



City of Westminster

Licensing Sub-Committee Report

Item No:

Licensing Ref No:

15/01317/LIREVP

Date:

30 April 2015

Classification:

For General Release

Title of Report:

**West 9 Food & Stores
Basement And Ground Floor
350 Harrow Road
London**

Report of:

Director of Public Protection and Licensing

Policy context:

City of Westminster Statement of Licensing Policy

Financial summary:

None

Report Author:

**Mr Ola Owojori
Senior Licensing Officer**

Contact Details:

**Telephone: 020 7641 7830
E-mail: owojori@westminster.gov.uk**

APPLICATION DETAILS

Application Type:	A review of premises licence application under the Licensing Act 2003.		
Applicant:	The Licensing Authority	Date Application Received:	24 February 2015
Premises Name and Address:	West 9 Food & Stores Basement And Ground Floor 350 Harrow Road		
Ward Name:	Westbourne	Stress Area:	No
Description of Premises:	The premises operates as a convenience store and off licence		
GUIDANCE	<p>Guidance issued under section 182 of the Licensing Act 2003 (Para 11.2) states that at any stage following the grant of a premises licence, a responsible authority, such as the Police or the Environmental Health Service, or any other person who can seek a review, may ask the Licensing Authority to review the premises licence because of a matter arising at the premises in connection with any of the four licensing objectives.</p> <p>As such, in accordance with section 52(2) of the above-mentioned Act, the Licensing Authority must hold a hearing to consider the application and any relevant representations.</p>		

1. SUMMARY OF APPLICATION

- 1.1 An application submitted by the Licensing Authority for a review of the premises licence for West 9 Food & Stores, 350 Harrow Road, London, W9 2HP, was received on 24th February 2015 on the grounds of Prevention of Crime and Disorder. **Please see Annex A**
- 1.2 On 19th September 2014, during an operation by Her Majesty's Revenue & Customs, substantial quantity of alcohol were seized from the premises when it became apparent that Excise Duty had not been paid on the goods. This is an offence under the S 170 of the Customs and Excise management Act 1979 and S144 of the Licensing Act 2003.
- 1.3 The premises currently benefits from a premises licence that permits:

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit Unrestricted

Sale by Retail of Alcohol (Off Sales)

Monday to Saturday 08:00 to 23:00
Sunday 10:00 to 22:30

Playing of Recorded Music Unrestricted

The opening hours of the premises:

Monday to Saturday 08:00 to 23:00
Sunday 10:00 to 22:30

- 1.4 A copy of the existing Premises Licence (07/00852/WCCMAP) is attached at **Appendix A of the applicant's bundle (Annex A)**

2. REPRESENTATIONS:

2.1 No representation has been received in respect of the application.

3. LICENCEES SUBMISSIONS:

3.1 There have been no submissions from the licence holders.

4. OPTIONS:

4.1 The applicant is seeking revocation of the licence.

4.2 The Authority must, having regard to the application and the representations, take such steps (if any), as it considers appropriate for the promotion of the licensing objectives. The steps are:

- (a) to modify the conditions of the licence;
and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition added.
- (b) to exclude a licensable activity from the scope of the licence;
- (c) to remove the designated premises supervisor;
- (d) to suspend the licence for a period not exceeding three months;
- (e) to revoke the licence;

4.3 In accordance with section 52(6) of the 2003 Act, if the authority takes measures to modify conditions or exclude licensable activities from the licence, it may stipulate that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

4.4 The licensing authority's determination of this application does not have effect until the 21 day appeal period has expired or if the decision is appealed the date the appeal is determined and / or disposed of.

5. LICENSING ACT 2003 APPLICATIONS AND APPEAL HISTORY

5.1 Any applications under the Licensing Act 2003 are set out in Appendix C.

5.2 The chronology relating to appeals and applications is set out in Appendix C.

List of Appendices:	<p>Annex A – Application for Review</p> <ul style="list-style-type: none">• Appendix A– Copy of current premises licence and photographs of the premises• Appendix B – Copy of Companies House report• Appendix C – Witness statement of Lawrence Stapleton (HMRC)• Appendix D – Correspondence between Licensing Inspector and Licensee• Appendix E –Additional material from Trading Standards <p>Annex B – Licence and Appeal History Annex C – Conditions Annex D – Residential Map and list of premises in the vicinity Annex E - Photograph of premises</p>
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Background Documents – Local Government (Access to Information) Act 1972

- Licensing Act 2003
- City of Westminster Statement of Licensing Policy (7th January 2011)
- Amended Guidance issued under section 182 of the Licensing Act 2003 (March 2015)



City of Westminster

APPLICATION FOR REVIEW

Please forward one copy of your completed application and any supporting documentation to:

Licensing Service
REVIEWS
Westminster City Council
Westminster City Hall
14th Floor
64 Victoria Street
London
SW1E 6QP

Fax: 020 7641 3238

AND

Please give one copy of your application and any supporting documentation to the Holder of the Premises Licence and each of the following responsible authorities on the same day that the application is served on the Licensing Service;

The Chief Officer of Police
Westminster Police Liaison Team
4th Floor, Westminster City Hall
64 Victoria Street, London, SW1E 6QP

London Fire & Emergency Planning Authority
156 Harrow Road
London
W2 6NI

Community Protection (Environmental Health; Health & Safety; Weights and Measures)

Westminster City Council
Environmental Health Consultation Team
4th Floor, Westminster City Hall
64 Victoria Street, London, SW1E 6QP

Development Planning Services
Westminster City Council
64 Victoria Street
London
SW1E 6QP

Area Child Protection Committee
Head of Commissioning – Child Protection & Quality, Social and Community
Services – Children and Families
4 Frampton Street
NW8 8LF

For boats only

The Navigation Authority (for vessels not permanently moored)

Tidal Thames
The Harbour Master
The Port of London Authority, 7 Harp Lane, London EC3R 6LB

Non Tidal Thames
The Environment Agency Recreation and Navigation, Thames Region, Kings
Meadow House, Kings Meadow Road, Reading, RG1 8DQ

Canals
The Leisure Manager
British Waterways Board
1 Sheldon Square, Paddington Central, London W2 6TT

And

The Surveyor General
The Maritime & Coastguard Agency, Orpington Marine Office, Central Court, 1
Knoll Rise

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 Andrew Ralph

(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 <p align="center">West 9 Food & Stores 350 Harrow Road,</p>	
Post town <p align="center">London</p>	Post code (if known) <p align="center">W9 2HP</p>
Name of premises licence holder or club holding club premises certificate (if known) <p align="center">Mr Nallanathan Muhunthakumar</p>	
Number of premises licence or club premises certificate (if known) <p align="center">07/00852/WCCMAP</p>	

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	Licensing Authority Westminster City Council 64 Victoria Street, London, S1WE 6QP
Telephone number (if any)	020 7641 7502
E-mail address (optional)	ncarter2@westminster.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

<input checked="" type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

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

On 19 September 2014, during an operation by Her Majesty's Revenue & Customs a substantial quantity of alcohol were seized from these premises when it became apparent that no 'Excise duty' had been paid on the goods These are offences under S.170 Customs and Excise Management Act 1979 and S.144 Licensing Act 2003.

This incident indicates that the premises are unable to promote the Licensing Objective of:-

1. The prevention of Crime and Disorder

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

This premises operates predominantly as a convenience store and off licence and is currently licensed for Regulated Entertainment (playing of recorded music and private entertainment) and Sale by retail of alcohol (Monday to Saturday 0800-2300hrs and Sunday 1000-2230hrs). Mr. Nallanathan Muhunthakumar has been the Designated Premises Supervisor since November 2005. The holder of the licence is ASM Ltd, 66 Worchester Park Road, Worchester Park, Surrey KT4 7QD. According to a Companies House report from 24 September 2014, Mr. Nallanathan Muhunthakumar is a Director of the company, appointed to that position on 10 February 1994. The Secretary of the company is Mr. Allan George Pratt; appointed to that position on 7 April 1999.

(See Appendix 'A' for copy of current Premises Licence and photographs of premises)

(See Appendix 'B' for a copy of the report from Companies House)

On Friday 19 September 2014 a joint visit was carried out by officers from Customs and Excise and Trading Standards. These visits were carried out as a result of intelligence which had been gathered by Customs and Excise and Trading Standards. During the visit a substantial quantity of wine, spirits and beer were identified by Customs and Excise as having entered the UK with no Excise duty paid. Specifically it was noted that much of the labelling relating to the UK tax duty stamps had been tampered with or had suspected counterfeit labelling. Present at the time of the time of the visit was the Duty Manager, Mr. Thamilvan Sivarosa who was required to produce purchase records in relation to the identified stock. As he was unable to do so, Customs and Excise seized the alcohol which was predominately found in the basement storeroom. Specifically:-

1,192.5 litres of wine

7.4 litres of Spirits and

517 litres of Beer

Some of this stock was on display in the shop premises for sale, and the remainder was found in the storerooms. The total outstanding duty of the seized stock amounted to £4,968.18. It is an offence contrary to S 170 of the Excise Management Act 1979 to evade excise duty on goods and Mr. Sivarosa was issued with a warning letter. He was also given a booklet explaining his right appeal the seizure of the alcohol. To date he has not done so.

(See Appendix 'C' for two (2) witness statements completed by Customs and Excise Officer.)

In addition it is also an offence contrary to S 144 Licensing Act 2003 for the Designated Premises Supervisor and/or holder of a Premises licence to 'knowingly keep on licensed premises any goods without payment of duty'. A formal letter was sent to Mr. Muhunthakumar on 5 November 2014, asking for an explanation. Mr Muhunthakumar responded to my letter and included a large number of invoices in relation to alcohol purchased. I have explained to him that, as these were not sent to the HMRC as proof of duty paid, the review would continue and it is for him to bring

the invoices to the attention of the Licensing Sub Committee should he wish. I will also bring my copies along, should Councillors wish to see them.

(See Appendix 'D' for copy of letter to Mr. Muhunthakumar and response)

(See Appendix 'E' for Additional Material)

In addition to the above matter there have been no other matters of concern relating to these premises, other than a voluntary undertaking to cease stocking/selling super-strength (above 5.5% Abv) beers and ciders, to assist in reducing problem street drinking in the vicinity of the premises.

In the statutory "Guidance issued under section 182 of the Licensing Act 2003" (under the heading of "Reviews arising in connection with crime") it states:

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 of smuggled tobacco and alcohol.

11.28 It is envisaged that licensing authorities, the police 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.

Please tick yes

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

If yes please state the date of that application

Month
Year

Day

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

None

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

Ahmed

Date

24 FEB 2015

Capacity

SERVICE MANAGER

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.

2

Appendix 'A'



City of Westminster

64 Victoria Street, London, SW1E 6QP

Schedule 12
Part A

WARD: Westbourne
UPRN: 999000131356

Premises licence

Regulation 33, 34

Premises licence number:

07/00852/WCCMAP

Part 1 – Premises details

Postal address of premises:

West 9 Food & Stores
Basement and Ground Floor
350 Harrow Road
London
W9 2HP

Telephone Number: Not Supplied

Where the licence is time limited, the dates:

N/A

Licensable activities authorised by the licence:

Regulated Entertainment:

- Playing of Recorded Music
- Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit

Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

Regulated Entertainment:

- Playing of Recorded Music: Unrestricted
- Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit: Unrestricted

Sale by Retail of Alcohol: Monday to Saturday - 08:00 to 23:00

Sale by Retail of Alcohol: Sunday - 10:00 to 22:30

For times authorised for Christmas and Good Friday see conditions at Annex 1

The opening hours of the premises:

Monday to Saturday - 08:00 to 23:00

Sunday - 10:00 to 22:30

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

Off

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence:

ASM Ltd
66 Worchester Park Road
Worchester Park
Surrey
KT4 7QD

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

02896623

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

Name: Nallanathan Muhunthakumar
Address: 141 Thetford Road
New Maiden
Surrey
KT3 5DZ
Phone: Not Supplied

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

Licence Number: Not Supplied
Licensing Authority: Not Supplied

Date:

9/03/07

Signed:


Director of Legal & Administrative Services

Annex 1 – Mandatory conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.

Conditions which reproduce the effect of any restriction imposed on the use of the premises by specified enactments

Conditions applicable to the Sale of Alcohol

4. Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- (a) On weekdays, other than Christmas Day, 08:00 to 23:00;
- (b) On Sundays, other than Christmas Day, 10:00 to 22:30;
- (c) On Christmas Day, 12:00 to 15:00 and 19:00 to 22:30;
- (d) On Good Friday, 08:00 to 22:30.

The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;
 - (b) ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
 - (c) sale of alcohol to a trader or club for the purposes of the trade or club;
 - (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.
5. Alcohol shall not be sold in an open container or be consumed in the licensed premises.

Annex 2 – Conditions consistent with the operating Schedule

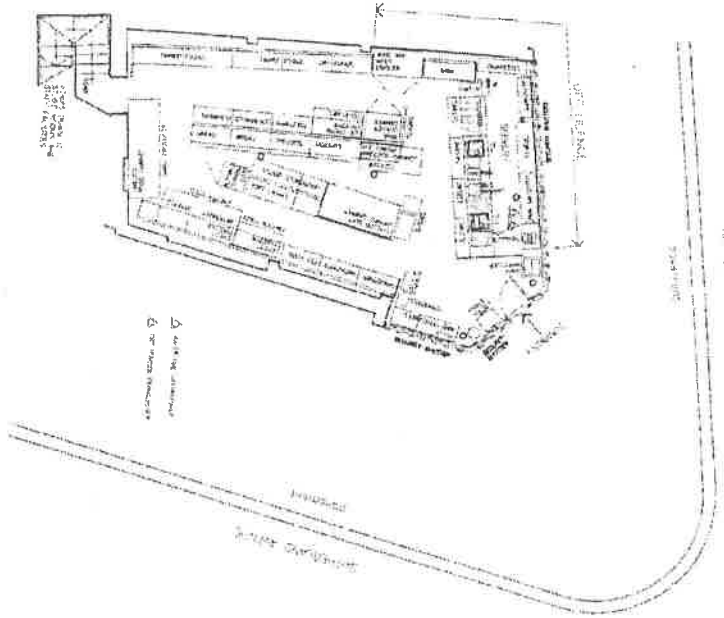
None

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

None

Annex 4 – Plans

GROUND FLOOR PLAN



WEST NINE SUPERMARKET
350 HARROW ROAD
LONDON
W9

PLAN OF PREMISES

Scale 1:100
Drawing No. WNT
Date July 2005
JOHN BEST
Designer
92 WINDERMERE ROAD
FALING W5 4TH
Tel: (020) 8567 1539

FOR SALE AND SUPPLY OF ALLIANCE



City of Westminster

64 Victoria Street, London, SW1E 6QP

Schedule 12
Part B

Premises licence
summary

WARD: Westbourne
UPRN: 999000131356

Regulation 33, 34

Premises licence number:

07/00852/WCCMAP

Part 1 – Premises details

Postal address of premises:

West 9 Food & Stores
Basement and Ground Floor
350 Harrow Road
London
W9 2HP

Telephone Number: Not Supplied

Where the licence is time limited, the dates:

N/A

Licensable activities authorised by the licence:

Regulated Entertainment:

- Playing of Recorded Music
- Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit

Sale by Retail of Alcohol

The times the licence authorises the carrying out of licensable activities:

Regulated Entertainment:

- Playing of Recorded Music: Unrestricted
- Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit: Unrestricted

Sale by Retail of Alcohol: Monday to Saturday - 08:00 to 23:00

Sale by Retail of Alcohol: Sunday - 10:00 to 22:30

For times authorised for Christmas and Good Friday see conditions at Annex 1

The opening hours of the premises:

Monday to Saturday - 08:00 to 23:00

Sunday - 10:00 to 22:30

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

Off

Name and (registered) address of holder of premises licence:

ASM Ltd
66 Worcester Park Road
Worcester Park
Surrey
KT4 7QD

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

02896623

Name of designated premises supervisor where the premises licence authorises for the supply of alcohol:

Name: Nallanathan Muhunthakumar

State whether access to the premises by children is restricted or prohibited:

N/A

Date:

9/03/07

Signed:


Director of Legal & Administrative Services

1/15
Lobby



2/1/15. Plaza



1/1/23

Carly



4

Appendix 'B'



Companies House

Current Appointments Report for:

ASM LIMITED

02896623

Created: 24/09/2014 13:23:13

Companies House is a registry of corporate information. We carry out basic checks to make sure that documents have been fully completed and signed, but we do not have the statutory power or capability to verify the accuracy of the information that corporate entities send to us. We accept all information that such entities deliver to us in good faith and place it on the public record. The fact that the information has been placed on the public record should not be taken to indicate that Companies House has verified or validated it in any way.

Company Register Information

Company Number:	02896623	Date of Incorporation: 09/02/1994
Company Name:	ASM LIMITED	
Registered Office:	570 KINGSTON ROAD RAYNES PARK LONDON SW20 8DR	
Company Type:	Private Limited Company	
Country of Origin:	United Kingdom	
Status:	Active	
Nature Of Business (SIC):	47110 - Retail sale in non-specialised stores with food, beverages or tobacco predominating 47190 - Other retail sale in non-specialised stores	
Number of Charges:	(0 outstanding / 0 part satisfied / 0 satisfied)	

Previous Names

No previous name information has been recorded over the last 20 years.

Key Filing Dates

Accounting Reference Date:	31/07
Last Accounts Made Up To:	31/07/2013 (TOTAL EXEMPTION SMALL)
Next Accounts Due:	30/04/2015
Last Return Made Up To:	09/02/2014
Next Return Due:	09/03/2015
Last members list:	09/02/2014
Last Bulk Shareholders List:	Not available

Current Appointments

Number of current appointments: 2

SECRETARY: PRATT, ALLAN GEORGE MR
Appointed: 07/04/1999 **Date of Birth:** 02/12/1937
Nationality: ENGLISH
No. of Appointments: 620
Address: 66 WORCESTER PARK ROAD
WORCESTER PARK
SURREY
KT4 7QD
Country/State of Residence: ENGLAND

DIRECTOR: MUHUNTHAKUMAR,
NALLANATHAN MR
Appointed: 10/02/1994 **Date of Birth:** 27/04/1963
Nationality: BRITISH
No. of Appointments: 9
Address: 141 THETFORD ROAD
NEW MALDEN
SURREY
KT3 5DZ
Country/State of Residence: UNITED KINGDOM

This Report excludes resignations

Recent Filing History

Documents filed since 25/02/2013

DATE	FORM	DESCRIPTION
24/03/2014	AA	31/07/13 TOTAL EXEMPTION SMALL
12/02/2014	AR01	09/02/14 FULL LIST
12/02/2014	LATEST SOC	12/02/14 STATEMENT OF CAPITAL;GBP 10000
22/04/2013	AA	31/07/12 TOTAL EXEMPTION SMALL
25/02/2013	AR01	09/02/13 FULL LIST

This Report excludes 88(2) Share Allotment documents

(5)

Appendix 'C'

WITNESS STATEMENT OF LAWRENCE STAPLETON

Visit to West Nine Food & Wine, 350 Harrow Road, London, W9 2HP

I, Lawrence Stapleton, Officer of Her Majesty's Revenue & Customs, (HMRC) based at Custom House, 20 Lower Thames Street, London EC3R 6EE will say as follows:

1. On the 19th September 2014, accompanied by other Officers of HMRC, I attended West Nine Food & Wine, 350 Harrow Road, London, W9 2HP under the authority of section 112 of the Customs & Excise Management Act. I entered the premises at 09:55 hours.
2. During the course of this visit, examination of bottles of spirits on display by myself and other Officers in the shop identified a quantity of bottles that had issues in respect of the UK tax duty stamps on the rear labels. These issues ranged from suspected counterfeit rear labels to marking on the UK tax duty stamps that indicated that the UK duty tax stamps had been tampered with. These finding led me to consider that the UK excise duty had not been paid on these products.
3. The Manager of the shop, Mr Thamilvan Sivarosa, who was present throughout the visit was asked to provide purchase records in respect of the alcohol in the shop to demonstrate that the UK duty had been paid. Mr Thamilvan Sivarosa advised that the shop was trading as ASM Limited with the Director of the company being a Mr Nallanathan Anandankumariah who is also a partner in the W9 food & Wine store based at 175 Ladbroke Grove, London, W10 6HJ.
4. Thamilvan Sivarosa consulted with the company accountant at Waran & Company based at 570 Kingston Road, Raynes Park, London, SW20 8DR and a number of invoices were faxed to my office over the course of the morning for verification. The invoices received were only able to substantiate purchases in respect of Red Stripe canned lager and 5 boxes of wine.

5. As no invoices could be produced to substantiate the legitimate origin/supply of the alcohol stock held I was led to believe, on the balance of probabilities that UK duty had not been paid on the alcohol in question.
6. I made the decision to seize the alcohol in the shop, including the storerooms, pursuant to section 139 of the Customs & Excise management Act 1979 as it was liable to forfeiture on the basis that, on the balance of probabilities, the UK excise duty had not been paid.
7. In total the following quantities were seized;
 - 517 Litres of Beer
 - 1192.5 Litres of Wine
 - 7.4 Litres of Spirits
8. The duty figures of the seized stock amounted to £4968.18, including VAT. There was stock left on the premises but this was purely left there from a logistical perspective as there was a considerable quantity of loose bottles on the premises. In respect of the quantities seized I am unable to specify the quantity of alcohol on display in the shop that was seized.
9. Mr Sivarasa was issued with a seizure information notice, a warning letter and a booklet explaining his right to appeal the seizure after which Officers of HMRC left the premises, at 16:45 hours. To date I am not aware of any appeal against the seizure.
10. I have been asked by the Licensing Officer, what, if any offences are committed in general terms relevant to the evasion of excise duty. The relevant overarching criminal offence is one of being knowingly concerned in the fraudulent evasion of excise duty contrary to section 170 of the Customs & Excise Management Act, however as mentioned above, the decision made in this instance was to seize the stock only, thereby limiting this to civil proceedings only.

Statement of Truth

I believe that the facts contained in this witness statement are true.

Signed:



.....

LAWRENCE STAPLETON
Dated 18th November 2014

WITNESS STATEMENT OF LAWRENCE STAPLETON

Visit to West Nine Food & Wine, 350 Harrow Road, London, W9 2HP

I, Lawrence Stapleton, Officer of Her Majesty's Revenue & Customs, (HMRC) based at Custom House, 20 Lower Thames Street, London EC3R 6EE will say as follows:

Further to my witness statement of 20th October 2014, I have been made aware by Nigel Carter, License Inspector Premises Management Westminster City Council, that a number of invoices have been produced to him, purporting to show that the alcohol seized by me on 19th September 2014 had actually had the UK Duty paid on it. As I stated in paragraph 4 of my original statement, some invoices were faxed to my office whilst I was on the premises, and examined by a colleague, but these could only substantiate the legitimate purchase of Red Stripe lager and some of the wine that was present, so this alcohol was not seized. The legitimate purchase of the rest of the alcohol in question could not be substantiated by the invoices provided and so that alcohol that was seized. The booklet that I mentioned in paragraph 9 of my original statement as having been issued, and which explains the appeal procedure, makes it quite clear who should be contacted within HMRC and the relevant timescales involved with regard to any appeal. I can confirm that since my initial visit no subsequent invoices have been provided to me, nor has any appeal of any kind been received by HMRC regarding this matter.

Statement of Truth

I believe that the facts contained in this witness statement are true.

Signed:



LAWRENCE STAPLETON
Dated 21st November 2014

(6)

Appendix 'D'



City of Westminster

Nigel Carter
Licensing Inspector
Tel: 020 7641 3385
Fax: 020 7641 3436
My ref: 14/37463/ELREAC
NCarter2@westminster.gov.uk

Mr. Nallanathan Muhunthakumar
141 Thetford Road
New Malden
Surrey
KT3 5DZ

5 November 2014

Dear Mr. Muhunthakumar

Re: 'West 9 Food & Stores, 350 Harrow Road, London W9 2HP'.

I write to you in relation to an allegation made by an officer from Her Majesty's Revenue & Customs (HMRC) that, on 19 September 2014, a quantity of alcohol was seized from the above premises where it was suspected that excise duty had not been paid. You are a Director of ASM Ltd, the premises licence holder for this venue.

The officer states that there were a number of issues with bottles of alcohol (wine, beer and spirits) on display in the shop, and in the storerooms. These issues ranged from suspected counterfeit labels to marking on the UK tax duty stamps which indicated that they had been tampered with. In total the following quantities of alcohol were seized:

517 litres of Beer

1,192.5 litres of Wine

7.4 litres of Spirits

The duty figures of the seized stock amounted to £4,968.18, including VAT.

You, as the premises licence holder and Designated Premises Supervisor for these premises, have possibly committed an offence under **Section 144 of the Licensing Act 2003, of 'knowingly keeping or allowing to be kept, on any relevant premises, any goods which have been imported without payment of the duty or which have otherwise been unlawfully imported'.**



City of Westminster

In these circumstances I am minded to call for a review of your premises licence, in accordance with the Guidance given under Section 182 of the Licensing Act 2003.

Before I submit any papers for Review, I would like to give you the opportunity to provide an explanation for the alcohol found on your premises where excise duty had not been paid. Any explanation you provide will be added to the papers, and put before the Licensing Sub Committee for consideration.

If you intend to provide a response, I would be grateful for a response no later than 19 November 2014; otherwise I will presume that you don't wish to provide any explanation.

Yours sincerely


Nigel Carter

Licensing Inspector
Community Protection
020 7641 7052

ASM Limited

350 Harrow Road
London W9 2HP
Tel: 020 7266 0397
Fax: 020 7266 0502

18/11/14 Received by N. Carter for

Nigel Carter
Licensing Inspector
City of Westminster
City Hall, 4th Floor
64, Victoria Street
London SW1E 6QP

14th November, 2014

Dear Sir,

West 9 Food and Stores, 350, Harrow Road, London W9 2HP

Thank you for letter dated 5th November, giving me the opportunity to explain about the quantity of alcohol that were seized by the HMRC from our premises for the alleged reason of not having paid the excise duty.

As mentioned in your letter, considerably large quantity of alcohol were seized from our shop by the HMRC on 18th September 2014, namely 517 litres of Beer, 1,192.5 litres of Wine, and 7.4 litres of Spirits as per the estimate of HMRC. Understandably, these were of considerable monetary value to us and been stored in our shop for resale, after being bought from reputable wholesalers in the UK. Please find enclosed the invoices pertaining to these transactions which show clearly the payments made in exchange of the amount of alcohol bought. I fail to understand how the HMRC can consider the labels on these stocks to be counterfeit when all our stocks are being bought in the UK open market by paying the relevant duties and taxes.

If HMRC seizure action is considered to be lawful and that there was duty evasion, it put a big question mark on the products we purchased from our wholesalers, namely Nisa, Dhamecha and Elbrook. My company, as their customer, rely on the big wholesalers' quality assurance for the products we buy from them. Following the HMRC seizure action, I have written to all my suppliers to challenge them on the

perceived authenticity of their labels. Only Nisa had taken further steps to get in touch with the HMRC about this issue so far.

Please note that none of the allegations quoted in your letter can be true. I cannot stress enough that if there are any counterfeiting mal practices, they exist elsewhere in the system. My shop is a small entity, trying to meet its many objectives and obligations towards its shareholders, employees and the wider community it serves, amidst tough competition from large retail stores. And, when such huge batches of alcohol are seized, seemingly for the contested reason of evasion of duty, by the government authorities, it places a huge impact on the moral and financial standing of a small business like ours by having a direct effect on the small income we generate. This lower income affects the livelihood of many who rely on the business to make a living. The seizure action by HMRC has not only put undue financial burden on the business but also levied on us the administrative and reputational burden to bear.

You may wish to note that the HMRC visit on 18th September was preceded by the City of Westminster Council's Trading Standard's officers' visit, which happened a few hours earlier on the same day (copy of code B notice attached). The Trading Standards officers' inspection of the alcohol stock did not reveal any wrong doing on our part, and they left having been satisfied by what they saw. Later HMRC officers arrived at the shop and carried out the same process but at the same time making a flurry of demands to my staff, and amongst these was a demand to see the invoices instantly of all the alcohol stock kept in the shop. My staff mobilised to comply but had to wade through the many invoices on the file to retrieve the relevant invoices. When they got hold of the invoices and tried to hand them over, the HMRC officers refused to even scrutinise or accept the invoices without offering any justification for such action. This seemingly highhanded action by the HMRC was of grave concern to my staff and was hard to comprehend by me.

As you will appreciate, any guilt should be proven under the law of this land, but to judge people guilty without even looking into the case being forwarded by them is what causes people to lose faith in the system eventually. Because the HMRC were not even prepared to accept the evidence in the form of invoices made their action of seizure totally unlawful.

As a director of ASM Ltd which owns this small retail shop, I have constantly provided strong instructions to my managing staff to purchase alcohol from reputed wholesalers only. My staff strictly adhere to this rule, so with them I rely heavily on such wholesalers for the quality assurance of the alcohol stock and other products we purchase from them.

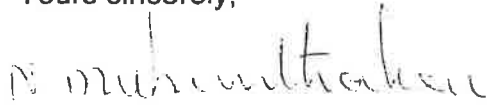
I take my licensing duties seriously as a premises licence holder and a designated premises supervisor by continuing to ensure that the staff who work in the shop get access to all the licensing guidance and undertake the necessary training as required by the alcohol licensing law and that they are made aware of their duties when it comes to the purchase and sale of alcohol.

I am very grateful for your offer to include my reply into the paperwork you would be submitting to the Licensing Sub Committee, and hope that the Licensing

Sub Committee would take all the above factors into consideration when they undertake the review.

Thank you.

Yours sincerely,



N. Muhunthakumar

Encl. Invoices

Code B (copy)

7

Appendix 'E'

Trading Standards Service
 5th Floor South, City Hall
 64 Victoria Street
 London SW1E 6QP
 email: tradingstandards@westminster.gov.uk
 Telephone: 020 7641 1111



City of Westminster

Police and Criminal Evidence Act 1984: Code B Notice

Business Name: <u>ASM Ltd t/a West 9 Food & Wine</u>			
Address of premises: <u>350 HARROW ROAD, LONDON</u>			
Date: <u>18/7/14</u>	Time of arrival: <u>09:40</u>	Notice issued to: <u>THAMILVANAN SIVAKASA</u>	
Position of recipient: <u>MANAGER</u>		Time of issue: <u>10:10</u>	
Recipient's signature: <u>[Signature]</u>			
Other people present: <u>Robert Langridge, James Williams</u>			
Authorised Officer: <u>Lee Older</u>		Officer's Tel: <u>02076412549</u>	

Your rights and the powers of an Authorised Officer are summarised overleaf

This inspection/search is being made under the following (tick as necessary)

1. **Exercise of statutory power** (please specify legislation)
CONSUMER PROTECTION ACT 1987

2. **Entry Warrant** (copy attached) made under:

3. **With consent** (complete declaration below)

Where there are no reasonable grounds to believe an offence has been committed, your consent may be requested by an officer. You do not have to agree to this, but if you do, anything obtained may be used in evidence. If you do agree, please complete the declaration below.

I agree to allow the Authorised Officer to inspect (please specify):

Name:	Signature:	Position:	Time:
Departure time:	Force Y/N	Damage Y/N	Officer's Signature:
Details of any damage caused:			
Uniform reference:		Search Register No.	

Licence & Appeal History

Application	Details of Application	Date Determined	Decision
Conversion and Variation	Application to convert existing Justices off Licence and to vary the premises licence to extend the hours for sale of alcohol	11.10.05	Conversion granted, variation refused by Licensing Sub-Committee

There is no appeal history for this premises.

CONDITIONS CONSISTENT WITH THE OPERATING SCHEDULE AND CONDITIONS PROPOSED BY A PARTY TO THE HEARING

When determining an application for a new premises licence under the provisions of the Licensing Act 2003, the licensing authority must, unless it decides to reject the application, grant the licence subject to the conditions which are indicated as mandatory in this schedule.

At a hearing the licensing authority may, in addition, and having regard to any representations received, grant the licence subject to such conditions which are consistent with the operating schedule submitted by the applicant as part of their application, or alter or omit these conditions, or add any new condition to such extent as the licensing authority considers appropriate for the promotion of the licensing objectives.

This schedule lists those conditions (if any) which are consistent with the operating schedule, or proposed as appropriate for the promotion of the licensing objectives by a responsible authority or an interested party as indicated. These conditions have not been submitted by the licensing service but reflect the positions of the applicant, responsible authority or interested party and have not necessarily been agreed.

Current conditions on the existing licence:

Annex 1 – Mandatory conditions

1. No supply of alcohol may be made at a time when there is no designated premises supervisor in respect of this licence.
2. No supply of alcohol may be made at a time when the designated premises supervisor does not hold a personal licence or the personal licence is suspended.
3. Every supply of alcohol under this licence must be made or authorised by a person who holds a personal licence.

Conditions which reproduce the effect of any restriction imposed on the use of the premises by specified enactments

Conditions applicable to the Sale of Alcohol

4. Alcohol shall not be sold or supplied except during permitted hours.

In this condition, permitted hours means:

- (a) On weekdays, other than Christmas Day, 08:00 to 23:00;
- (b) On Sundays, other than Christmas Day, 10:00 to 22:30;
- (c) On Christmas Day, 12:00 to 15:00 and 19:00 to 22:30;
- (d) On Good Friday, 08:00 to 22:30.

The above restrictions do not prohibit:

- (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel;

- (b) ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
- (c) sale of alcohol to a trader or club for the purposes of the trade or club;
- (d) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces.

5. Alcohol shall not be sold in an open container or be consumed in the licensed premises.

Annex 2 – Conditions consistent with the operating Schedule

None

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

None

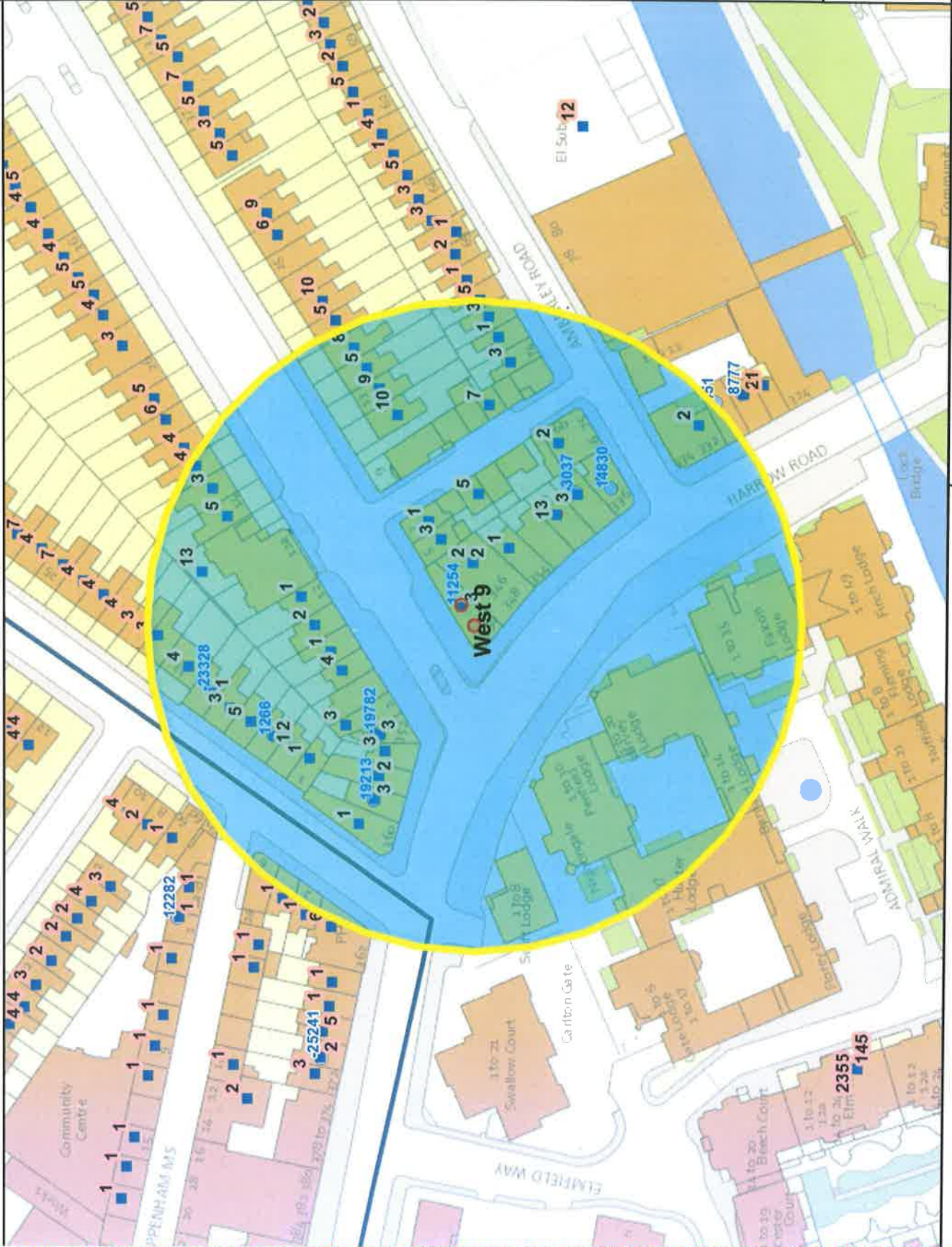
Mandatory conditions to be attached to the premises licence

- A.
- (1) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - (2) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - (3) 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 either—
 - (a) a holographic mark, or
 - (b) an ultraviolet feature.
- B(i) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- B(ii) For the purposes of the condition set out in paragraph 5(i) above -
- (a) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - (b) "permitted price" is the price found by applying the formula -

$$P = D + (D \times V)$$
 Where -
 - (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence -
 - (i) the holder of the premises licence,
 - (ii) the designated premises supervisor (if any) in respect of such a licence, or

- (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;
 - (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and
 - (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
- B(iii). Where the permitted price given by Paragraph 5(ii)(b) above would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
- B(iv). (1) Sub-paragraph 5(iv)(2) below applies where the permitted price given by Paragraph 5(ii)(b) above on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax.
- (2) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

West 9 Food & Stores



Residential / Proposed Residential	145
Under Construction	0
Other Uses	Not known
Proportion Residential of all Uses	Not known

APPENDIX D

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Data Source: Uniform Database
Date: 16/04/2015

Description

OFF LICENCE

WEST 9
FOOD & WINE

350

CASH MACHINE

SEC01H

OFF LICENCE

Available here



Makes travelling around London easy

COLOUR COPY

NOW

IN STORE

cash machine

All bank cards accepted

Welcome



PUSH

PUSH

PUSH

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FREE international calls

Sharing

Tube
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Bus
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