

**LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 2pm on 27
JANUARY 2012**

Present: Councillor E Hicks – (Chairman).
Councillors D Morson, D Perry and V Ranger.

Also present:

L Davies, Area Manager; S Holcroft, Regional Manager; and
A Lourenco, Designated Premises Supervisor - One Stop Stores;
S Perraton, Solicitor.
Mr S Sparrow, Police Licensing Officer
Mrs F Lambert

Officers in attendance:

R Dobson (Democratic Services Officer), M Hardy (Licensing Officer)
and M Perry (Assistant Chief Executive-Legal).

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DETERMINATION OF A VARIATION OF A PREMISES LICENCE

The Chairman welcomed everyone to the meeting.

The Assistant Chief Executive-Legal explained that Mr Sparrow was attending as an observer only.

The Licensing Officer presented a report setting out an application for a variation of the premises licence in respect of One Stop Store, Elsenham. He said the application had been served with due process, and no representations had been received from the statutory bodies consulted. Representations had been received from interested parties, which had been included in the background papers sent to Members, and one of those parties was present, Mrs Lambert.

The Licensing Officer took Members through the report which set out the objectives of the Licensing Act 2003, the granting of a premises licence to the store on 18 November 2005 and the original conditions of the licence. He described the circumstances of positive sales of alcohol being made in test purchases conducted by Trading Standards, which had led to three subsequent reviews of the licence on 22 April 2009, 11 August 2009 and 27 January 2010.

The Licensing Officer set out in detail the variation of the store's conditions of licence which had been made on each occasion, and reminded Members that on the second review, a suspension of the premises licence for one month had been imposed, and on the third review, a suspension of three months. At the third review three further conditions had been added to the licence, as follows:

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

The Licensing Officer drew to Members' attention the fact that the above conditions had been offered by the store. He said since the imposition of the last sanction there had been no further offences recorded against the premises, no further reviews and no applications pending for a review. He referred to the unusually high turnover of Designated Premises Supervisors at the location, there having been between December 2005 and December 2011 twelve different individuals with that role.

The Licensing Officer set out the amendments to the premises licence now being sought, which were:

- (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"

The Chairman thanked the Licensing Officer.

In reply to a question from Councillor Perry, the Licensing Officer confirmed that there had been no re-occurrence of any anti-social behaviour outside the premises so far as the licensing authority was aware.

Councillor Ranger asked whether the first test purchase by Trading Standards had been made as a result of intelligence received, or whether it was a routine test. The Licensing Officer said usually test purchases were intelligence-led. He said the subsequent test had been a follow-up test, and had not been in response to reports of any problems

The Chairman invited Mrs Perraton to speak.

Mrs Perraton said since 2009 there had been no further issues in terms of failed test purchases of alcohol or trouble caused by youths outside the store. Of the representations received none were from statutory consultees. She said three representations had been received from other parties. Two of these representations, from Ms Lees and Mr Clear, were supportive of the application to vary the licence

Mrs Perraton said the store wished to vary its conditions of licence because of the inconvenience for customers in having to produce photographic ID when

buying alcohol. The store had been the subject of some criticism in the press for what was perceived as its 'draconian' attitude towards its legitimate customers when buying alcohol. One Stop Store now wished to remove the following two conditions from its licence: the condition requiring a minimum of two staff to be on the shop floor at all times, one of whom should hold a personal licence or who had undertaken and passed the BIIB level 1 award in respect of alcohol retailing or the equivalent; and the condition that no sales of alcohol should be made to any person who did 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.

Mrs Perraton gave details of the ways in which the store complied with its existing conditions. She said that if the variation were granted the store would still have a comprehensive CCTV system, training in the use of which all staff received. She said routine checks were made of the register of refusals of sales of age-restricted products. Mrs Perraton said there had been improvements to the training scheme for staff, which was now more comprehensive. She said at this particular store every member of the 17 staff save for one also had a personal licence, which was over and above normal practice.

Mrs Perraton said that if the condition requiring photo ID were varied, the store would seek to work with the Challenge 25 system, and that therefore the application included modifying condition 13 regarding signage, to reflect the intention to display Challenge 25 information. An amendment to the till prompts would also be sought in order to reflect such a change to the conditions.

With the consent of the Committee, Mrs Perraton submitted as late representations two witness statements in support of the application, the statements of David Nash and Sharon Holcroft.

Mrs Perraton took Members through the statement by Mr Nash. The statement referred to statistics showing that 90% transactions at the store in Elsenham did not include the sale of alcohol. The statement also referred to the fact that the One Stop Store chain had a partnership with its home authority, Walsall Metropolitan Borough Council regarding its policy on management of age restricted sales; that the store was a member of the Retail of Alcohol Standards Group and that staff at the Elsenham store participated in the 'staff safe' wristband system.

Mr Nash's statement also set out the reasons for seeking a variation to the licence conditions, citing the inconvenience to elderly customers who had experienced difficulty in producing the correct ID; and referring to the impracticability of having two staff members on duty on the shop floor at all times.

Mrs Perraton said the proposed variation to the conditions of licence would ensure the store would continue to have a stringent approach to sale of alcohol. She accepted the store had not had a good year in 2009, but said it had turned the corner since then. She said the store could show consistency of staffing in

that nine of the current 17 members of staff had been working at the store in 2009.

Mrs Perraton referred to the store's 'bronze silver gold' training, which all staff were encouraged to work through at all stores; and said the till prompts were absolute, in that no sale of alcohol could take place without the details of the ID presented being entered. The data was accessible by Head Office. She said One Stop Stores also employed an external auditing service, Service Legal which conducted test purchases, and which showed that since 2010 the store had a 100% pass rate. She also referred to internal audits of the licensing log book at the store, which again reflected a 100% pass rate.

Mrs Perraton then referred the Committee to the statement of Ms Sharon Holcroft, who was in attendance. She said the Elsenham store was rated as having a 'green' status under the current area manager, Ms Leigh Davies, and that staff participated in training known as 'the Challenge 25 cascade', which required staff to assess photos according to the Challenge 25 criteria.

The Chairman thanked Mrs Perraton.

Councillor Perry asked whether any test purchases carried out by Serve Legal took place during the hours 8pm to 11pm, which was when most illegal activity was likely to occur.

Mrs Perraton said the examples in the documents provided happened all to be at lunchtime.

Mrs Holcroft said tests did indeed take place during all hours of the day at other stores, and this should be taking place at the store in Elsenham.

Councillor Morson said there had certainly been considerable improvements at the store, but he wondered whether that was due to the conditions the licensing authority had imposed at the last review. He asked whether if such conditions were to be rescinded the situation would become more vulnerable.

Mrs Holcroft said the company had improved its training dramatically, and was now much less tolerant of any non-compliance issues, and had good staff at Elsenham.

Councillor Morson said that in the past the shop had been a magnet for young people trying to buy alcohol or getting others to buy it on their behalf. He was concerned that bringing in Challenge 25 would again lead to an increase in attempts by youngsters to purchase alcohol or to do so by proxy.

Ms Holcroft said she appreciated this concern, but said the remit of Serve Legal included test proxy sales and the store would continue to be aware of the issue.

Mrs Perraton said monitoring of external CCTV would also help ensure proxy sales were not being made.

Councillor Morson said he was pleased there was stability of staffing at the shop, and asked how long the present store manager Ms Lourenco had held the DPS role and how often she was on site.

Ms Lourenco said she had worked at the Elsenham store since August 2011 and she worked part time for 30 hours a week.

In reply to a question from Councillor Morson, Mrs Perraton said Ms Lourenco would have been considered suitable to take on the post of store manager at the Elsenham shop, but that due to family commitments she was working only on a part-time basis. She was appointed DPS on 15 December 2011. The post of store manager had recently been filled and the new manager was currently receiving training to become a personal licence holder but once he had done so there was no intention to change the DPS.

The Licensing Officer referred Members to the guidance on the role of a DPS.

The Licensing Officer asked for more details to be given on the area covered by the CCTV and Ms Davies said the camera showed the area towards the roundabout on the road outside the store. She confirmed that the CCTV had infrared capacity.

The Chairman thanked Ms Davies, and invited Mrs Lambert to ask questions and if she wished to make a statement to do so.

Mrs Lambert questioned the significance of claiming that there was 100% compliance with the requirement not to sell alcohol to those without photo ID, when the till prompts did not allow such transactions to take place.

She said that the CCTV only pointed towards the roundabout, and that therefore there was a 'blind spot' on the left hand side of the store, near its gates.

Ms Davies agreed it was not possible to see the area near the Indian restaurant, but that the camera was a round lens which provided a good range of vision.

Mrs Lambert asked whether the CCTV was on all the time. Ms Davies confirmed it was.

Mrs Lambert referred to her statement in which she had described a police incident regarding anti-social behaviour by youths who had shoved the store's food cages into the road. She felt it was wrong for the incident to be described as 'alleged' since the police had a record of it. She said she had next day spoken to staff at the store who had assured her the cages would be locked away in future, but that this was often not done, and again had not been done the previous night.

Ms Davies said the store had had no record of the incident Mrs Lambert had referred to. Ms Lourenco said she was responsible for shutting the premises

and locking away the cages, that she herself had done this at 11pm the previous night.

In reply to a question from the Chairman she confirmed it was customary to lock away moveable items at the store, and she assured Mrs Lambert and Members that this issue would be monitored in future.

Mrs Lambert then read out her statement which had previously been circulated to Members, and in which she objected to the application to vary the licence.

In reply to Members' questions, Mrs Lambert said she feared that if the variation were to be granted the situation would revert to how it had been before with trouble such as noise and increased litter caused by groups of youths, particularly in the area outside the store which could not be viewed on CCTV. This was a concern to residents living near the shop, particularly in summer.

Mrs Perraton said as far as she was aware there had been no instances of sale of alcohol to minors at the store. She said the incident regarding food cages had had no bearing on the two previous review hearings; that that incident had happened in 2009; that the store had done a great deal to improve the situation; that the variation was for customers' benefit. She said the store had a good team of staff; and that CCTV footage was monitored by the store and by managers. If it was being suggested that alcohol was being consumed outside the premises scanning of the products was possible to ascertain whether they had been purchased at that store. She asked the Committee to accept that there had been huge changes since 2009.

The Chairman asked the Licensing Officer to comment on the effectiveness of the Challenge 25 scheme in Essex.

Mr Hardy said the scheme was promoted by Trading Standards and that the licensing authority supported the scheme.

The Assistant Chief Executive-Legal advised Members the incident of the cages was not relevant to the application for a variation to the store's licence, as it was not recent and had not been considered as part of the previous reviews.

At 3.10pm the Committee withdrew to consider its decision, and returned at 5.05pm.

DECISION

The Committee has this afternoon considered an application by One Stop Shop Elsenham for a variation of its premises licence. The premises were first licensed by this authority in November 2005 during the transitional period when the Licensing Act 2003 was coming into force. The licence was granted subject to the embedded conditions and the mandatory conditions under the Act.

In April 2009 the Licensing Committee considered an application for a review of the licence. The application was made by the police following a failed test purchase carried out by trading standards when alcohol was sold to a person under the age of 18. As a result of that incident the conditions were modified. In August 2009 there was a further review of the licence following another failed test purchase. On this occasion the licence was suspended for a period of 1 month and the conditions were again modified. There was a third review in January 2010 following yet another failed test purchase. On this occasion the licence was suspended for 3 months, the longest suspension the Committee had power to impose, and the conditions were further modified. On that occasion the Committee had been minded to revoke the licence. However the Committee were persuaded that a condition offered by the licence holder should prevent any further sales to minors and subject to that condition Members decided not to revoke. That condition can be summarised as a requirement that no sales of alcohol could be made unless the buyer produced satisfactory proof of age.

The licence holder now seeks to delete condition 11 of the licence which requires at least 2 staff to be on the shop floor at all times. This condition in a different form was first introduced on the first review in April 2009. The wording was changed slightly at the August 2009 review and it remained on the licence at the January 2010 review. The licence holder also seeks to delete condition 12 of the licence which requires buyers of alcohol to produce specified forms of ID. The licence holder then wishes to replace condition 13, which requires the store to display signs informing customers of the requirement for the production of ID before alcohol can be sold, with a condition requiring signage to promote the Challenge 25 policy. A consequential amendment is requested to condition 14 dealing with till prompts. Finally the licence holder seeks a removal of the restrictions on hours of sale for Christmas Day and Good Friday.

No representations were made in respect of the application by any of the responsible authorities. However there were objections from Mr and Mrs Lambert who are interested parties and Mrs Lambert appeared before the Committee today.

In support of the application Mrs Perraton on behalf of the licence holder submitted that the conditions requiring production of ID for all sales of alcohol caused an inconvenience to customers. The Committee gave that submission, which was supported by two interested parties, little weight. The Committee were told that sales of alcohol formed a small part of the stores total transactions. Further the vast majority of customers are local. It follows that the customer base will be aware of the requirement and would generally take suitable ID with them when wishing to purchase alcohol. The inconvenience suffered by customers is light compared to the inconvenience customers would have suffered had the licence been revoked which would have been the outcome of the last review had the condition not been offered and accepted.

Mrs Perraton also said that the company had improved its practices since the last review. She said that the company has now introduced a training scheme with bronze silver and gold standards which all staff were required to complete

and that all staff save for one were personal licence holders. The company had engaged a firm to carry out random test purchases and that the outcome of these purchases was 100%. The company had not experienced any difficulties with the sale of other age restricted products, such as cigarettes, DVDs et cetera. In the circumstances Mrs Perraton suggests that the company can be relied upon not to engage in underage sales if the variations were to be granted. The Committee were not impressed by the fact that there had been no failed test purchases of alcohol as such should be impossible because of the condition on the licence. The Committee noted Mrs Perraton's submission with regard to other age restricted products but were not given any evidence as to the outcome of test purchases with regard to such products.

While on the face of it the company has made progress since the last review the Committee is not convinced that the variations sought regarding proof of age for alcohol sales would achieve the licensing objectives. The Committee is obliged to have regard to its licensing policy and government guidance as is set out in the officer's report. In particular the Committee has had regard to paragraph 1.32 of the Council's licensing policy and notes that some conditions which the company wishes to vary were volunteered by the company at the last review presumably based on its own risk assessment. The company must have considered at that time that those conditions were necessary to secure the licensing objectives of the prevention of crime (in the form of underage sales of alcohol) and the protection of children from harm. The condition is not to be found on any other premises licence in the area and was tailored for these premises which had a bad record of underage sales within a short period of time. No risk assessment has been produced as is suggested by paragraph 2.4 of the Council's licensing policy dealing with the proposed variation. The Committee note the approach of the company which appears to address paragraph 3.5 of the Council's policy. Key to these steps are effective and responsible management of which more will be said later. In paragraph 6.6 of the Council's policy there is reference to particular areas of concern which includes where there have been convictions of current staff for underage sales or the premises have a reputation for underage drinking. Whilst there is nothing to suggest that any of the current staff do have such convictions the Committee is not reassured that 9 of the current staff of 17 were employed by the company at the time the test purchases took place and were therefore used to a regime under which such sales were made. These premises certainly had a reputation for underage drinking. In terms of the training given the Committee are aware that the underage sale which gave rise to the January 2010 review was made by an employee who was a personal licence holder who had received training on the Challenge 25 policy. The Committee have concerns with the current management of the premises in that there has been a very high turnover of designated premises supervisors. The current DPS was appointed in December 2011, after this application for a review was made. Her predecessor held that role for just over 3 months. The current DPS is employed only part time and is not the store manager. It transpired that the store manager is the 1 employee who does not hold a personal licence and is undergoing training.

Government guidance supports the requirement for proof of age before sales are made. As a minimum this would require those appearing to be under 18 to

produce ID but the guidance indicates that higher ages may be appropriate. The Challenge 25 policy having failed at these premises on 2 occasions it clearly was not sufficient for these premises which is why on the last review the Committee concluded that the only way the licensing objectives could be achieved would be to require all customers to produce proof of age.

Had the licence been revoked on the last review and One Stop were today applying for a new premises licence, if representations had been made to require a hearing the Committee would have rejected the application. The Committee are not satisfied today that the application for a variation to conditions 12, 13 and 14 of the licence as applied for would secure the licensing objectives of the prevention of crime and the protection of children from harm. That is not to say that this situation will carry on in perpetuity. If an application were to be made at some stage in the future when the company were able to demonstrate a period of stability in its management with a full time store manager in the role of DPS and produce a satisfactory risk assessment then the application may receive more favourable consideration. However for the reasons given the application to vary conditions 12, 13 and 14 is refused.

With regard to condition 11 Mrs Perraton said that whilst it was company policy to have two staff on the shop floor at all times this was sometimes impractical, for example if a member of staff needed a comfort break. The Committee are satisfied that requiring two persons to be on the shop floor at all times is not necessary for the promotion of the licensing objectives as underage sales are effectively prevented by conditions 12 – 14. However if there were less than two people on the premises this may well make the premises a target for crime either by shoplifting or more serious offences. The Committee will therefore amend condition 11 by deleting the words “shop floor” and replacing them with the word “premises”.

Finally the application to delete the provisions regarding opening hours on Christmas Day and Good Friday is granted.

The Assistant Chief Executive-Legal advised the applicant’s representative Mrs Perraton of the right of appeal within 21 days of being served with notice of the decision.

The meeting ended at 5.15pm.