

**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: -

“Somersfield 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.