

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE
Council Chamber - Town Hall
15 March 2012 (10.30 am - 12.00 pm)**

Present:

COUNCILLORS

Conservative Group Peter Gardner (Chairman) and + Lynden Thorpe

Labour Group Denis Breading

An apology for absence was received from Councillor Linda Trew.

+Substitute Member: Councillor Lynden Thorpe (for Linda Trew).

Present at the hearing were Mr Keith Bush (Havering Trading Standards Service), PC David Fern (Metropolitan Police), Mr Juan Lopez (Solicitor for the premises), Mr Ozgur Ay (Agent for the premises) and three members of the public.

Also present were Paul Campbell (Havering Licensing Officer), the Legal Advisor to the Sub-Committee and the clerk to the Licensing sub-committee.

All decisions were taken with no votes against.

The Chairman reminded Members of the action to be taken in an emergency.

1 REPORT OF THE LICENSING OFFICER

PREMISES

Seker Express Supermarket Quality Food Centre
57-75 London Road
Romford
RM7 9QA

DETAILS OF APPLICATION

Application for a review of the premises licence by the Trading Standards Service under section 51 of the Licensing Act 2003 ("the Act").

APPLICANT

Keith Bush
Divisional Trading Standards Manager
London Borough of Havering
5th Floor, Mercury House
Mercury Gardens
Romford,
Essex.
RM1 3SL

1. Details of existing licensable activities

Supply of Alcohol (OFF SALES ONLY)		
Day	From	To
Monday to Wednesday	07.00 hours	00.00 hours
Thursday to Saturday	07.00 hours	01.00 hours
Sunday	07.00 hours	23.00 hours

2. Grounds for Review

The application had been brought by the London Borough of Havering Trading Standards Service following the sale of alcohol to underage volunteers on two separate occasions within two months in 2011.

3. Promotion of the Licensing Objectives

The review had been requested in order to promote the licensing objectives as shown below:

The prevention of crime and disorder

The protection of children from harm

4. Details of Representations

Trading Standards – (a responsible authority under the Licensing Act 2003) – The representation stated that:

On 26 October 2011 at approximately 3.20pm, two volunteers entered the premises, a fifteen and a sixteen year old male. The volunteers had been sold four cans of Carlsberg Export lager (5% vol). The sale had been made by Mehmet Seker. Mr Seker had not challenged the volunteers as to their age, nor had he requested any identification. Mr Seker did not hold a personal licence. For the offence, he had been issued with a fixed penalty notice. The DPS had been present at the time of the sale but failed to intervene to prevent the sale. The vendor had not been trained by the DPS

and no refusal log had been produced. The signage in the shop displayed both Challenge 21 and Challenge 25 posters which have an unclear and inconsistent message to staff and customers.

On 17 December 2011 at approximately 3.40pm, the premises had been re-visited with two female volunteers, one aged fifteen the other aged sixteen. The volunteers were sold two 75cl bottles of wine, Blossom Hills and Echo's Falls, both with an alcohol content of 12.5%. The sale had been made by Mrs Reyhan Seker. Mrs Seker had not challenged the volunteers as to their age, nor had she requested any identification. The DPS had been present at the time of the sale and had been situated behind the counter but failed to intervene to prevent the sale. Mrs Seker did not hold a personal licence. For the offence, she had been issued with a fixed penalty notice. Staff present at the shop had been unable to locate a refusals registers and Mrs Seker had seemed unsure as to whether the venue operated a Challenge 21 or Challenge 25 policy.

On 12 January 2012, Mr Bush visited the premises with his colleague, Diana Diaz, to conduct a spot check of the systems in operation to establish whether a review of the licence was necessary. The following observations had been made:

- Neither of the persons who made the underage sales had a personal licence, nor had they received adequate training. It had been suggested that the individuals who sold the alcohol did not work regularly at the premises and that they had been helping out. No training records had been available for inspection at the premises.
- There were 2 tills in operation at the premises. Only one of the tills had a prompt on it. Mr Bush considered the till prompt to be inadequate in that it flashed up on the screen for a few seconds before disappearing. By not requiring action by staff to override the till prompt, the transaction could be completed.
- Four alcoholic drinks had been checked to view the information visible from the till prompt. The till prompt failed to activate on two occasions when a bottle of gin and a bottle of champagne had been scanned. Staff present claimed that due to the recent move to the larger premises, some items had yet to be added to the system for prompting.
- A refusal log was made available for inspection; it contained only two entries since August 2011, neither of which had a date recorded against them. The low number of entries indicated that either checks had not been conducted or that the refusal register had not been maintained.
- The signage at the premises implied that both a Challenge 21 and a Challenge 25 policy were in operation. Staff at the premises confirmed that Challenge 25 was in operation and not Challenge 21. The Challenge 21 poster was accordingly removed from the premises.

Two underage sales of alcohol within a 3 month period could have resulted in the Trading Standards Service offering a 48 hour closure notice in lieu of prosecution. However, Mr Bush was particularly concerned that not only had the underage sales taken place, but the underlying systems, procedures and management controls had been insufficient at the venue. Despite the number of conditions attached to the licence, this had not been sufficient to prevent underage sales by staff at the premises, particularly when the DPS had been present on both occasions and had not intervened to prevent the sales. As such, the Service questioned whether Mr Seker was suitably competent to remain as DPS at the premises.

The venue had a condition on its licence which required that all staff had to be suitably trained for their job and that the training must be recorded with documentation available for inspection upon request. The two failed test purchases demonstrated that this condition had not been met.

The close proximity of the premises to Cottons Park where youths were known to have gathered meant that it was very important that it complied with its obligations in respect of potential underage sales.

The Service considered that a suspension of the licence would be appropriate to give the management at the premises sufficient time to remedy the systems and controls that had been found wanting, in particular the issues around the training of staff and correcting the faults with the till prompt.

Chief Officer of Metropolitan Police (“the Police”) (a responsible authority under the Licensing Act 2003) –

The representation stated that:

The premises was situated close to a park which had suffered from criminal damage, littering, anti social behaviour from youths and individuals drinking alcohol. Whilst there was no evidence to link the alcohol consumed in the park to the premises, the close proximity was a cause for concern. As such, the Police suggested that a further condition be added to the licence which required the labelling of all alcohol on sale at the premises so that it could be traced back to the shop. The label should have the store name and post code detailed on the labels.

London Fire & Emergency Planning Authority (“LFEPA”) – None

Health & Safety Enforcing Authority - None

Planning Control & Enforcement – None

Children and Family Services– None

The Magistrates Court – None

Representation from Interested Party – None

Reply for the Premises Licensee

The representative for the premises licence holder, Mr Lopez, accepted that this was a serious matter and did not seek to dispute the majority any of the evidence presented by the responsible authorities supporting the review. His only dispute concerned the status of the person who carried out the second sale of alcohol to underage persons. Mr Lopez informed the sub-committee that the individual had not been authorised to operate the till despite her claim otherwise.

Mr Lopez argued that a suspension of the licence would not remedy the situation which could be achieved through conditions.

In respect of training, all 8 members of staff had received training to Level 2 standard through booklets provided by NARTS. The booklets were produced in Turkish but each of the members of staff had a good grasp of English. Training records were complete and available for inspection upon request.

With respect to the till prompt; there were two tills in the store, only one of which had a till prompt. All sales of alcohol went through the till with the prompt. Mr Lopez suggested that it would be too expensive to have the second till installed with a prompt and that the existing arrangement was sufficient.

There was a cost implication with the Police suggestion that all alcohol should be labelled. There was no evidential link from the premises to the anti-social behaviour which took place in the nearby park. Mr Lopez suggested that a marker pen would be sufficient to identify alcohol which had been purchased from the premises, however, he acknowledged that his client would be willing to work with the Police to find a suitable compromise.

The management of the premises had changed since the underage sales had taken place. Mr Has, who had not been responsible for the previous errors made by the DPS, had applied to become joint DPS with Mr Huseyin Seker. Both Mr Has and Lalo Toprak, had significant experience working at the premises without any incidents. The premises now operate a Challenge 25 policy only. A refusal log had been created and was available for inspection.

The owners recognised that there had been problems with the operation of the premises and they had sought to address the problem with the measures as set out above. Mr Lopez repeated that the issues could be resolved through conditions and that suspension of the licence was not necessary in the circumstances.

5. Determination of Application

Consequent upon the hearing held on 15 March 2012, the Sub-Committee's decision regarding the review of a premises licence for Seker Express Supermarket Quality Food Centre, 57-65 London Road, Romford, was as set out below, for the reasons shown:

The Sub-Committee was obliged to determine this application with a view to promoting the licensing objectives, which are:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

In making its decision, the Sub-Committee also had regard to the Guidance issued under Section 182 of the Licensing Act 2003 and Havering's Licensing Policy.

In addition the Sub-Committee took account of its obligations under s17 of the Crime and Disorder Act 1998, and Articles 1 of the First Protocol of the Human Rights Act 1998.

Decision

The Sub-Committee revoked the premises licence at 65 London Road which had been incorrectly varied in June 2010 to incorporate the whole of the premises from 57-65 London Road.

For the basis of its decision, the Sub-Committee made use of the premises licence which was granted on 23 November 2009. A copy of that decision notice was available in the agenda papers issued for this hearing.

The Sub-Committee decided not to suspend the premises licence at 57-65 London Road but agreed a number of conditions which were to be added to the premises licence. They were as follows:

1. Any till used at the premises for the purpose of serving customers must operate a prompt which requires the vendor to certify the age of the customer purchasing any alcoholic product
2. All alcohol products on sale at the premises must be labelled so as to identify that the product had been purchased from the store.
3. All staff must receive monthly refresher training on their roles and a recording of that training must be maintained and be available for inspection at the premises.

In reaching its decision, the Sub-Committee did not take lightly the two failed test purchases which had resulted in the review of the premises

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licence. However, the Sub-Committee was mindful of the assurances provided by the applicant that staff training deficiencies had been identified and addressed. The Sub-Committee considered that the issue concerning the operation of the till prompts, as identified by the responsible authorities, could be dealt with by way of the imposition of an additional condition to the licence.

Chairman