

HAVANT BOROUGH COUNCIL
PUBLIC SERVICE PLAZA
CIVIC CENTRE ROAD
HAVANT
HAMPSHIRE P09 2AX

Telephone: 023 9247 4174
Fax: 023 9248 0263
Website: www.havant.gov.uk



Havant
BOROUGH COUNCIL

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LICENSING SUB COMMITTEE AGENDA

Membership: Councillor Gibb-Gray (Chairman)

Councillors Tarrant and Ponsonby

Meeting: Licensing Sub Committee

Date: Wednesday 16 July 2014

Time: 9.30 am

Venue: Tournebury Room , Public Service Plaza, Civic Centre Road,
Havant PO9 2AX

The business to be transacted is set out below:

Jo Barden-Hernandez
Service Manager – Legal & Democratic Services

8 July 2014

Contact Officer: Tristan Fieldsend 023 9244 6233
Email: tristan.fieldsend@havant.gov.uk

Page

1 Declarations of Interests

To receive and record declarations of interests from any of the members present in respect of any of the various matters in the agenda for this meeting.

2 Licensing Hearing

1 - 54

The Licensing Sub-Committee is requested to determine an application for a review of a Premises Licence in respect of:

Clapps Convenience Store, 236 Seafront, Hayling Island

Appendices:

| | |
|--|-----------|
| Report of Licensing Officer | (1 – 6) |
| Notice of Hearing | (7 – 8) |
| Application for Review | (9 – 16) |
| Representation from the Police | (17 – 20) |
| Representation from the Licence Holder | (21 – 28) |
| Information to Accompany Notice | (29 – 30) |
| Relevant Regulations Relating to Hearings | (31 – 32) |
| Hearings Procedure | (33 – 34) |
| Additional Information Supplied by Trading Standards | (35 – 48) |

GENERAL INFORMATION

IF YOU WOULD LIKE A VERSION OF THIS AGENDA, OR ANY OF ITS REPORTS, IN LARGE PRINT, BRAILLE, AUDIO OR IN ANOTHER LANGUAGE PLEASE CONTACT DEMOCRATIC SERVICES ON 023 9244 6231

Internet

This agenda and its accompanying reports can also be found on the Havant Borough Council website: www.havant.gov.uk

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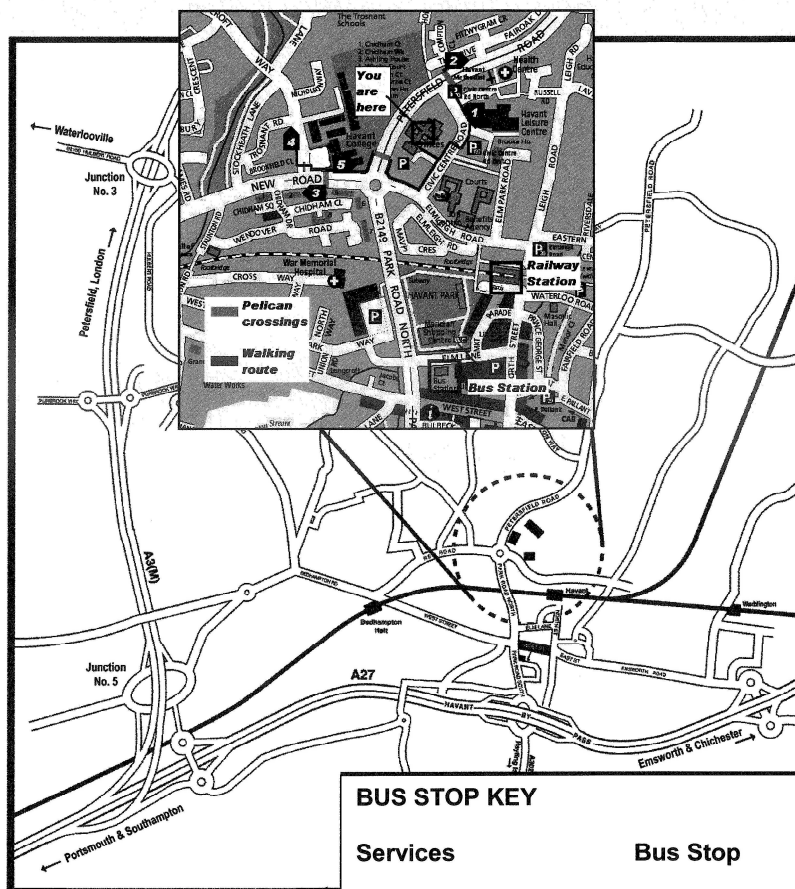
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Havant
BOROUGH COUNCIL

Public Service Plaza
Civic Centre Road
Havant
Hampshire PO9 2AX

BUS STOP KEY

| Services | Bus Stop |
|--------------------|----------|
| 20, 21, 39, 63 | 1 |
| 20, 21, 36**, 39 | 2 |
| 23, 36** | 3 |
| 23, 27**, 37 | 4 |
| 23, 27**, 36**, 37 | 5 |

** - also stops "hail and ride" opposite
Stop 1 in Civic Centre Road

Public
Service
Plaza

Review of Premises Licence for Clapp's Convenience Store, 236 Seafront, Hayling Island, PO11 0AU

Report by the Licensing Officer Mr Gerry Thorne.

Background

A Premises Licence under the Licensing Act 2003 was issued to Islandwide (Hampshire) Ltd on 24 November 2005 for Clapp's Convenience Store, 236 Seafront, Hayling Island, PO11 0AU. This company is owned by Mr Nigel Swan.

The Designated Premises Supervisor is Darren John SAWYER, of 10 Mark Anthony Court, Beach Road Hayling Island, who has a personal licence HPE1306 Issued by Havant Borough Council and valid until 18/10/2023.

The Licence is for the sale of alcohol for consumption off the premises, between the hours of 8.00am and 11.00pm Monday to Saturday, 10.00am to 10.30pm Sundays, Good Friday 8.00am to 10.30pm, and Christmas Day 12noon to 3.00pm and 7.00pm to 10.30pm

The Licence includes the following conditions :-

Mandatory Conditions: Where licence authorises supply of alcohol

Where a premises licence authorises the supply of alcohol, the licence must include the following conditions:

- 1) The first condition is that no supply of alcohol may be made under the premises licence-
 - (a) at a time when there is no designated premises supervisor in respect of the premises licence, or
 - (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 2) The second condition is that every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.

Further Conditions added 1 October 2010

- 1) The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

- 2) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

ANNEX 3 - CONDITIONS ATTACHED AFTER A HEARING BY THE LICENSING AUTHORITY on 3rd October 2013

- (1) In addition to the DPS, at least 1 member of staff who is authorised to sell alcohol at the premises will pass the Level 2 BIIAB Award for personal licence holders course or equivalent course within 3 months of today's date. Thereafter the member of staff will receive refresher training regarding appropriate precautions to prevent the sale of alcohol to persons under the age of 18, the signs and symptoms of drunk persons and the refusal of sale due to intoxication, every 6 months. Records of this training will be kept which should be signed and dated by the member of staff who received that training. All training records will be made available immediately upon the request of Hampshire Constabulary or any other responsible authority. Training records will be kept on the licensed premises to which they relate for a minimum period of two years.
- (2) A written log shall be kept of all refusals of age restricted products, including refusals to sell alcohol. This log will also record the sale of alcohol where the Challenge 25 policy has been applied and the customer has then produced appropriate identification allowing the sale to conclude. The premises licence holder shall ensure that the refusals log is checked, signed and dated on a weekly basis by the designated premises supervisor. The refusal log will be kept and maintained at the premises and will be available for inspection immediately upon request by Hampshire Constabulary and any other responsible authority. Records of refusals will be retained for 12 months.
- (3) There will be a challenge 25 policy operating at the premises. Challenge 25 means that the holder of the premises licence shall ensure that every individual who visually appears to be under the age of 25 years of age and is seeking to purchase or be supplied with alcohol at the premises or from the premises, shall produce identification proving that individual to be 18

years of age or older. Acceptable identification for the purpose of age verification will include a driving licence, passport or photograph bearing the "PASS" logo and the persons date of birth. If the person seeking alcohol is unable to produce acceptable means of identification, no sale or supply of alcohol will be made to or for that person. Challenge 25 posters shall be displayed in prominent positions at the premises.

- (4) A document prominently be displayed on the premises showing staff authorised to sell alcohol.
- (5) The premises shall have sufficient cameras located within the premises to cover all public areas including the outside of the premises covering the entrance and exit.
- (6) The premises shall have a CCTV system which shall include the following features:
 - (i) The system will be able to cope with strobe lighting (where used) and all levels of illumination throughout the premises as well as outside areas;
 - (ii) CCTV warning signs to be fitted in public places. The CCTV system must be operating at all times whilst the premises are open for licensable activity.
 - (iii) All equipment shall have a constant and accurate time and date generation.
 - (iv) The recording system will be able to capture a minimum of 4 frames per second and all recorded footage must be securely retained for a minimum of 28 days.
 - (v) The premises licence holder must be able to demonstrate that the CCTV system has measures to prevent recordings being tampered with i.e. password protected.
 - (vi) Viewable copies of CCTV footage will be supplied to the police within 24 hours of their request. Any images recovered must be in a viewable format on either disc or VHS. Footage supplied in a digital format on CD or DVD will also have a copy of the CCTV

system software enabled on the disc to allow playback.

- (vii) In the event of a technical failure of the CCTV equipment the premises licence holder or designated premises supervisor must report the failure to the police licensing unit within 24 hours.

The Review Application

An application for a Review of the Premises Licence was made by the Hampshire Trading Standards on 27 March 2014. Detail of the review was served on Mr SWAN (as the Premises Licence Holder) and all the Responsible Authorities at the same time, and Notices were displayed on the Premises and at Havant Borough Council Offices and website for the regulatory 28 days.

A further representation has been made by PC Barron, Hampshire Constabulary (Licensing Officer for the Havant district). His representation is based upon the same facts as those of the Trading Standards Officers and he is fully supportive of their aims in this case.

No further representations or letters in support of the Premises Licence Holder have been received.

The Review

The Review relates to concerns regarding the Licensing Objectives of:-

- The Prevention of Crime and Disorder
- The Protection of Children from Harm.

Hampshire County Council Trading Standards Service are seeking a review under the prevention of crime and disorder and the protection of children from harm licensing objectives, following three consecutive failed alcohol test purchases in a ten month period.

Chronology of events:

26/04/13 - failed test purchase

18/07/13 -. failed test purchase

07/08/13 – 7 day closure notice in force

03/10/13 – Review hearing (which included 14 day suspension and conditions)

20/02/14 - failed test purchase

The store failed the third consecutive test purchase on 20 February 2014, when a member of staff, who had not been trained to BIIAB APLH level, sold alcohol to a sixteen year old girl volunteer working with Trading Standards. Three failed test purchases and each time by a different member of staff.

On 20 February 2014 when TSO Lawford returned to the store directly after the test purchase, he checked the training records and refusals books. The refusals book comprised of a separate sheet for each week. TSO Lawford noted that for week commencing (w/c) 05/01/14 there were 2 entries and the sheet was annotated, "original sheet lost"; w/c 19/01/14 - 2 entries annotated "not good enough"; w/c 26/01/14 – the sheet was missing; w/c 02/02/14 – 3 entries dated 2, 9 and 13 February; w/c 09/02/14 – no sheet; w/c 16/02/14 – 2 entries.

When the refusals book was inspected by TSO Lawford on 20 February 2014 there were no entries recorded in the refusals book where photographic ID had been produced as per the condition applied at the Review hearing on 3 October 2013. This could be that nobody had been asked for ID or that the store was not adhering to that condition of their premise licence.

Trading Standards feel that the conditions imposed at the Review hearing on 3 October 2013 have not worked, and the Challenge 25 condition and refusals book condition have not been complied with. It is not appropriate to remove the DPS nor to add further conditions when existing conditions are not being complied with. Therefore Trading Standards' view is that it is appropriate and proportionate that this premises licence be revoked.

Hampshire Constabulary Licensing Officer PC Barron has submitted a supporting representation and shares the concerns of Trading Standards and also seek revocation of the Premises Licence.

The Sub-Committee is requested to determine the application when they have heard from all parties.

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HAVANT BOROUGH COUNCIL

LICENSING ACT 2003 – SECTION 52(2)
APPLICATION FOR A REVIEW OF A PREMISES LICENCE
Clapps Convenience Store, 236 Seafront, Hayling Island, PO11 0AU

NOTICE

To: Applicant: Hampshire Trading Standards Service, Montgomery House, Monarch Way, Winchester, SO22 5PW

Licence Holder: Island Wide (Hampshire) Ltd, Clapps Newsagents, 236 Seafront, Hayling Island, PO11 0AU

Persons Who Have Made Relevant Representations:

PC 1148 Phil Barron, Hampshire Constabulary, Licensing Department,
Havant Police Station, Civic Centre Road, Havant PO9 2AN

I HEREBY GIVE NOTICE that a hearing under Section 52(2) of the Licensing Act 2003 to determine an application made by Hampshire Trading Standards Service of Montgomery House, Monarch Way, Winchester, SO22 5PW, for a review of a premises licence in respect of premises known as Clapps Convenience Store, 236 Seafront, Hayling Island, will be held by the Council's Licensing Sub-Committee in the Tournurbury Room at Havant Borough Council, Public Service Plaza, Civic Centre Road, Havant in Hampshire at 1.30pm on Friday 20 June 2014.

Dated this 30 day of April 2014

Signed

Solicitor to the Council

Enclosures

Information to Accompany a Notice of Hearing
Hearings Procedure

Relevant Regulations Relating to Hearings

Notice of Intention

Representations:

- a) Application for review
- b) Representation received from the police



Public Service Plaza, Civic Centre Road, Havant PO9 2AX

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.

We Hampshire County Council Trading Standards Service wish to

(Insert name of applicant)

apply for the review of a premises licence under section 51 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

Clapps Convenience Store
236 Seafront

Post town Hayling Island

Post code (if known) PO11 0AU

Name of premises licence holder or club holding club premises certificate (if known)

Islandwide (Hampshire) Ltd

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

HPR0124

Part 2 - Applicant details

I am

Please tick ✓ yes

1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below)

☐

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 ☒ yes

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 Hampshire County Council Trading Standards Service Montgomery House Monarch Way Winchester Hampshire SO22 5PW |
| Telephone number (if any) 01962 833658 |
| E-mail address (optional) stephen.lawford@hants.gov.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 | <input type="checkbox"/> |
| 3) the prevention of public nuisance | <input type="checkbox"/> |
| 4) the protection of children from harm | ✓ |

Please state the ground(s) for review (please read guidance note 2)

Hampshire County Council Trading Standards Service are seeking a review under the prevention of crime and disorder and the protection of children from harm licensing objectives, following three consecutive failed alcohol test purchases in a ten month period.

Please provide as much information as possible to support the application (please read guidance note 3)

26/04/13 - failed test purchase

18/07/13 -. failed test purchase

07/08/13 – 7 day closure notice in force

03/10/13 – Review hearing (which included 14 day suspension and conditions)

20/02/14 - failed test purchase

Following the Review hearing on 3 October 2013 TSO Lawford informed the licence holder's representative that he feared that the conditions imposed by the sub-committee were not sufficient to prevent the store from selling alcohol to persons under the age of eighteen. TSO Lawford confirmed this in an email dated 16 October 2013 :-

"I'm pleased that you are having one of the staff trained on an APLH course. You will be aware of my concerns that the store could fail another test purchase if all staff are not trained to APLH level. I sincerely hope the store does not fail again, because if it did it's likely there would be another Review hearing, and I think we both know what the consequences of that could be."

The store failed a third consecutive test purchase on 20 February 2014, when a member of staff, who had not been trained to BIIAB APLH level, sold alcohol to a sixteen year old girl volunteer working with Trading Standards. Three failed test purchases and each time by a different member of staff.

On 20 February 2014 when TSO Lawford returned to the store directly after the test purchase, he checked the training records and refusals books. The refusals book comprised of a separate sheet for each week. TSO Lawford noted that for week commencing (w/c) 05/01/14 there were 2 entries and the sheet was annotated, "original sheet lost"; w/c 19/01/14 - 2 entries annotated "not good enough"; w/c 26/01/14 – the sheet was missing; w/c 02/02/14 – 3 entries dated 2nd, 9th and 13th February; w/c 09/02/14 – no sheet; w/c 16/02/14 – 2 entries.

The minutes from the Review hearing of 3 October 2013 state :-

In response to questions raised by Mr Lawford, Mrs Chestnutt advised that:

Action would be taken to ensure that all refusals were recorded and the book signed by the DPS: the refusals book would also record where people had been challenged but not refused.

In response to further questions from members of the Sub-Committee and Mr Thorne, Mr Swan, Mrs Chestnutt and Mr Sawyer advised that:

there were approximately 10 to 15 refusals each week; staff had been trained to challenge anyone who appeared to be under the age of 25; after discussing the matter with Mr Thorne, it had been agreed that all challenges would now be recorded.

The following condition was imposed at the Review hearing on 3 October 2013 :-

A written log shall be kept of all refusals of age restricted products, including refusals to sell alcohol. This log will also record the sale of alcohol where the Challenge 25 policy has been applied and the customer has then produced appropriate identification allowing the sale to conclude. The premises licence holder shall ensure that the refusals log is checked, signed and dated on a weekly basis by the designated premises supervisor. The refusal log will be kept and maintained at the premises and will be available for inspection immediately upon request by Hampshire Constabulary and any other responsible authority. Records of refusals will be retained for 12 months.

When the refusals book was inspected by TSO Lawford on 20 February 2014 there were no entries recorded in the refusals book where photographic ID had been produced as per the condition applied at the Review hearing on 3 October 2013. This could be that nobody had been asked for ID or that the store was not adhering to that condition of their premise licence.

Clearly the conditions imposed at the Review hearing on 3 October 2013 have not worked, and the Challenge 25 condition and refusals book condition have not been complied with. It is not appropriate to remove the DPS nor to add further conditions when existing conditions are not being complied with.

Para 11.23 of the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003 states :-

Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

We also highlight paragraphs 11.26, 11.27 and 11.28 of the Secretary of State's Guidance.

11.26 Where the licensing authority is conducting a review on the ground that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licensee and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any necessary steps to remedy the problems. The licensing authority's duty is to take steps with a view to the promotion

of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence.

11.27 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 purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people.

11.28 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.

Hampshire County Council is responsible for the health and wellbeing of Hampshire residents, particularly the vulnerable such as children and it is vital that we do everything we can to protect children from the dangers of alcohol.

This store continues to sell alcohol to children by failing test purchase operations, and shows a complete disregard for the licensing objectives. This cannot be allowed to continue. Staff should not be blamed for this awful record as this is solely down to poor company practices.

Trading Standards' view is that it is appropriate and proportionate that this premises licence be revoked.

| |
|--|
| |
| |

Please tick ✓

yes

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

✓

If yes please state the date of that application 09/08/2013

Day Month Year

| | | | | | | | |
|---|--|--|--|--|--|--|--|
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|---|--|--|--|--|--|--|--|

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

tick ✓ yes

Please

- 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 4)

Signature of applicant or applicant's solicitor or other duly authorised agent (please read guidance note 5). **If signing on behalf of the applicant please state in what capacity.**

Signature S. Lawford

.....

Date 27/03/14

.....

Capacity TSO

.....

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)

| | |
|--|--|
| | |
|--|--|

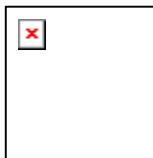
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|------------------|------------------|
| Post town | Post Code |
|------------------|------------------|

| |
|----------------------------------|
| 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. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.



**Application for the review of / Representation in respect of a
Premises licence or Club Premises certificate
under the Licensing Act 2003**

Page 1 of 3

Before completing this form, please refer to FPP 07001 (Licensing (Licensing Act 2003))

I PC 1148 Phil BARRON, on behalf of the Chief Officer of Hampshire Constabulary,
(Insert name of applicant)

☒ Apply for the review of a premises licence.

☐ Apply for the review of a club premises certificate.

(Select as applicable)

☐ Make a representation about a premises licence/club premises certificate

Premises or Club Premises details

| | |
|-----------------------------|--|
| Postal address of premises: | Clapps Convenience Store 236 Seafront Hayling Island |
| Postcode (if known): | PO11 OAU |

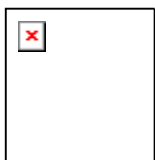
| |
|---|
| Name of premises licence holder or club holding club premises certificate (if known) Island wide (Hampshire) |
|---|

| |
|---|
| Number of premises licence or club premises certificate (if known) HPR0124 |
|---|

Details of responsible authority applicant

| | |
|--|--|
| Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Miss <input type="checkbox"/> Ms <input type="checkbox"/> Other title / Rank: | PC 1148 Licensing Officer |
| Surname: | BARRON |
| First Names: | Phil |
| Current postal address : | Licensing Department Havant Police Station Civic Centre Road |
| Postcode: | PO9 2AN |
| Daytime telephone number: | 02392 891535 |
| E-mail address: (optional) | phil.barron@hampshire.pnn.police.uk |

Hampshire Constabulary is a responsible authority and the applicant has the delegated authority of the Chief Officer of Police in respect of his responsibilities under the Licensing Act 2003



**Application for the review of / Representation in respect of a
Premises licence or Club Premises certificate
under the Licensing Act 2003**

Page 2 of 3

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

*Select one or more
boxes*

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

Please state the grounds for review which must be based on one or more of the licensing objectives together with supporting information:

Hampshire Constabulary wish to make representation in support of Hampshire Trading standards review of the above premises in relation to the following licensing objectives, the prevention of crime and disorder and the protection of children from harm.

Evidence suggest across Havant Borough the majority of ASB incidents, criminal damage and minor assault are committed by juveniles. Those stop checked in the early evenings on Fri / Sat nights, a high proportion are in drink and some in possession of alcohol, which may have been purchased by proxy sale or by the individual. Since October 2012 Havant Police Licensing department have carried out extensive alcohol test purchase operations across the district.

The present Premises licence holder is Mr Nigel Roy SWAN.

The premises has failed the following carried out by Trading Standards and the Police.

26/04/13 - failed test purchase

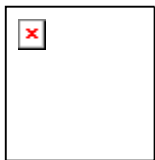
18/07/13 -. failed test purchase

07/08/13 – 7 day closure notice in force

03/10/13 – Review hearing (which included 14 day suspension and conditions)

20/02/14 - failed test purchase.

HC Believe that these test purchase failures are entirely due to poor management of the business on the part of Mr SWAN. His failure to comply with the conditions imposed by the licensing committee review hearing on 3/10/13, coupled with the failure to promote the four licensing objectives to his staff, have been a direct result of these failures. At this time Mr SWAN is unfit to be involved in the supply and sale of alcohol. The request by Trading Standards to revoke the premises licence is fully supported by Hampshire Constabulary. I urge you to consider the evidence laid before you today and ask for revocation of the premises licence.



**Application for the review of / Representation in respect of a
Premises licence or Club Premises certificate
under the Licensing Act 2003**

Page 3 of 3

Have you made an application for review relating to these premises before: ☒ Yes | ☒ No

If yes please state the date of that
application:

09 / 07 / 2013

Day Month Year

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

Please tick

☒ 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 have sent a copy of this representation to the principal licensing officer of Havant
Council

**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**

Signature of Officer Completing

Name Phil BARRON

Collar Number: 1148

Signature: _____

Date: 22/4/2014

Signature of Authorising Officer (Inspector or above)

Name Insp PAGE

Collar Number: Insp 1479

Signature: _____

Date: 22/4/2014

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In response to your notice of intention (under the licensing act of 2003), on the form we have indicated that we do not think that the hearing is necessary and submit the following statements in support of this position.

Staff Training

TSO Lawford suggested that the proposed actions may not be enough.

At this time and during the hearing (which we assume will be noted in the minutes) Mrs. Chestnutt asked what further help Trading Standards, CAP and Licensing Department could provide to us, as their websites advise they assist retailers within the CAP with training and support staff in making refusals.

She also spoke to TSO Lawford after the hearing to see what training was available. He advised there wasn't anything although he did have some challenge 25 badges in the office and he would get Paul Worrall to deliver them to the shop when he was next in the area. These were never received.

Mrs. Chestnutt had a very helpful conversation with TSO Lawford following the failure in February. She has looked at the various training offers on the websites and asked about the training offered under the CAP (on their website). TSO Lawford advised that the Southern CO-OP had offered to help smaller retailers with staff training. He was unable to provide any contact details and was unsure whether this was still available as the Hayling CAP was and still is in a non-operative state on the off license side following the departure of James Noble the lead police officer. This may explain why none of the emails Mrs Chestnutt sent were responded to. TSO Lawford very kindly offered to try and find out if any training was still available, but was instructed not to assist by Philip Loring CAP and his supervisor (See enclosed email).

After extensive research by Mrs. Chestnutt we were put in contact with Kevin Jones Compliance manager for the CO-OP. He has offered to train the 3 members of staff who failed the test purchases to ALPH level. He has also arranged to provide us with some books they use in their training. The courses are on the 28th May and the 20th June. This will mean that we have 5 members of staff trained to ALPH level.

He advised that in their stores they only train the section supervisor to ALPH level the other members of staff undertake an e-learning module the content of which he assumed is similar to the training manual provided by the CAP. Retraining takes place every 6 months. The only time they have more staff trained to ALPH level is if there is a history of problems with proxy sales or under age drinking in the area.

We feel strongly that Trading Standards, Licensing and the Committee should have been more responsive in assisting us with the training required. This would have enabled more staff to be trained in line with Trading Standards recommendation and helped avoid this latest failure.

Refusals log

We feel that it would be worse if the failure had been by the same member of staff, as this would indicate they had not learnt from the failure or the subsequent training received.

The refusal logs inspected by TSO Lawford reflected a traditionally quiet time of year with custom further reduced by some of the worst weather on Hayling Island for years with the island experiencing flooding and high winds.

Also as the challenge 25 policy had been employed effectively for several months customers were coming in with their ID ready, so fewer challenges needed.

Gerry Thorne licensing officer had verbally confirmed that there was no need to repeatedly challenge customers that you had served before and that he would expect the number of challenges to reduce with time.

We therefore feel that the number of entries recorded is not out of line with expectations

Challenges and the challenge log

We accept what was written on the sheets appears to not be good enough however Darren Sawyer the DPS had also had conversations with the staff to ensure they were recording entries. At one stage we were getting them to sign at the end of their shift to say that no challenges had been made. This practice was stopped on the advice of Gerry Thorne, when he delivered our revised license.

Mrs. Chestnutt has discussed this with Darren, he is aware that he needs to record that he has spoken to the staff on the challenge log. He wishes to point out that he has had no contact from Trading Standards the CAP or licensing office to assist him in his role as DPS and review the effectiveness of the systems he had put in place.

He phoned the licensing office after the failure on the 20th February to ask for help and what he should do. He was advised that there was nothing he could do and that he just had to wait for notification of the review date, or he could hand the license in.

We have enclosed a copy of the sheets and grid that we are using. We have reviewed the sheets for the period in question and confirm that challenges where ID was produced and the sale was able to proceed have been recorded.

The 2 entries that had been recorded on the week of the failure were for refusals. The person was unable to produce ID, which is why nothing is noted on the sheet. Other weekly sheets clearly show that ID is recorded when produced and the sale proceeds.

From the introduction of the logs until the 20/2/2014 a total of 119 challenges have been made in relation to age related products, there have been a further 123 since.

Peter Hawkins, who failed the test purchase, works 2 shifts a week in the shop from 5am to 2pm. After allowing for his break, he is only there for 10 hours that the shop is licensed for. He had recorded 7 challenges with the last one on the 12th January. He had been absent for approx. 7 days due to sickness and holiday since 12th January. We feel this level of refusals is acceptable. The highest numbers of challenges over the same period was 39 and 32 and were done by the 2 members of staff who work more hours that are predominantly evenings and weekends.

Management of the premises (Para 11.23)

We do not believe the management of the premises is any different from other independent retailers. Indeed TSO Lawford has confirmed that many other outlets will not

have a refusal log and will not under take the training we have. Kevin Jones from the co-op made the same point.

We have trained all staff using the material provided by the CAP. We have obtained more challenge 25 signage and we have upgraded the till so that a challenge 25 warning appears for all age related products. We have made our own age ready reckoner for the staff to use as the one in the training book and website are out of date.

A company policy has been drawn up and is on display in the shop. All staff have been provided with a copy.

The DPS continues to check the refusal logs weekly. After the failure in February we devised a grid so that we can easily see how many challenges each member of staff is making and when the last one was. This is then looked at against their working hours and shifts. i.e. the more hours, and evening weekend shifts, you work the more challenges expected. Any concerns are then discussed with the member of staff concerned.

We are also reviewing our staff rota to try and ensure there is a member of staff trained to ALPH level on duty(after completion of the courses in May and June) when ever possible. Now that the business is more stable financially even more attention can and will be devoted to up holding of the licensing objectives, hopefully with the support of the CAP, Trading Standards and licensing office.

Action taken immediately after the failure.

We suspended Peter from selling alcohol for 2 weeks following the incident and retrained him with the CAP training material. Peter is a challenging employee in many ways and TSO Lawford suggested we sack him. As you will know, this is not possible with employment law requiring certain processes to be followed which are very time consuming and drawn out, and quite often impossible to conclude. We continue to up skill him and also ensure he works on shifts that have a very low level of alcohol purchases.

We believe that the management structure within the shop is sufficient to uphold the license objectives, however as with all manual processes errors can occur. By way of example we have listed a few just from this case:

- Omission in your letter advising the outcome of the last hearing picked up by Mrs. Chestnutt and resulting in delays.
- Errors on trading standard web site in relation to some of the training material and amount of the fixed penalty fine
- Trading standards not delivering the promised challenge 25 badges or informing us and the committee of the training ALPH training available through the CAP.

We are extremely sorry about the failure and apologise to everyone involved. We firmly believe that our procedures are much stronger than at the review in October and have strengthened even further since the last failure. Indeed TSO Lawford and Kevin Jones have both said that our systems are probably stronger than many other Independent retailers. However the majority of licensed premises are never tested. TSO Lawford advised that they only test if there is a complaint or there are public disorder problems in the area or if a CAP is set up as in our case. Indeed with the CAP not currently operational ,new licenses have been agreed on Hayling and others amended which will not have been tested .

We have not been advised, or are aware of any complaints against us or any problems in our locality with underage drinking and proxy sales. This indicates that our systems are robust.

On the rare occasion that an underage sale has occurred in the area we have always co-operated fully with the Police, as mentioned at the last hearing we have been able to satisfy Police that sale was not made by us as the item was not stocked.

Wider Community interest (para 11.26)

We have banned individuals from the shop who have alcohol problems, indeed when trying to enforce this a few months ago a member of staff was physically threatened. In line with our policy we supported the member of staff and contacted the police.

Unfortunately despite providing CCTV footage the police advised they were unable to support us in any action against the individual.

There have been no complaints from the police or public against us.

There are no local problems with proxy sales or underage drinking.

We serve a retired community and are a life link for them.

Summary

The allegation that we continue to fail and show a complete disregard for the licensing objectives is simply not true, as evidenced by the steps we have taken to ensure all conditions of the license have been complied with – acknowledged by TSO Lawford in our conversation.

The licensing officer Gerry Thorne also visited the store to deliver the revised license, and confirmed that he was happy with the steps we have put in place to meet the hearing and our legal requirements. He acknowledged that a large percentage of our trade is to known local customers.

We accept that the implementation of the practices was not up to the required standard at the last hearing due to the personal problems that Mr. Swan had experienced.

We are also aware from the councils website that precedents have been set in decisions against other retail units in the borough, that have had even more failures, where no action has been taken by the committee. In this instance the member of staff had left the business. TSO Lawford did suggest in our conversation of 24th February that we dismiss Peter Watkins but as we are sure your legal council will confirm you cannot easily do this, and one failure is not sufficient grounds to take this course.

We phoned TSO Lawford immediately after the failure and had a very productive conversation. We asked if we could work together on an action plan rather than going to review. We discussed the CAP and he agreed to contact Philip Loring who is in charge. We then received the enclosed e-mail from TSO Lawford stating that the community alcohol partnerships officer has advised “retailers within a CAP would expect enforcement action where another retailer is persistently failing to uphold legal requirements.” and that his senior officer within Trading Standards has authorized a review and that the offer of free training was not appropriate.

With CAP not operational from a retailer perspective and new retailers probably not even aware of the CAP, we feel this approach was unfair, and if they were concerned about the welfare of children they did nothing to help us protect them whilst we awaited the hearing.

My understanding is that any decision by the committee, or subsequent appeal hearing would be based on the position at the time of the hearing. We feel that the information presented shows that our systems are robust and that we are committed to the licensing objectives. We believe that a hearing of the committee is not necessary and would not be a good use of involved parties time.

We would instead suggest that the evidence we have provided is reviewed by the Committee, Trading Standards and the Licensing Officer and that we spend time working together to uphold the licensing objectives and get to a place that Trading Standards and Licensing are happy with.

If however you still feel a hearing is appropriate we request a date change, as we are not available on The 20th June due to a pre booked holiday.

We are also in the process of seeking legal guidance from the National federation of newsagents, and may present further information if you decide a review hearing is necessary. TSO Lawford advised this could be done until the night before the hearing.

We would like to record that my dealings with TSO Lawford have been friendly professional and open. We are appreciative of the information and advice that he has been able to give. It is just a shame that the CAP seems to have disappeared and that we were not offered the free training as mentioned at the last hearing as a significant amount of time and money could have been saved.

CLAPPS CONVENIENCE STORE CHALLENGE 25 REFUSAL LOG

[illegible]

DPS SIGNATURE: _____

From: "Lawford, Stephen"
Subject: RE: age restricted sales retailer pack request.
Date: 7 March 2014 10:20:39 GMT
To: 'Dreen Chestnutt'

Dear Dreen

I have received a reply from the Community Alcohol Partnerships Officer and he has said that retailers within a CAP would expect enforcement action where another retailer is persistently failing to uphold legal requirements.

My senior officer has authorised a Review of the premises licence for Clapps and has stated that therefore, the offer of free training is not appropriate.

Yours sincerely

Steve Lawford
Trading Standards Officer

-----Original Message-----

From: Dreen Chestnutt
Sent: 06 March 2014 08:07
To: Lawford, Stephen
Subject: Re: age restricted sales retailer pack request.

Hi Steve,

Thanks for your time last week. It was very useful. I am conscious that i will need to book the licensing course at Highbury shortly (31st March) and wondered whether you have heard back from Philip at the community alcohol partnership regarding the training they offer and whether the co-op can help under the scheme? It would be great to get all f the staff trained as you suggested at the previous hearing and this is hopefully a way of achieving that, without the prohibitive financial cost.

Thank you for your time and help.I know how busy you are now that Paul has left.

Kind Regards

Dreen Chestnutt

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LICENSING SUB- COMMITTEE

Information to accompany a Notice of Hearing

Notes:

The purpose of this guide is to advise you of the work and responsibilities of the Licensing Sub-Committee.

The purpose of the hearing is for the Sub-Committee to consider the application laid before it under the Licensing Act 2003, in the light of any representations received before or at the meeting, including those of the applicant or his representative.

The meeting is open to the public and the press. An interested party or responsible authority may attend and may be assisted or represented by any person whether or not that person is legally qualified. However, the Sub-Committee may exclude the public, including any party to the hearing, from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing (or part hearing) taking place in public.

The hearing procedure and relevant extracts from the Regulations relating to hearings are attached.

If you have notified the Council that you do not intend to attend the hearing or to be represented at the hearing, you should be aware that the hearing may proceed in your absence.

However, if you have not indicated such an intention to the Council and you then fail to attend or be represented at the hearing, the Sub-Committee may:

- adjourn the hearing to a specified date, if considered necessary in the public interest or
- hold the hearing in your absence.

Where a hearing is held in your absence, the Sub-Committee shall consider the application, plus any written representations you have made. Where the Sub-Committee adjourns the hearing to a specified date, all parties to the hearing will be notified of the date, time and place to which the hearing has been adjourned.

The Sub-Committee may require any person attending the hearing, who in its opinion is behaving in a disruptive manner, to leave the hearing forthwith and may:

- refuse to permit that person to return, or
- permit the person to return only on such conditions as the Sub-Committee may specify,

but such a person may, before the end of the hearing, submit to the Sub-Committee in writing any information which they would have been entitled to give orally had they not been required to leave.

Please note, that the Council may dispense with holding a hearing if all persons involved, i.e. the applicant, interested parties and responsible authorities, agree that such a hearing is unnecessary, by giving notice to the Council that they consider a hearing to be unnecessary.

Particular Points On Which the Council Considers it Will Want Clarification at the Hearing

None save those raised in the representations received.

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Copy of Regulations 15 and 16 of The Licensing Act 2003 (Hearings) Regulations 2005

Right of attendance, assistance and representation

- 15.** Subject to regulations 14(2) and 25, a party may attend the hearing and may be assisted or represented by any person whether or not that person is legally qualified.

Representations and supporting information

- 16.** At the hearing a party shall be entitled to—
- (a) in response to a point upon which the authority has given notice to a party that it will want clarification under regulation 7(1)(d), give further information in support of their application, representations or notice (as applicable),
 - (b) if given permission by the authority, question any other party; and
 - (c) address the authority.

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HAVANT BOROUGH COUNCIL
HEARINGS PROCEDURE
REVIEW OF PREMISES LICENCE

(in accordance with Regulations issued under the Licensing Act 2003)

- 1 The Chairman will explain to all those present how the hearing will be conducted. The parties to the hearing will be told it will be in accordance with this procedure, which will have been circulated to all parties in advance of the hearing.
- 2 Before the hearing commences the Chairman will:
 - (a) explain that a record will be taken of the proceedings in a permanent and intelligible form;
 - (b) ask all parties to the hearing if any of them wishes to withdraw any representations they have made;
 - (c) ask all parties to the hearing if any of them wishes to call witnesses and will seek the Sub-Committee's approval for witnesses to address the hearing.
- 3 The Licensing Officer will outline the nature of the application for a review of the premises licence and the reasons why the matter is before the Sub-Committee;
- 4 The Members, the Trading Standards Officers, the Police, the Licence Holder and any other persons who have made representations (or their respective representatives) may ask questions of the Licensing Officer;
- 5 The Trading Standards Officers, will be invited to submit representations to the Sub-Committee and call witnesses in support of their application for a review of the premises licence;
- 6 The Members, the Police, the Licence Holder and any other persons who have made representations, will be invited to ask questions of the Trading Standards Officers and/or their witnesses;
- 7 The Police will be invited to make representations to the Sub-Committee;
- 8 The Members, the Trading Standards Officers, the Licence Holder and any other persons who have made representations will be invited to ask questions of the Police and/or their witnesses;

- 9 Other persons who have made representations will be invited to submit their representations to the Sub-Committee;
- 10 The Members, the Trading Standards Officers, the Police and the Licence Holder will be invited to ask questions of those other persons who have made representations and/or their witnesses;
- 11 The Licence Holder, will be invited to submit representations to the Sub-Committee and call witnesses in support of their representations;
- 12 The Members, the Trading Standards Officers, the Police and any other persons who have made representations will be invited to ask questions of the Licence Holder and/or their witnesses;
- 13 The Trading Standards Officers will be given an opportunity to submit any final comments to the Sub-Committee;
- 14 The Police will be given an opportunity to submit any final comments to the Sub-Committee;
- 15 Other persons who have made representations will be given an opportunity to submit any final comments to the Sub-Committee;
- 16 The Licence Holder will be given an opportunity to submit any final comments to the Sub-Committee;
- 17 The Chairman will announce that the Sub-Committee will retire to consider its determination. The Sub-Committee, in retiring, will be accompanied by the Council's Solicitor, for legal advice only, and the Democratic Services Officer;
- 18 If at any time before making its determination, the Sub-Committee wishes to ask any additional questions of any of the parties, it will return to the Committee Room to ask those questions in front of all parties to the hearing. At this stage, the Chairman will allow further questions by any of the parties of those additional questions, if this is deemed necessary;
- 19 After any further retirement, the Sub-Committee will return to the Committee Room and the Democratic Services Officer will announce the decision of the Sub-Committee, together with the reasons for that decision.

**R (on the application of Carmarthenshire County Council)
v Llanelli Magistrates' Court**

Licensing – Licence – Premises licence – Review – Local authority revoking interested party's premises licence following review of same – Magistrates' court allowing appeal against revocation decision and ordering authority to pay interested party's costs – Whether costs order undermined by errors made in respect of ruling on revocation issue – Whether declaration to be made – [Licensing Act 2003, ss 4, 51, 52](#)

[2009] EWHC 3016 (Admin), CO/5226/2009, (DAR Transcript: Wordwave International Ltd (A Merrill Communications Company))

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**QBD, ADMINISTRATIVE COURT
SILBER J**

6 OCTOBER 2009

6 OCTOBER 2009

G Walters for the Claimant

The Defendant did not appear and was not represented

None stated at original source

SILBER J:

[1] Camarthenshire County Council ("the Council") seeks in these proceedings to challenge a decision made by the Llanelli Magistrates' Court ("the Magistrates") on 30 March 2009, by which it allowed the appeal of Mr Hugh Williams ("the interested party") against the Council's decision revoking his licence to sell alcoholic drinks at premises known as the Class-of-Wine, 1 Colbrook, Pontyberem, Llanelli ("the premises"). The Council was also ordered by the Magistrates to pay the interested party's costs in the sum of £3,850. The Council also seeks an order quashing this costs decision in this application. It is brought with the leave of HHJ Curran QC, sitting as a judge of the Administrative Court.

[2] Although the Council challenges the decision allowing the appeal of the Interested Party, it does not seek an order revoking the licence of the Interested Party. Nevertheless, it is necessary for me to consider that decision, because it is relevant on the challenge to the costs decision, and also to the further relief which the Council seeks, which is for a declaration that, on an appeal from a decision of a Council in relation to a review of premises licence under the [Licensing Act 2003](#) ("the 2003 Act"), the Magistrates should take such steps as they consider necessary for the promotion of the licensing objectives which are set out in s 4(2) of the 2003 Act.

[3] The background to this application is that it was alleged that alcohol was sold at the premises to three different customers aged 15 years in a trading

standards test, and that these sales took place on 7 August 2008, 13 August 2008 and 20 August 2008. The Interested Party was notified that, for those reasons, the Council wished to review his licence pursuant to the provisions of s 51 of the 2003 Act. Under s 52 of the 2003 Act, the Council was entitled on such review to take a number of steps that it considered necessary for the promotion of "the licensing objectives". Those steps included modifying the conditions of the licence and revoking it, as set out in s 52(4) of the 2003 Act.

[4] The licensing objectives are of fundamental importance in resolving this application. They are set out in s 4(2) of the 2003 Act, which, provides insofar as is relevant to this case that:

"The licensing objectives are –

(a) the prevention of crime and disorder;

. . .

(d) the prevention of children from harm."

It is of critical importance in deciding this appeal that s 146(1) of the 2003 Act provides that "A person commits an offence if he sells alcohol to an individual aged under 18."

[5] On 18 December 2008, the Council sub-committee considered at an oral hearing the application to review the Interested Party's licence. It found that the premises' licence holder or the designated premises supervisor personally sold the alcohol on two of the three occasions to persons under the age of 18. The police and Children's Services of the local authority supported the application, which had been made by the Trading Standards Authority, to review the premises licence granted to the interested party. The Licensing Committee of the Council attached importance to the fact that the application to review the interested party's licence had been made by those bodies, which fall within the definition of "a responsible authority", and it had been supported by two other responsible authorities. The effect of being a responsible authority is that by s 52(2) of the 2003 Act, the Council was obliged to have regard to their representations.

[6] The Council found that "On the balance of probabilities, the committee is satisfied that the current operation of the premises is not promoting the licensing objectives of protecting children from harm." The committee proceeded to consider what course of action was necessary and proportionate, and it concluded that ". . . revocation of the licence is necessary in this case, and a proportionate response to what has happened".

[7] As I have indicated, the Magistrates allowed the appeal of the interested party. This judicial review application is brought on the basis that the Magistrates first failed to apply the proper law or principles by omitting to consider the legislative objective properly or at all, and second that it also failed to exercise its discretion in relation to costs in a proper and responsible manner. The Magistrates submitted an Acknowledgment of Service, stating that they did not intend to make any submissions other than including a note of the proceedings in which there was an explanation of its decision-making process. The Interested Party has neither been present nor represented, but it made written representations through its solicitor in a letter dated 8 May 2009, in which it contended that the decision of the Magistrates should be upheld.

[8] Before dealing with the Council's submissions, it is appropriate to summarise the reasoning of the Magistrates, which was, first, that the test which they would apply was whether the revocation was "necessary and proportionate in the circumstances of the case". The Magistrates, in answering that question, found first that the Interested Party had been the proprietor of the premises for 19 years and second that he enjoyed a clean and unblemished record prior to the date of the test purchases. The Magistrates also attached importance to the fact that PC Melly had given evidence that there was no link between the premises and the commission of any crime and disorder in the village of Pontyberem.

[9] The Magistrates also considered that the Interested Party was ". . . properly implementing the law. We also note their many letters of support for Mr Williams." The conclusion of the Magistrates was that:

"We will therefore allow the appeal . . .

In coming to this decision we had regard to the Secretary of State's guidance under [section 182](#) of the Licensing Act 2003."

The Magistrates also explained that:

"The selling of prohibited goods to children is clearly a matter which has to be taken seriously and we view it in this light and therefore have no criticism of the Local Authority's decision to conduct the test purchases and bringing the matter before the subcommittee."

[10] The main ground of challenge relied on by Mr Graham Walters, counsel for the Council, is that the Magistrates failed to apply the statutory test in the licensing in s 52 of the 2003 Act, which provides that:

"The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives."

[11] In my view, the decision of the Magistrates was wrong, for the following overlapping reasons. First, they adopted the wrong test of considering whether the revocation of the Interested Party was necessary and proportionate, which thereby disregarded attaching any weight to the licensing objectives in the statutory obligations in the 2003 Act. Second, the Magistrates erred, as they did not expressly or impliedly consider the licensing objective of "prevention of children from harm" or the prevention of crime and disorder contained in the 2003 Act and the guidance under it.

[12] By acting this way, the Magistrates were ignoring their duty under s 4(3) of the 2003 Act, which provides:

"In carrying out its licensing functions, a licensing authority must also have regard to –

. . .

(b) any guidance issued by the Secretary of State under section 182."

[13] Guidance was indeed issued under s 182 of the 2003 Act. The approach which should be taken to the Guidance is set out in para 2.3 of the guidance, which provides that:

". . . in carrying out its functions a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent."

It is noteworthy that para 5.99 of the Guidance states that:

"The proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises."

By para 1.115 of the Guidance, the question of the sale of alcohol on the premises for underage drinkers is considered, where it is stated that:

"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 purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and propensity for crime of young people."

[14] In my view, the Magistrates were obliged to consider the sale of alcohol to minors "particularly seriously", as stated in the Guidance. Unfortunately, they did not do so, because they failed to consider with care, in its review of the license, whether its decision was consistent with the objective, and in particular the impact on the health, educational attainment, employment prospects and propensity for crime of young people. This was particularly relevant in this case, as the Interested Party committed an offence on three occasions by selling alcohol to youths who were three years under the age of 18. There is nothing in the reasoning of the Magistrates to show that they considered these matters at all.

[15] The significance of the guidance has been stressed repeatedly by this court. In *R (Donald Thwaites plc) v Wirral Borough Magistrates Court* [2008] EWHC 838 (Admin), [2009] 1 All ER 239, 172 JP 301, Black J said at para 38:

"What a . . . Magistrates' Court is not entitled to do is simply to *ignore* the Guidance or fail to give it any weight . . . when a Magistrates' Court is entitled to depart from the Guidance and justifiably does so, it must . . . give proper reasons for so doing . . . the magistrates did not need to work slavishly through the Guidance in articulating their decision but they did need to give full reasons for their decision overall and full reasons for departing from the Guidance if they considered it proper so to do."

[16] In *R (Bassetlaw District Council) v Worksop Magistrates Court* [2008] EWHC 3530 (Admin), 173 JP 599, Slade J said at para 37 that:

"The district judge in reaching his decision simply referred to the circumstances of the case and the fact that what is necessary is a question of the valuation and judgment The district judge in my judgment failed to identify why and in what respects he was departing from the guidance. I find that the district judge erred in failing to give reasons for departing from the applicable guidance."

This case is a stronger case, because in this case it is that the Magistrates not merely did not follow the Guidance, but they did not even refer to it at all.

[17] A third reason why the Magistrates erred is that they failed to consider the harm caused by the sale of alcohol to these 15 year-old youths. This was, after all, the basis on which the Council revoked the application, but instead the only matter which seemed of importance to the Magistrates was the absence of any connection between the premises and the commission of a crime in the village of Pontyberem. As I have already stressed, the Magistrates had to consider further matters other than the commission of a

crime in relation to the effect of selling alcohol to under-age youths, such as the effect on other aspects of their life.

[18] The fourth objection to the approach of the Magistrates is that they did not deal properly with the objections from three responsible authorities to the continuance of the interested party's license. They were, as I have explained, the Trading Standards Authority, the Police and the Children's Services. I have already referred to the statutory provisions, which show that the Magistrates were obliged to consider them. These matters were not considered at all by the Magistrates, notwithstanding that each of those three organisations was a responsible authority which had made representations.

[19] It is well settled in this court that the Magistrates and the Council were obliged to attach some weight to it. In the case of *Donald Thwaites* (supra) it was held at para 63 that weight had to be attached by the decision-makers to the views of the police. In my view, similar reasoning applies to the views of the trading standards, and the children's department. It is noteworthy as well that para 2.1 of the Guidance states that the licensing authority should ". . . look to the police as a main source of advice on crime and disorder".

[20] Furthermore, para 2.51 of the Guidance states that an authority should expect to maintain close contact with the police, young offenders' teams and trading standards officers regarding unlawful sales and consumption of alcohol by minors and the development of control strategies. Paragraph 5.103 of the Guidance points out that:

"It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, interested parties and responsible authorities in pursuit of common aims."

Unfortunately, the Magistrates failed to comply with those requirements.

[21] Finally, the reasoning of the Magistrates shows that they regarded as definitive in this case the absence of any link between the premises and the commission of crime and disorder, as well as the fact that steps had been taken by the Interested Party to ensure no sales were made in the future to underage youths. This shows a misunderstanding of the legislative objectives.

[22] For all those reasons, I have concluded that the decision of the Magistrates was flawed. It has not been suggested that I should, therefore, revoke the license of the Interested Party, and I do not do so. I do however make the declaration which has been sought. In my view, it would serve a useful purpose, as it would explain to these Magistrates and other bodies the approach which they should adopt. The effect of my disagreement with the approach of the Magistrates is it undermines their decision to order the Council to pay the costs of the interested party. The reasoning of the Magistrates was that "With regard to costs, given the sub-committee decision to revoke the license was unreasonable in all the circumstances and therefore unsound. We award the full costs as requested."

[23] It will be quite apparent from what I have just said that I am unable to accept that approach, and for that reason the order for costs must be quashed.

Judgment accordingly.

Neutral Citation Number: [2008] EWHC 3530 (Admin)

IN THE HIGH COURT OF JUSTICE

QUEEN'S BENCH DIVISION

THE ADMINISTRATIVE COURT

Royal Courts of Justice

Strand

London WC2A 2LL

Friday, 7th November 2008

B e f o r e:

MRS JUSTICE SLADE

Between:

THE QUEEN ON THE APPLICATION OF BASSETLAW DISTRICT COUNCIL

Claimant

v

WORKSOP MAGISTRATES COURT

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited

A Merrill Communications Company

190 Fleet Street London EC4A 2AG

Tel No: 020 7404 1400 Fax No: 020 7831 8838

(Official Shorthand Writers to the Court)

MR J QUIRKE appeared on behalf of the **Claimant**

The **Defendant** did not appear in person and was not represented

J U D G M E N T

1. 1.1. MRS JUSTICE SLADE: Bassetlaw District Council applies for judicial review of the judgment and decision of a district judge allowing an appeal from decisions made on a licensing authority's review of a licence held by Mr and Mrs Jones.

The licensing committee of the district council had reviewed the premises licence of the premises where Mr and Mrs Jones operated, in the light of offences which had taken place on 10th March 2007 namely the unlawful sale of alcohol on the premises to two 14 year old girls. The girls were sent to the premises for test purchases in accordance with arrangements made by the trading standards office. The sales took place over a relatively short period of time. Each girl made a separate purchase or purchases, was served by one of two different young cashiers. Having regard to these matters, on review the licensing authority suspended the licence for the premises for one month.

There was an appeal to the district judge. The district judge overturned the decision of the licensing authority and instead imposed what were said by him to be, "additional conditions on the licence".

2. 2.1. Mr Quirke appears for the licensing authority. The district judge has served two statements in connection with this hearing, but otherwise takes no further part in it.

The interested parties, Mr and Mrs Jones, were served with the notice of application but have not served an acknowledgement of service. I am also told that the licensing authority are not going to seek to overturn the determination of the district judge as to penalty. They seek, however, declarations as to the correctness in law of the decision and the judgment of the district judge.

3. 3.1. The grounds for judicial review may be analysed as falling under five headings. As will become apparent later on in this judgment, two of those matters can, in my judgment, be taken together.

4. 4.1. First, it is said that the district judge erred in holding that, in accordance with the guidance issued by the Secretary of State, it is not the function of the licensing authority to punish licensees for an infringement of licensing law and provisions on its license. Further, it is said that the district judge was in error in holding that, on a proper construction of the licensing provisions and guidance applicable, the licensing authority powers were restricted to guidance or remedial action which was the approach of the district judge. It is said that the steps which the licensing authority and the district judge on appeal may take include a range of powers which must be deployed according to the particular circumstances of the case.

5. 5.1. Secondly, it is said that the orders made by the district judge which were in substitution for the suspension of the licence imposed by the licensing authority were, in effect, not additions to the conditions of the licence which applied up to that point. Save in one respect they were merely a reiteration of steps which were already being taken or were already in fact conditions of the licence.

6. 6.1. Thirdly, it is said that the district judge erred in his approach to his own decision making on appeal. It is said that he adopted a too generous approach to his powers on appeal in that he appears in page 2, paragraph 5 of his judgment to direct himself that he could take a decision standing in the shoes of the licensing authority having regard to the particular circumstances and considering whether the licensing authority's decision was justified. It is said that the district judge failed to give proper regard to the guidance issued under section 182 of the Licensing Act 2003 in that he did not state that he was departing from such guidance in certain respects. Since, it is said, that he departed from such guidance, he erred in failing to state why he was departing from such guidance.

7. 7.1. Fourthly, it is said that the district judge failed properly to apply and have regard to paragraph 5.115 of the guidance given under section 182 of the Licensing Act. This sets out and categorises as criminal certain activities which may arise in connection with licence premises and which the Secretary of State considers should be treated particularly seriously. Included in the use of licence premises for the purchase and consumption of alcohol by minors which impacts on the health, educational attainment, employment prospects and prosperity for crime of young people. It is said that the district judge failed to pay proper regard to that. Where there has been a compliant of an incident which is categorised rightly as criminal activity in connection with licence premises, it is said that the district judge failed to take into account paragraph 5.113 of the guidance. This provides that the licensing authority's duty, in circumstances such as these, is:

"... to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence."

8. 8.1. Finally, it is said that the district judge failed in his approach to pay proper regard to the guidance of Lord Goddard in the case of *Stepney Borough Council v Joffe*

which the judge himself referred to at page 2 of his judgment, paragraph 5. In Joffe it was said that although on an appeal, such as this, there is a right to a rehearing. The appellate court should pay regard to the fact that the duly constituted and elected local authority have come to an opinion on the matter. The appellate body ought not lightly to reverse their opinion.

9. 9.1. Discussion.

10. 10.1. I will briefly outline some of the relevant statutory provisions and guidance. Pursuant to the Licensing Act 2003, section 4, the licensing authority must carry out its function under the Act with a view to promoting the licensing objectives.

Subsection 2 provides that:

"The licensing objectives are:

"(a) the prevention of crime and disorder;

"(b) public safety;

"(c) the prevention of public nuisance; and

"(d) the protection of children from harm."

11. 11.1. Importantly, section 4(3) provides:

"In carrying out its licensing functions, a licensing authority must also have regard to...

"(b) any guidance issued by the Secretary of State under section 1.282."

12. 12.1. Section 52 of the 2003 Act applies where an application for a review of licence under section 51 has been made. Subsection 52(3) provides:

"The authority must, having regard to the application and any relevant representations, take such of the steps mentioned in subsection 4, if any, as it considers necessary for the promotion of the licensing objectives."

13. 13.1. Those objects are set out in section 4.

14. 14.1. Subsection 52(4) provides that the steps are:

"(a) to modify the conditions of the licence ...

"(d) to suspend the licence for the period not exceeding three months.

"(e) to revoke the licence.

"For this purpose the conditions of the licence are modified. If any of them is altered or omitted or any new condition is added."

15. 15.1. It is to be noted that section 146(1) of the 2003 Act provides:

"A person commits an offence if he sells alcohol to an individual aged under 18."

16. 16.1. Pursuant to section 182 of the 2003 Act guidance is issued. I have already outlined the requirement for the licensing authority in carrying out its functions to do so in accordance with the guidance and to have regard to it. The background and the approach which should be taken to that guidance is set out in paragraph 2.3 of the guidance itself which was applicable at the relevant date. The guidance was revised with effect from June 2007. Reference is made in paragraph 2.3 to section 4 of the 2003 Act which provides that:

"In carrying out its functions, a licensing authority must have regard to guidance issued by the Secretary of State under section 182. The requirement is therefore binding on all licensing authorities to that extent."

17. 17.1. It is recognised that the guidance cannot anticipate every possible scenario or set of circumstances that may arise. So long as the guidance has been properly and carefully understood and considered, licensing authorities may depart from it, if they have reason to do so. When doing so, licensing authorities will need to give full

reasons for their decisions. Departure from the guidance could give rise to an appeal or judicial review and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.

18. 18.1. I will set out here the passages in the guidance material to this application.

Paragraph 5.99 provides:

"Proceedings set out in the 2003 Act for reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licence by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises."

19. 19.1. The provisions relating to the power of the licensing authorities in conducting a review are set out in paragraph 5.107 and following. 5.107 provides:

"The 2003 Act provides a range of powers for the licensing authority on determining and review that it may exercise where it considers them necessary for the promotion of the licensing objectives."

20. 20.1. At 5.109, there are set out the steps which may be taken by the licensing authority where it considers that actions under its statutory powers are necessary. Those include modification of the condition of the premises licence, suspension of the licence and revocation of the licence; the suspension, being for a period not exceeding three months.

21. 21.1. Paragraph 5.110 provides that:

"In deciding which of the powers to invoke the licensing authority should so far as possibly seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than a necessary and proportionate response."

22. 22.1. Paragraph 5.111 refers to the need for any detrimental financial impact of a licensing authority's decision, in particular of suspension of a licence, to be considered.

23. 23.1. A separate section in the guidance deals with reviews arising in connection with crime. In my judgment these provisions are particularly material to this case.

Paragraph 5.112 states:

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

24. 24.1. It is agreed by Mr Quirke that the sale of alcohol on the premises to under age drinkers is connected with licensable activities. Indeed, in paragraph 5.115 such activity is expressly referred to in the following terms:

"There is certain criminal activity that may arise in connection with licence premises which the Secretary of State considers should be treated particularly seriously. These are the use of the licensed premises [and there are enumerated a number of crimes... which include] 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."

25. 25.1. Of importance to the consideration of the case before me is also paragraph 5.113 which provides:

"Where the licensing authority is conducting a review on the grounds that

the premises have been used for criminal purposes, its role is solely to determine what steps are necessary to be taken in connection with the premises licence for the promotion of the crime prevention objective."

26. 26.1. The paragraph continues:

"The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives in the interests of the wider community and not those of the individual holder of the premises licence."

27. 27.1. At paragraph 5.114, there is a reference to the fact that it is not the role of the licensing authority to determine guilt or innocence, but it is stated that:

"At the conclusion of the review, it will be for the licensing authority to determine, on the basis of the application for the review and any relevant representations made, what action needs to be taken for the promotion of the licensing act objectives in respect of the licence in question regardless of any subsequent judgment in the courts about the behaviour of individuals."

28. 28.1. I now turn to a consideration of the various heads of challenge which Mr Quirke, on behalf of the licensing authority, makes to the judgment and determination of the district judge in this case. In the course of the discussion I may refer not just to the district judge's judgment but also, albeit maybe briefly, to a statement filed by him in these proceedings. Taking grounds 1 and 4 of challenge together, the main issue raised by those grounds is that the district judge misdirected himself in considering that the function of the authority and his function as the appellate body was not punitive but in effect was remedial. It is submitted that the approach of the district judge was to confine his consideration to remedy of the cause of the breach of the licence provisions and of the law.

29. 29.1. At paragraphs 4 and 5 of the judgment in the section headed, "Discussions", at page 10 the district judge said that:

"The function of the local authority, and now this court, must be first to establish why the four sales of the alcohol to girls A and B occurred on 10th March 2007. Secondly, to take such steps, if any, under section 52 of the Act as are necessary to ensure that no further sales occur thereby promoting the two licensing objectives principally engaged by this case: namely, the prevention of crime and disorder, and the protection of children from harm. The step or steps taken must be the minimum intervention necessary to achieve those aims. What is necessary is a question of value and judgment which will involve the local authority or the court taking account of all the circumstances of the case."

30. 30.1. In my judgment, the language of paragraph 5 indicates clearly that the district judge was considering solely the provisions of the guidance which were not specific to reviews arising in connection with crime. In my judgment, a proper reading and application of the guidance which governs the approach that a licensing authority must take in discharging its duties requires, where the circumstances render it applicable, the consideration of the paragraphs relating to reviews in connection with crime.

Whilst it may be said that in reviews which do not engage a requirement to consider the paragraphs giving guidance on the approach where there is activity in connection with crime related to licensed premises, the general provisions which apply to all reviews may result in the approach outlined in paragraph 5 being the appropriate one to follow.

Indeed, paragraph 5.110, which applies generally to the exercise by a licensing authority of its powers on review, does state a requirement, so far as possible, on the authority to establish the cause or causes of the concerns and that remedial action taken should be directed generally to these causes and should always be no more than a necessary and proportionate response. That observation, in my judgment, is directed to the overall approach to the exercise by the licensing authority of its powers on a review.

When considering reviews arising in connection with crime, decisions of the licensing authority would have to be reasonable in all the circumstances and that would necessarily engage a requirement to consider necessity and proportionality.

31. 31.1. However, in my judgment was not borne in mind by the district judge failed to have regard to the requirement on a licensing authority conducting a review on the grounds that the premises had been used for criminal purposes to take steps with view to the promotion of licensing objectives in the interests of the wider community. That is a requirement set out in paragraph 5.113. For reasons given earlier, and in particular by reason of the fact that paragraph 5.115 clearly specifies criminal activity which may arise in connection with the use of the licence premises for the purchase and consumption of alcohol by minors, that provision is engaged in this case.

32. 32.1. Accordingly, in my judgment, the district judge misdirected himself by confining his consideration of the case to the test which would be appropriate where no criminal activity was concerned. Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.

33. 33.1. The district judge held that the provisions are not to be used and cannot be used for punishment. That may strictly speaking be correct. However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable. Therefore, when the district judge confined himself, as in my judgment he did, to the considerations of remedying, and adopted only the language of paragraph 5.110 in his considerations, he erred in law. In my judgment, that error is sufficient to undermine the basis of his decision. On those two grounds alone, grounds 1 and 4 as I have outlined, I allow this application for judicial review.

34. 34.1. However, I continue to consider under the various headings the other grounds raised. The orders made by the district judge are challenged. He added to the existing conditions of the licence six matters as to which I am told that five were already present but not properly implemented. The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14 year old girls. In effect this is a perversity challenge to the decision of the district judge. Even if the approach of the district judge had been correct, which in my judgment it was not, it may well be that the order he made was perversely minimal to meet the circumstances and gravity of the case.

35. 35.1. Under the third general head of challenge, it is said that the district judge

failed to pay proper regard to the decision of the licensing authority. Whereas he directed himself in accordance with the dictum of Lord Goddard in the Stepney Borough Council v Joffe case which he set out at page 2, paragraph 5 of his judgment, nonetheless, it is said that he failed to pay regard to the initial decision of the licensing authority when coming to his decision. Since in my judgment the district judge erred in other respects I determine this judicial review challenge on other grounds.

36. 36.1. It is finally said that the district judge erred in that he departed from the guidance issued under section 182 of the Licensing Act but failed, as he was obliged to do, to state that he was so departing and failed to give reasons for so departing. The departure, it is said, is constituted by the failure to give recognition and carry into effect the provisions of paragraphs 5.113, 5.115 and 5.116.

37. 37.1. Earlier in this judgment I set out the basis upon which licensing authorities must pay regard and be governed by guidance issued. Plainly an appellate body must operate similar principles to those applicable to the licensing authority. The guidance contains specific provisions as to the approach to be adopted where criminal activity connected with licence premises is concerned. He failed to give reasons for a departure from applicable guidance. The district judge in reaching his decision simply referred to the circumstances of the case and the fact that what is necessary is a question of the valuation and judgment which will involve the local authority or the court taking into account all the circumstances of the case, that is at page 10 of his judgment, paragraph 5. The district judge in my judgment failed to identify why and in what respects he was departing from the guidance. I find that the district judge erred in failing to give reasons for departing from the applicable guidance.

38. 38.1. Accordingly, for the reasons set out in this judgment I allow this application for judicial review and find that the district judge erred in law in his approach to determining the appeal of the licensees in this case.

Yes, Mr Quirke.

39. 39.1. MR QUIRKE: I do not think there is any need to formulate a declaration, I think your judgment, in effect, will do the declaration required and the guidance required.

40. 40.1. I am instructed to apply for costs.

41. 41.1. MRS JUSTICE SLADE: Yes.

42. 42.1. MR QUIRKE: It is a tricky one.

43. 43.1. MRS JUSTICE SLADE: It is rather. Can you help me a bit on this?

44. 44.1. MR QUIRKE: Well, ordinarily the usual rules as to the cost apply. If somebody does not turn up, and for example if it is case stated and the magistrates do not attend at court, the court does not usually make an order for costs, but this is a sort of half way house, where the submissions have been made, although nobody has turned up to make them.

45. 45.1. MRS JUSTICE SLADE: Yes. Who would you want your costs from?

46. 46.1. MR QUIRKE: The Magistrates' Court.

47. 47.1. MRS JUSTICE SLADE: Mr Quirke, as you say, there are certain approaches which may normally be adopted but they are within my discretion. In the circumstances, where one would hope that the Magistrates' courts hearing such cases in the future will adhere to the judgment on matters which may not have been apparent to the district judge when coming to his decision and the subsequent order; since he was exercising his judicial function and there is no suggestion of impropriety or anything of that sort, I will not make an order for costs.

48. 48.1. MR QUIRKE: I am grateful.

49. 49.1. MRS JUSTICE SLADE: Thank you.

50. 50.1. I would ask you, Mr Quirke, to draw up the order.
51. 51.1. Thank you for your assistance.

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Updated position

Peter Watkins and Luke Smith both passed the ALPH course on the 26th May. They have both expressed an interest in getting their personal licenses and will progress this once their certificates are received.

Jerry Wise was unable to attend his course due to a back problem- doctors have advised he shouldn't sit for long periods. This has been rescheduled for the 23rd September with the Co- op at their Lakeside site.

Darren and I have spent time with Jerry and the other staff who haven't been on the ALPH course to ensure they are aware of their responsibilities under the licensing act and the support available to them from the police and us if customers become abusive.

The Essentials of Alcohol workbook has been used as recommended by Kevin Jones co-op compliance manager. And they have signed to confirm they are happy with it- see attached

All staff authorized to sell alcohol by Darren Sawyer the DPS have either passed the ALPH course or undergone the above training.

We currently have 4 members of staff trained to ALPH level. With Jerry registered to take the course in September. There are 3 further members of staff Sam, a university graduate, one that only works 5 hours a week and the other 12 hours whilst we are licensed to sell alcohol.

In the event that we employ new staff they will be trained using the Essentials of Alcohol workbook

Refusals since 24/2 a total of 184 age related product refusals have been recorded. The highest 52 by Sam who works evenings and weekends. All staff have recorded refusals and Darren checks these weekly to ensure they are in line with trade and the hours and times that member of staff has worked.

The councilors may have seen in the court round up in the Portsmouth evening news that staff at Clapps stopped a man who was under the influence of alcohol and drugs shop lifting in the shop. The police were called and arrested him and successfully prosecuted him.

This makes 2 instances in the recent past where we have contacted the police in an attempt to protect the local community from harm at the hands of people under the influence of alcohol. As you will be aware from previous submission the 1st instance didn't proceed to prosecution due to lack of evidence.

We continue to work closely with the landlord at the Shades public house to keep abreast of any potential problem individuals or happenings in the local community.

We would ask the committee to allow us to continue selling alcohol without additional restriction in light of the actions we have taken.

Revocation or suspension would have a massive impact on the viability of the business affecting the staff that work for us and the local community who use the shop

We are happy to work with the trading standards and licensing officer to ensure they are happy with our systems.

We are also willing to be involved in enforcement evenings if the Community Alcohol partnership is re activated.

Background Information for the Committee

Clapps Newsagency is a family run business and has been in the family since the 1950's. They provided a lifeline to the many elderly customers in the local community with many of their customers known to them.

Alcohol license held for over 25 years with no previous problems.

We have always co-operated fully with the police to stamp out under aged drinking. Indeed There have been several occasions where the police have consulted us for help with under aged drinking cases and we have been able to prove that sales are not from Clapps as the items in question are not stocked.

The Police have not advised us of any concerns or under age drinking problems, and there is no visible evidence that this is happening.

We advised the previous committee that Mr Swan's marriage of 25 years broke down and his 14-year-old son was diagnosed with type 1 diabetes a life threatening illness in April 2013. This took its toll and he suffered severe depression, which affected his ability to run the business at that time.

Prior to this he was on the Council of the National Federation for Retail Newsagents for which he arranged local events, which he did very effectively, proving he has got the necessary organisational skills to uphold licensing objectives effectively.

His mental state is much improved and he has started to resume some local duties for the Federation. References are available as to his character and abilities if the committee requires them.

The DPS duties were transferred to Darren Sawyer after the review in October 2013.

Mrs Chestnutt, Mr Swan's sister, and a branch manager for Nat West with 31 years experience has been helping with the business, since the middle of September 2013, when the family became aware of the problems he was experiencing.

In her role at Nat West she deals with staff training and ensures legal responsibilities are met and procedures followed. Putting action plans in place when human errors occur which happens

Extracts from the guidance issued by the Secretary of State

Para 2.51 of the guidance The 2003 act states “ It Is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between license holders, authourised persons, interested parties and responsible authorities in pursuit of common aims”

Which would be in line with the 2003 Act which states that
“remedial action taken should be directed generally to these causes and should always be no more than a necessary and proportionate response.”

I have today received training from Darren around the challenge 25 policy to prevent sales of underage products to under 18's.

This specifically covered.

1. The challenge 25 policy and it's aims. Company policy that no ID means no SALE, and action to take when the challenge 25 warning appears on the till- i.e request identification if the customer is not known and appears to be under 25.
2. Logging of all challenges and refusals in the refusals log
3. How to check ID and detect fake ID. Including use of the UV detector which has been installed for this purpose.
4. To call 999 if customers become abusive to seek assistance.
5. How to deal with objections- suggested dialogue.

I confirm I am happy with the systems in place and know that I must refuse the Sale if I am in any doubt and ID cannot be provided.

Signed

Date

Dear Richard

I am sure you will be aware that we failed a test purchase by trading standards last Thursday.

Following the review hearing in October I had put rigid systems in place to comply with the conditions of the license, and more importantly preventing sale of alcohol to minors. You had training on the challenge 25 Policy and signed the training record to confirm your understanding of the policy, and your personal responsibilities.

I have been checking the refusals log weekly and spoken to all of you to confirm all refusals and requests for ID have been logged.

Nigel and I are disappointed to be facing further investigation by trading standards, as a result of this latest failure and at this stage are uncertain as to the future of the license.

It is imperative that you all implement the policy to the letter at all times.

I have or will be retraining all of you over the next week. If you have any questions please ask.

Remember NO ID means NO SALE

If you are in any doubt as to a customers age simply refuse the sale. You will not get into trouble by refusing.

Further failures will have serious consequences for the business and jobs, and will be dealt with very seriously.

If you have any questions or concerns please speak to me in person. I am always available for advice in person or on my mobile.

Yours sincerely

Darren Sawyer
Designated premises Supervisor