

**EXTRAORDINARY LICENSING COMMITTEE held at 11.30 am
AT LONDON ROAD SAFFRON WALDEN on 11 AUGUST 2009**

Present: Councillor E W Hicks – Chairman.
Councillors E L Bellingham-Smith, H J Mason and A D Walters.

Officers
in attendance: M Hardy (Licensing Officer), M Perry (Assistant Chief Executive) and R Procter (Democratic Services Officer).

Also present: Mike Cooke, Leigh Davis and Laura Hutchinson (One Stop Stores); Martin Reed (Essex Police); Peter Stratton (Essex County Council Trading Standards).

LC13 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

The Chairman welcomed all parties to the meeting. He apologised for his late arrival, due to an error in noting the start time. Officers advised that an adjournment had been sought by Essex Police and Trading Standard to consider material submitted by One Stop Stores which had not been served on them. The Chairman noted that Mr Reed and Mr Stratton had now had an opportunity to peruse these papers.

There were no apologies for absence, and no declarations of interest.

LC14 DETERMINATION OF REVIEW OF PREMISES LICENCE

The Committee considered the report of the Licensing Officer setting out an application for a review of the premises licence in respect of One Stop Stores, Elsenham. The review was sought by Essex Police, as a responsible authority, on the grounds relating to the licensing objectives that dealt with prevention of crime and disorder, and the protection of children from harm, under the Licensing Act 2003.

The Licensing Officer presented his report as follows:

- 1 'On 18 November 2005, a premises licence was granted to One Stop Stores following an application to convert their existing Justices Off-Licence in accordance with the Licensing Act 2003. This allows for the sale of alcohol by retail for consumption off the premises only provided that the sale is made or authorised by a person who holds a personal licence.
- 2 The conditions imposed on the licence are listed below:
 - (a) No supply of alcohol is to be made at a time when there is no designated premises supervisor in respect of the premises licence.
 - (b) No supply of alcohol at a time when the designated premise supervisor does not hold a personal licence or his personal licence is suspended.
 - (c) No alcohol shall be sold in an open container.
- 3 On 21 January 2009, a test purchase for the sale of alcohol by retail was supervised by an Essex County Council Trading Standards Officer in

conjunction with Essex Police at these premises resulting in a positive sale being made. Police Constable Jeggo then entered the store and spoke with Charlotte Moon, giving reasons for the visit resulting in the Officer issuing an £80 Fixed Penalty Ticket in respect of the sale of alcohol to a person under 18 years of age.

- 4 It was on that basis that the Chief Constable sought a review of the Premises Licence.
- 5 On 22 April 2009 an application for a review of the premises licence was heard before the Licensing Committee which resulted in the conditions of the licence being modified which were deemed necessary to promote the licensing objectives that relate to the prevention of crime and disorder and the protection of children from harm.
- 6 The conditions imposed following that review are listed below
 - (a) A digital CCTV system incorporating recording will operate throughout the whole of each period the premises are open.
 - (b) The system will include coverage of all public entrances and exits from the premises, the outside frontage of the premises and any other area agreed with the police.
 - (c) The system will provide for recording of all cameras simultaneously and recordings will be made for the whole of each period of trading
 - (d) The recordings are to be kept for a minimum of 31 days or longer if requested by Police or council officers. All recordings must be made available to Police or Council officers upon request.
 - (e) Two persons will be present on the premise from 6.00 pm until close.
 - (f) All refusals of sales of alcohol or other age restricted products are to be recorded in a register.
 - (g) Reasonable and adequate staff training to be carried out and properly documented in relation to:
 - (i) Use of CCTV system
 - (ii) Dealing with incidents and prevention of crime and disorder
 - (iii) Sale of alcohol (to underage, persons over 18 purchasing for underage, drunks etc)
 - (h) No staff will make any sales of alcohol to the public until they have received reasonable and adequate training.
 - (i) Training records, incident logs, together with the refusal register to be kept for at least 12 months and made available to Police and council officers on request (incident book/refusal register may be one and the same).
 - (j) The Challenge 25 scheme has been adopted to ensure that alcohol will not be sold on the premises to those under the age of 18 years. Only approved proof of age identification will be accepted, such as a passport, photo driving licence or a pass accredited card.
- 7 On 20 June 2009 a further test purchase for the sale of alcohol by retail was supervised by an Essex County Council Trading Standards Officer in conjunction with Essex Police at these premises resulting in a positive sale being made.

- 8 Police Community Support Officer, Sharon Cooper, then entered the shop and spoke with Laura Hutchinson the designated premises supervisor. The facts of the positive sale were relayed to her resulting in a £80 Fixed Penalty Ticket being issued in respect of selling alcohol by retail to a person under the age of 18 years. The sale was conducted by a member of staff at the premises who was not the designated premises supervisor.
- 9 It is on this basis that the Chief Constable is now seeking a second review of the current premises licence.'

The Licensing Officer advised the Committee that statutory requirements for advertising and serving copies of the application had been fulfilled. He drew the Committee's attention to two representations which had been received in respect of the application. The first, from the Children's Safeguarding Service, had been received the previous afternoon, and sought the amendment of the Challenge 25 condition to Challenge 30. The second representation, from a resident of Elsenham, suggested that the sale of alcohol to children in Elsenham would exacerbate the already known problem of rowdy teenagers in the village, and the ease with which children could obtain alcohol from the licensed premises.

The Licensing Officer said that the Chief Constable sought a suspension of the Premises Licence. He explained the options available to Members in determining the application, as set out in his report, and advised that when determining an application, due regard should be given to the Council's policy regarding licensing and to the guidance given by the Secretary of State.

He concluded by recommending that the application be determined, and that in the event of an appeal against the decision of the licensing authority, then a Member be nominated to represent the authority at court.

The Chairman thanked the Licensing Officer for his report and invited questions.

Mr Reed said he wished to ask a number of questions, as the folder provided by the Store had only been made available to him this morning, but first set out representations on behalf of Essex Police. He said the decision to apply for a review of the premises licence had not been taken lightly, but that the Police took a serious view as this was the second occasion on which there had been a failed test purchase. Advice on sale of alcohol had been given to staff at the premises in December 2008, and this advice had not been heeded. Whilst the documentation seemed to indicate that good training procedures were in place, in his opinion One Stop Stores were not adequately supervising provision of such training. There had been two occasions of underage sale of alcohol, one of which was to a 14 year old. It was the intention of the Police therefore to seek that the Premises Licence be revoked or subject to a period of suspension; and that its conditions be varied to require recording of sales by CCTV, the presence of a qualified operator of the CCTV system at the premises; and the presence of at least two staff at all times, one of which should have a BII level 1 qualification or equivalent in the sale of alcohol.

The Chairman thanked Mr Reed, and invited Mr Stratton to speak on behalf of Essex County Council Trading Standards. Mr Stratton said he was in attendance only to answer questions. There being none at this stage, the Chairman invited Mr Cooke to speak on behalf of One Stop Stores.

Mr Cooke expressed unreserved apologies for the second failed test purchase. He said he wished to highlight actions now being taken by One Stop Stores following that incident. A new management team structure had been implemented in the store, in that Ms Hutchinson had been redeployed as a new store manager, and the store was also now under the control of a very experienced area manager, Ms Davis. As part of a continuing review of training, third party test purchasing had been arranged. A guide had been produced to help store managers implement training. An investigation was being carried out which might result in disciplinary action in relation to the member of staff involved in the failed test purchase. One Stop Stores had undertaken a benchmarking exercise across its stores to focus resources more effectively on training. He was pleased to report that of the two internal test purchases carried out, both were passes, and that a further test yesterday had also resulted in a pass.

Regarding the Challenge 25 campaign, he said One Stop Stores would be implementing this policy in all its stores from 7 September 2009. This policy had already been put in place in the Elsenham store following the first review.

Regarding till prompts, these had been adapted to help staff, in that an automatic stop would occur until the cashier entered the date of birth from the ID presented by the purchaser, removing the need for staff to have to calculate the age of the purchaser.

The Chairman thanked Mr Cooke. Members then asked a number of questions.

In reply to the question what training or supervision did the store have following the redeployment of the new store manager, Mr Cooke said the new store manager had attended a week's induction training course; that training was monitored by the company's training department; and that it was the responsibility of the area manager to oversee performance.

Councillor Mason referred to the implementation of the 'Think 25' campaign by One Stop at all its stores. She queried whether this had been introduced at the Elsenham store after the first incident in January. In reply, Mr Cooke said the policy had been in place since June.

In reply to a question by Mr Reed, Mr Cooke replied that the age of the test purchasers the company had used was 18 or 19.

Mr Reed asked about the operation of the electronic refusal register and till prompt. He was concerned at the absence of a record of any ID shown to the cashier in respect of the test purchase on 4 May 2009. Ms Davis said the record would not show on the log if the purchase had been refused altogether, or if the member of staff had since left employment with the store.

Mr Reed expressed his serious concern that records in these cases were not retained, as the omission rendered the store's record useless to this Committee. Mr Cooke said he would refer this point to the company in order to ensure the system was rectified.

The Chairman said Mr Reed had made a good point. Despite efforts by the company to put good systems into place, if the information was not retained, records would not be accurate and would be of no use.

Mr Reed noted that the documents before the Committee indicated that display materials at the store suggested a policy of Challenge 21, rather than Challenge 25 was in place, since the last review. In reply, Mr Cooke said the policy had been adapted after that review. Mr Stratton referred to the statement dated 22 June 2009 of Michelle Walsh, of the Trading Standards office, which indicated that a 'Think 21' poster was displayed at the till.

Further questions were asked regarding the ability of any supervisor to observe staff adequately, and the correct operation of the till in relation to age restricted products. Mr Cooke said the procedure, as well as intensive training, included a prompt for the cashier to 'look, think, ask'. If the correct ID could not be provided, the store would prefer to lose the sale.

Councillor Mason expressed her concern that if a 'Think 21' poster was displayed at the till, that the cashier could not be condemned for not 'thinking 25'. If a 14 year old was then served alcohol, communication to all staff was inadequate. Computers were only as good as the people using them. She was concerned about the prospects for implementing the 'Think 25' policy to 500 other stores when a test store could not get it right.

Mr Cooke said internal test purchases would assist with tailoring training where needed. The Elsenham store would receive refresh training.

In reply to a request by the Chairman for clarification that the till performed as had been described at the time of the failed test purchase, Mr Cooke confirmed that it had done so.

The Assistant Chief Executive then summarised the relevant provisions of the Council's licensing policy and the Government Guidance Reviews 2007, to which Members should have regard. He explained the wide range of powers open to the authority, and said whilst there was nothing to prevent the authority issuing an informal warning, that where a responsible authority had already issued warnings for improvements to be made, licensing authorities should not merely repeat that approach. He referred to the powers of the licensing authority to take steps in the interests of the wider community and not just the holder of the licence in circumstances where crime was an issue, that is, the purchase of alcohol by minors.

The Assistant Chief Executive concluded by setting out guidance established by the case of R (Bassetlaw District Council) v Worksop Magistrates' Court. The case indicated that consideration must be given to what was necessary to promote the objective of crime prevention, and to the needs of the wider community, and not be limited to remedial action and to the needs of the

licence holders. The decision in that case to suspend the licence for a period of one month was not criticised on appeal.

There being no questions, the Committee withdrew to determine the application.

Upon returning from deliberations, the Chairman made the following statement:

'This is a review of a premises licence on the application of Essex Police and Essex Trading Standards following a test purchase made on 20 June 2009 when alcohol was sold to a 14 year old boy. This was not the first occasion that the store failed a test purchase. There was a similar event on 21 January 2009. Following that incident there was a review of the licence when conditions attached to the licence were varied. Notwithstanding the new conditions which were intended to underpin the licensing objectives of the prevention of crime and the protection of children from harm, the further offence was committed.

'Members take a serious view of this. We note the government guidance that the government views the sale of alcohol to minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people with concern. The guidance expects licensing authorities to use review procedures to deter crime.

'Paragraph 11.2 of the guidance suggests that temporary suspension could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of deterring the licence holder from allowing the problem to happen again. It suggests a suspension for a weekend. However that guidance is not given in the context of the licensing objective of the prevention of crime. As the Bassetlaw case clearly shows, where crime prevention is the consideration, the licensing authority's duty is to take steps with a view to the promotion of the licensing objectives on the interests of the wider community and not those of the individual holder of the premises licence. Deterrence is a valid consideration in that context.

'Paragraph 11.26 of the guidance says that licensing authorities should use review procedures effectively to deter crime. It expects that a revocation should be seriously considered even in the first instance. In this case there have been two offences within 6 months. The licensing conditions added to the license at the last review were not fully implemented – in particular, although the company was to introduce 'Think 25' policy at the date of the second offence the store was still displaying a Challenge 21 poster. There needs to be a deterrent both in terms of complying with the law and with licensing conditions. There is little assistance on what an appropriate deterrent would be. The weekend suggested by the government guidance is not appropriate for two reasons. Firstly a short suspension may be appropriate in circumstances where the effect of the suspension is to close the business. That does not apply here as the business sells a range of other products. More importantly that element of the guidance is not in the sections dealing with the prevention of crime. The committee note

that in Bassetlaw the decision of that council to suspend for one month was not criticised in the High Court, and in the circumstances the Committee have decided that one month is appropriate. The Committee also considers that certain additional conditions are necessary for the licence in accordance with the Police request. The decision of the Committee is therefore that:-

- 1 the licence shall be suspended for a period of one calendar month.
- 2 There be a qualified operator of the CCTV system at the premises at all times.
- 3 The condition requiring two persons to be on the premises from 6 pm until close shall be deleted and replaced with a condition that there are a minimum of two staff at all times on the shop floor, one of whom holds a personal licence or has undertaken and passed BII level 1 award in responsible alcohol retailing or equivalent.'

The Assistant Chief Executive advised that the suspension would take effect 21 days after the parties had been deemed to have received notice of the decision, and reminded parties of their right to appeal against the decision within 21 days of notification.

The meeting ended at 1.40 pm.