

**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.