

**MINUTES of the meeting of Regulatory Sub Committee held at The Council Chamber, Brockington, 35 Hafod Road, Hereford on Friday 13 March 2009 at 2.00 pm**

**Present:** Councillor JW Hope MBE (Chairman)

**Councillors:** PGH Cutter and A Seldon

**51. ELECTION OF CHAIRMAN**

Councillor JW Hope MBE was elected as Chairman for the Regulatory Sub-Committee hearing.

**52. APOLOGIES FOR ABSENCE**

Apologies were received from Councillor P Jones CBE.

**53. NAMED SUBSTITUTES (IF ANY)**

Councillor JW Hope MBE was noted as a substitute for Councillor P Jones CBE.

**54. DECLARATIONS OF INTEREST**

There were no declarations of interest made.

**55. APPLICATION FOR A REVIEW OF PREMISES LICENCE 'SOMERFIELD, DISHLEY STREET, LEOMINSTER, HR6 8PX.' (Pages 1 - 2)**

The Regulatory Sub-Committee was convened in order to determine an application for a review of a premises licence in accordance with Section 51 of the Licensing Act 2003. The Review had been applied for by the Chief Constable of the West Mercia Constabulary after Somerfield had failed in three test purchase operations since December 2007. The sales were made on 28 December 2007, 20 August 2008, and 20 December 2008.

The Chairman introduced the Members and Officers and asked any interested parties to introduce themselves. He advised them of the hearing procedures and asked if any party required an extension to the 10 minute time limit for public speaking, Mr Wallsgrove requested an additional 10 minutes. The Chairman then asked the Licensing Officer to present his report.

In accordance with the Licensing Act 2003 (Hearings) Regulations 2005, Tony Mantle, representing West Mercia Police Authority addressed the sub-committee. He advised the Sub-Committee that he was authorised by the Chief Officer to make representations. He noted that PC Thomas had requested a condition regarding the removal of the DPS but felt that this condition could now be disregarded as the relevant action had already been taken by Somerfield. In accordance with Section 53 C (3)(a) of the Licensing Act 2003, he requested that as a minimum measure two further conditions should be added to the licence:

- That a personal licence holder is on the premises at all times it operates for the sale of alcohol

- That the premises licence is suspended until all staff are retrained in age restricted sales

He added that the Sub-Committee should seriously consider revoking the Premises Licence due to the poor record of underage sales at the store.

In response to a question from Councillor PGH Cutter, Mr Mantle confirmed that his grounds for proposing revocation of the licence were the 3 test purchase failures over a 12 month period. He added that there was no evidence to the contrary that the store's record would improve and felt that the premises were likely to continue to sell to minors. He asked Members to look at the history of the store when making their decision. Following a question from Mr Wallsgrove, Mr Mantle confirmed that he had not visited the store but was aware of Somerfield's training procedures. In response to an additional question he added that in his opinion there was insufficient staff training taking place in the store.

In accordance with the Licensing Act 2003 (Hearings) Regulations 2005, Mr John Wallsgrove, the premise licence holder's legal advisor addressed the sub-committee. He advised Members that it was the committee's responsibility to promote the licensing objectives and felt that this would be best achieved through the addition of conditions on the licence. He added that although a thorough investigation had not deemed the Designated Premises Supervisor to be at fault, the store had decided to replace the DPS in order to address any possible training issues. He added that staff had been retrained with a greater emphasis given to personal responsibility and that there had been an increase in one to one training. He added that Somerfield were currently in the process of training 6 members of staff to be personal licence holders, resulting in 9 personal licence holders employed in the store. He felt that the proposed police condition could be too restrictive and could cause difficulties due to staff sick leave. Mr Wallsgrove went on to explain the current training systems adopted by the store and the company as a whole and also gave details of the training records that were kept.

Mr Wallsgrove then went on to explain the circumstances behind the most recent test purchase. He advised the sub-committee that the member of staff who had made the sale felt that the customer was over 18 years of age, he added that she had failed to apply the challenge 25 policy but did not think the premises licence holder was at fault for this as she had received thorough training in age restricted sales.

Members were also briefed on the independent test purchase scheme operated by Somerfield. Mr Wallsgrove advised that there had been 6 independent test purchase operations at the store since October 2008 and the store had passed on each occasion. He also detailed the operations put in place by store managers and area managers employed by Somerfield in respect of age restricted sales.

In summing up Mr Wallsgrove felt that the situation could be addressed through relevant conditions. He asked the Sub-Committee to take into account the stores voluntary change of DPS and their pledge to train an addition 6 personal licence holders to work in the store.

In response to a question from the Legal Practice Manager, Mr Wallsgrove confirmed that although the Challenge 25 condition hadn't been applied to the licence until January 2009 it had been a policy in store since July 2008.

Members were shown photographs of the two youths who took part in the test purchase operation. The photographs were also circulated to the Premises Licence Holder and their legal representative.

In response to a question from Councillor A Seldon, the police representative advised that Leominster had some issues with antisocial behaviour and that a number of the issues related to the consumption of alcohol by youths. He added that a number of bottles had been confiscated in the Grange area of Leominster.

In response to a question regarding training, Mr Wallsgrove confirmed that the police had not visited the store and that they had not viewed Somerfield's training methods. He added that in his opinion the latest sale was not a result of insufficient training.

The Chairman invited all of the parties present to sum up their comments in a brief closing statement. The Sub-Committee then retired to make their decision, the Legal Practice Manager and the Democratic Services Officer also retired to assist them with procedural matters.

The Sub-Committee decided the following, which was read out by the Legal Practice Manager:

*"We have heard this application for review and take into consideration the materials before us today, the representations made by the police and those made by Mr Wallsgrove on behalf of Somerfield Stores. We have disregarded the representation from PC Thomas regarding the removal of the DPS as detailed in his letter dated 8<sup>th</sup> January 2009.*

*The trigger event for this review was the sale of alcohol to a 16 year old boy at the Somerfield Leominster store on the 20 December 2008. We have seen the photograph of the boy concerned. It is not disputed that this sale took place. It has been confirmed by Mr Wallsgrove that 'Challenge 25' was a policy in force in the store since July 2008. We have had our attention drawn to the antecedent history of this particular store and note that alcohol sales were made to minors on the 28 December 2007 and 20 August 2008 in addition to the sale in December 2008.*

*We are cognisant of the fact that a premises licence is capable of amounting to 'property' within the meaning of the European Convention of Human Rights.*

*We have been invited by Mr Wallsgrove to deal with this matter today by way of the imposition of a condition requiring a personal licence holder to be rostered to be at the premises during the hours of licensable activity as a suitable outcome. The Police have urged for revocation of the licence. Our approach is governed by our duty to ensure that the relevant licensing objectives are upheld. Those key objectives are the prevention of crime and disorder and the protection of children from harm.*

*Having regard to all of the circumstances and having regard to our duty to act proportionally we feel that we are able to add a condition that there be a premises licence holder in the store at all times during licensing hours.*

*However we are not confident that the current regime in store upholds the licensing objectives and in those circumstances we impose a 42 day suspension to enable the staff being the subject of the new condition to be recruited or trained.*

*We also urge as an item for information that the police visit the store and review issues of topical concern in Leominster so that more effective controls can be devised for the future in respect of underage sales."*

## **RESOLVED**

**That;**

- the premise licence in respect of Somerfield, Dishley Street, Leominster, HR6 8PX, be amended as detailed in the attached decision notice.
- the premises licence be suspended for a period of 42 days.

**56. APPLICATION FOR A REVIEW OF PREMISES LICENCE 'THE CO-OPERATIVE STORE, 90 GRANDSTAND ROAD, HEREFORD, HR4 9NR.'** (Pages 3 - 4)

The Regulatory Sub-Committee was convened in order to determine an application for a review of a premises licence in accordance with Section 51 of the Licensing Act 2003. The Review had been applied for by the Chief Constable of the West Mercia Constabulary after the Co-operative store had failed in three test purchase operations since December 2007. The sales were made on 28 December 2007, 19 August 2008, and 15 December 2008.

The Chairman introduced the Members and Officers and asked any interested parties to introduce themselves. He advised them of the hearing procedures and asked if any party required an extension to the 10 minute time limit for public speaking, no extensions were requested.

The Licensing Officer presented his report and advised Members that the applicant had agreed to all of the recommended conditions. He also advised that the Designated Premises Supervisor had been changed on 13 February 2009.

In accordance with the Licensing Act 2003 (Hearings) Regulations 2005, Tony Mantle, representing West Mercia Police Authority addressed the sub-committee. He advised the Sub-Committee that he was authorised by the Chief Officer to make representations. He noted that PC Thomas had requested 2 conditions which had both been agreed with the applicant. In accordance with Section 53 C (3)(a) of the Licensing Act 2003, he requested that the following conditions be added to the licence:

- That the use of 'Challenge 25' is made a condition of all sales on the premises.
- That the premises employs proven training methods for all staff in age restricted sales and that written records of the training are kept and made available for inspection by the Licensing Authority and Police.

In accordance with the Licensing Act 2003 (Hearings) Regulations 2005, Phillip Samerakis, representing the premises licence holders addressed the sub-committee. He advised Members of the training procedures, practices, and in house test purchase operations that had been put in place in the store in relation to age restricted sales. He went on to explain the circumstances behind the most recent sale and advised Members that the member of staff who authorised the sale had been notified of the death of his father the day before the sale took place. He added that the premises licence holders were sorry that the sale had taken place but hoped the Sub-Committee could take the circumstances behind the sale into account when making their decision.

The Chairman invited all of the parties present to sum up their comments in a brief closing statement. The Sub-Committee then retired to make their decision, the Legal Practice Manager and the Democratic Services Officer also retired to assist them with procedural matters.

The Sub-Committee decided the following, which was read out by the Legal Practice Manager:

*"We have heard representations from the Police and from Mr Samerakis, on behalf of the Co-operative store, and have considered all of the material placed before us.*

*The trigger even for this review was the sale of alcohol to a 16 year old minor on 15 December 2008. That sale is not disputed.*

*We are also aware of antecedent matters relating to this premises namely the sale of alcohol to a 16 year old on 28 December 2007 and a similar sale on 19 August 2008, when again a sale of alcohol as made to a 16 year old.*

*We recognise the fact that a premises licence is capable of amounting to property within the meaning of the European Convention on Human Rights.*

*We have been invited to deal with this matter by way of conditions suggested by the police which are agreeable to the Co-operative and have had explained to us that the supervisor in the store on 15 December had recently suffered a close family bereavement. It is submitted that the sale was authorised by an employee who was distracted by his grief. We note the expression of contrition on the part of the store.*

*As always in matters such as these where age restricted sales are authorised, our approach is to ensure that the licensing objectives are upheld. These key objectives are the prevention of crime and disorder and the protection of children from harm.*

*Having regard to all of the circumstances we consider that the following two conditions should be attached to the licence.*

- That the use of 'Challenge 25' is made a condition of all sales on the premises.*
- That the premises employs proven training methods for all staff in age restricted sales and that written records of the training are kept and made available for inspection by the Licensing Authority and Police.*

*Having regard to the change of control of the premises in September 2008 this is in reality the first underage sale at the premises by its new owner. Having regard to the exceptional circumstances affecting the supervisor at the time of sale we make no other order.*

*We consider this decision to be proportionate and fair.*

## **RESOLVED**

**That the premise licence in respect of the Co-Operative Store, 90 Grandstand Road, Hereford, HR4 9NR, be amended as detailed in the attached decision notice.**





## HEREFORDSHIRE COUNCIL

REGULATORY COMMITTEE DECISION NOTICE  
(THE LICENSING ACT 2003)

<b>PREMISES</b>	Somerfield Leominster
<b>LICENCE HOLDER</b>	Somerfield Stores Ltd
<b>APPLICANT'S NAME</b>	Chief Constable Paul West
<b>APPLICATION TYPE</b>	Review of Premises Licence
<b>PANEL MEMBERS</b>	Councillor JW Hope MBE (Chairman) Councillor PGH Cutter Councillor A Seldon
<b>DATE OF MEETING</b>	13 March 2009

Members of the Licensing Panel of the Council's Regulatory Committee considered the above application, full details of which appeared before the Members in their agenda and the background papers.

Prior to making their decision, the Members heard from Tony Mantle, representing West Mercia Constabulary, together with Mr Wallsgrove, the premises licence holders' legal representative.

Having carefully considered those matters put before them, the Members of the Committee considered that in order to promote the Licensing Objectives that the application should be, and was determined as follows:-

That the Licence be suspended in respect of all licensable activities for a period of 42 days commencing 15 April 2009.

That the following additional condition be imposed forthwith\* upon the licence:-

- *A personal licence holder must be on the premises at all times it operates for the sale of alcohol.*

That the following informative note be added to the licence\*:-

- *A representative of the West Mercia Constabulary to visit the store at a time convenient to all parties to discuss issues of topical concern in Leominster and to devise more effective controls for the future in respect of under age sales.*

\* Subject to Section 52(11) which states that a determination under this section does not have effect:

- (a) until the end of the period given for appealing against the decision, or  
(b) if the decision is appealed against, until the appeal is disposed of.

**HEREFORDSHIRE COUNCIL**

**REGULATORY COMMITTEE DECISION NOTICE  
(THE LICENSING ACT 2003)**

**REASONS**

In reaching their decision, the Members had full regard to both the provisions of the Licensing Act 2003 and the Council's Licensing Policy, the Guidance issued pursuant to Section 182 of the Act, together with the matters raised both orally and in the documents presented to the meeting. The Committee were cognisant of the fact that the Licence amounted to 'property' within the meaning of Article 1 to the First Protocol of the European Convention on Human Rights and considered that their decision was proportionate, having regard to all the matters put before them. The Members made their decision in order to promote two of the four licensing objectives, namely the prevention of crime and disorder and the protection of children from harm.

The Sub-Committee added that they were not confident that the current regime in the store upheld the licensing objectives and felt that the suspension was both appropriate and proportional in order to allow suitable time for staff to be recruited or trained in accordance with the additional condition.





## HEREFORDSHIRE COUNCIL

**REGULATORY COMMITTEE DECISION NOTICE  
(THE LICENSING ACT 2003)**

<b>PREMISES</b>	The Co-operative Store
<b>LICENCE HOLDER</b>	Mid Counties Co-operative Ltd
<b>APPLICANT'S NAME</b>	Chief Constable Paul West
<b>APPLICATION TYPE</b>	Review of Premises Licence
<b>PANEL MEMBERS</b>	Councillor JW Hope MBE (Chairman) Councillor PGH Cutter Councillor A Seldon
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Having carefully considered those matters put before them, the Members of the Committee considered that in order to promote the Licensing Objectives that the application should be, and was determined as follows:-

That the following additional conditions be imposed forthwith\* upon the licence:-

- *The use of 'Challenge 25' is made a condition of all sales made on the premise.*
- *That the premise employs proven training methods for all staff in age restricted sales.*
- *Written records of the training are kept and made available for inspection by the Licensing Authority and Police.*

\* Subject to Section 52(11) which states that a determination under this section does not have effect:

- (a) until the end of the period given for appealing against the decision, or  
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**HEREFORDSHIRE COUNCIL**

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(THE LICENSING ACT 2003)**

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