

A G E N D A

Regulatory Sub Committee

Date: **Friday 13 March 2009**

Time: **2.00 p.m.**

Place: **The Council Chamber, Brockington, 35
Hafod Road, Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

*Ricky Clarke, Democratic Services Officer, Tel:
01432 261885 Fax: 01432 260286
E-mail: rclarke@herefordshire.gov.uk*

Herefordshire Council

AGENDA

for the Meeting of the Regulatory Sub Committee

To: Councillors PGH Cutter, P Jones CBE and A Seldon

Pages

1. ELECTION OF CHAIRMAN

To elect a Chairman for the hearing.

2. APOLOGIES FOR ABSENCE

To receive apologies for absence.

3. NAMED SUBSTITUTES (IF ANY)

To receive details any details of Members nominated to attend the meeting in place of a Member of the Committee.

4. DECLARATIONS OF INTEREST

To receive any declarations of interest by Members in respect of items on the Agenda.

GUIDANCE ON DECLARING PERSONAL AND PREJUDICIAL INTERESTS AT MEETINGS

The Council's Members' Code of Conduct requires Councillors to declare against an Agenda item(s) the nature of an interest and whether the interest is personal or prejudicial. Councillors have to decide first whether or not they have a personal interest in the matter under discussion. They will then have to decide whether that personal interest is also prejudicial.

A personal interest is an interest that affects the Councillor more than most other people in the area. People in the area include those who live, work or have property in the area of the Council. Councillors will also have a personal interest if their partner, relative or a close friend, or an organisation that they or the member works for, is affected more than other people in the area. If they do have a personal interest, they must declare it but can stay and take part and vote in the meeting.

Whether an interest is prejudicial is a matter of judgement for each Councillor. What Councillors have to do is ask themselves whether a member of the public – if he or she knew all the facts – would think that the Councillor's interest was so important that their decision would be affected by it. If a Councillor has a prejudicial interest then they must declare what that interest is and leave the meeting room.

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The Public's Rights to Information and Attendance at Meetings

YOU HAVE A RIGHT TO: -

- Attend all Council, Cabinet, Committee and Sub-Committee meetings unless the business to be transacted would disclose 'confidential' or 'exempt' information.
- Inspect agenda and public reports at least five clear days before the date of the meeting.
- Inspect minutes of the Council and all Committees and Sub-Committees and written statements of decisions taken by the Cabinet or individual Cabinet Members for up to six years following a meeting.
- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. (A list of the background papers to a report is given at the end of each report). A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
- Access to a public Register stating the names, addresses and wards of all Councillors with details of the membership of Cabinet and of all Committees and Sub-Committees.
- Have a reasonable number of copies of agenda and reports (relating to items to be considered in public) made available to the public attending meetings of the Council, Cabinet, Committees and Sub-Committees.
- Have access to a list specifying those powers on which the Council have delegated decision making to their officers identifying the officers concerned by title.
- Copy any of the documents mentioned above to which you have a right of access, subject to a reasonable charge (20p per sheet subject to a maximum of £5.00 per agenda plus a nominal fee of £1.50 for postage).
- Access to this summary of your rights as members of the public to attend meetings of the Council, Cabinet, Committees and Sub-Committees and to inspect and copy documents.

Please Note:

Agenda and individual reports can be made available in large print. Please contact the officer named on the front cover of this agenda **in advance** of the meeting who will be pleased to deal with your request.

The meeting venue is accessible for visitors in wheelchairs.

A public telephone is available in the reception area.

Public Transport Links

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- The nearest bus stop to Brockington is located in Old Eign Hill near to its junction with Hafod Road. The return journey can be made from the same bus stop.

If you have any questions about this agenda, how the Council works or would like more information or wish to exercise your rights to access the information described above, you may do so either by telephoning the officer named on the front cover of this agenda or by visiting in person during office hours (8.45 a.m. - 5.00 p.m. Monday - Thursday and 8.45 a.m. - 4.45 p.m. Friday) at the Council Offices, Brockington, 35 Hafod Road, Hereford.

HEREFORDSHIRE COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

FIRE AND EMERGENCY EVACUATION PROCEDURE

In the event of a fire or emergency the alarm bell will ring continuously.

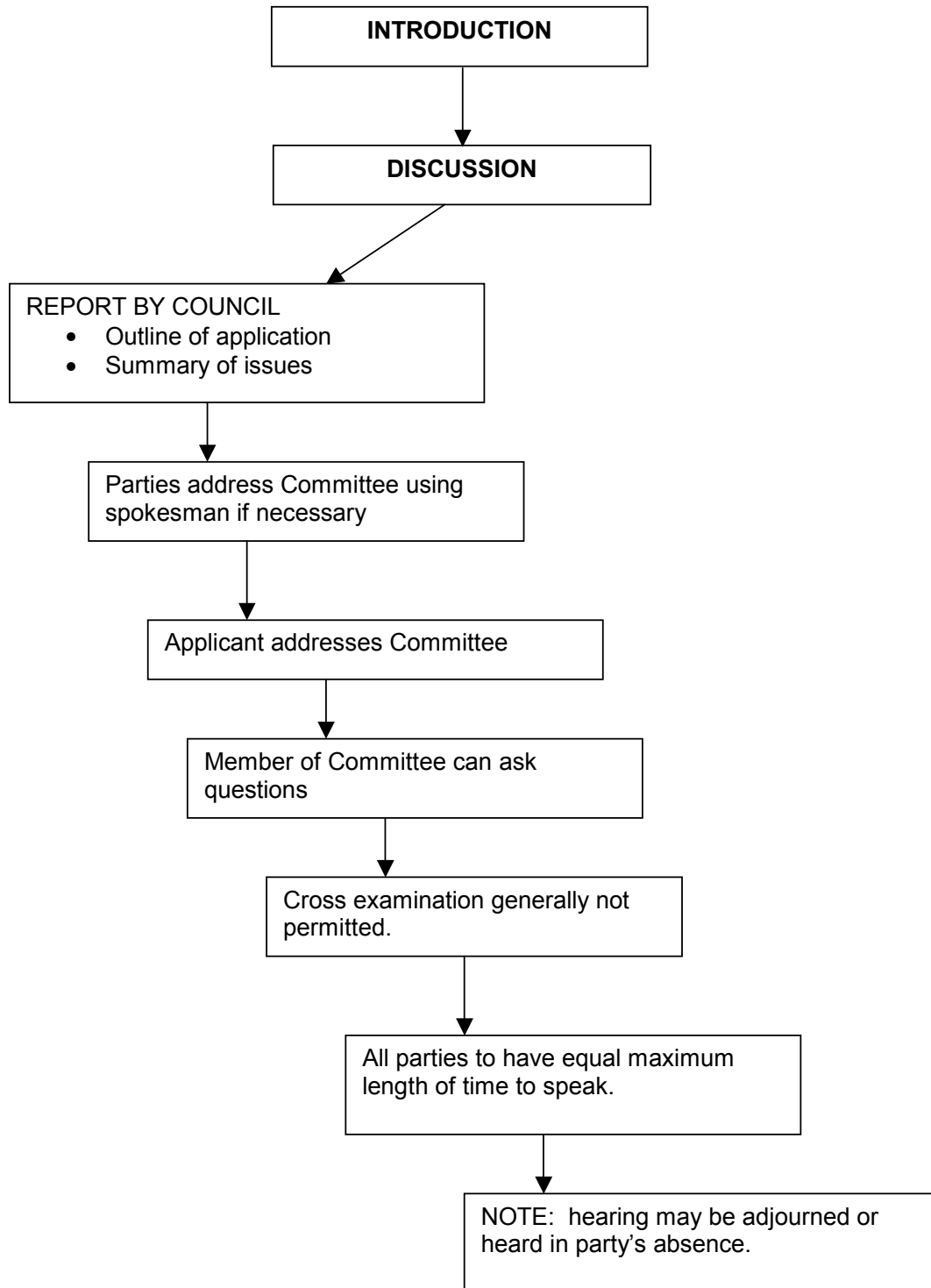
You should vacate the building in an orderly manner through the nearest available fire exit.

You should then proceed to Assembly Point J which is located at the southern entrance to the car park. A check will be undertaken to ensure that those recorded as present have vacated the building following which further instructions will be given.

Please do not allow any items of clothing, etc. to obstruct any of the exits.

Do not delay your vacation of the building by stopping or returning to collect coats or other personal belongings.

LICENCING HEARING FLOW CHART



**APPLICATION FOR REVIEW OF A PREMISES LICENCE
ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT
OF 'SOMERFIELD, DISHLEY STREET, LEOMINSTER, HR6
8PX'.**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Leominster

1. Purpose

To consider an application for a review of a premises licence in respect of Somerfield, Dishley Street, Leominster, HR6 8PX.

2. Background Information

Applicant	Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.	
Premise Licence Holder	Somerfield Stores Ltd, Somerfield House, Whitchurch Lane, Bristol, BS14 0TJ.	
Solicitor	Blake Laphorn, New Kings Court, Tollgate, Chandler's Ford, Eastleigh, Hampshire, SO53 3LG.	
Type of application: Review	Date received: 17/01/09	28 Days consultation 13/02/09

A notice advertising the review was placed on the premises prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (i.e. at the Council's Bath Street Offices).

3. Current Licence

The current licence allows: -

Sale by Retail of Alcohol

- On weekdays, other than Christmas Day, 8 am to 11 pm
- On Sundays, other than Christmas Day, 10 am to 10.30 pm
- On Christmas Day, 12 noon to 3 pm and 7 pm to 10.30 pm
- On Good Fridays, 8 am to 10.30 pm

There are no Non-Standard Timings.

4. Summary of Application

The application for review relates to the following licensing objectives: -

- Prevention of public nuisance
- Protection of children from harm

5. The grounds for the review are: -

The premise has been the subject of four test purchase operations since December 2007 and has sold on three occasions.

The licence was reviewed on 4 November 2008 as a result of 2 sales following test purchase operations. Additional conditions were attached to the licence at this time.

The premises was the subject of another test purchase operation on the 16 December 2008 and a sale was made to a 16 year old.

6. **The information provided to support this application is: -**

On 28 December 2007, Herefordshire Council's trading standards service and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol without being challenged about her age.

The person who made the sale was issued with a fixed penalty notice.

On 20 August 2008, Herefordshire Council's trading standards service and the West Mercia Constabulary carried out a further test purchase operation at the premises.

A 16 year old female was again served alcohol without being challenged about her age.

The person who made the sale was issued with a fixed penalty notice.

The premise licence was reviewed as a direct result of these sales, and on the 4 November 2008, the licence was suspended for a period of 24 hours and the following conditions were added to the licence:

1. The use of 'Challenge 25' was made a condition of all sales made on the premises.
2. All staff engaged in the selling of alcohol must be trained in alcohol awareness in strict accordance with the training regime annexed to the letter from Blake Laphorn, dated 7 October 2008.

On the 20 December 2008, Herefordshire Council's trading standards service and the West Mercia Constabulary carried out another test purchase operation at the premises.

A 16 year old was again served with alcohol without her age being challenged.

The person who made the sale was issued with a fixed penalty notice.

7. **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

West Mercia Police

West Mercia Police have since provided additional evidence in support of the application.

Environmental Health, Fire Authority and Interested Parties.

No representations have been received from these bodies.

8. Review Response

The following response has been received from the solicitor representing the premises licence holder: -

“Somerset Stores Ltd is implacably opposed to the sale of alcohol to under age persons. The company, as the premises licence holder, exercise all due diligence to prevent the sale of alcohol to minors.

Following the review of the premises licence for other failed test purchases, all staff were retrained. There is a comprehensive training programme and the test purchase failure on 16 December was not as a consequence of a lack of training of the member of staff who made the sale.

A condition had been added to the premises licence following the last review in respect of the training of staff and this was complied with both prior and subsequent to that review.

There are comprehensive measures in place to prevent the sale of alcohol to minors. A number of these measures are required to be completed by the Designated Premises Supervisor. Following an investigation, the Designated Premises Supervisor did all he was required to do.”

9. Changes to Premises Licence

On 9 February 2009 an application was made by the premise licence holder for a change of the Designated Premises Supervisor which was granted.

10. Previous Review

On 20 December 2008 this Committee reviewed the premise licence. The decision of the Committee was: -

‘That the Licence be suspended in respect of all licensable activities for a period of 24 hours.

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

- That the use of ‘Challenge 25’ is made a condition for all sales made on the premises.
- All staff engaged in selling alcohol must be trained in alcohol awareness in strict accordance with the training regime annexed to the letter from Blake Laphorn dated 7 October 2008.’

Section 52 (11) of the Licensing Act states “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.”

On 3 December 2008 the Magistrates Court notified the Licensing Authority that this decision had been appealed against.

This meant that the decision had no effect.

A date of 15 January 2009 was listed for the matter to be heard.

This matter was subsequently withdrawn by the applicant and accordingly the conditions and suspension came into force on 13 January 2009.

11. **Other information**

The Committee will be aware of the document issued by the Home Office & Department of Culture, Media and Sport document entitled 'Problem Premises on Probation – Red and Yellow Cards which appeared before the Regulatory Committee on 4 November 2008 and Full Council on 17 February 2009.

A copy of this document is included in background papers.

12. **Committee's Responsibility**

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

13. **Options: -**

- Take no action
- Take any of the following steps: -
 - (a) to modify the conditions of the licence;
 - (b) to exclude a licensable activity from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence for a period not exceeding three months;
 - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

14. **Background Papers**

- a. Application Form
- b. Police Representation
- c. Somerfield Representation
- d. Ministerial Letter (Problem Premises on Probation – Red and Yellow Cards)

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

NOTES**REVIEWS**

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22 A number of reviews may arise in connection with crime that is not directly connected with licensable activities

Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all.

Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.25 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 sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- 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;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52 (11) 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.

Licensing Authorities power to exercise substantive discretionary powers.

The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the

inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary. You may wish to keep a copy of the completed form for your records.

LICENSING SECTION
RECEIVED
12 JAN 2009
TO: _____

I Paul West Chief Constable West Mercia Constabulary
(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description SOMERFIELDS Dishley Street	
Post town Leominster	Post code (if known) HR6 8PX
Name of premises licence holder or club holding club premises certificate (if known) SOMERFIELDS STORES LTD	
Number of premises licence or club premises certificate (if known) PR00287	

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises
 - d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)

3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr Mrs Miss Ms Other title
(for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Stephen Gomer THOMAS Police Constable 697, on behalf of the Chief Constable of the West Mercia Constabulary Hereford Police Station Bath Street HEREFORD HR1 2HT
Telephone number (if any) 01432 364552
E-mail address (optional) stephen.thomas@westmercia.pnn.police.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- 1) the prevention of crime and disorder
- 2) public safety
- 3) the prevention of public nuisance
- 4) the protection of children from harm

Please state the ground(s) for review (please read guidance note 1)
The premise has been the subject of four test purchase operations since December 2007 and has sold on 3 occasions.

The licence was reviewed on the 4th November 2008, as a result of 2 sales, following test purchase operations and additional conditions were attached to the licence.

Those conditions were

- 1 The use of Challenge 25 was made a condition of all sales made on the premise
- 2 All staff engaged in the selling of alcohol be trained in alcohol awareness.

The premise was the subject of another test purchase operation on the 16th December 2008 and a sale was made to a 16 year old.

Please provide as much information as possible to support the application
(please read guidance note 2)

On the 28th December 2007, Herefordshire Council Trading Standards Department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol with out being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

On the 20th August 2008, Herefordshire Council Trading Standards Department , and the West Mercia Constabulary carried out a test purchase operation at the premise

A 16 year old was served alcohol with out being challenged concerning her age

The person who made the sale was issued with a fixed penalty notice

The premise licence was reviewed as a direct result of these sale, and on the 4th November 2008, the licence was suspended for a period of 24 hours and the following conditions were added to the licence

1 That the use of challenge 25 is made a condition of all sales made on the premises

2 All staff engaged in selling alcohol be trained in alcohol awareness in strict accordance with the training regime annexed to the letter from Balke Laphorn dated 7 October 2008.

On the 16th December 2008 , Herefordshire Council Trading Standards Department, and the West Mercia Constabulary carried out a test purchase operation at the premise

A 16 year old was served with alcohol with out being challenged concerning her age.

The operson who made the sale was issued with a FPT

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

10th Day
Month *September*
Year *2008*

If you have made representations before relating to this premises please state what they were and when you made them

The West Mercia Constabulary called for a review of this premise licence on the 10th September 2008.

The representations made were that the premise had failed two test purchase operations

The West Mercia Constabulary requested additional conditions be attached to the licence.

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

S. J. Haron P(59)

Date 8th January 2009.

Capacity Divisional Licensing Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Licensing Department
Hereford Police Station
Bath Street
HEREFORD
HR1 2HT
Direct Dial 01432 364552 Fax:



WEST MERCIA
CONSTABULARY
TOGETHER - WORKING FOR SAFETY AND JUSTICE

8th January 2009.

Our Ref:
Your Ref:

Herefordshire Council Licensing Section
The County Offices
PO Box 233
Bath Street
HEREFORD
HR1 2ZF

Dear Sir / Madam

REF: SOMERFIELD LEOMINSTER.
APPLICATION TO REVIEW PREMISE LICENCE
LICENSING ACT 2003

On behalf of the Chief Constable of the West Mercia Constabulary, I have made an application to review the Premise Licence for, Somerfield Store, Leominster.

The application is made in accordance with section 51 of the Licensing Act 2003, and for the purpose of section 52 (7) the relevant representations concern the promotion of the licensing objectives of "the protection of children from harm " and "the prevention of public nuisance "

The premise is licensed for the sale by retail of alcohol.

The West Mercia Constabulary and Herefordshire Council Trading Standards Department have taken part in regular test purchase operations.

These operations involved the use of 15 or 16 year olds, visiting licensed premises and attempting to purchase alcohol, in accordance with section 149 (2) of the Licensing Act 2003.

In the spring of 2007 The West Mercia Constabulary, and Herefordshire Council Trading Standards Department, took part in the, Home Office Police Standards Unit, test purchase operation.

In the county of Herefordshire 12 out of the 20 premises tested, sold to children.

This premise was not part of that operation.



In view of the high failure rate, particularly in Leominster, further operations were planned, with a larger number of premises being tested.

In December 2007, The West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out a further test purchase operation in the county.

During this operation 48 separate premises were made the subject of a single "test"

- Out of the 48 premises "tested" 12 sold which is 25%
- This premise was the subject of a test purchase operation on the 28th December 2007, and a sale was made to a 16 year old

In the spring of 2008, the West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out a further test purchase operation in the county that involved revisiting all 12 premises that made sales in December 2007.

- Out of the 12 re-visited, 4 made sales which is 33%

This premise was the subject of a test purchase operation on the 1st March 2008, and no sale was made.

Because of the same high failure rate, during the summer of 2008, the West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out further test purchase operations in the county.

During this operation 55 separate premises were made the subject of a single "test"

Out of the 55 premises "tested" 19 sold which is 29%

- This premise was the subject of a test purchase operation on the 20th August 2008, and a sale was made to a 16 year old female.

On the 10th September 2008 the West Mercia Constabulary called for a review of this premise, as a direct result of these failed test purchase operations.

On the 4th November 2008 Herefordshire Council Licensing sub committee, imposed two additional conditions of the premise licence and suspended it for 24 hours.

The additional conditions were

- That the use of Challenge 25 is made a condition of all sales made on the premises

- All staff engaged in the selling of alcohol be trained in alcohol awareness in strict accordance with the training regime annexed to the letter from Blake Laphorn dated 7 October 2008.

In December 2008 Herefordshire Council Trading Standards Department and the West Mercia Constabulary carried out a further test purchase operation at premises who had failed previous "tests"

This premise was the subject of a test purchase operation on the 16th December 2008, and a sale was made to a 16 year old female

In March 2008 the government issued an evaluation of the impact of the Licensing Act 2003

This review produced 3 "Immediate Actions" one of which was, to change the offence of "persistently selling alcohol to a person under the age of 18 from three strikes to two strikes in 3 months."

In accordance with section 53 C (3) (A) the West Mercia Constabulary would seek the licensing authority to modify the conditions on the licence by the addition of the following.

- That the DPS is removed from the premise licence
- That a personal licence holder is on the premise at all times it operates for the sale of alcohol
- That the premise licence is suspended until, all staff are retrained in age restricted sales

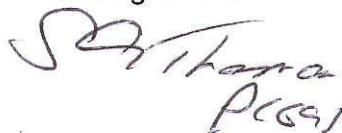
It is the view of the West Mercia Constabulary that the provision of these conditions is necessary to promote the licensing objective of the protection of children from harm, and the prevention of public nuisance. They are the minimum conditions we would wish to see if the premise is to continue to be licensed.

During the operations in the summer of 2008, the Somerfield stores in both Ross on Wye and Ledbury, were also the subject of test purchase operations.

1. On the 26th August 2008 a sale was made to a 16 year old at the Ross on Wye store
2. On the 26th August 2008 a sale was made to a 16 year old at the Ledbury

These premises were also the subject of test purchase operations in December 2008, and no sales were made.

S G Thomas
Licensing Officer



S G Thomas
P(69)

The Licensing Manager
Herefordshire Council
County Offices
PO Box 233
Bath Street
HEREFORD
HR1 2ZF

New Kings Court, Tollgate, Chandler's Ford
Eastleigh, Hampshire SO53 3LG

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T: +44 (0) 2380 908090
F: +44 (0) 2380 363349
E: jon.wallsgrove@blaw.co.uk
www.blaw.co.uk

Our Ref: 501797/000004/JOSWLDRLIC/EB

Your Ref:

9 February 2009

Dear Sirs

Somerfield
Dishley Street, Leominster, Hereford & Worcester, HR6 8PX

We act for Somerfield Stores Limited and write further to the application to Review the Premises Licence by West Mercia Constabulary.

We confirm our clients received the application to Review the Premises Licence on Monday 12th January. We enclose written representations made on behalf of our client and look forward to receiving confirmation of when the matter will be listed before the Committee for a hearing.

We note the application was accompanied by a covering letter which included reference to a number of matters which are entirely irrelevant. This information was appended to the last Review Application for Somerfield Stores. At the Committee Hearing the Chairman made it clear they were not taking into account that information accepting that it related to other premises and made reference to matters which were not yet law. Accordingly, we would be grateful if you would ensure that the covering letter with the application is not included the Committee's papers. The relevant information contained within that letter may be given orally, expanding on the information provided in the application.

We would be grateful if you would ensure that we are served with all relevant correspondence in these proceedings and we will accept service on behalf of our client. Particularly we request that the "Reading Material" for the Committee is served on us in good time prior to the hearing.

Thank you for your assistance in this matter. Should you have any queries then please contact Jon Wallsgrove at these offices.

Yours faithfully


Blake Lapthorn

Enc



**Representations following an application to review the premises licence for
Sommerfield, Dishley Street. Leominster.**

Sommerfield Stores Ltd is implacably opposed to the sale of alcohol to under age persons. The company as premises licence holder exercise all due diligence to prevent the sale of alcohol to minors.

Following the review of the premises licence for other failed test purchases all staff were retrained. There is a comprehensive training programme and the test purchase failure on the 16th December was not as a consequence of a lack of training of the member of staff who made the sale.

A condition had been added to the premises licence following the last review in respect of the training of staff and this was complied with both prior and subsequent to that review.

There are comprehensive measures in place to prevent the sale of alcohol to minors. A number of these measures are required to be completed by the Designated Premises Supervisor. Following an investigation the Designated Premises Supervisor did all he was required to do.

MINISTERIAL LETTER TO LOCAL AUTHORITIES

Department for Culture, Media and Sport
Gerry Sutcliffe MP
Minister for Sport

2-4 Cockspur Street Tel 020 7211 6200
London SW1Y 5DH Fax 020 7211 6249
www.culture.gov.uk

CMS 102866/mk

19 September 2008

Dear Chief Executive

LICENSING ACT 2003 ENFORCEMENT

As you may be aware, the Government's evaluation of the impact of the Licensing Act 2003 in March found that, while the Act was generally working well, the powers available under the Act were not being consistently well used across the country.

These findings were reinforced by the National Audit Office report *The Home Office: Reducing the risk of violent crime*, which looked at the effectiveness of violent crime reduction at a local level, including the approach taken in relation to alcohol related violence. It found that some areas were more effective than others at sharing good practice across partnerships and using the powers available under the Licensing Act alongside other interventions. It recommended that the government should raise awareness amongst partnerships and the police about how the Licensing Act can be used to reduce alcohol related violence and to ensure that all areas are using the Act to its maximum potential to reduce the risk of violent crime.

The Secretary of State for Culture, Media and Sport therefore announced a number of measures to help enforcement authorities, such as the police, trading standards and environmental health officers, take a proactive approach to identifying and seeking reviews of problem premises, and to encourage licensing authorities to consider where tougher conditions might be appropriate following a licence review. A copy of the Secretary of State's written statement to the

House of Commons is enclosed for information.

A key part of the approach outlined by the Secretary of State was for authorities to use local intelligence and



knowledge to identify problem premises and to seek licence reviews with the intention of applying tough conditions as a 'yellow card' with the threat of revocation at a further review (a 'red card') should they fail to improve. Further details are set out in the attached guidance.

Some authorities already adopt a similar approach and the Home Office are organising a series of regional, practitioner focused workshops in November (to be run through Government Offices) on tackling problem premises through effective use of tools and powers, including the Licensing Act. Inevitably, different areas will need to adopt different approaches to reflect their own particular combination of issues in their area. We would like the regional events to identify some practical responses, including better partnership approaches such as sharing data about problem premises, enforcement of existing powers, test purchase campaigns and also the yellow/red card approach that can be tailored to individual areas. Invitations to the events should be issued shortly.

Both the Police observations as part of the campaign to tackle sales to drunks (last December) and the recent KPMG review of industry social responsible retail standards identified a number of premises which were not only breaking the law, but also represented high risks in relation to several of the licensing objectives (not just the prevention of crime and disorder). Some of those would appear to be exactly the kinds of premises where a yellow card backed up by tough conditions might be appropriate. In these circumstances, it is important that all responsible authorities are playing their part in using the 2003 Act to help promote the licensing objectives and to work in partnership to identify and tackle poorly run premises.

I should be grateful if you could share this letter and attachments with colleagues who are responsible for issues relating to the management of the night time economy and with local partnerships, such as your CDRP. I would, of course, be interested in hearing of any successful partnership approaches in your area and how the yellow/red card and tough conditions approaches might be implemented

GERRY SUTCLIFFE

Department for Culture, Media and Sport

2-4 Cockspur Street

London SW1Y 5DH

www.culture.gov.uk

MINISTERIAL WRITTEN STATEMENT

Tuesday 04 March 2008

EVALUATION OF THE IMPACT OF THE LICENSING ACT 2003

LICENSING ACT 2003 AND TACKLING ALCOHOL-RELATED HARM

The Secretary of State for Culture, Media and Sport (Andy Burnham): I am today publishing the evidence gathered so far on the operation of the licensing laws introduced in England and Wales in November 2005, and setting out how we intend to monitor the licensing regime over the next few weeks and months, and the immediate action the Government is taking to tackle alcohol-related problems. Copies of the evaluation report are being placed in the Library of both Houses.

This first review of the Licensing Act reveals a **mixed picture**.

Its introduction has not led to the widespread problems some feared. Overall, crime and alcohol consumption are down. But alcohol-related violence has increased in the early hours of the morning and some communities have seen a rise in disorder.

Our main conclusion is that **people are using the freedoms** but people are **not sufficiently using the considerable powers** granted by the Act to tackle problems, and that there is a need to **rebalance action towards enforcement** and crack down on irresponsible behaviour.

Some aspects of the Act have worked well.

Bringing together six previous licensing regimes into a single integrated scheme has resulted in a considerable reduction in red tape – estimated at £99m per annum – with benefits not just for business, but the third sector and non-profit making clubs too.

The Act has also delivered new powers and flexibilities enabling local authorities and police to work in partnership to significantly reduce crime and disorder in some areas.

At the same time, millions of people have been able to enjoy the convenience of shopping at a time that suits them and socialising in restaurants, bars and cafés beyond 11pm.

Furthermore, contrary to popular expectations:

- The average closing time across all on-licensed premises has increased by only 21 minutes since the Act came into effect;
- the overall volume of incidents of crime and disorder has remained stable and not risen; and
- alcohol consumption, rather than increasing, has instead fallen over this period.

In total, fewer than 4% of premises (some 5,100) have licences permitting them to open for up to 24 hours a day - many of which are hotels, stores and supermarkets. Only some 470 pubs, bars and nightclubs have 24 hour licences, but there is no evidence that more than a handful operate on that basis. The British Beer and Pub Association informed a Select Committee recently that there are only two traditional pubs in the entire country that operate for 24 hours.

But beneath these headline facts the picture is much more mixed.

Whilst crimes involving violence may have reduced over the evening and night time period, the evidence also points to increases in offences, including violent crimes, reported between 3am and 6am. This represents 4 per cent of night-time offences.

Similarly, whilst there is no clear picture of whether alcohol related demands on A&E services and alcohol-related admissions have risen, some hospitals have seen a fall in demand, others have reported an increase.

It is also clear that the overall reduction in alcohol-related disorder we wanted to see across the country has not materialised consistently in all areas.

The Government remains determined to address these issues, and the report published today has helped us identify a number of ways we can go further to protect the public, both in terms of using all the **flexibilities in the Act to crack down on irresponsible behaviour**, including more caution and conditions when issuing licenses and the withdrawal of licences in certain areas, but also introducing **new initiatives to tackle anti-social behaviour** associated with alcohol consumption.

The announcements today contain measures to target those businesses that continue to sell alcohol irresponsibly and cause harm within our communities.

To specifically address the small but unacceptable proportion of violent crimes occurring in the early hours of the morning, we will undertake further comprehensive **research into post-midnight drinking patterns and their impact on crime and order**, and will not hesitate to take the necessary action through new legislation and enforcement measures to tackle this.

But we will take immediate action now.

First, we will utilise existing **powers to identify problem premises**. We will make it **easier to review premises** where local intelligence suggests there is a problem.

Second, we will encourage the imposition of **tougher sanctions** on those found to be breaching their licensing conditions. This includes the stipulation that there be **far more instant closures** of pubs and clubs in an area where there has been a disorder and indefinite closure by the courts for any breach of licence conditions. We will develop a toolkit for local authorities and police, building on my Rt. Hon. Friend the Home Secretary's recently published Guide for Dealing with Alcohol Related Problems.

Third, we will change the offence of "**persistently selling alcohol to a person under 18**" from 'three strikes' to 'two strikes' in three months. This means that any seller who twice sells to under age drinkers and is caught doing so will immediately lose their licence.

Fourth, we will support the police and local authorities to **identify problem hotspots** by ranking geographical areas and concentrations of premises on the basis of the risks they present to crime and disorder, public nuisance and children. This will allow licensing authorities the ability to exercise **more caution and conditions when issuing licenses, and wholesale withdrawal of licences** in these areas, and permit local authorities and police to **target enforcement resources** more effectively at problem hotspots.

Finally, the message must be clear to all: breach your licensing conditions and you face severe and costly restrictions on your business – with a new “**yellow card and red card**” alert system. A yellow card will put the problem premises on immediate probation together with tough and uncompromising sanctions. And when the circumstances are right, it will be a straight red card leading to withdrawal of the licence.

To tackle wider anti-social behaviour associated with alcohol consumption my Rt Hon Friend, the Home Secretary, will bring forward legislation to:

- **Increase the maximum fine for anyone not obeying an instruction to stop drinking**, or to give up their drink in a designated public place from £500 to £2,500;
- Make it easier for the police to **disperse anti-social drinkers** – both adults and children – from any location – if necessary, we will change the law to make this happen;
- **Extend the use of Acceptable Behaviour Contracts** for young people caught drinking in public, to require them and their parents to attend a session with a trained worker; and
- In addition, we will be extending the **alcohol arrest referral pilots** that my Rt Hon Friend, the Home Secretary, announced last month so that under 18s may also benefit from a brief intervention from a trained worker. This will help deal with young people drinking in public who are already involved in criminal activities.

I, together with my Rt Hon Friend, the Home Secretary, will convene a **summit of police and local authorities** to explore how we can take these proposals forward.

The report published today is not the end of the story. The measures announced today are only part of the Government’s comprehensive strategy for combating the problems associated with alcohol.

A significant programme of work is underway over the next 6 months.

We are working with the industry on alcohol advertising, and welcome industry consideration to give much more prominence **to clear information about the dangers of alcohol**, and to actively support Government campaigns to promote sensible drinking. We will strongly encourage them to press on with trials to test their effectiveness. If we need to, we will consider more restrictions.

Later in the year, my Rt. Hon. Friend, the Secretary of State for Children, Schools and Families will publish the Government’s action plan on young people and alcohol containing further proposals for reducing drinking by young people specifically.

Later in the spring, my Rt. Hon. Friend, the Secretary of State for Transport, will also set out measures for dealing with the relatively small number of people who continue to think it is acceptable behaviour to **drink and drive**.

The Department of Health will publish the results of the independent study commissioned from the University of Sheffield to look at the evidence on the relation between **alcohol price, promotion and harm** and in response will bring forward necessary action. The real cost of alcohol has fallen to historically low levels, and there is already an emerging consensus that more needs to be done to tackle **irresponsible promotions and deep discounting** that can lead to anti social behaviour. The Government will begin immediate work with the licensing authorities and retailers, including the

development of new codes on **responsible sales and promotions** which might be considered as a condition of an alcohol licence.

In conclusion, we are prepared to take action wherever the evidence suggests that it is necessary to tackle the problems associated with alcohol.



“PROBLEM PREMISES ON PROBATION” – RED AND YELLOW CARDS : HOW IT WOULD WORK

The problem

1. In many cases, revocation of a premises licences effectively kills any business which is focused on retailing alcohol. This means that the not only the business owner suffers, but most people working there will lose their livelihoods. Many of these workers will be entirely innocent of any wrong-doing. There is also an impact on those who rely indirectly on income from the premises - such as local food suppliers or cleaning contractors, and the closure of a premises can deprive some communities of their local shop or restrict local consumer choice. Enforcement agencies that apply for reviews and local councillors sitting on licensing committees are well aware of this potential impact and it can lead to a reluctance to use the powers in the Act to revoke the licence instantly for any failure to promote the licensing objectives. This risks patchy enforcement and uneven solutions to alcohol-related problems around the country.

2. In addition, in many cases, enforcement agencies will prefer to negotiate additional voluntary conditions with problem premises against the threat of review as an immediate, pragmatic and less bureaucratic solution. While this may be a reasonable approach in many cases, there is a risk that some premises are not being dealt with as firmly as necessary, particularly given the level of test purchase failures. Nor are voluntary agreements particularly visible, lessening the deterrent effect on other premises.

3. Government wishes to support the enforcement agencies and licensing authorities by providing clear guidance on a “yellow card / red card” system, which would ensure a firm response to problems, but which give premises an opportunity to reform. The intention is that such a system would be highly visible and send a clear message to alcohol retailers, and the public, that action will be taken against those who act contrary to the licensing objectives and the law.

4. The proposed interventions below would not prevent the giving of an instant red card in an appropriately serious case. It should be realised that a “test purchase” failure often masks multiple offences that have gone undetected.

Supporting enforcement agencies

5. The Government will encourage enforcement agencies – mainly the police, trading standards officers and environmental health officers – to seek more reviews in the knowledge of the yellow card/red card system described below. This will mean not giving informal warnings. It will mean that on identifying problem premises, the licensing authority will be engaged faster than it might have been in the past.

6. Enforcement agencies would be encouraged to seek reviews when local intelligence suggests that individual premises are selling to children or causing other crime problems or causing noise nuisance.

7. Under the law, the licensing authority must then hold a hearing so long as the application relates to one of the four licensing objectives and is made by a responsible authority or by an interested party like a local resident or another local business.

First intervention

8. Responsible authorities will be encouraged to propose a package of tough new conditions to be added to the existing conditions which are designed to combat the identified problem. The kinds of conditions that we have in mind are set out in Annex A. These would not be appropriate for every premises and need to be tailored to the nature of the problem and the type of premises. Such action should be supplemented where appropriate by:

- Removal of the designated premises supervisor and his/her replacement (the manager is removed);
- Suspension of the licence for between 1 day and 3 months according to the circumstances.
- Restriction on trading hours – cutting hours of trading in alcohol.
- Clear warning that a further appearance will give rise to a presumption of revocation.

9. If appropriate following review, the licensing authority should consider these packages of conditions and actions to challenge problem premises more aggressively.

10. For example, requiring a major supermarket to make all alcohol sales through a single till manned by a person aged 25 years or older in order to tackle sales to underage. Over a year, this would potentially cost such a supermarket £millions. It would also make them reflect on their levels of supervision at other stores.

11. In addition, enforcement agencies should make the premises in question a priority for test purchases and more regular inspections.

12. The aim would be to put the premises on probation. Effectively, they are given a yellow card. They are put on notice that the next offence or breach would mean an automatic second intervention – a red card.

Second intervention

13. In the absence of improvement, enforcement agencies should seek another review. The licensing authority again must grant a hearing.

14. If satisfied on the issue of the lack of improvement, the licensing authority should look to **revoke the licence**. The action should be publicised in the area as an example to other retailers.

Implementation

15. Requires:

- Development with the Home Office of a toolkit and guidance for police, trading standards and ethos;
- Initial letters to Leaders of local authorities and Chief Executives;
- Ultimately, stronger statutory Guidance to be laid in Parliament for licensing authorities themselves.

16. Central Government cannot tell licensing authorities what to do. The review powers are devolved to them. Similarly, central Government cannot direct enforcement agencies how to enforce the law. It would remain their judgement when and how to act.

POSSIBLE TOUGH CONDITIONS TO BE ASSEMBLED INTO PACKAGES

GREATER CONTROL OVER SALE

1. Designated checkout(s) for alcohol sales (supermarket). Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
2. Personal licence holder/DPS to be on site at all times during sales of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
3. Personal licence holder/DPS to supervise and authorise every individual sale of alcohol. Impact on protection of children from harm and new costs if additional staff have to qualify as personal licence holder.
4. SIA registered security staff to be present at points of sales to support staff refusing sales to u-18s and drunks.
5. Alcohol sales only to be made only by person aged not less than 25 years. Impact on protection of children from harm, but also impact on sales and goodwill (probable loss of trade to competitors).
6. CCTV installed at all points of sale and recorded. Recordings can be examined by a constable or trading standards officer to determine sales to minors or drunks

TRAINING

7. All staff to read and sign a declaration that they understand the law every time they start a shift.
8. Train all staff engaged in selling alcohol in alcohol awareness (not just personal licence holders). All new staff to be trained within two weeks of commencing employment. Evidence of training to be retained in writing and to be available for inspection by any authorised person and training standards officers. Impact on all licensing objectives.

ALCOHOL SALE BANNED AT CERTAIN HOURS

9. No alcohol sales Mon – Fri between 4pm and 8.30pm. Impact on protection of children from harm or targeted hours reflecting times when local intelligence indicates under 18s may be purchasing alcohol.
10. No alcohol sales --- Friday to Sunday. Impact on all four licensing objectives.

ALCOHOL DISPLAYS

11. No displays of alcohol or advertising of alcohol promotions that can be seen from outside the premises.
12. No alcohol stocks promoted alongside goods likely to appeal to children (eg. confectionary, toys).

CUTTING DOWN ON SHOPLIFTING

13. SIA registered security staff to be present at alcohol aisles during opening times to prevent attempted under age sales or theft.
14. Location of alcohol stocks/displays not to be sited near the entrance/exit to deter shoplifting.
15. No direct public access to alcohol products – like tobacco, alcohol to be kept behind a dedicated kiosk.

NAMING AND SHAMING

16. Display an external sign/yellow card to state which of the licensing act objectives they have breached and what action has been taken against them.

OTHERS

17. Maintain a log of all under attempted purchases from those who appear to be under 18 or drunk.
18. Children aged under [18 years] not to be present or (not more than one child at any one time) on premises (other than children living on the premises or of the people working on the premises); or only children under 18 accompanied by an adult to be permitted on the premises during retailing hours. Impact on protection of children from harm.
19. Products to be labelled (a label stuck to the bottle or can) to show the details of the shop from which it was bought. Purpose would be to provide evidence of unlawful sales if product found commonly in possession of persons under 18.
20. Designated single items --- beer, alcopops and cider ---- not to be sold to any person. Impact on protection of children from harm. Purpose would be to reduce sales to children and drunks. Alternative would be to prescribe sales of beer, alcopops and cider in quantities of less than four.
21. CCTV installed, monitored and 24 hour recordings kept for a week and made available to constables and persons authorised under the 2003 Act to help identify attempted proxy purchasing.

**APPLICATION FOR REVIEW OF A PREMISES LICENCE
ISSUED UNDER THE LICENSING ACT 2003 IN RESPECT
OF 'THE CO-OPERATIVE STORE, 90 GRANDSTAND ROAD,
HEREFORD. HR4 9NR'.**

Report By: Head Of Environmental Health And Trading Standards

Wards Affected:

Hereford

1. Purpose

To consider an application for a review of a premises licence in respect of The Co-operative Store, 90 Grandstand Road, Hereford, HR4 9NR.

2. Background Information

Applicant	Paul West – Chief Constable of the West Mercia Constabulary, c/o Police Station, Bath Street, Hereford.	
Premises Licence Holder	Mid Counties Co-operative Ltd, Co-operative House, 234 Botley Road, Oxford, OX2 0HP.	
Solicitor	Legal Services, Mid Counties Co-operative Ltd, Co-operative House, 234 Botley Road, Oxford, OX2 0HP.	
Type of application: Review	Date received: 17/01/09	28 Days consultation 13/02/09

A notice advertising the review was placed on the premise prior to the start of the statutory consultation period and also displayed in the public area of the Licensing Authority (Bath Street).

3. Current Licence

The current licence allows: -

Sale by Retail of Alcohol

Monday to Sunday 0800 hours to 2100 hours.

There are no Non-Standard Timings.

4. Summary of Application

The application for review relates to the following licensing objectives: -

- Prevention of public nuisance
- Protection of children from harm

5. The grounds for the review are: -

The premise has been the subject of four separate test purchase operations since December 2007 and has sold on 3 occasions.

6. **The information provided to support this application is: -**

On 28 December 2007, Herefordshire Council's trading standards service and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol without being challenged about her age.

The person who made the sale was issued with a fixed penalty notice.

On 19 August 2008, Herefordshire Council's trading standards service and the West Mercia Constabulary carried out a further test purchase operation at the premise.

A 16 year old was again served alcohol without her age being challenged.

The person who authorised the sale was issued with a fixed penalty notice.

The person who made the sale on 19 August 2008 was a 16 year old male, but the sale was authorised by his supervisor and she was aware that the store operates an over 25 policy.

On the 15 December 2008, Herefordshire Council's trading standards service and the West Mercia Constabulary carried out another test purchase operation at the premise.

On this occasion, a 16 year old male was again served with out being challenged about his age.

The person who authorised the sale was issued with a fixed penalty ticket.

The person who made the sale on 15 December 2008 was under the age of 18, but the sale was authorised by his supervisor.

7. **Summary of Representations**

Copies of the representations and suggested conditions can be found within the background papers.

West Mercia Police

The West Mercia Police have has since provided additional evidence in support of the application.

Environmental Health, Fire Authority and Interested Parties.

No representations have been received from these bodies.

8. **Review Response**

The police and the premise licence holder have discussed the issues in respect of the review and have agreed between themselves a number of conditions. These are: -

1. Challenge 25 must be implemented.
2. That members of staff will be trained in accordance with the Co-op Training Manual in Age Restricted Sales supplied to PC Thomas prior to the date of this hearing.

3. Written training records must be kept at the premises and must be made available for inspection by the Licensing Authority and Policy when requested.

9. **Changes to Premises Licence**

On 13 February 2009 an application was made by the premise licence holder for a change of designated premises supervisor which was granted.

10. **Other information**

The Committee will be aware of the document issued by the Home Office & Department of Culture, Media and Sport document entitled 'Problem Premises on Probation – Red and Yellow Cards' which appeared before the Regulatory Committee on 4 November 2008 and Full Council on 17 February 2009.

A copy of this document is included in the background papers.

11. **Committee's Responsibility**

The committee is responsible for promoting the four licensing objectives.

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- The steps that are necessary to promote the licensing objectives;
- The representations (including supporting information) presented by all parties;
- The guidance issued to local authorities under Section 182 of the Licensing Act 2003
- The Herefordshire Council Licensing Policy

12. **Options: -**

- Take no action
- Take any of the following steps: -
 - (a) to modify the conditions of the licence;
 - (b) to exclude a licensable activity from the scope of the licence;
 - (c) to remove the designated premises supervisor;
 - (d) to suspend the licence for a period not exceeding three months;
 - (e) to revoke the licence;

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.

Where the authority takes a step mentioned in subsection (a) or (b), it may provide that the modification or exclusion is to have effect for only such period (not exceeding three months) as it may specify.

13. **Background Papers**

- a. Application Form
- b. Police Representation
- c. Ministerial Letter (Problem Premises on Probation – Red and Yellow Cards)

Background papers are available for inspection in the Council Chamber, Brockington, 35 Hafod Road, Hereford 30 minutes before the start of the hearing.

NOTES**REVIEWS**

11.7 Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

11.22 A number of reviews may arise in connection with crime that is not directly connected with licensable activities

Licensing authorities do not have the power to judge the criminality or otherwise of any issue. This is a matter for the courts of law. Some reviews will arise after the conviction in the criminal courts of certain individuals but not all.

Where a review follows a conviction, it would also not be for the licensing authority to attempt to go behind any finding of the courts, which should be treated as a matter of undisputed evidence before them.

11.25 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 sale and distribution of Class A drugs and the laundering of the proceeds of drugs crime;
- for the sale and distribution of illegal firearms;
- for the evasion of copyright in respect of pirated or unlicensed films and music, which does considerable damage to the industries affected;
- 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;
- for prostitution or the sale of unlawful pornography;
- by organised groups of paedophiles to groom children;
- as the base for the organisation of criminal activity, particularly by gangs;
- for the organisation of racist activity or the promotion of racist attacks;
- for unlawful gaming and gambling; and
- for the sale of smuggled tobacco and alcohol.

Section 52 (11) 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.

Licensing Authorities power to exercise substantive discretionary powers.

The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject

to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.

Application for the review of a premises licence or club premises certificate under the Licensing Act 2003

PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Paul West Chief Constable West Mercia Constabulary

(Insert name of applicant)

apply for the review of a premises licence under section 51 / apply for the review of a club premises certificate under section 87 of the Licensing Act 2003 for the premises described in Part 1 below (delete as applicable)

Part 1 – Premises or club premises details

Postal address of premises or, if none, ordnance survey map reference or description CO OPERATIVE STORES 90 Grandstand Road	
Post town Hereford	Post code (if known) HR4 9LT

Name of premises licence holder or club holding club premises certificate (if known) Mid Counties Co operative Limited Co operative House 234 Botley Road OXFORD OX2 0HP
--

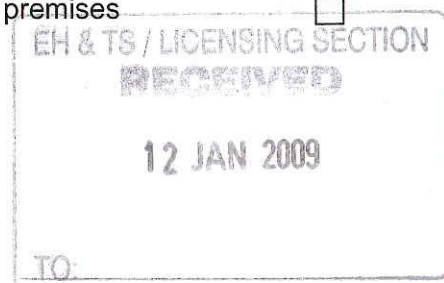
Number of premises licence or club premises certificate (if known) PR00745
--

Part 2 - Applicant details

I am

Please tick yes

- 1) an interested party (please complete (A) or (B) below)
- a) a person living in the vicinity of the premises
 - b) a body representing persons living in the vicinity of the premises
 - c) a person involved in business in the vicinity of the premises



- d) a body representing persons involved in business in the vicinity of the premises
- 2) a responsible authority (please complete (C) below)
- 3) a member of the club to which this application relates (please complete (A) below)

(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)

Please tick

Mr Mrs Miss Ms Other title (for example, Rev)

Surname

First names

I am 18 years old or over

Please tick yes

Current postal address if different from premises address

Post town

Post Code

Daytime contact telephone number

E-mail address (optional)

(B) DETAILS OF OTHER APPLICANT

Name and address

Telephone number (if any)

E-mail address (optional)

(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT

Name and address Stephen Gomer THOMAS Police Constable 697, on behalf of the Chief Constable of the West Mercia Constabulary Hereford Police Station Bath Street HEREFORD HR1 2HT
Telephone number (if any) 01432 364552
E-mail address (optional) stephen.thomas@westmercia.pnn.police.uk

This application to review relates to the following licensing objective(s)

Please tick one or more boxes

- | | |
|---|-------------------------------------|
| 1) the prevention of crime and disorder | <input type="checkbox"/> |
| 2) public safety | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input checked="" type="checkbox"/> |
| 4) the protection of children from harm | <input checked="" type="checkbox"/> |

Please state the ground(s) for review (please read guidance note 1)

The premise has been the subject of four separate test purchase operations since December 2007, and has sold on 3 occasions

Please provide as much information as possible to support the application
(please read guidance note 2)

On the 28th December 2007, Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise.

A 16 year old was served alcohol with out being challenged concerning her age.

The person who made the sale was issued with a fixed penalty notice.

On the 19th August 2008, Herefordshire Council trading standards department , and the West Mercia Constabulary carried out a test purchase operation at the premise

A 16 year old was served alcohol with out being challenged concerning her age

The person who authorised the sale was issued with a fixed penalty notice

The person who made the sale on the 19th August 2008 was a 16 year old male, but the sale was authorised by his supervisor and she was aware that the store operates an over 25 policy

On the 15th December 2008, Herefordshire Council trading standards department, and the West Mercia Constabulary carried out a test purchase operation at the premise

A 16 year old male was served with out being challenged concerning his age.

The person who authorised the sale was issued with a fixed penalty ticket

The person who made the sale on the 15th December 2008 was under the age of 18 but the sale was authorised by his supervisor.

Please tick yes

Have you made an application for review relating to this premises before

If yes please state the date of that application

10th Day
Month *September*
Year *2008*

If you have made representations before relating to this premises please state what they were and when you made them

On the 10th September 2008 the West Mercia Constabulary called for a review of the premise licence following two failed test purchase operations

The West Mercia Constabulary subsequently withdrew this application following a change in the premise licence holder.

Please tick yes

- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

IT IS AN OFFENCE, LIABLE ON CONVICTION TO A FINE UP TO LEVEL 5 ON THE STANDARD SCALE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION

Part 3 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent
(See guidance note 4). **If signing on behalf of the applicant please state in what capacity.**

Signature

[Handwritten Signature]

Date 8th January 2009.

Capacity Divisional Licensing Officer

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 5)

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

Notes for Guidance

1. The ground(s) for review must be based on one of the licensing objectives.
2. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
3. The application form must be signed.
4. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
5. This is the address which we shall use to correspond with you about this application.

Licensing Department
Hereford Police Station
Bath Street
HEREFORD
HR1 2HT
Direct Dial 01432 364552 Fax:



**WEST MERCIA
CONSTABULARY**
TOGETHER - WORKING FOR SAFETY AND JUSTICE

8th January 2009.

Our Ref:
Your Ref:

Herefordshire Council Licensing Section
The County Offices
PO Box 233
Bath Street
HEREFORD
HR1 2ZF

Dear Sir / Madam

REF: CO OPERATIVE STORE, 90 GRANDSTAND ROAD HEREFORD.
APPLICATION TO REVIEW PREMISE LICENCE
LICENSING ACT 2003

On behalf of the Chief Constable of the West Mercia Constabulary, I have made an application to review the Premise Licence for, Co Operative Store, 90 Grandstand Road, Hereford.

The application is made in accordance with section 51 of the Licensing Act 2003, and for the purpose of section 52 (7) the relevant representations concern the promotion of the licensing objectives of "the protection of children from harm " and "the prevention of public nuisance "

The premise is licensed for the sale by retail of alcohol.

The West Mercia Constabulary and Herefordshire Council Trading Standards Department have taken part in regular test purchase operations.

These operations involved the use of 15 or 16 year olds, visiting licensed premises and attempting to purchase alcohol, in accordance with section 149 (2) of the Licensing Act 2003.

In the spring of 2007 The West Mercia Constabulary, and Herefordshire Council Trading Standards Department, took part in the, Home Office Police Standards Unit, test purchase operation.

In the County of Herefordshire 12 out of the 20 premises tested, sold to children

This premise was not part of that operation.



In view of the high failure rate, further operations were planned, with a larger number of premises being tested.

In December 2007, The West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out a further test purchase operation in the county.

During this operation 48 separate premises were made the subject of a single "test"

- Out of the 48 premises "tested" 12 sold which is 25%
- This premise was the subject of a test purchase operation on the 22nd December 2007, and a sale was made to a 16 year old

In the spring of 2008, the West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out a further test purchase operation in the county that involved revisiting all 12 premises that made sales in December 2007.

- Out of the 12 re-visited, 4 made sales which is 33%

This premise was the subject of a test purchase operation on the 1st March 2008, and no sale was made.

Because of the same high failure rate, during the summer of 2008, the West Mercia Constabulary and Herefordshire Council Trading Standards Department carried out further test purchase operations in the county.

During this operation 55 separate premises were made the subject of a single "test"

Out of the 55 premises "tested" 19 sold which is 29%

- This premise was the subject of a test purchase operation on the 19th August, and a sale was made to a 16 year old female.

In September 2008, the West Mercia Constabulary called for a review of this premise licence following the two sales made since December 2007.

The West Mercia Constabulary subsequently withdrew this application, because the Premise Licence holder had changed between the sales made to children.

In December 2008 the West Mercia Constabulary and Herefordshire Council trading standards department carried out further test purchase operations in the county

- This premise was the subject of a test purchase operation on the 15th December 2008, and a sale was made to a 16 year old male.

On both the 19th August 2008, and 15th December 2008 the sales were made by an assistant under the age of 18, but on both occasions those sales were authorised by a person over the age of 18.

In March 2008 the government issued an evaluation of the impact of the Licensing Act 2003

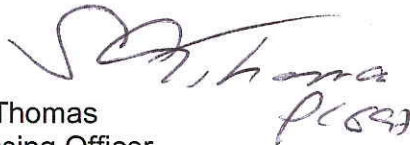
This review produced 3 "Immediate Actions" one of which was, to change the offence of "persistently selling alcohol to a person under the age of 18 from three strikes to two strikes in 3 months."

In accordance with section 53 C (3) (A) the West Mercia Constabulary would seek the licensing authority to modify the conditions on the licence by the addition of the following.

- That the use of "challenge 25" is made a condition of all sales made on the premise.
- That the premise employ's proven training method 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.

It is the view of the West Mercia Constabulary that the provision of these two conditions is necessary to promote the licensing objective of the protection of children from harm, and the prevention of public nuisance. They are the minimum conditions we would wish to see if the premise is to continue to be licensed.

S G Thomas
Licensing Officer



S G Thomas
PLS

