

**Committee:** Licensing and Environmental Health

**Agenda Item**

**Date:** 27 January 2012

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**Title:** Determination of a variation for a  
Premises Licence One Stop Store -  
Elsenham

**Author:** Murray Hardy (01799) 510598

Item for  
decision

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## Summary

This report sets out an application for a variation of the premises licence in respect of One Stop Store, 4 Ambrose Corner, Elsenham, Essex.

## Recommendations

The Committee determine this application.  
In the event of an appeal against the decision of the Licensing Authority then a member is nominated to represent the authority at Court.

## Background papers

Application for the variation of the Premises Licence  
Copy of current Premises Licence  
Location of premises  
Plan of premises  
Representation from Mrs Lees  
Representation from Mr Clear  
Representation from Mr and Mrs Lambert  
Essex Police Incidents recorded at One Stop

## Impact

Communication/Consultation	Consultation has taken place with all statutory consultees, Members of this Authority, the Parish Council and the immediate neighbours.
Community Safety	None
Equalities	None
Finance	None
Health & Safety	None
Human Rights/Legal Implications	Members may modify the conditions of the licence or reject the application in whole or in part. Any conditions that are imposed must be proportionate and necessary to promote the licensing objectives.

Sustainability	None
Ward-specific impacts	Elsenham only
Workforce/Workplace	None

#### Situation

- 1 The Licensing Act 2003 places an obligation on a Licensing Authority to promote the objectives contained within the Act. The objectives are listed below:
  - The prevention of crime and disorder
  - Public safety
  - The prevention of public nuisance
  - The protection of children from harm
- 2 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.
- 3 The conditions imposed on the licence at that time were:
  - (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.
- 4 On 2 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. This resulted in a positive sale being made. Police Constable Jeggo then entered the store and spoke with Charlotte Moon an employee of One-Stop. The Officer gave 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.
- 5 It was on that basis that the Chief Constable supported by The Children's Safeguarding Service from Essex County Council sought the first review of the Premises Licence.
- 6 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

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7 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 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.

8 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.

9 Police Community Safety 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 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.

- 10 On 11 August 2009 an application for a second review was heard before the Licensing Committee which was brought again by The Chief Constable supported by The Children's Safeguarding Service from Essex County Council. This resulted in the premises licence being suspended for a period of one month and two further conditions being added to the licence. These are listed below:
- (a) There is a qualified operator of the CCTV system at the premises at all times.
  - (b) 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.
- 11 On 21 November 2009 a further test purchase for the sale of alcohol by retail took place at the premises supervised by officers from Essex County Council Trading Standards. The test purchase again resulted in a member of the One Stop staff selling alcohol to a person under the age of 18 years.
- 12 As a result of this event taking place Michelle Walsh and Sophie Day from Trading Standards re-entered the premises and spoke to the relief manager informing her of the sale that had taken place. Conversations took place between the officers and the relief manager resulting in arrangements being made for a further visit to the premises when accompanied by an officer from Essex Police.
- 13 On 23 November 2009 Police Community Support Officer Kelly Roberts in company with Michelle Walsh from Essex County Council Trading Standards visited the premises and spoke with a member of staff called Sally Jane Phillips and 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.
- 14 On 27 January 2010 an application for a third review was heard before the Licensing Committee which was brought again by the Chief Constable supported by The Children's Safeguarding Service from Essex County Council. This resulted in the premises licence being suspended for a period of three months and three further conditions were added to the licence. These are listed below:
- (a) 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.
  - (b) 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.

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- (c) Tills shall be configured so as to prevent sales of alcohol being recorded unless the appropriate form of identification is entered.

15 In delivering this decision the Chairman of the Committee told the representative for One Stop that members had come close to revoking the premises licence and that if the company were to fail a further test purchase after the suspension of the licence had ended or if there were to be a review of the licence following an offence under The Licensing Act 2003 it would be difficult to see what the Committee could do other than impose a revocation of their licence.

16 Since the imposition of the last sanction there has been no further offences recorded against these premises, no further reviews, or applications pending for a review.

17 Since the granting of the licence on the 18 November 2005 there have been 12 different Designated Premises Supervisors at this location. The position of DPS was considered essential by the government so as the Police, Fire Authority or the Licensing Authority could identify this individual so as to deal swiftly with any problems that may arise. The current Designated premises Supervisor is Anabela Lourenco. Listed below are the dates when the DPS changed:

9 December 2005  
31 March 2006  
20 April 2006  
11 July 2006  
3 December 2007  
30 April 2009  
21 May 2009  
7 December 2009  
28 May 2010  
12 July 2010  
6 September 2011  
15 December 2011

18 The applicant is now seeking the following amendments to the licence:

- (a) To remove Conditions 11 and 12 on the premises licence.
- (b) To remove the restrictions regarding timings for the sale of alcohol by retail on Good Friday and Christmas Day.
- (c) To remove Condition 13 and replace it with the wording "Challenge 25 signage shall be clearly displayed informing members of the public that Challenge 25 is in operation"
- (d) To remove Condition 14 and replace it with the wording "Tills are configured to prompt cashiers on all age restricted products to confirm that the customer appears over the relevant age" 19 The decision that the Committee can make in respect of this application is to:

- (a) Modify the conditions of the licence.
- (b) To reject the whole or part of the application.

- 19 When determining an application, then due regard should be given to the Council's policy regarding liquor licensing, and to the guidance given by the Secretary of State.
- 20 The relevant sections of the Council's licensing policy are:-
- 1.32 If an applicant volunteers a prohibition or restriction in their operating schedule because their own risk assessment has determined such prohibition or restriction to be appropriate, such volunteered prohibitions or restrictions will become conditions attached to the licence, or certificate and will be enforceable as such. [Members should be aware that the conditions imposed on reviews were primarily volunteered by the licence holder]
- 1.33 The Licensing Authority recognises that where representations are made applications should be considered on an individual basis and any condition attached to such a licence will be tailored to each individual premises, in order to avoid the imposition of disproportionate and other burdensome conditions on those premises. Standard conditions will therefore be avoided. Conditions will be not be imposed that cannot be shown to be necessary for the promotion of the licensing objectives. [The conditions the licence holder wishes to remove are not replicated for other premises within the district. They were imposed to deal with issues relating solely to these premises]
- 2.4 The selection of control measures, referred to in 2.3 above, should be based upon a risk assessment of the premises, events, activities and the customers expected to attend (e.g. their age, number, etc.).** Whilst the Licensing Authority cannot require such risk assessments to be undertaken or documented, (other than where required by other legislation), it considers such documentation to be good practice and a useful tool in the instruction and training of staff, as well as a sound basis for review by the licence holder, in the event of requiring to make application for variation or in response to changing circumstances/conditions at the premises.
- 3.3 The promotion of the licensing objective, to prevent crime and disorder, places a responsibility on licence holders to become key partners in achieving this objective. If representations are made to the Licensing Authority **applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to reduce or prevent crime and disorder on and in the vicinity of their premises, relevant to the individual style and characteristics of their premises and events.**
- 3.4 When addressing the issue of crime and disorder, the applicant should consider those factors that impact on crime and disorder. These may include:
- Underage drinking
- 3.5 The following examples of control measures are given to assist applicants who may need to take account of them in their operating schedule in the event that representations are received, having regard to their particular type of premises and/or activities:
- Effective and responsible management of premises

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- Training and supervision of staff
- Adoption of best practice guidance (e.g. Safer Clubbing, the National

Alcohol Harm Reduction Strategy Toolkit and other voluntary codes of practice, including those relating to drinks promotions e.g. The Point of Sale Promotions published by BBPA, Security in Design published by BBPA and Drugs and Pubs, published by BBPA)

- Acceptance of accredited 'proof of age' cards e.g. PASS, locally approved 'proof of age' cards e.g. 'Prove It' and/or 'new type' driving licences with photographs or adoption of industry best practice (e.g. Challenge 21 policy)
- Provision of effective CCTV and mirrors in and around premises

**6.5 If representations are made applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to protect children from harm, relevant to the individual style and characteristics of their premises and events.**

6.6 Whilst children may be adequately protected from harm by the action taken to protect adults, they may also need special consideration and no policy can anticipate every situation. When addressing the issue of protecting children from harm, the applicant should consider those factors that impact on harm to children. Areas that will give particular concern in respect of children include:

- where there have been convictions of members of the current staff at the premises for serving alcohol to minors or with a reputation for underage drinking

6.7 The following examples of control measures are given to assist applicants and are considered to be amongst the most essential that applicants should take account of in their operating schedule, in the event that representations are received, having regard to their particular type of premises and/or activities. These examples can be adopted in any combination:

- Effective and responsible management of premises
- Provision of a sufficient number of people employed or engaged to secure the protection of children from harm
- Appropriate instruction, training and supervision of those employed or engaged to secure the protection of children from harm
- Adoption of best practice guidance (Public Places Charter, The Portman Group Code of Practice on the Naming, Packaging and Promotion of Alcoholic Drinks)
- Limitations on the hours when children may be present, in all or parts of the premises
- Measures to ensure children do not purchase, acquire or consume alcohol

21 The relevant sections of the government's guidance are:-

2.44 Conditions relating to the access of children which are necessary to protect them from harm are self evidently of great importance. As mentioned

Determination of a variation for a premises licence: One Stop Stores, Elsenham Licensing and Environmental Health Committee, 27 January 2012, item 2 in connection with statements of licensing policy in Chapter 13 of this Guidance, issues will arise about the access of children in connection with premises:

- where a member or members of the current management have been convicted for serving alcohol to minors or with a reputation for allowing underage drinking
- where it is known that unaccompanied children have been allowed access;
- where requirements for proof of age cards or other age identification to combat the purchase of alcohol by minors is not the norm;

2.47 Conditions, where they are necessary, should reflect the licensable activities taking place on the premises and can include ..where alcohol is sold, requirements for the production of proof of age cards or other age identification before sales are made, to ensure that sales are not made to individuals under 18 years

10.65 The premises licence holder or club premises certificate holder must ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol. This must as a minimum require individuals who appear to the responsible person (see paragraph 10.56) to be under the age of 18 years of age to produce on request, before being served alcohol, identification bearing their photograph, date of birth, and a holographic mark

10.66 It should be noted that it is acceptable, and indeed encouraged, for premises to have an age verification policy which requires individuals who appear to the responsible person to be under an age greater than 18 to produce such identification on request. For example, if a premises has a policy that requires any individual that appears to be under the age of 21 to produce identification that meets the criteria listed above, this is perfectly acceptable under the mandatory code.

10.68 The premises licence holder or club premises certificate holder must ensure that staff (in particular staff who are involved in the supply of alcohol) are made aware of the existence and content of the age verification policy applied by the premises.

11.26 There is certain criminal activity that may arise in connection with licensed premises, which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises: ...

- for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people

22 If the Committee in their decision wishes to impose conditions, the only conditions that can be imposed are those that are necessary and proportionate to promote the licensing objectives relative to the representations received. Equally, the Committee should not impose conditions that duplicate the effect of existing legislation.

### Risk Analysis

Risk	Likelihood	Impact	Mitigating actions
There may be future sales of alcohol to	Members would need to take a view on the	3 The sale of alcohol to persons under 18 has a potentially harmful effect	The premises may be subject in the future to further test



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persons under the age of 18	probability of this occurring taking into account any risk assessment tendered by the premises licence holder	upon them. Should there be a further failed test purchase there is a probability that the licence would be revoked depriving resident of Elsenham of an off-licence	purchases although this is outside the control of this authority.
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1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.