

Memorandum



TRADING STANDARDS

From Oliver Jewell
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Our Ref 205171

Your Ref

To Swale Borough Council Licensing Section

The Trading Standards Department of Kent County Council as a responsible authority under the Licensing Act 2003, make representation on the grounds of the **crime and disorder**, **public nuisance** and the **protection of children from harm** licensing objectives, in connection with the review submitted by Kent Police in relation to **Best One, 16 Hawthorn Road, Sittingbourne**.

The following representations are made with reference to information held on the departmental complaints database as well as information received from the Kent County Council Public Protection Intelligence Team who receive reports from external agencies.

The data referred to goes back to 2017 (with some reference to incidents before), being relevant in demonstrating the long standing concerns held in respect of the premises at 16 Hawthorn Road, Sittingbourne. As of late 2021, the majority of complaints relate to disposable vaping products which although not subject to the Licensing Act, is a relevant matter in relation to the age restrictions placed on those products and the resulting inferences on the ability to uphold objectives of the Licensing Act.

25/10/2017 – test purchase operation carried out on the basis of prior intelligence (July 2015 sale of alcohol to minors, November 2015 sale of alcohol and tobacco to minors, August 2017 sale of alcohol and tobacco to minors). The test purchase on this occasion was passed.

20/12/2017 – a Challenge 25 test purchase was attempted on the basis of continuing concerns related to the premises. A challenge 25 test purchase is designed to determine if a premises is following the best practice principle of challenging anyone appearing to be under 25 for age restricted goods.

3/8/2018 – a further under 18 test purchase was carried out on the basis of further intelligence received. Once again the sale was refused

The following detail ongoing reports received by the Trading Standards Service which unless stated, are all unique in terms of who has made the complaint.

27/9/2019 – a member of the public reports that they are aware the premises is selling alcohol and tobacco products to minors. They are also aware that cigarettes are being sold singly from the premises which if proven would constitute a breach of the Standardised

Packaging of Tobacco Regulations 2015, whereby cigarettes must be sold in a minimum quantity of 20 as a measure to prevent young people from accessing tobacco products.

A drop in reports was experienced throughout the Covid pandemic, however disposable vaping products emerged in popularity in the autumn of 2021, shortly after which complaints re-emerged.

1/4/21 – an anonymous report was received through Crimestoppers alleging that the premises was selling alcohol to “large groups of underage children”

4/9/2021 – a report from Kent Police was disseminated to Trading Standards in respect of young people aged 14-16 being known to purchase alcohol from the store without challenge. The same youths were alleged to drink alcohol in the nearby vicinity thus causing a public nuisance.

11/11/2021 – a report from Kent Police was disseminated to Trading Standards alleging a young person believed to be 15-16 years old was seen entering the store and leaving shortly after with a packet of cigarettes believed to have been purchased at that time.

12/11/2021 – a report from Kent Police was disseminated to Trading Standards alleging that Year 9 children (approx. 13-14 years old) from Westlands Secondary School were being sold vape products from the premises.

23/11/2021 – a report from Kent Police was disseminated to Trading Standards to allege that 13 year olds were being sold vape products from the premises.

22/1/2022 – a member of the public reports concerns that the premises is selling alcohol, tobacco and vaping products to under 18's. The same complaint raises concern of drugs being sold from the premises.

9/6/2022 – a report was received through an online anonymous reporting portal to state the shop was selling vapes to 12 and 13 year olds. It was alleged the young people would go after 3pm when the owner was there as he would sell to them.

28/6/2022 – a report from Kent Police was disseminated to Trading Standards to state the premises was selling cigarettes and vape products to Year 7 children (approx. 11-12 years old) from the Westlands Secondary School.

11/7/2022 – a report from Kent Police was disseminated to Trading Standards to state that 11-12 year olds were being sold vape products from the premises. It was alleged the owner removed the vapes from the packaging and told the young people to move away from the shop after buying the products.

12/8/2022 – a member of the public reports that their 13 year old daughter and her friend have been sold vaping products from the premises

28/8/2022 – a member of the public reports that their 13 year old daughter bought vapes from the premises in July and “her and her friends went to this shop because they would get served”

29/8/2022 – a member of the public reported that their 12 year old daughter had been sold vapes from the premises.

6/9/2022 - a member of the public reported that the premises had sold vaping products to their daughter and her friend who were 12-13 years old.

23/9/2022 – a member of the public witnessed vape products being sold to young people who were in school uniform.

27/10/2022 – a member of the public reported the sale of a vape to a 13 year old.

5/1/2023 - a member of the reported a sale of a vape to their 13 year old daughter.

5/1/2023 – a report from Kent Police was disseminated to Trading Standards which appears to be duplicate to the previous report received directly by Trading Standards.

9/1/2023 – a report from Kent Police was disseminated to Trading Standards stating that underage children that attend the Sittingbourne School were being sold vapes from the premises. Given the timing of the report, it is possible that this report is duplicate.

7/3/2023 – a member of the public witnessed a sale being made to a group of three young people, one being described as in school uniform and the other two being judged to be no more than 14-15 years of age.

On the **5/4/2023** an advisory visit was carried out by officers from Kent Trading Standards. Officers met with the owner Roopesh Kapoor and advised him of concerns. Mr Kapoor showed signage relating to Challenge 25 and use of a refusals book as his evidence that he had been refusing sales to young people. At the time of the visit Mr Kapoor reported that it was only him working in the shop and he confirmed that his CCTV was working and recording for 28 days as required.

10/5/2023 – a member of the public reported that their 15 year old daughter had purchased a vape from the premises

17/6/2023 – a member of the public reported that their 12 year old child had been sold a vape from the premises. The report continued that vape was a 9000 puff model which they were told were kept under the counter. The complaint continued to allege that their child and friends were sold vape products when wearing school uniform.

The Tobacco and Related Product Regulations 2016 require that a disposable e-cigarette device contain no more than 2ml of nicotine containing liquid. Although other legislation requires the quantity to be given on the packaging, some manufacturers choose to represent the volume by a number of puffs the product provides. Industry have equated 2ml to approximately be represented as 600 puffs and is commonly quoted on UK legal products. **A product claiming to contain 9000 puffs will without doubt be an illegal product that has not been subject to the proper checks for sale in the UK.**

On **27/7/2023** Trading Standards participated in the multi-agency visit to Best One at 16 Hawthorn Road, Sittingbourne. As identified in the application Mr Roopesh Kapoor was alone in control of the shop upon our arrival.

Disposable vape products were displayed prominently on the counter which were checked and all those on display appeared to meet the legal requirements, notably being no more than 2ml/600 puffs. Mr Kapoor allowed the officer behind the counter where the inspection continued.

In boxes behind the counter were disposable vape products that immediately were recognized as illegal brands such as the R&M Tornado device which was labelled as containing 18ml (nine times the UK legal limit).



3 x illegal vapes seized and 1 x pack herbal waterpipe shisha



Side view of illegal vapes (two showing volume > 2ml) and reverse of shisha pack

Illegal vapes, particularly those of higher capacities remain popular with young people as per ml of liquid they are considerably cheaper than UK legal products, however in addition to breaking UK safety requirements, they have been reported in other cases to contain heavy metals such as lead where cheaper components not subject to emissions testing are used.

A total of 86 illegal vaping products were found and seized from these boxes behind the counter. Mr Kapoor claimed to be unaware that there was anything wrong with them, claiming they were present on the previous visit and nothing was said to him. The fact remains however that it is implausible that by chance, not one of the illegal products were found in the displays. Furthermore, it is believed Mr Kapoor knew exactly which products were and which were not legal for UK sale.

In addition to the vaping product, 6 packs of herbal shisha molasses were seized. The shisha did not carry correctly the health warnings required for sale in the UK, as required by the Tobacco and Related Product Regulations 2016. It is likely that they are also subject to duty evasion and are in fact smuggled goods. Herbal molasses carry the same duty thresholds as tobacco as a means to reduce consumption. The current duty rate of £161.62/kg is applied to 'other smoking tobacco' which includes herbal products. At a pack weight of 50g, the duty alone on each pack would be £8.08 whereas the price shown in the picture shows them to be available for £3.00.

While checking for the presence of any further illegal vapes a number of other items were drawn to the attention of officers.

Alongside the illegal vapes, a box containing bottles of 'Room Odourisers' under brands such as Liquid Gold and Rush XXL was found as shown in the image below. The bottles are sold in this way to avoid scrutiny as their true purpose of 'poppers' which are inhaled recreationally causing euphoric effects. The active ingredient is isopropyl nitrite which can also cause dizziness and increased heart rates (and are potentially dangerous for those with heart problems). Poppers are not covered by the Psychoactive Substances Act 2016 but would be regulated under the Medicines Act 1968.



Close up of Rush XXL Bottle as found behind counter

Also behind the counter were boxes full of mini zip lock bags (as shown below). There is no restriction on the sale of zip lock bags, however the setting, size and quantity indicates once bought they would be used for drugs, a fact that was not denied by Mr Kapoor. Likewise the presence of cream whippers and balloons used for the inhalation of nitrous oxide gas.



Shelf Displaying Ziplock bags with packs of balloons to the left



Cream Whippers found on counter (to be used in combination with nitrous oxide cannisters)

At the conclusion of the visit Mr Kapoor signed a voluntary disclaimer to allow the future destruction of the seized goods.

Despite passing several exercises of testing Best One, either with those under the legal age limit or as part of a Challenge 25 test purchase, complaints have persisted leading to the conclusion that it is only those already known to Mr Kapoor who will be served.

On the balance of probabilities, the information including the sheer volume of complaints suggests that the premises has and will continue to sell vapes to young people as well as the likely continuation of products associated with drug use.

In a period between June 2022 and July 2023, this premises accounted for over 7% of all complaints received by Trading Standards across the whole county in relation to the sale of vapes to young people. The complaints have been assessed and are deemed to be individual, unique and not vexatious against the premises.

It is believed that Mr Kapoor is not a person who is willing or able to uphold the licensing objective to protect children from harm and equally given the associated concerns from young people drinking alcohol in the immediate vicinity and the presence of drug paraphernalia in the shop indicates that he is also unwilling or unable to uphold the prevention of public nuisance objective. The presence in the shop of the illegal vapes in the shop demonstrates an unwillingness to prevent crime.

Trading Standards would therefore support any moves to revoke the premises licence as there are no conditions that would be suitable to bring about satisfactory change to this business and the continuation of the licensable activity at this premises risks further undermining of the Licensing Act objectives.



Oliver Jewell
Principal Trading Standards Officer – Kent County Council