

Entertainment Licensing
Leeds City Council
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Elections and Regulatory Services

Civic Hall
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Our Ref: A80/CB/LIC/PREM/02712/008

Your Ref:

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Date: 3 December 2023

Dear Sirs/Madam,

REVIEW APPLICATION UNDER THE LICENSING ACT 2003
PREMISES: M&S 24/7 OFF LICENCE SHOP, 128 ROUNDHAY ROAD, LEEDS,
LS8 5NA

Please accept this formal representation by an officer on behalf of the Licensing Authority. I am employed as a Senior Liaison & Enforcement Officer within Leeds City Council's Entertainment Licensing Section.

My duties include investigating complaints for licensed/unlicensed premises contrary to the Licensing Act 2003 as well as visiting licensed premises with other agencies to ensure compliance under the Licensing Act 2003, in promoting the four licensing objectives; the prevention of crime and disorder; public safety; the prevention of public nuisance and the protection of children from harm. I have delegated authority under the said Act.

The current Premises Licence PREM/03356/006 for M&S 24/7 Off Licence Shop allows the retail sale of alcohol between 00:00 and 23:59 every day. The Premises Licence Holder (PLH) and the specified Designated Premises Supervisor (DPS) since 13 November 2019 is Mr Merhawi Yowhanshe. The premises was previously known as Roundhay Convenience Store and on the 26 September 2023 Entertainment Licensing received an application from Mr Yowhanshe to change the trading name to M&S 24/7 Off Licence Shop.

As a result of information passed to West Yorkshire Police that alcohol and nitrous oxide (laughing gas) was being sold to children; PC Neil Haywood and I visited the shop at 12:20 on the 23 August 2023. The PLH and DPS Mr Merhawi Yowhanshe was present at the shop at the time of our visit.

PC Haywood spoke to Mr Yowhanshe about the allegation and asked if he could have a look behind the counter. He found a 10 pack of balloons attached to cardboard – each pack contained 16 balloons under the counter not on display to customers. When PC Haywood asked who bought the balloons Mr Yowhanshe replied that that it was a man in a white van. PC Haywood said, 'No, who buys them?'. Mr Yowhanshe did not reply and PC Haywood said, 'I believe you are selling these to children'.

I walked around the shop to the rear door. There were boxes of alcohol piled high on both sides towards the rear door and to the left at the top of the stairs I noted boxes of nitrous oxide cannisters. One of the boxes was open and when I looked inside I noted there were 6 large cannisters of nitrous oxide. They were about the size of medium fire extinguishers. I called PC Haywood to the back and showed him the boxes at the top of the stairs. There were 10 boxes altogether, some on the right hand side of the stairs leading to the basement store room. PC Haywood asked Mr Yowhanse 'Why do you have these? Is it for balloons?'. When Mr Yowhanse replied that it was for cakes, PC Haywood asked 'Why would you need so many?'.

We returned to the counter and I noted that Part B was displayed high up behind the counter. When I asked Mr Yowhanse if he could produce Part A of the Premises Licence he could not. I explained that this was an offence under Section 57 of the Licensing Act 2003.

Section 57 states:-

(1) This section applies whenever premises in respect of which a premises licence has effect are being used for one or more licensable activities authorised by the licence.

(2) The holder of the premises licence must secure that the licence or a certified copy of it is kept at the premises in the custody or under the control of—

(a) the holder of the licence, or

(b) a person who works at the premises and whom the holder of the licence has nominated in writing for the purposes of this subsection.

(3) The holder of the premises licence must secure that—

(a) the summary of the licence or a certified copy of that summary and and

(b) a notice specifying the position held at the premises by any person nominated for the purposes of subsection (2),

are prominently displayed at the premises.

(4) The holder of a premises licence commits an offence if he fails, without reasonable excuse, to comply with subsection (2) or (3).

I then asked about the cctv as there was a monitor screen facing the counter showing 4 camera feeds. I noted that the time was an hour out. I asked Mr Yowhanse if he could operate the cctv. I asked him what hours he was open. He said 24 hours. I asked 'You are open 24 hours and your cctv does not work?' He replied that it did. I told him that he had to show me that it was recording for the requisite 31 days. Mr Yowhanse stated that he could not operate the cctv.

When I asked him about deliveries as there were nearly 3 pages of conditions Relating to them, he said he did not do deliveries of alcohol.

I then asked to have a look at the Incident Register and Refusals Register as these are specific conditions on the Premises Licence. He said that he did not have such records. I advised Mr Yowhanse that a Page a Day Diary would comply for both of these conditions as they are usually bound and have the dates on each page so are chronological in effect and you would be able to tell easily if a page was missing.

I gave him 1 week to rectify the matters.

When there is a breach of Premise Licence conditions any sales of alcohol become an offence under Section 136 of the Licensing Act 2003, namely:

- (1) *A person commits an offence if -*
 - (a) *he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or*
 - (b) *he knowingly allows a licensable activity to be so carried on.*
- (4) *A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to an unlimited fine, or to both.*
- (5) *In this Part "authorisation" means -*
 - (a) *a premises licence,*
 - (b) *a club premises certificate, or*
 - (c) *a temporary event notice in respect of which the conditions of section 98(2) to (4) are satisfied.*

PC Haywood seized the 10 boxes of nitrous oxide and the balloons.

At 13:32 on the 25 September 2023 PC Haywood and I revisited the shop and found Mr Yowhans on site. He was able to produce Part A of the Premises Licence and there were proof of age posters on display. PC Haywood gave Mr Yowhans forms for the seizure of his phone.

I noted that the cctv was still at the incorrect time and then asked Mr Yowhans if he could operate the system to show me 31 days recording. He said the harddrive and mouse was in the cellar. PC Haywood followed him down to the cellar but after some time came back saying that Mr Yowhans could not access the system as he had forgotten the PIN. PC Haywood explained that it was not ideal having the monitor etc in the cellar and recommended that it would be better located behind the counter making it more accessible.

I explained that every time he sells a bottle of vodka or a can of beer and he's not compliant with the cctv or other conditions, then he is committing offences under Section 136 of the Licensing Act 2003 and that if I took him to court and he was found guilty of such offences he could receive an unlimited fine and/or 6 months imprisonment; that's how serious it is. He had neither an Incident or Refusals Register.

When I asked when the shop was open, he said 9 am to midnight. Mr Yowhans was not aware of the condition that stated the hatch should be used after 2300. I showed him condition 24 on the Premises Licence. PC Haywood checked the hatch and confirmed it was operational. I gave my business card to Mr Yowhans and told him to ring me when the cctv was working so that we could revisit and check it. I also advised him that he should read through all his Premises Licence to ensure he was compliant with every condition.

Following receipt of a review application submitted by PC Haywood, we revisited the shop on the 12 October 2023. In accordance with the Licensing Act we attached an A4 blue notice to the nearest lamp post to the shop. This notice advises the general public that a review application has been received by the Licensing Authority, the grounds on which the application has been made and gives the contact details should any members of the public wish to make any representation. At 10:30 we entered the shop and introduced ourselves to the male behind the counter. Mr [REDACTED] explained that Mr Yowhans would not be in for another 2/3 hours. I explained about the notice outside the shop and gave him a letter addressed to Mr Yowhans. I explained that Mr Yowhans should have received the papers in relation to the review so would already know about it.

I asked if there was an Incident Register and Refusals Register. Mr [REDACTED] looked under the counter and produced 2 A5 puka pads which were loose leaf and not numbered. I checked both notebooks and there was nothing written in either of them. I explained that I had told Mr Yowhansé to purchase a Page a Day diary as then the pages would be chronologically numbered. I ripped a page out of one of the notepads and showed if it was numbered, you would be able to tell. I asked Mr [REDACTED] if he could produce the Part A of the Premises Licence; he could not. I noted that the cctv was now showing the correct time, however when PC Haywood asked if it was still in the cellar, Mr [REDACTED] confirmed it was. When PC Haywood asked if he operate the cctv system, Mr [REDACTED] replied that he could not. I told Mr [REDACTED] that Mr Yowhansé had my business card already and if he could ask him to ring me about the cctv.

As I had received no call from Mr Yowhansé, I emailed him on the 31 October 2023. Attached to the email was a warning letter detailing the number of visits to the shop and the breaches of conditions found on each occasion and the specific offences under the Licensing Act 2003.

To date I have received no communication from Mr Yowhansé.

In view of the above detailed continuous breaches of the Licensing Act 2003, it is clear that the Premises Licence Holder and Designated Premises Supervisor has failed to operate responsibly in upholding the objectives; the prevention of crime and disorder and the protection of children from harm and therefore support the review being brought by West Yorkshire Police.

Yours faithfully

[REDACTED]

Mrs Carmel Brennand
Senior Liaison & Enforcement Officer
Entertainment Licensing