Standards (the Weights and Measures Authority) unreservedly support the application for review of this premises licence brought by Durham County Council's Licensing Authority.

By way of background: the LIFESTYLE EXPRESS store (also known as M & A GENERAL STORE) is licensed by Durham County Council for off-premises sales of alcohol.

The current premises licence holder is Dalvinder SINGH, and the Designated Premises Supervisor (DPS) Jaswant KAUR. The current licence was issued on 9th November 2017. The proprietors of the premises are B S and J K

E S also known as E S T has accepted proprietorship of the business.

He is the subject of an ongoing Trading Standards investigation into the supply of counterfeit and otherwise illicit tobacco products. This investigation commenced on 20th July 2018 following receipt of intelligence that he sold illicit tobacco products from vehicles parked outside.

Environment, Health & Consumer Protection
Durham County Council, PO Box 617, Durham, DH1 9HZ
Main Telephone 03000 261016

During the course of this investigation, it has been shown via authorised surveillance that S T has sold products from vehicles, registered to him, parked outside of the commercial premises. On two occasions, these products had the appearance of tobacco products. On nearly all occasions, customers enter the LIFESTYLE EXPRESS store before being served by T at these vehicles.

The carrying on of the activity in the vicinity of the premises, and attendance by customers at them, establishes an association between them, the criminality, and nuisance caused.

This surveillance also showed that S had access to a container within the site of situated close-by at the rear of MIDDLE STREET.

On 26th October 2018 the LIFESTYLE EXPRESS store, container and S home address at were entered under warrant by Trading Standards officers. Quantities of illicit tobacco products were found in a vehicle registered to S T at and in the container.

These totalled 8,800 illicit cigarettes and 9.5kg of illicit hand rolling tobacco. The total value of these goods is valued between £3,250.00 and £3,690.00.

While Mr S accepts possession of the illicit tobacco products for his personal use, it is my experience (and based on all of the circumstances) that the cigarettes and tobacco were not for his personal use, but were in his possession to be supplied.

An application for a Closure Order (pursuant to the Anti-social Behaviour, Crime and Policing Act 2014) was determined by magistrates at Peterlee Magistrates Court on Thursday 15th November 2018. This resulted in an order for closure of the premises being granted for a period of three months (to expire on 12th February 2018) in order to prevent a serious nuisance in the locality.

Attached to these representations are witness statements of: -

- Andrew COOK, Team Leader, Trading Standards
- Mark MILLER, Trading Standards Investigator
- PCSO Ian GOODWIN, Durham Constabulary
- K WILKINSON, Durham County Council Public Health
- Copy of Closure Order
- Memorandum of conviction relating to B S (concerns conviction for illicit tobacco offences on 11th April 2018 at a previous premises)

The supply of illegal tobacco undermines the licensing objective to prevent crime and disorder.

The supply and possession of illicit tobacco products are criminal offences. The activity also evades tobacco duty, and attracts criminality to local neighbourhoods.

Illicit tobacco is linked to crime regionally and nationally. It generates considerable profits, which are frequently used to fund other forms of criminality.

Guidance issued under section 182 of the Licensing Act 2003 provides that there is certain activity that may arise in connection with licensed premises that should be treated particularly seriously. This includes the use of licensed premises for the sale or storage of smuggled tobacco and alcohol.(paragraphs 11.24 to 11.28).

Additionally paragraph 7.11 of the Durham County Council Statement of Licensing Policy:

“In addition to the requirement of the Licensing Authority to promote the Licensing Objectives, the Council also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all it can reasonably do to prevent crime and disorder in its area and to consider crime and disorder in its decision making process”

This guidance also states that, where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

It is our submission that the current operation of these licensed premises undermines the crime prevention objective in that supplies of illicit tobacco products (albeit off the premises) would not have occurred but for the situation of the premises themselves.

The prevention of public nuisance

In this case, the Trading Standards Service has consulted with nearby retailers, public health and police. The results of this consultation indicate that supplies of illegal tobacco cause a nuisance in the Blackhall locality.

These representations are respectfully submitted for your consideration.

Yours faithfully,

Craig Hudson
Trading Standards Manager
Durham County Council
Environment, Health and Consumer Protection

Enclosed

- Andrew COOK, Team Leader, Trading Standards
- Mark MILLER, Trading Standards Investigator
- PCSO Ian GOODWIN, Durham Constabulary
- K WILKINSON, Durham County Council Public Health
- Copy of Closure Order
- Memorandum of conviction relating to B (concerns conviction for illicit tobacco offences on 11th April 2018 at a previous premises)

**DURHAM COUNTY COUNCIL
ENVIRONMENT, HEALTH & CONSUMER PROTECTION**

STATEMENT OF WITNESS

*((Criminal Procedure Rules r. 27.2; Criminal Justice Act 1967, S.9,
Magistrates' Courts Act 1980, s.5B))*

Statement of: Andrew COOK

Age (if over 18 enter 'over 18'): Over 18

Occupation: Team Leader (Special Investigations), Trading Standards

This statement (consisting of 14 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.

Dated this the; 9th November 2018

Signed... ..

I am the above named person employed as a Team Leader in the Special Investigations Team of Durham County Council's Trading Standards Service.

I make this statement in support of the Council's application for a Closure Order (under the Anti-social Behaviour, Crime and Policing Act 2014) in respect of the LIFESTYLE EXPRESS store, 44 MIDDLE STREET, BLACKHALL COLLIERY, COUNTY DURHAM.

This application is made following an investigation into the supply of illicit tobacco products from the premises ('Operation Jellyfish'), and seizures of illicit tobacco products on Friday 26th October 2018.

A subject of this investigation, B S T. remains under investigation.

Signed.....

..... Name

Background – 'illicit tobacco'

The term 'illicit tobacco' is used to describe illegal tobacco products including: -

- Illicit whites – brands that have no legal market in the United Kingdom, and are from elsewhere in the world (often Eastern Europe).
- Non-UK duty paid – genuine UK brands brought into the country and sold without duty being paid.
- Counterfeit – illegally manufactured and made to look like recognised brands by using trade marks without authorisation.

The trade in illegal tobacco products causes a nuisance within local communities by: -

- Making it easier for children to smoke – research by FRESH has established that 55% of North East children who smoke buy illegal tobacco, and 73% have been offered it. Children are often aware of who is selling illegal tobacco, and at pocket money prices – circumventing the age restriction on tobacco products that are normally upheld by legitimate retailers.
- Attracts criminality to neighbourhoods – it is well known that the illegal tobacco trade is linked to criminals. Suppliers are often involved in other forms of criminality.
- Has adverse effects on health – cheap tobacco undermines price as one of the key drivers to bring down smoking rates.
- Has a significant negative effect on legitimate businesses – illegal tobacco causes serious nuisance to retailers who comply with the law by causing a significant decrease in sales of legitimate products.

Background information – LIFESTYLE EXPRESS store

The LIFESTYLE EXPRESS store is a retail premises situated in BLACKHALL COLLIERY.

The premises is licensed for the sale of alcohol for consumption off the premises.

The premises has been owned by E S T and J K since 10th December 2015, both of whom reside at

The current premises licence holder is Dalvinder SINGH; and the Designated Premises Supervisor (DPS) is Jaswant KAUR.

B S T and J K are jointly liable for business rates at the premises.

Background information – B S T

B S T formerly traded as VINE STORES at 42 MIDDLE STREET, BLACKHALL COLLIERY, which has since closed. This was a similar small retail type business, licensed for the off-premises sale of alcohol by retail.

On 30th August 2017, an inspection was made of VINE STORES by Trading Standards officer, who acted on information that illicit tobacco products were being sold from the shop.

During a search of the premises, quantities of counterfeit and illicit white cigarettes were discovered concealed under floorboards in a rear store room. Smaller quantities were also found in the main shop area, behind the counter.

The following quantities of tobacco products were seized: -

- Illicit white – 'JIM' cigarettes – 2,800 sticks – failed to conform to the requirements for health warnings and standardised packaging.

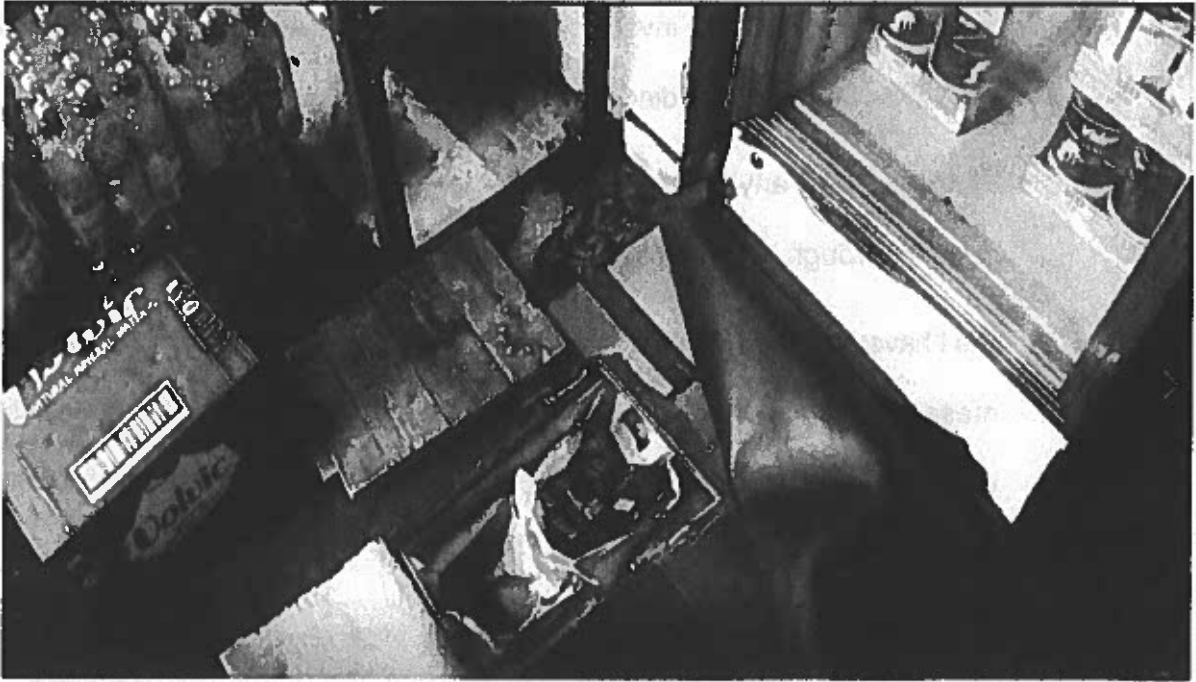
- Illicit white – 'BRASS' cigarettes – 1,100 sticks – failed to conform to the requirements for health warnings and standardised packaging.
- Illicit white – 'GOLD CLASSIC' cigarettes – 20 sticks – failed to conform to the requirements for health warnings and standardised packaging.
- Counterfeit – 'REGAL' cigarettes – 600 sticks – in breach of registered trade mark, and failed to conform the requirements for health warnings and standardised packaging.
- Counterfeit – 'MAYFAIR' cigarettes – 20 sticks – in breach of registered trade mark, and failed to conform to the requirements for health warnings and standardised packaging.
- Non-UK duty paid – 'TURNER' hand rolling tobacco – 1.45kg – failed to conform to the requirements for health warnings and standardised packaging.

Representing totals of: -

- 4,540 illicit cigarettes
- 1.45kg illicit hand rolling tobacco.

A mobile telephone seized during the search contained sent messages indicating involvement in the supply of similar tobacco products.

A photograph illustrating the manner of concealment of tobacco products at the rear of the premises is produced below: -



On 24th October 2017, S T attended Council offices and was interviewed under caution about these matters. He made no comment to questions asked, and submitted two prepared statements accounting for the matters related to illicit tobacco as follows: -

- 'I am a heavy smoker. My wife does not like me smoking at home or near the kids. This has caused arguments. I bought some cigarettes and pouched tobacco for my own personal use. It does not bother me what brand it is. The cigarettes and tobacco is all mine for my own personal use. My intention was to smoke the cigarettes, however, I have been trying to reduce my smoking and that is why I had some rolling tobacco, in order to reduce my smoking. I have roughly the last 3/4 months of invoices for the tobacco that I have purchased for the business. The invoices are for MA Stores, 44 Middle Street. That business is currently being refurbished and the tobacco purchased has been sold at 42 Middle Street. The VAT offices are aware of this as they were informed about 3-4 months ago. My intention is to go back to 44 Middle Street, once the shop has been refurbished.

You can see from the invoices my level of purchasing has been roughly £700-£1,200 per week depending upon demand.

I have not sold any tobacco or cigarettes which were for my own personal use, to anyone through the business. Neither was it my intention to do so.'

- 'As I have already said all the cigarettes are for my own personal use. I believe the messages confirm this, due to the gaps in time and the amounts requested. My wife, as I said, was angry with me, that's why I moved all my tobacco for my own use, to where it was found from.'

On 9th January 2018 Durham County Council's Licensing Sub-Committee decided to revoke the Premises Licence relating to 42 MIDDLE STREET.

On 11th April 2018 S T was sentenced, having entered guilty pleas to offences of possessing cigarettes bearing false trademarks for supply and hand rolling tobacco failing to conform to the requirement for standardised packaging.

He was also sentenced having pleaded guilty to knowingly allowing a licensable activity to be carried on otherwise than in accordance with an authorisation under the Licensing Act.

For these offences, he was sentenced to £2,125.56 in fines and costs.

Chronology – 'OPERATION JELLYFISH'

On 20th July 2018 an investigation was commenced following receipt of intelligence that S T continued to sell illegal tobacco products from vehicles, which were parked next to the LIFESTYLE EXPRESS store.

Judicial authorisation for Directed Surveillance (pursuant to the Regulation of Investigatory Powers Act) was granted towards the commencement of the investigation.

Surveillance during the course of the investigation showed S T supply products from vehicles, parked near to the LIFESTYLE EXPRESS store. These vehicles are: -

- white Ford – registered keeper Mr B S
- grey Mitsubishi – registered to F T
- silver Vauxhall motor car – registered to F T

On two occasions, products supplied by S T have the appearance of tobacco products. Given the method of his operation on these occasions, it can be inferred that the exchanges between T and third parties, on other occasions, also involve the supply of similar products.

It is significant that customers at S T vehicles do not appear to hand over money to him during their exchanges. However, nearly all enter the LIFESTYLE EXPRESS store prior to dealing with S T, at his vehicles. It is therefore suspected that payment for illicit tobacco products is made on the business' premises.

This surveillance also established S T, access to a container located within the compound of the site, at the rear of MIDDLE STREET.

Acting on this information, warrants of entry were obtained in respect of the following premises: -

- LIFESTYLE EXPRESS store, 44 MIDDLE STREET, BLACKHALL COLLIERY
- CONTAINER within the curtilage of the [redacted] site at the rear of MIDDLE STREET, BLACKHALL COLLIERY
-
- Vehicles associated with S [redacted] T [redacted] and the premises at 44 MIDDLE STREET.

Execution of the warrants on Friday 26th October 2018, and searches of the premises, led to the seizure of the following property: -

Location	Seizures and results of examinations
CONTAINER	400 'Superking' cigarettes and 2.5kg of 'Golden Virginia' hand rolling tobacco. Both products confirmed to be counterfeit and in breach of requirements for standardised packaging and the display of health warnings.
	8,400 'Richmond' and 'Brass' cigarettes and 6.5kg 'The Turner' hand rolling tobacco. The 'Richmond' are confirmed as counterfeit. All products are in breach of requirements for standardised packaging and the display of health warnings. Also recovered was black bag containing waste comprising tobacco product packaging (cigarette sleeves etc.)

Signed.....

..... Name

<p>M v registration</p>	<p>0.5kg of 'The Turner' Hand Rolling tobacco. Does not conform to the requirement for standardised packaging and the display of health warnings.</p> <p>This vehicle was parked close to</p>
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I have assessed the retail value of the illicit tobacco products as follows: -

Quantity	Price	Total value
8,800 cigarettes =	£3.50	£1,540.00
440 x packets of 20 cigarettes	£4.50	£1,980.00
935kg hand rolling tobacco =	£9.00	£1,710.00
190 x 50g pouches of tobacco		

The total value of the illicit tobacco products is therefore between £3,250.00 and £3,690.00. This estimation is based upon my experience in the area of illicit tobacco enforcement and current sales prices of illicit products.

During the enforcement operation, S T was arrested on suspicion of possessing counterfeit tobacco products for supply, as well as tobacco products not conforming to standardised packaging and health warning requirements, and was interviewed.

This interview resumed on Tuesday 30th October 2018 after S T had been released (from police custody) under investigation.

S T was questioned extensively about matters related to the investigation. He provided 'no comment' to questions asked; and in particular, around the activity of supplying products from vehicles in the vicinity of the LIFESTYLE EXPRESS store. On 30th October, he provided the following prepared statements: -

- 'I have not sold any tobacco items from any vehicles on 3rd, 4th or 5th August 2018, or on 5th, 19th or 27th September 2018.'
- 'I am a heavy smoker, all of the tobacco and cigarettes found are for my own personal use.'

The investigation remains ongoing at the time of my making this statement.

Local area assessment

As a result of the enforcement activity, on 7th November 2018 consultation was undertaken with nearby retail type businesses, in the vicinity of the LIFESTYLE EXPRESS store. This engagement, by way of survey, confirmed that illicit tobacco caused a serious nuisance to the respondents.

In response to a question, "What are the effects of illicit tobacco?", the respondents stated:

- 'It kills the genuine shop keepers. We need to employ staff and we can't because the sales go down. I have experienced this in my business. When illegal tobacco isn't available, we see a massive increase in our tobacco sales. Even kids buy the illegal products. The local illegal sellers don't care who they sell to'.
- 'Depriving the taxpayer of money, potentially puts people at risk due to quality concerns, it keeps people smoking, and reduces takings through my till. This is one thing that impacts us'.

MIDDLE STREET, BLACKHALL is a diverse, traditional high street location that offers alternative retail premises similar to those operated by S T Should a Closure Notice and/or Closure Order be granted, it is not believed that the local community would suffer through lack of access to alternative shopping facilities.

The problem of illicit tobacco in BLACKHALL COLLIERY is further highlighted by detected tobacco criminality, which has occurred within close proximity of the LIFESTYLE EXPRESS STORE. Incidents have included: -

Date	Event
17/03/2016	Retail premises (not S T) at MIDDLE STREET visited and inspected by Trading Standards officers, resulting in a seizure of 27,700 illicit cigarettes, and 14.75kg of illicit hand rolling tobacco.
30/08/2017	Retail premises (not S T) at MIDDLE STREET visited and inspected by Trading Standards officers, resulting in a seizure of 3,220 illicit cigarettes, and 1.2kg of illicit hand rolling tobacco.
30/08/2017	VINE STORES, a retail business operated by S T at MIDDLE STREET, visited and inspected by Trading Standards officers, resulting in a seizure of 4,540 illicit cigarettes and 1.45kg of illicit hand rolling tobacco.
13/12/2017	Residential premises at AVENUE, connected with a commercial premises in SEAHAM, searched under warrant by Trading Standards officers, resulting in a seizure of 69,000 illicit cigarettes and 22.55kg of hand rolling tobacco.
02/10/2018	Police undertaking enquiries into a separate matter seized 2,540 illicit cigarettes and 0.1kg of illicit hand rolling tobacco from a vehicle at AVENUE.

These investigations and seizures indicate that illicit tobacco is of particular concern in the area of BLACKHALL COLLIERY.

Signed.....

..... Name

There is strong support for tackling the issue of illicit tobacco across County Durham amongst the public. Trading Standards regularly receives information from members of the public about suppliers of illicit tobacco products, including in the East Durham area. The Trading Standards Service has consulted with a number of other stakeholders and has not received information that would prejudice this application.

Signed.....



..... Name

Conclusion

Illicit tobacco causes problems to local communities on many levels.

This case is aggravated on account of S T having only recently been convicted of offences related to illegal tobacco. This earlier action has not caused him to desist in this activity; rather, it is my belief that it has led to him employing further layers of concealment to avoid detection. This adds to the proportionality of the application that is being made in this case.

Although the supply of illicit tobacco is known to occur off the premises, I believe that the association between the premises and the consequent serious nuisance is clear.

Signed.....

..... Name

**DURHAM COUNTY COUNCIL
ENVIRONMENT, HEALTH & CONSUMER PROTECTION**

STATEMENT OF WITNESS

*((Criminal Procedure Rules r. 27.2; Criminal Justice Act 1967, S.9,
Magistrates' Courts Act 1980, s.5B))*

Statement of: **Mark MILLER**

Age (if over 18 enter 'over 18'): **Over 18**

Occupation: **Trading Standards Investigator**

This statement (consisting of 4 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.

Dated: **8th November 2018**

Signed.....

I am employed by Durham County Council as a Trading Standards Investigator in the Consumer Protection Service of Trading Standards. I am an authorised officer for the purposes of the Trade Marks Act 1994 and the Consumer Protection Act 1987.

I make this statement in relation to Operation Jellyfish which concerns the alleged supply of illicit cigarettes and hand rolling tobacco products from a shop known as Lifestyle Express, 44 Middle Street, Blackhall Colliery, TS27 4EA, by a male I know to be **E S**

Intelligence suggested illicit and counterfeit tobacco products were being sold from various vehicles outside of this shop by **S** on a regular basis, with the shop being used to directly to facilitate this activity.

Under directed surveillance authority granted at a Magistrates Court, visual recordings were made between 3rd August 2018 and 27th September 2018 of **S** regularly taking customers to vehicles. On every occasion customers are seen to enter the shop before walking to the vehicles with **£** and then items are handed over by him. All footage relating to this statement was obtained from the Lifestyle Express store at 44 Middle Street, Blackhall Colliery, TS27 4EA.

Signed.....

..... Name **MARK MILLER**

This footage is stored on a removable hard drive disc storage device from which I have copied clips of the relevant recordings onto discs, which show S [redacted] taking customers to his vehicles outside of the shop, then handing over items.

I exhibit copies of these discs as follows:

MM/1/19092018 – disc containing footage clips from 3rd August 2018 timed at 15.26 and 19.20 that day.

MM/1/24092018 – disc containing footage clips from 4th August 2018 timed at 16.34 and 19.00 that day.

MM/2/24092018 – disc containing footage clips from 5th August 2018 timed at 10.51, 16.49, 17.46 and 17.54 that day.

MM/1/18102018 – disc containing footage clips from 5th September 2018 timed at 11.15 and 14.39 that day.

MM/2/18102018 – disc containing footage clip from 19th September 2018 timed at 11.59 that day.

MM/3/18102018 - disc containing footage clips from 27th September 2018 timed at 11.34, 14.48 and 15.04 that day.

From these footage clips I produce some still images of those transactions as the following exhibits:

MM/1/05112018 – two still images taken from footage clip at 11.15 on 5th September 2018. Still image numbered one showing a female being handed an item by S [redacted] who is sat in a grey [redacted] Still image numbered two is a close-up showing a small blue package.

MM/2/05112018 – two still images taken from footage clip at 14.39 on 5th September 2018. Still image numbered one showing a female being handed an item by £ who is stood at an opened door of a grey . Still image numbered two is a close-up showing small blue package, consistent with a packet of hand rolling tobacco.

MM/3/05112018 – still image taken from footage clip at 11.59 on 19th September 2018 showing a female being handed a small white packet, consistent with cigarettes by £ who is sat in a

On Friday 26th October Trading Standards Officers executed three entry warrants in relation to illicit tobacco products at;

1. Lifestyle Express, 44 Middle Street, Blackhall Colliery. No illicit tobacco products were found.
2. The home address of £ A significant amount of illicit cigarettes and tobacco was recovered. Also recovered from this location was illicit tobacco found within the boot space of the These brands are Richmond, Red Brass cigarettes and Turner hand rolling tobacco.
3. A storage container to the rear of Middle Street, Blackhall Colliery known to be accessed by £ A large carrier bag was recovered which contained illicit cigarettes and tobacco. These brands were Superkings cigarettes and Golden Virginia hand rolling tobacco.

The items seized on 26th October 2018 from the home address of £ at are consistent with items he exchanged at vehicles on 5th and 19th September 2018. I produce the following photographs of items seized from this address on that day as exhibits:

MM/1/08112018 – still image of a white single packet of Brass cigarettes.

MM/1/08112018 – still image of a blue single packet of Turner hand rolling tobacco.

Signed...

..... Name..... MARK MILLER.....

On 29th October 2018, a brand representative examined samples of the Richmond and Superkings cigarettes, and Golden Virginia tobacco and concluded all of these products to be counterfeit. The other brands recovered are also believed to be illicit regarding incorrect labelling, plain packaging and health warning requirements, and should not be sold within the UK.

Signed.....

..... Name..... MARK MILLER.....

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: Ian Goodwin

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

Occupation: **PCSO 6638**

This statement (consisting of 2 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: 09/11/2018

I am the above named officer, employed by Durham Constabulary stationed at Peterlee police office.

I patrol the beat area covering Blackhall and the surrounding villages and have done for a number of years. Over this time, it has become apparent to myself that there is an illegal trade in the area around counterfeit cigarettes and the selling of these to members of the public. There are also issues regarding the sale of these to those who are under the age where they can be legally bought - the number of youths visibly smoking appears to have increased over the past few years.

This was highlighted recently by an incident where a male was stabbed and threatened with a firearm over a dispute over counterfeit cigarettes in the Blackhall area. This is a currently ongoing investigation.

I have also spoken to various shop owners and managers in the area who state that this trade is causing them to lose legitimate business and is causing them to look at other options to make up sales, either by increasing prices or by carrying less stock, all of which have an impact on the community as a whole.

As a Police force, we would support any action taken in order to combat this issue and will work closely with partenr agencies in order to ensure that appropriate action is taken.

Signature:..... Signature witnessed by:

Signature:..... Signature witnessed by:

**DURHAM COUNTY COUNCIL
ENVIRONMENT, HEALTH & CONSUMER PROTECTION**

STATEMENT OF WITNESS

*((Criminal Procedure Rules r. 27.2; Criminal Justice Act 1967, S.9,
Magistrates' Courts Act 1980, s.5B))*

Statement of: Kirsty WILKINSON

Age (if over 18 enter 'over 18'): Over 18

Occupation: Public Health Advanced Practitioner

This statement (consisting of 2 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.

Dated this the; 7th November 2018

Signed.

I am the above named person, employed by Durham County Council as a Public Health Advanced Practitioner.

I have held the Council's portfolio for tobacco control since June 2018. My role is to lead on the delivery of evidence based tobacco control strategies across County Durham that will reduce smoking prevalence, and reduce the disease burden that smoking has on our communities, and consequently also on mortality. The removal of illicit tobacco is one of the eight key strands of my tobacco work (and the strategic approach towards tobacco control).

I hold a Masters Degree in Public Health.

I make with reference to the proposed issue of a Closure Notice, and application for a Closure Order, in respect of a commercial premises in BLACKHALL COLLIERY, COUNTY DURHAM, which it is alleged is connected with the sale and supply of illicit tobacco products.

Signed.

..... Name

While all tobacco kills, illicit tobacco causes additional problems to communities on many levels.

Firstly, in the protection of children, illicit tobacco has been proven to provide an opportunities for children to bypass the "Over 18" law, which most honest retailers abide by. The selling of illicit tobacco is therefore making it easier for children to procure cigarettes, and so become addicted. Children are often aware who is selling illicit tobacco locally, and at pocket money prices.

We also know that illegal tobacco brings crime to local communities. People supplying it are frequently involved in other criminality, for example illegal drugs and loan sharking.

Illicit tobacco undermines the work we do to reduce smoking and prevent health harms that smoking causes in communities. Cheap tobacco encourages smokers to keep smoking, to smoke more, and can break their will-power to quit. It frustrates the maintenance of price as one of the key drivers to reduce smoking rates.

For all of these reasons, it is my belief that the supply of illicit tobacco causes a nuisance to communities within County Durham.

Durham County Council
County Hall
Durham
DH1 5UL



Tel: 03000 260000

CLOSURE ORDER

Pursuant to Section 80 of the Anti-social Behaviour, Crime and Policing Act 2014

Premises to be closed: **Lifestyle Express Store**
44 Middle Street, Blackhall Colliery, TS27 4EA

Order Issued: **Thursday 15th November 2018**
Order Expires: **Tuesday 12th February 2019**

In County Durham & Darlington Magistrates Court, sitting at Peterlee Magistrates Court, a Closure Order under Section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014 was granted.

**ACCESS TO THE PREMISES BY ANY PERSONS, OTHER THAN THE OWNER,
IS PROHIBITED**

**ANY PERSON WHO CONTRAVENES THIS ORDER SHALL BE LIABLE ON
SUMMARY CONVICTION TO IMPRISONMENT FOR A PERIOD NOT EXCEEDING
51 WEEKS AND/OR A FINE**

*[FOR THE AVOIDANCE OF DOUBT, THE FLAT ABOVE THE PREMISES AT 44
MIDDLE STREET, BLACKHALL COLLIERY IS NOT THE SUBJECT OF THIS
ORDER]*

If you are affected by this Closure Order you may seek independent legal advice from the Citizens Advice Bureau, Shakespeare House, Shakespeare Street, Seaham, SR7 7JB

Enquiries regarding this Order should be directed to Durham County Council Trading Standards Team on 03000 261 016 or by email at ehcp@durham.gov.uk

2 15/11/18
BY ORDER OF THE COURT

B S T

DOB:
Gender: Not spe

Case Number: 1800028971
Defendant Present: Yes
Attending Solicitor: Mr Lally
Informant: DCC Durham County Council
Post-Hearing Custody Status:

1 **LG03029**
Between 30/08/2017 and 03/10/2017 at Blackhall knowingly allowed a licensable activity to be carried on, namely unknown, on or from premises, namely Vine Stores, 42 Middle Street, Blackhall, Hartlepool, otherwise than under and in accordance with an authorisation issued under the Licensing Act 2003.
Contrary to section 136 of the Licensing Act 2003.

Plea: Guilty - 11/04/2018

ACNOTE

FO 250.00
Fined £250.00.

FCOST 1,125.56
To pay costs of £1125.56.

COLLO
Collection order made.

FDEST
All items to be forfeited under Trade Mark Act and destroyed.

GPTAC
Defendant's guilty plea taken into account when imposing sentence.

2 **LG03030**
Between 30/08/2017 and 03/10/2017 at Blackhall exposed for sale by retail on premises, namely Vine Stores, 42 Middle Street, Blackhall, Hartlepool, alcohol, namely unknown, in circumstances where the sale by retail of that alcohol would be an unauthorised licensable activity.
Contrary to section 137 of the Licensing Act 2003.

WDRN
Offence withdrawn.

3 **LG03117**
Between 30/08/2017 and 03/10/2017 at Blackhall had in your possession alcohol, namely unknown, which you intended to sell by retail in circumstances where that activity would be an unauthorised licensable activity.
Contrary to section 138 of the Licensing Act 2003.

WDRN
Offence withdrawn.

Between 30/08/2017 and 03/10/2017 at Blackhall the defendant had alcohol, namely unknown, which the defendant intended to sell by retail in circumstances where that activity would be an unauthorised licensable activity.

4 **TP16001**

On 30/08/2017 at Blackhall Colliery supplied a tobacco product for smoking, namely 227 packets of 20 cigarettes and 29 packets of 50g Turner Hand Rolling Tobacco, the unit pack of which did not carry a combined health warning as required by regulation 5 of the Tobacco and Related Products Regulations 2016, in that you had not complied with specific requirements, namely the requirement to have a combined health warning on both the front and the back surfaces. Contrary to regulations 5, 48(a)(i) and 51 of the Tobacco and Related Products Regulations 2016 and section 2(2) of the European Communities Act 1972.

WDRN

Offence withdrawn.

5 **TP16001**

On 30/08/2017 at Blackhall Colliery supplied a tobacco product for smoking, namely 227 packets of 20 cigarettes and 29 packets of 50g Turner Hand Rolling Tobacco, the unit pack of which did not carry a combined health warning as required by regulation 5 of the Tobacco and Related Products Regulations 2016, in that you had not complied with specific requirements, namely the requirement to carry a general warning "Smoking kills - Quit now" and an information message "Tobacco smoke contains over 70 substances known to cause cancer".

Contrary to regulations 5, 48(a)(i) and 51 of the Tobacco and Related Products Regulations 2016 and section 2(2) of the European Communities Act 1972.

Plea: Indicated plea of Guilty - 11/04/2018

FO

Fined £250.00.

250.00

GPTAC

Defendant's guilty plea taken into account when imposing sentence.

6 **ST15001**

On 30/08/2017 at Blackhall Colliery, produced or supplied a tobacco product, namely 227 packets of 20 cigarettes, that did not comply with the requirements of the regulations in that the requirement for the only colour or shade permitted on the external packaging of a unit packet of cigarettes is Pantone 448C with a matt finish was not present.

Contrary to regulation 15 of the Standardised Packaging of Tobacco Products Regulations 2015

WDRN

Offence withdrawn.

- | | | | | |
|---|----------------|--|--|--------|
| 7 | ST15001 | On 30/08/2017 at Blackhall Colliery, produced or supplied a tobacco product, namely 29 packets of 50g Turner Hand Rolling Tobacco, that did not comply with the requirements of the regulations in that the requirement for the only colour or shade permitted on the external packaging of a unit packet of cigarettes is Pantone 448C with a matt finish was not present.
Contrary to regulation 15 of the Standardised Packaging of Tobacco Products Regulations 2015 | FO
Fined £250.00. | 250.00 |
| | | Plea: Indicated plea of Guilty - 11/04/2018 | GPTAC
Defendant's guilty plea taken into account when imposing sentence. | |
| 8 | TM94010 | On 30/08/2017 at Blackhall Colliery with a view to gain for yourself or another, or with intent to cause loss to another, and without the consent of the proprietor, had in your possession, custody or control in the course of a business, goods, namely 30 packets of 20 Regal King Size cigarettes, which bore, or the packaging of which bore, a sign identical to, or likely to be mistaken for, a registered trade mark, namely Regal, with a view to you or another selling the said goods.
Contrary to section 92(1)(c) and (6) of the Trade Marks Act 1994. | FO
Fined £250.00. | 250.00 |
| | | Plea: Indicated plea of Guilty - 11/04/2018 | GPTAC
Defendant's guilty plea taken into account when imposing sentence. | |
| 9 | TM94010 | On 30/08/2017 at Blackhall Colliery with a view to gain for yourself or another, or with intent to cause loss to another, and without the consent of the proprietor, had in your possession, custody or control in the course of a business, goods, namely 1 packet of 20 Mayfair Cigarettes, which bore, or the packaging of which bore, a sign identical to, or likely to be mistaken for, a registered trade mark, namely Mayfair, with a view to you or another selling the said goods.
Contrary to section 92(1)(c) and (6) of the Trade Marks Act 1994. | WDRN
Offence withdrawn. | |

Time To Pay: £200.00 per month commencing 09/05/2018

BALANCE	2,125.56
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I certify the above extract to be a true copy

Date Printed: 02/11/2018

of the said Magistrates' Court.

Reviews arising in connection with crime

- 11.24 A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises, money laundering by criminal gangs, the sale of contraband or stolen goods, the sale of firearms, or the sexual exploitation of children. Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts. The licensing authority's role when determining such a review is not therefore to establish the guilt or innocence of any individual but to ensure the promotion of the crime prevention objective.
- 11.25 Reviews are part of the regulatory process introduced by the 2003 Act and they are not part of criminal law and procedure. There is, therefore, no reason why representations giving rise to a review of a premises licence need be delayed pending the outcome of any criminal proceedings. Some reviews will arise after the conviction in the criminal courts of certain individuals, but not all. In any case, it is for the licensing authority to determine whether the problems associated with the alleged crimes are taking place on the premises and affecting the promotion of the licensing objectives. Where a review follows a conviction, it would also not be for the licensing authority to attempt to go beyond any finding by the courts, which should be treated as a matter of undisputed evidence before them.
- 11.26 Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.
- 11.27 There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises:
- for the sale and distribution of drugs controlled under the Misuse of Drugs Act 1971 and the laundering of the proceeds of drugs crime;
 - for the sale and distribution of illegal firearms;
 - for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
 - for the illegal purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people;
 - for prostitution or the sale of unlawful pornography;
 - by organised groups of paedophiles to groom children;
 - as the base for the organisation of criminal activity, particularly by gangs;

- for the organisation of racist activity or the promotion of racist attacks;
- for employing a person who is disqualified from that work by reason of their immigration status in the UK;
- for unlawful gambling; and
- for the sale or storage of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.

Review of a premises licence following closure order

11.29 Licensing authorities are subject to certain timescales, set out in the legislation, for the review of a premises licence following a closure order under section 80 of the Anti-social Behaviour, Crime and Policing Act 2014 or section 38 of and Schedule 6 to the Immigration Act 2016. The relevant time periods run concurrently and are as follows:

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

Review of a premises licence following persistent sales of alcohol to children

11.30 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.