

**EXTRAORDINARY LICENSING AND ENVIRONMENTAL HEALTH COMMITTEE held at COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 10am on 6 JUNE 2016**

Present: Councillor R Chambers (Chairman)  
Councillors J Davey, R Gleeson and T Goddard

Officers in attendance: M Perry (Assistant Chief Executive – Legal), A Rees (Democratic and Electoral Services Officer) and A Turner (Licensing Team Leader)

Also Present: Councillor J Freeman, Mr K Patel, Mr M Patel, Mr R Jordan (the applicant's consultant), Councillor D Morgan (Thaxted Parish Council), Mr I Barnard and Mrs J Francis.

LIC7 **APOLOGIES FOR ABSENCE AND DECLARATIONS OF INTEREST**

There were no apologies for absence or declarations of interest.

LIC8 **APPLICATION FOR A NEW PREMISES LICENCE – THAXTED POST OFFICE, 8-10 TOWN STREET, THAXTED, CM6 2LA**

The Chairman read out the procedures for determining premises licence applications.

The Licensing Team Leader presented her report. The licensable activities being sought by Thaxted Post Office were as follows:

Supply of Alcohol (off premises)	Monday – Sunday 8am-9pm
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Opening Hours	Monday – Sunday 5am-9pm
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The operating schedule also indicated the measures which would be adopted to meet the four licensing objectives. Copies of the application were served on the statutory bodies. They had made no representations.

Eight representations had been received from interested parties including the Parish Council which had raised concerns based on the prevention of public nuisance and the protection of children from harm. A petition had also been logged by one of the interested parties although this did not form a representation in its own right. The concerns raised were as follows:

(a) The village already has two food shops and 4 pubs selling alcohol responsibly and no further outlets are required

(b) The position of the Post Office has a wide pavement outside with bench ideal for immediate consumption of alcohol and people to congregate.

(c) Premises regularly visited by school children as also sells toys and sweets.

(d) Post Office is very close to bus stop where children gather and alight from school bus. Sale of alcohol here therefore puts children at risk.

The Licensing Team Leader said the licensing authority had to promote the four licensing objectives as defined in the Licensing Act 2003. These were; the prevention of crime and disorder, public safety, the prevention of public nuisance, the protection of children from harm.

The Committee could consider whether to grant the application as applied for, modify the application by inserting conditions, reject the whole or part of the application. When determining the application due regard should be given to the Council's Licensing Policy, as well as the Secretary of States' Guidance.

The Licensing Team Leader said that if the Committee decided to impose conditions, they had to be appropriate and proportional to promote the licensing objectives. Additionally they could not duplicate existing legislation.

The Chairman invited Councillor Morgan to speak. He said that the whole of the Parish Council was opposed to the application as it did not meet three of the licensing objectives; the prevention of crime, the prevention of public nuisance and the protection of children from harm.

The Store was located next to a bus stop which was by children going to and from school. It was also on a wide pavement so people tended to congregate outside, including school children who would go to the Store after school had finished. The Parish Council hoped that the application would be outright rejected and added that there were a number of premises nearby which sold alcohol so there were was no need for a licence to be granted.

Councillor Morgan then said that the Council's Licensing Policy was proactive and that public nuisance was to be prevented before it occurred. Public nuisance was defined in its widest possible term. The Secretary of State's Guidance also stated that public nuisance should not be narrowly defined.

The Chairman read out the representation made by Councillor Foley during the consultation for the application, which was appended as Appendix B5 to the report.

The Chairman invited Mr Jordan to speak on behalf of the applicants. He began by outlining the training which would be undertaken by staff, which included age verification, the consequences of selling alcohol to underage persons, selling alcohol outside of the licensable hours, selling to those who were purchasing as

a proxy for someone underage and selling to those who were already intoxicated. A Challenge 25 scheme would be in operation.

There were no grounds to depart from the Council's Licensing Policy as no exceptional reasons had been advanced. No representations had been made any of the statutory bodies and there had been no history of disturbances at the store.

Mr Jordan said that there was a NISA supermarket nearby which also sold alcohol and was also near a bus stop. This store had experienced no problems. Toys were currently sold at the Waylett Store, but this was not grounds to depart from policy. All toys would be displayed separately from any alcohol on sale. The petition could not be taken into account as it had not been included in the background papers.

In response to questions by Councillor Goddard, firstly the Licensing Team Leader said that no representations had been made by any of the statutory authorities. Secondly Councillor Morgan said that there had been some instances of underage drinking outside of the places in Thaxted which currently served alcohol. Finally, Mr Jordan said that 8am had been sought for the licensable hour as it was close to the stores opening hours. It was not expected that much alcohol would be sold in the morning.

In response to further questions by Members, Mr M Patel explained that staff would be trained not to sell alcohol until the licensable hours and a strict ID scheme would be in place. Before the licensable hours, alcohol would be hidden from sight by roller blinds.

The Assistant Chief Executive – Legal explained that prior to 2005, applicants did need to demonstrate a need for the licensable activities. However, following the implantation of the Licensing Act 2003, this was no longer a consideration for the Committee. It was common for shops to have the same opening and licensable hours, although this was not the case for the Store. Selling alcohol before the licensable hours was a criminal offence. If prosecuted, the Store could also lose its premises licence.

He then said that once a member of the public left the premises they were no longer the responsibility of the licence holder. There had been a number of drink zones throughout the district. These had now lapsed but if an issue did arise then they could be re-implemented if necessary. Any conditions related to the protection of children from harm were more likely to be added if the licence was reviewed.

Lastly, the Assistant Chief Executive – Legal drew the Committee's attention to the case of R. (on the application of Daniel Thwaites Plc) v Wirral Borough Magistrates' Court 2008, which he said meant that an evidence based approach needed to be taken to decision making.

RESOLVED that under section 100I of the Local Government Act 1972 the public be excluded for the following item of business on the grounds that it involved the likely disclosure of exempt information as defined in paragraphs 1 and 2 part 1 of Schedule 12A of the Act.

Councillors Chambers, Davey, Goddard and Gleeson, the Democratic and Electoral Services Officer and the Assistant Chief Executive – Legal left the room at 10.30am so the Committee could consider its decision. They returned at 10.50am.

## **DECISION**

Waylett of Thaxted Limited has applied for a premises licence in respect of Thaxted Post Office in Town Street, Thaxted. The premises are described as being a Post Office and convenience store. The application is for the sale of alcohol for consumption off the premises only. The proposed hours that the licence will be in effect are from 8am to 9pm, 7 days a week. The premises are actually open for longer than the licence is sought for namely from 5am until 9pm every day.

In the operating schedule the applicant offers up the following conditions:

1. CCTV shall be installed with a 21 day recording facility.
2. Staff training shall be recorded and shall cover the requirements for ID as part of age verification.
3. The licence holder shall ensure that a refusals register is kept on the premises and that it is available for inspection upon the request of an authorised officer.
4. The register shall record any refused sale of alcohol. It shall be inspected on a regular basis (at least weekly) by the designated premises supervisor who will sign to confirm that he or she has checked the register.
5. The refusal register shall be retained for at least 12 months and available during that time for inspection by an authorised officer.
6. A Challenge 25 Policy will be applied on the premises at all times. Signage of the Challenge 25 Policy shall be promptly displayed on the premises.
7. Acceptable identification to verify age shall be a passport, photo driving licence or PASS accredited identity card.
8. Signage shall be displayed in a prominent position on the premises requesting customers to leave quietly.
9. Signage shall be prominently displayed warning customers of the legal penalties for purchasing alcohol for any person under the age of 18.

The application has proved controversial within Thaxted and has attracted a number of objections. These are based upon concerns that a licence at the premises could adversely impact upon the licensing objectives of the prevention of public nuisance and/or the protection of children from harm. It is pointed out that there is a school pick-up and drop-off near the premises. There is a wide pavement outside the premises with a bench which is ideal for the immediate consumption of alcohol. It is said that school children regularly visit the premises. Some objectors also considered that a licence may adversely impact

upon the objective of the prevention of crime and disorder but no explanation was given as to why this may be the case outside of the risk of alcohol being purchased for children under 18. One objector lodged a petition containing 500 signatures in opposition. A number of objectors also cited the fact that Thaxted appears to be well served by licensed premises and does not need another off-licence. The objectors include one of the local members and the parish council.

The committee immediately rejected the objections on the ground that there is no need for a licence. It is right to say that prior to the 2003 Licensing Act coming into effect; applicants for new licences did need to demonstrate need. If the Licensing Justice considered that an area was well served by licensed premises, then they ought to have refused applications for new licences. That situation does not prevail under the 2003 Act. Unless the council has a cumulative use policy, which this council does not, the number of licensed premises in an area is entirely irrelevant.

The licensing authority must exercise its powers so as to promote the four licensing objectives of prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

Although the premises have not yet been licensed they have traded for a number of years. Objectors have said that children use the premises to buy sweets, drinks etc. There is no evidence to show that the premises have to date been the source of any crime or disorder or that customers from the premises have caused a public nuisance. The government's guidance states that the authority's determination should be evidence based. The committee's attention has also been drawn to the case of R. (on the application of Daniel Thwaites Plc) v Wirral Borough Magistrates' Court 2008. This concerned an appeal to Licensing Justices from a decision of a licensing committee. The judge in the High Court said "there can be little doubt that local magistrates are also entitled to take into account their own knowledge but, in my judgement, they must measure their own views against the evidence presented to them. In some cases the evidence will require them to adjust their own impression. This is particularly likely to be so where it is given by a responsible authority such as the Police. They must also scrutinise their own anxieties about matters such as noise and other types of public nuisance, particularly carefully if the responsible authorities raise no objections on these grounds". He went on to say "However in my view their approach to what was 'necessary' was coloured by a failure to take proper account of the changed approach to licensing introduced by the Act. Had they had proper regard to the Act and the guidance they would have approached the matter with a greater reluctance to impose regulation and would have looked for real evidence that it was required in the circumstances of the case. The fact that the Police did not oppose the hours sought should have weighed very heavily with them whereas, in fact, they appear to have dismissed the Police view because it did not agree with their own".

In this case there have been no representations from the responsible authorities including the police and child protection unit. There is no evidence linking the premises with any crime or disorder. Whilst it may be the case that children frequent the premises the committee take notice of the fact that there are numerous convenience stores and similar shops which are frequented by

children which are licensed without difficulty. Any concerns which the committee may have had would be adequately dealt with by the conditions offered up by the applicant in the operating schedule to the application.

In the circumstances, the committee grant the licence in the terms of the application. If any evidence comes to light of adverse impact upon any of the licensing objectives, then anyone concerned may apply for a review of the licence.

The Assistant Chief Executive – Legal informed the interested parties of their right to appeal the decision.

The meeting ended at 11.05am.