

**LICENSING COMMITTEE held at COUNCIL OFFICES
LONDON ROAD SAFFRON WALDEN on 20 JANUARY 2010**

Present: Councillor E W Hicks - Chairman
Councillors, K R Artus, J E Hudson, R M Lemon,
J I Loughlin, D J Morson, D G Perry, and A D
Walters.

Officers in attendance: M Perry (Assistant Chief Executive)
and C Roberts (Democratic Services Officer).

LC44

PUBLIC QUESTION AND ANSWER SESSION

The Chairman welcomed everyone, and invited members of the taxi trade present to speak, in accordance with their notice of intention to do so.

Statements were then made by Mr B Drinkwater, Mr A Mahoney and Mr R Sinnott who all expressed their appreciation for the resolution of the controversy regarding taxi licence fees.

Mr Mahoney thanked all present for their contribution to this work and expressed his confidence in the accounting procedures now being used by the Council. He also thanked the Assistant Chief Executive for helpful advice provided regarding display of licensing plates and commented that the efforts towards co-operation between Council and Trade in Uttlesford compared very favourably with those elsewhere.

The Chairman of the Committee thanked the three members of the taxi trade for the hard work patience and perseverance they had shown in this matter.

The Assistant Chief Executive referred to a table of suggested taxi fares circulated to Members of the Committee at the request of ULODA, and Mr Drinkwater explained that this was an early intimation of a request to raise fares which would be submitted, with reasons, for consideration at the meeting to be held on 10 March. The Assistant Chief Executive stressed the need for prompt action on this.

LC45

APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

Apologies for absence were received from Councillors E L Bellingham-Smith and J A Redfern. There were no declarations of interest.

LC46

MINUTES

The Minutes of the scheduled meeting of the Committee held on 11 November 2009 and the extraordinary meetings held on 16 December 2009 and 21 December 2009 were received, confirmed and signed by the Chairman as a correct record subject, in the case of the Minutes of the meeting held on 21 December, to an amendment to Minute LC43 to record that Councillor Perry did not agree with a proposal to withhold moneys on the basis previously set out in a Part 2 report to the Committee. The amendment arose from the following discussion.

Minute LC43 – Licence Fees paragraphs 4 and 6:

Councillor Perry requested that the Minutes of the meeting on 21 December 2009 include a more detailed record of his suggestions on fee reduction.

The Assistant Chief Executive reminded the meeting that as the Committee's discussion at that time included information derived from a Part 2 report publication of the discussion must therefore be circumspect. He suggested that the Minutes should record that Councillor Perry did not agree with a proposal to withhold moneys on the basis previously set out in a Part 2 report to the Committee and this was agreed.

Councillor J Loughlin requested a Part 2 session to remind the meeting of the advice and the Chairman agreed that this could take place at the end of the meeting.

LC47

MATTERS ARISING

(i) Minute LC31 – money claimed by taxi drivers

Councillor J Loughlin said she was pleased with the satisfactory resolution of this matter and wished to record her thanks to all concerned.

(ii) Minute LC33 – Quality Taxi Partnership

The Assistant Chief Executive informed the meeting that funding in the sum of £10,000 was promised from the Essex County Council for CCTV. The Chairman of the Committee expressed Members' appreciation of this news.

(iii) Minute LC40 – Determination of Private Hire Driver's Licence

The Assistant Chief Executive informed the meeting that the driver in this case had not appealed the decision of the Committee.

In answer to a question from the Chairman he confirmed that the review of procedures was in hand.

**LC48 POSSIBLE REVOCATION OF HACKNEY CARRIAGE
DRIVER'S LICENCE**

Members considered the report of the Assistant Chief Executive on steps he had taken under delegated powers to suspend a driver's licence with immediate effect and to enable Members to reach a decision as to whether or not the driver should continue to drive as a licensed hackney carriage driver.

Members were asked to determine whether or not to revoke the driver's licence.

The Assistant Chief Executive said that the driver had been informed of the reference to the Licensing Committee, and invited to attend but that he had not come.

The Assistant Chief Executive's report reminded the Committee that although the driver had been dismissed his licence was not limited to the employer company and he would be legally able to drive with his licence until the time it expired on 31 January 2010.

The driver had been driving a hackney carriage on behalf of Elsenham Cabs when he was stopped by the police for exceeding the speed limit. He was required to take a breathalyser test which proved positive. He was charged with the offence of driving with excess alcohol and was summoned to appear at the Harlow Magistrates Court. The case had been listed for the 13 January 2010 but adjourned. It was understood that the breath/alcohol ratio was at least twice the legal limit.

The Assistant Chief Executive felt the driver, having a conviction for drinking and driving which occurred when he was working as a hackney carriage driver, posed a threat to public safety. He had therefore exercised his delegated powers to suspend the licence with immediate effect.

The report also covered the matter of spent convictions. Councillor Perry reported that the outcome of the case had been a 2 year ban and fine, and that the driver had declined to go on a driving course.

Members expressed the view that the Assistant Chief Executive had acted quickly, decisively and well.

RESOLVED that the licence be revoked with immediate effect in the interests of public safety.

LC49 2009/10 BUDGETARY MONITORING

Members considered the report of the Assistant Chief Executive and the Chief Finance Officer detailing Licensing Committee income and expenditure for the period April to November 2009 and a forecast for the end of 2009/10 of a net underspend of £20,000. There was an excess of income over expenditure relating to taxi licensing of £26,000.

It was noted that the Committee total in the column headed "Variance April to November" should read -43 not -86.

In answer to a question from Councillor J Loughlin the Assistant Chief Executive confirmed that Members would be kept informed of service improvements, but said that he was considering improving the position regarding fees.

RESOLVED that the report be approved.

LC50 2010/11 FEES AND CHARGES

Members considered the report of the Assistant Chief Executive and the Chief Finance Officer detailing annexed proposed fees and charges for 2010/11.

It was noted that there should be scope for reduction of charges in connection with taxis later in the year.

In answer to a question from Councillor J Loughlin the Assistant Chief Executive affirmed that a few authorities charged more than Uttlesford for a sex establishment licence, but that in Uttlesford there were no such licensed establishments.

RESOLVED that the proposed 2010/2011 fees and charges as set out in Appendix A to the report be approved.

LC51 2010/11 BUDGET

The Committee considered the report of the Assistant Chief Executive and the Chief Finance Officer on the 2010/11 Revenue Budget for the Committee.

It was noted that the taxi licensing income budget had been reduced in line with the reduced fees referred to above.

It was noted that there was an apparent discrepancy between the figures in this report and those in the table referred to in Minute LC 49 above as regards staffing costs in 2009/10 but that this did not affect the outturn. The Assistant Chief Executive undertook to refer this matter to the Finance Department for comment.

RESOLVED that the Committee's 2010/11 revenue budget as set out in Appendix A to the report be approved for recommendation to the Finance and Administration Committee subject to officers exploring ways to reduce the surplus on taxi licensing fees.

LC52 EXERCISE OF DELEGATED POWERS

The Assistant Chief Executive informed the meeting that there had been no exercise of delegated powers further than the one referred to in Minute LC 48 above.

LC53 EXCLUSION OF THE PUBLIC

RESOLVED that, under Section 100(I) of the Local Government Act 1972, the public be excluded for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part 1 of Schedule 12A of the Act.

LC54 LICENCE FEES LEGAL ADVICE

The Assistant Chief Executive advised the Committee about the effect and likely extension of recent legal developments and the prudent course of action in the light of these matters.

The meeting ended at 8.35pm

EXTRAORDINARY LICENSING COMMITTEE held at 10.15 am at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN on 27 JANUARY 2010

Present: Councillor E W Hicks – Chairman.
Councillors J E Hudson, R M Lemon, and JA Redfern

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

Other attenders: S Sparrow (Licensing Officer Essex Police) Martin Reed and Kelly Roberts (Essex Police), Michelle Walsh and Wayne Groves (Essex Trading Standards), Councillor Catherine Dean (Ward Member) Maggie Ryan and Mike Cooke (One Stop Stores Ltd), and Rachael Lynne (DLA Piper representing One Stop Stores Ltd.)

LC 55 APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST

The Chairman welcomed all parties to the meeting and introduced the Members of the Panel.

The Licensing Officer reported receipt of an apology for absence from Sian Caruth (Child Protection Officer Essex County Council). The Children's Safeguarding Service had been unable to provide an officer to attend the review.

There were no declarations of interest.

LC 56 APPLICATION FOR REVIEW OF PREMISES LICENCE – ONE STOP STORE ELSENHAM

The Licensing Officer obtained confirmation by the representatives of both parties that they had received copies of all relevant papers in the case.

He then presented the application for a review of the premises licence for the OneStop Stores at Elsenham, explaining that the review was being sought by Essex Police and was supported by the Children's Safeguarding Service from Essex County Council. The grounds on which the request for review was made were based on the licensing objectives of prevention of crime and disorder and protection of children from harm.

The Licensing Officer outlined the history of the licensed premises from 18 November 2005 when 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 allowed for the sale of alcohol by retail for consumption off the premises only provided that the sale was made or authorised by a person who held a personal licence.

The Licensing Officer explained that the conditions imposed on the licence were as 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 premises supervisor does not hold a personal licence or his personal licence is suspended.
- (c) No alcohol shall be sold in an open container.

He continued that on 2 January 2009, a test purchase for the sale of alcohol by retail had been supervised by an Essex County Council Trading Standards Officer in conjunction with Essex Police at these premises. This had resulted in a positive sale being made. On that occasion Police Constable Jeggo had entered the store and spoken with Charlotte Moon an employee of One Stop. The Officer had given reasons for the visit which resulted in a fixed penalty ticket being issued for the offence of selling alcohol to a person under the age of 18 years.

It was on that basis that the Chief Constable supported by The Children's Safeguarding Service from Essex County Council had sought the first review of the premises licence.

On 22 April 2009 an application for a review of the premises licence had been heard before the Licensing Committee which had resulted in the conditions of the licence being modified as deemed necessary to promote the licensing objectives that relate to the prevention of crime and disorder and the protection of children from harm.

The conditions imposed following that review were as listed below:

- (d) A digital CCTV system incorporating recording will operate throughout the whole of each period the premises are open.
- (e) 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.
- (f) The system will provide for recording of all cameras simultaneously and recordings will be made for the whole of each period of trading.
- (g) 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.
- (h) Two persons will be present on the premises from 6.00 pm until close.
- (i) All refusals of sales of alcohol or other age restricted products are to be recorded in a register.
- (j) 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)
- (k) No staff will make any sales of alcohol to the public until they have received reasonable and adequate training.
- (l) Training records, incident logs, together with the refusal register to be kept for at least 12 months and made available to police.
- (m) 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.

On 20 June 2009 a further test purchase for the sale of alcohol by retail had been 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 Community Safety Officer, Sharon Cooper, had then entered the shop and spoken with Laura Hutchinson the designated premises supervisor. The facts of the positive sale had been relayed to her resulting in a fixed penalty ticket being issued in respect of selling alcohol by retail to a person under the age of 18 years. The sale had been conducted by a member of staff at the premises who was not the designated premises supervisor.

On 11 August 2009 an application for a second review had been heard before the Licensing Committee brought again by the Chief Constable supported by the Children's Safeguarding Service from Essex County Council. This had resulted in the premises licence being suspended for a period of one month and two further conditions being added to the licence as listed below:

- (n) There is a qualified operator of the CCTV system at the premises at all times.
- (o) The condition requiring two persons to be on the premises from 6pm 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 who has undertaken and passed the BIIB level I award in respect of alcohol retailing or the equivalent.

On 21 November 2009 a further test purchase for the sale of alcohol by retail had taken place at the premises supervised by officers from Essex County Council Trading Standards. The test purchase had again resulted in a member of the One Stop staff selling alcohol to a person under the age of 18 years.

As a result of this event taking place Michelle Walsh and Sophie Day from Trading Standards had re-entered the premises and had spoken to the relief manageress informing her of the sale that had taken place. Conversations had taken place between the officers and the relief manageress resulting in arrangements being made for a further visit to the premises when accompanied by an officer from Essex Police.

On 23 November 2009 Police Community Support Officer Kelly Roberts in company with Michelle Walsh from Essex County Council Trading Standards had visited the premises and had spoken with a member of staff called Sally Jane Phillips and had issued her with a fixed penalty ticket for the offence of selling alcohol by retail to a person under the age of 18 years. This related to the incident which took place at these premises on 21 November 2009.

It was on this basis that the Chief Constable was seeking a third review of the current premises licence. He was again supported with this application by the Children's Safeguarding Service from Essex County Council.

The Licensing Officer affirmed that in accordance with the Licensing Act 2003, the Chief Constable had served copies of his application on all of the responsible authorities and on the premises licence holders and that upon receipt of the application, the Licensing Authority had advertised this review on its website and on its public notice board between 10 December 2009 and 6 January 2010. In addition the Licensing Officer had arranged for a notice regarding the review to be displayed on the premises in a prominent position so that it could be seen by members of the public and had attended those premises to verify compliance.

The Licensing Officer added that the Chief Constable was seeking a revocation of the premises licence following the previous reviews which had already taken place.

The Licensing Officer explained that the decisions open to the Committee in respect of the application were to:

- Modify the conditions of the licence
- Modify the conditions of the licence for a limited period not exceeding three months
- Remove the designated premises supervisor
- Suspend the licence for a period not exceeding three months
- Revoke the licence

He added that when determining the application due regard should be given to the Council's policy regarding licensing and to the guidance given by the Secretary of State. If the Committee wished to impose conditions, the conditions must be necessary and proportionate to promote the licensing objective relative to the representations received. Equally, the Committee could not impose conditions that duplicated the effect of existing legislation.

The Licensing Officer drew to the attention of the Committee representations received from a resident of Elsenham and circulated before the meeting.

There were no questions for the Licensing Officer.

The Essex Police Licensing Manager, Mr M Reed, was present on behalf of the Chief Constable to set out the case for Essex Police.

He informed the meeting that Mr Stratton and Miss Day of the Trading Standards Department would not be present and that Miss Walsh of that Department would read her statement (which had been circulated previously).

Miss Walsh then read her statement (copy annexed to these minutes).

There were no questions for Miss Walsh.

Mr Reed commented that the review sought was proportionate in as much as it was the third time in eight months that under age sales had been seen to take place at the Store. He added that whilst the Store proposed to offer documentary evidence that it exercised due diligence in its sales, the Police would question this, particularly since the last detected under age sale had taken place around lunch time on a Saturday afternoon.

He also referred to the Departmental Guidance regarding reviews which required the Committee to seek to establish the causes of the concerns which had arisen and to impose no more of a sanction than was necessary, proportionate and directed at the concerns. With this in mind he nevertheless asked the Committee seriously to consider revocation of the licence.

There were no questions for Miss Walsh or Mr Reed.

Ms R Lynne, representing One Stop Stores, spoke on behalf of the Licensee company, apologising for the occurrence and assuring the meeting that the Licensee took the matter of under age sales very seriously.

She explained that the assistant who had failed to stop the under-age purchase in question had been a personal licence holder with retail sales experience. Notwithstanding this she had been trained to comply with the Licensing Act 2003 and with the One Stop Store policies which included the Challenge 25 policies. When she had been questioned under caution it had become apparent that she did in fact understand what she was meant to do by way of challenging and asking for ID and that no sale should be made after challenge without ID. It seemed likely that the excuse she had made about not knowing was a concocted one and she had left the employment having been disciplined.

Ms Lynne suggested that the assistant had received adequate training, and was sufficiently supported by till prompts to challenge and by the company's system of error-generated training reviews, and that her employer who took the responsibilities of retail alcohol sales very seriously, had every reason to

trust that she would be a successful, capable employee, particularly since she had passed the internal test purchase, coincidentally on the same day.

Ms Lynne asked the Committee to consider imposing a No ID No sale condition on all sales of alcohol which, with a suspension of up to 3 months, would be necessary and proportionate.

Members asked many questions of Ms Lynne predominantly about their concerns that:-

(i) The training was less than a week old on the day of the incident. *(Ms Lynne commented that the till operation was used as a means of establishing whether staff used and understood the system. An alert would be triggered if the name of the member of staff did not appear beside a particular transaction or if there was failure to scan a bottle.)*

(ii) On that day, as on the day of the second under age sale, there was only one member of staff on the shop floor. This was in breach of the new licence condition requiring two staff on the shop floor. *(Members were informed that on the day of the second under age sale other staff were replenishing stocks and visiting the lavatory and that on the day of the third under age sale the manageress was taking a confidential phone call. Members expressed the view that there should have been enough staff present to ensure that the condition was not broken.)*

(iii) It was necessary for the till operator to push a button to identify a sale as one requiring challenge, as failure to challenge went unrecorded; in default of pressing the button the sale would go through as a normal sale;

The Licensing Officer informed the Committee that the assistant who had failed to stop the under-age purchase had been granted a personal licence by virtue of "grandfather rights" which required no other qualification.

In answer to a question from the Chairman of the Committee, the Assistant Chief Executive confirmed that the manageress's office did not amount to part of the shop floor for the purposes of the requirement for two staff to be on the shop floor.

Mr Reed then asked questions of the One Stop representatives concerning staff work breaks. Mr Cooke said that most staff worked too few hours for this to be a concern, but that where Ms Phillips had worked 40 hours in a week 20 of them were overtime.

In answer to the question what procedures had been changed by the company since the last review, Mr Cooke mentioned internal test purchasing, of which there had been one instance since the last review; a staff grading

process to determine how often challenges had been issued and evaluation of internal and external failures leading to disciplinary action against Ms Phillips and a final written warning. Improved advice was supplied to management and in September the Challenge 25 process had been introduced with appropriate training.

In answer to a question Mr Cooke confirmed that the training undergone by the relevant employer had taken 27 minutes and consisted of a CD Rom, work sheets to complete and actions to demonstrate to the supervisor and the store manager. In answer to a further question he confirmed that the training script needed updating in that it specified Challenge 21 not Challenge 25, and that the whole training package would not have been completed on one day. He was requested to provide the supervisor's outturn sheet for the day in question but did not have it available.

Mr Reed asked questions regarding the records provided on the till printout and sought confirmation that the system did not appear to record the number of staff present or the internal test system and the documents present did not deal with the incident in question.

Mr Cooke explained in answer to a question that when a challenge was made and ID was not produced, the till could not be over-ridden but that it was up to the sales assistant to decide whether there was reason to challenge and to register the decision on the till to make it record the refusal process.

LC 57 EXCLUSION OF THE PUBLIC

RESOLVED that under Regulation 14(2) of the Licensing Act 2003 (Hearings Regulations) 2005 the press and public be excluded from the meeting whilst the Committee considered its decision on the grounds that it was in the public's interest so to do to permit a free and frank exchange of views between members.

The Panel left the room to deliberate on their decision at 12.20 pm.

LC 58 APPLICATION FOR REVIEW OF PREMISES LICENCE – ONE STOPSTORE ELSENHAM

Members returned to announce their decision at 2.37 pm.

The Chairman made the following statement:-

"This is the third application for a review of the premises licence at One Stop Store Elsenham in the last 9 months. Each review was requested after a sale of alcohol to a person under the age of 18. The buyers were aged 14, 15 and 16. In each case the person who made the sale received a fixed penalty notice for £80.

The licence was originally granted in the transitional period prior to the Licensing Act 2003 coming into full effect. As such only the standard conditions were applied. On the first review the Licensing Committee imposed additional conditions designed to prevent the sale of alcohol to children. These conditions were:-

- (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 premises 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.
- (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.

Notwithstanding these conditions within a little more than two months the store failed another test purchase. On that review the Licensing Committee having regard to the Bassetlaw case suspended the premises licence for a period of one month and strengthened the conditions by providing that there should be a qualified operator of the CCTV system at the premises at all times and by substituting condition (e) above with a requirement that there are a minimum of two staff at all times on the shop floor, one of whom holds a personal licence or who has undertaken and passed the BIIB level I award in respect of alcohol retailing or the equivalent.

On 29 October 2009 a trading standards officer visited the premises and noted that in breach of the condition requiring two staff to be on the shop floor there was only one member of staff in the shop. He spoke to the manageress and drew this matter to her attention. He also informed her that the premises would be subject to a test purchase.

On 21 November 2009 a test purchase was carried out and a member of staff sold a bottle of lager to a 15 year old boy. As the boy approached the till the staff member asked if he had ID. When he replied that he did not the sale proceeded regardless. The staff member concerned said when questioned that she thought she knew the boy and that he was 22 years old. However she acknowledged that she should not have completed the sale without ID. The Committee find her explanation unconvincing as she said she could identify the boy by reference to him wearing a hat but when shown photographs showing him hatless identified him by reference to his curly hair. The Committee agree with the views of Ms Lynne that in all probability this was a story made up to cover a difficult situation.

The employee concerned had only been employed by the company for a short period. She was a personal licence holder having obtained her personal licence during the transitional period and had undergone training by the company. This included training on the company's Challenge 25 policy.

The police in applying for this review seek revocation of the licence. Mr Reed relies upon the fact that despite previous reviews and warnings alcohol is still being sold to persons under age. He says the policy and training is clearly not working. He referred the Committee to paragraphs 11.26 and 11.27 of the guidance issued by the Secretary of State under s.182 Licensing Act 2003 which suggests that licensing authorities and law enforcement agencies should use review procedures effectively to deter (among other things) the purchase and consumption of alcohol by minors. The guidance continues 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.'

The sale of alcohol to minors is a criminal act and the Committee is of the view that the crime prevention objective is currently being undermined.

On behalf of the company it has been submitted that it has a responsible attitude towards its obligations under the Act, that it invests heavily in training, that the company has sophisticated equipment and procedures in place to prevent sales to persons who are under age, that on this occasion the sale was made by an individual who chose not to follow the procedures and that the company should have been entitled to rely upon her as she was a personal licence holder who had received training in the company's policies and procedures.

The Committee does not accept these submissions. The company's attitude towards its responsibilities under the Act appears to the Committee to be anything but responsible. It is clear that in order to comply with the condition requiring two members of staff to be on the shop floor at all times at least three employees must always be on the premises. On two random visits (in October and the time of the last test purchase) only one member of staff was present on the shop floor and on the latter occasion only two members of staff were at the premises. The company admits that it arranges its shifts to try and avoid the need for breaks so that only two members of staff are on duty where deliveries and administrative tasks are not required. However, if that is its method of operation, it follows that it will be unable to avoid breaching this condition.

So far as its training programme is concerned the evidence before the Committee is that the training does not achieve the desired objective of preventing underage sales. On each of the three occasions that Trading Standards have attempted test purchases staff have sold alcohol to persons under 18. Having had two reviews of the licence within 5 months and having been warned that Trading Standards were intending to carry out a further test purchase the company should have taken steps to ingrain the policies and procedures into its staff. It did not do so.

With regard to the company's equipment this sounds impressive until it is explained that it can be overridden by staff. As was submitted the till cannot stop a sale, only a member of staff can do this.

With regard to the submission that it was reasonable for the company to place reliance on a particular member of staff, in the view of the Committee to rely upon a new member of staff who obtained a personal licence in transition and therefore had no licensing qualification and who had received only basic training to be unsupervised on the shop floor within days of her commencing her employment was foolhardy in the extreme and shows a serious failure on the part of management.

Having regard to the guidance the Committee gave very serious consideration to a revocation of the licence. However the company has offered to accept a condition that no sales of alcohol will be made to anyone regardless of age or appearance without proof of age. Paragraph 11.19 of the guidance reads "in deciding which of these powers to invoke it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response". The cause of the underage sales in all cases has been the failure of staff to obtain evidence of identity. The Committee feel that appropriate conditions should be effective in dealing with the cause and that the conditions it proposes to impose are a necessary and proportionate response to the concerns.

However one of the matters licensing authorities are directed to have regard to by the Guidance is the need to deter underage sales. Whilst the Committee

accept that Bassetlaw does not impose a duty on licensing authorities to impose a suspension in such circumstances the authority can and should consider whether a suspension is appropriate as a deterrent. The Committee is of the opinion that in this case a suspension is clearly warranted both as a deterrent to the company and as a deterrent to others. The licence was suspended for a period of one month on the last review which appears not to have acted as a sufficient deterrent to the company to ensure that it puts its house fully in order. The decision of the Committee is that in the circumstances of this case only the maximum suspension it has the power to impose is an appropriate deterrent. The licence therefore will be suspended for a period of 3 months commencing at the end of the period for lodging an appeal against this decision or (if an appeal is lodged within that period) until the appeal has been dealt with by the magistrates court.

The Committee also impose the following conditions in addition to those already on the licence:-

1. No sales of alcohol shall be made to any person who does not produce proof of age by way of a photo type driving licence, a passport or a card carrying the PASS hologram at the time of sale.
2. Signs shall be clearly displayed inside and outside the premises informing members of the public that alcohol shall not be served to anyone unable to produce proof of age.
3. Tills shall be configured so as to prevent sales of alcohol being recorded unless the appropriate form of identification is entered.

The Committee also stresses to the Company that Members expect all licensing conditions to be observed at all times, including those relating to the number of staff in the shop. Breach of any conditions may constitute an offence under the Licensing Act 2003 and enforcement officers from this authority will look to ensure that no such offences are being committed.

This has been a difficult decision. The Committee came close to revoking the licence and if the Company were to fail a further test purchase after the suspension of the licence has ended or if there were to be a review of the licence following an offence under the Act it is difficult to see what the Committee could do on such an occasion short of revocation.

The meeting ended at 2.42 pm.

ANNEX



**ESSEX COUNTY COUNCIL
TRADING STANDARDS SERVICE
2 BEAUFORT ROAD, CHELMSFORD, CM2 6PS**

(Criminal Procedure Rules r 27.1 (1); CJ Act 1967, S9; MC Act 1980, S5B)

STATEMENT OF: Michelle WALSH

Age of Witness: Over 18
(if over 18 enter "over 18")

Occupation of Witness: Trading Standards Officer

This statement, consisting of 6 pages 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 the 23rd day of November 2009

Signature: 

I am employed by Essex County Council's Trading Standards Service as a Trading Standards Officer. I am authorised for the purposes of the Licensing Act 2003. On Saturday 21st November 2009 at 10am I met with colleagues Keith Pike and Sophia Day at the office of Essex Trading Standards at Beaufort Road Chelmsford as we were carrying out test purchasing of alcohol in the Uttlesford District. I then drove the three of us to the home address of our fifteen year old volunteer that we were using for the day. When we arrived I saw Sophia speak to the volunteers Mum and the four of us then drove to Saffron Walden Police Station East Street Saffron Walden. When we arrived at the Police Station we introduced ourselves to reception and explained that we were meeting with PCSO Andy Davis. We were told that he had called in sick that day. We were told that another PCSO was going to be on duty from midday and may be able to assist. I left my mobile



number for her to contact me. We decided that as we may get assistance from another officer we would carry on with the test purchases. Whilst we were at the Police Station I witnessed Sophia take two photographs of the volunteer, a full length photo and a head and shoulders photo. Sophie then measured him and read the document entitled 'Notes for the Volunteer' which outlines the procedure for carrying out test purchases and their care and welfare.. We then left the Police station to begin our test purchases. At about 12.50pm I entered the premise of 'One Stop' store at 7, Ambrose Corner, Robin Hood Road Elsenham Essex. Shortly afterwards I saw the volunteer enter the store and watched him as he walked towards the alcohol section of the store. I watched as he selected a small bottle of Carlsberg larger and as he walked towards the till area he also selected some confectionary. I also selected some confectionary and whilst I was standing there I had a clear and unobstructive view of our volunteer, as well as the sales assistant, as he approached the till area. When he placed the items on the counter, I saw and heard the female sales assistant ask the volunteer if he had any identification to which the volunteer replied no. I did not hear her say anything else to the volunteer apart from the cost of the items. She then proceeded to sell the alcohol to him. When the volunter paid for the items he left the shop. I then approached the till and paid for my confectionary. Whilst I was there I noticed they had a 'Think 25' poster behind the counter. For the period of time I was in the shop there was only one person on the shop floor and that was the sales assistant. I left the store at about 12:54pm. The sales assistant was female in her 40's with blond hair. I then returned to my car and assisted Sophia in completing the sample book. The 275ml, bottle of Carlsberg 3.8%



abv was issued the sample number 01197. The bottle and a copy of the sample book were then placed in a inverted clear plastic bag and securely sealed using a security tag number with the unique reference number of A158901. I can produce this bottle of Carlsberg as evidence identified by me as MJW/onestop/01. At about 13:06 I re-entered the shop with Sophia Day and introduced myself and Sophia to the same sales assistant that had sold the alcohol by showing her our identification. I asked if I could speak to her manager. I was again aware that the only person on the shop floor was this sales assistant. The sales assistant then rang a bell from behind the till. I asked if I could go straight to the manager's office, which we did. I knocked on the door and introduced my self and Sophia and we showed our warrant cards. I explained that we had just carried out a test purchase and her member of staff on the till sold alcohol to our 15 year old volunteer. The lady introduced herself as [REDACTED] and told me she was the relief manager as the usual manager, [REDACTED] was currently off sick. I asked [REDACTED] the name of the lady on the till and she said it was [REDACTED]. I explained to [REDACTED] that I would need to speak to [REDACTED] about what had happened but [REDACTED] was reluctant for me to do this as she said that she thinks the policy is she needs to contact the area manager first. I said to [REDACTED] that I was not aware of any such policy but if she wanted to contact the area manager then that was fine. [REDACTED] then left the room and when she came back she told me that she had told [REDACTED] that she had sold to a fifteen year old. [REDACTED] spent the next ten minutes trying to get hold of her area manager. [REDACTED] then said that when I speak do to [REDACTED] that she would like to be present which I said was fine. [REDACTED] told me she would have to contact



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someone to come in to work on the shop floor whilst this happened as they were the only two people there. About twenty minutes later someone arrived to work on the shop floor so [REDACTED] then came in to the office with [REDACTED]. I explained to [REDACTED] about the test purchase which was carried out and I then cautioned her at about 13:40. [REDACTED] gave me her date of birth as [REDACTED] and gave me her home address and telephone number. I asked [REDACTED] how long she had worked at One-Stop and she said four days so I then asked if she had received staff training and she replied yes. I asked [REDACTED] if I could look at the staff training books and she showed me. I could see that there was a list of various staff training including one called 'Challenge 25' to which [REDACTED] had signed on 14th November 2009. I signed and dated it as well to show I had checked it. Without me even asking her, [REDACTED] said that the boy she sold alcohol to she recognised as being a son of her friend's and she knows this boy to be about twenty two years of age. I asked her that if she knew the age of the boy, why she asked if he had any identification and she replied that it is the policy to ask if they look under twenty five years of age. I then asked her what the policy is if they don't have identification and she said that they don't sell the item. She then said she wouldn't have sold but she thought she knew him. She said to me that after she asked for identification she said to the boy that she recognised him. I explained to [REDACTED] that because she committed an offence of selling alcohol to a person under the age of eighteen then it would be dealt with by way of a Fixed Penalty Notice but this can only be given by a Police Officer or a Police Community Support Officer (PCSO). She asked if she is able to pay me but I said no that it's issued by the Police but you don't pay them directly



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either but it will be explained to her when it's issued. I said that if I could arrange for an Officer to attend that day then I would try and ensure they came along on Monday. We then discussed the sale again and I said that if she feels that she needs to request identification and the person doesn't have any the she does not sell the age restricted item. She repeated that she thought it was her friend's son but this time she said that she said to him that she had seen his Mum the night before. As [REDACTED] was so sure she knew the boy I decided to show her the photographs of our volunteer but before she saw them she said that she remembers what he looked like because he was wearing a hat. When I showed her the photographs it clearly showed that he was not wearing a hat but she still said she remembered him because of his curly hair. I then asked if she uses a refusals book and she said they don't have a book but there is an ID prompt on the till and if they refuse a sale this is recorded on the till and these can be printed off. I asked [REDACTED] if she has refused a sale since she has worked there and she replied that she hasn't had to refuse a sale so far. She then said again that she thought the boy she sold to was over twenty one so I asked her was she aware that the store had a 'Challenge 25' policy and she said yes. Whilst we were in the back office I was aware that they had CCTV which appeared to be in working order. After I had finished speaking to her myself and Sophia left the shop, this was about 2pm. When myself and Sophia left the shop we both mentioned to each other how we smelt alcohol on [REDACTED] breath when she was talking to us. We then returned to my car and left. When I returned to the office I photocopied the bottle of alcohol and then placed it in the secure store. On Monday the 23rd November at 2pm I met with PCSO 74072 Kelly Roberts, who is based at



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Stansted Police Station, at the One Stop store at Robin Hood Road
Elsenham. I explained to Kelly what happened regarding the sale of alcohol
to our fifteen year volunteer on the previous Saturday and we then both went
into the store. I saw [REDACTED] and asked if I could speak to [REDACTED]. I then
saw [REDACTED] and asked if we could speak to her in the back office. Once in there
I explained to [REDACTED] that I returned with a PCSO following her serving alcohol
to our fifteen year old volunteer. PCSO Roberts then spoke to [REDACTED] and
explained to her the implications of the sale and issued her with a Fixed
Penalty Notice, issue number 42/A0021310. Myself and PCSO Roberts then
left the store at about 2:20pm and I returned to the office. 



