

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	16 APRIL 2012
TITLE OF REPORT:	REVIEW OF PREMISES LICENCE: SOMERFIELD, DISHLEY STREET, LEOMINSTER, HR6 8PX. – LICENSING ACT 2003
PORTFOLIO AREA:	HEALTH & WELLBEING SERVICES

CLASSIFICATION: Open

Wards Affected

Leominster

Purpose

To consider an application for a review of the premises licence relating to 'Somerfield, Dishley Street, Leominster, HR6 8PX' called by Herefordshire Council Trading Standards.

Key Decision

This is not a Key Decision.

Recommendation

THAT Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should 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, and
- The Herefordshire Council Licensing Policy.

Key Points Summary

- 3rd Review of Premises Licence
- Called following a further underage sale.
- Two representations received from a responsible authority.

Further information on the subject of this report is available from
Fred Spriggs – Licensing Officer 01432 383542

Options

1 Take no action or

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.

Reasons for Recommendations

2 Ensures compliance with the Licensing Act 2003.

Introduction and Background

3 Background Information

Applicant	Herefordshire Council – Trading Standards	
Premise Licence Holder	Somerfield Stores Ltd T/A Co-operative Group Food Ltd Somerfield House, Whitchurch Lane, Bristol, BS14 0TJ	
Solicitor	N/K	
Type of application: Review	Date received: 27/02/12	28 Days consultation 26/03/12

4 Current Licence

The current licence authorises the following licensable activities during the hours shown: -

Supply/Sale of Alcohol

Monday – Sunday from 06:00 until 23:00

5 **Previous Review**

This is the third review of the premises licence.

On 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 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 female 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 sales, 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. 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 in strict accordance with the training regime annexed to the letter from Blake Laphorn dated 7 October 2008.

On the 20th 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 person who made the sale was issued with a fixed penalty notice.

On the 13th March 2009 the licence was again reviewed before this committee and the following additional condition were imposed on the licence:-

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

6 **Summary of Application**

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

- Prevention of Crime & Disorder
- Protection of Children from harm

7 **The grounds for the review are: -**

The premise is one of a national chain of food stores which is situated in the centre of Leominster.

The request for this review is based on the licensing objectives regarding the prevention of crime and disorder and the protection of children from harm.

The premise has been the subject of a test purchase operation which it failed.The

premises is a general store situated on the outskirts of Hereford.

8 The information provided to support this application is: -

During the evening of Saturday 25th February Herefordshire Council trading standards department and the West Mercia Constabulary carried out a test purchase operation at the premise.

Two(2) males aged 15 years and 14 years were served alcohol (4 cans of Strongbow cider) without being challenged concerning their age.

Herefordshire Council Licensing Policy states that any premises failing a test purchase will be reviewed.

This is the third failure at the premises and following previous failures the premises licence was reviewed on 4th November 2008 and 13th March 2009.

9 Further Information

At the time of the test purchase a Personal Licence holder was on site as required. The training records of the member of staff who sold were requested. The personal licence holder was unable to show the officer at the time any training records and had to telephone the manager who came to the store. She was unable to access these without making a further telephone call. Once access was obtained to the computerised records all that could be confirmed was that the member of staff was currently trained. No details of the training could be provided.

Although the officer went back to the store 3 days later to view the training records again no details of the training package provided could be given.

Since the previous reviews the premises is now operated by the Co-operative Group. It should be noted that the premises trades as the Co-operative yet the premises licence remains in the name of Somerfield.

It is also clear that Condition 2 imposed by this committee on 4th November 2008 was not and could not be complied with as Blake Laphorn have no connection with the Co-op.

10 Summary of Representations

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

Both the police and Trading Standards have made representation. Trading standards have asked for a number of conditions to be attached to the licence, whereas the Police seek revocation.

Key Considerations

- 11 To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

Guidance issued under Section 182 of the Licensing Act 2003 in respect of Reviews states at paragraph: -

11.26 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.

11.27 It is envisaged that licensing authorities, the police and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. **Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.** We would also encourage liaison with the local Crime and Disorder Reduction Partnership.

Community Impact

12 It is felt that any decision made will have a minimal impact on the Community.

Legal Implications

13 The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

14 The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

15 Furthermore the Thwaites case established that only conditions should be attached to a licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

16 This judgement is further supported in the case of The Queen on the Application of Bristol Council v Bristol Magistrates' Court, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

Legal Implications

- 15 Schedule 5 Section 8(2) gives a right of appeal to: -
- a) the applicant for the review,
 - b) the holder of the premises licence, or
 - c) any person who made relevant representation in relation to the application.
- 16 Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

Consultees

- 17 Responsible authorities and persons living or with a business interest within the vicinity of the premises.
- 18 A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.
- 19 The notice of review was displayed on the premises prior to the start of the consultation period and was displayed for 28 days. In addition the notice was also displayed at the offices of the Licensing Unit at Bath Street, Hereford over the same period.

Appendices

- 20
- a. Application Form for Review
 - b. Police Representation
 - c. Trading Standard Representation

Background Papers

Background papers are available for inspection in the Assembly Hall, Town Hall, Hereford, 30 minutes before the start of the hearing.