

**Havering Council – Decisions taken by the Licensing Sub-Committee on Monday, 20 June 2016**

<b>Agenda Item No</b>	<b>Topic</b>	<b>Decision</b>
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**Note: this decision list is for guidance only. The text of the minutes, which may be different, is definitive.**

**Part A – Items considered in public**

<p><b>A1</b></p>	<p>Application to review premises licence - Shels Food and Wine, 3-4 Writtle Walk, Rainham, RM13 7XB</p>	<p align="center"><b>Licensing Act 2003 Notice of Decision</b></p> <p><b>PREMISES</b> Shel's Food and Wine, 3-4 Writtle Walk, Rainham, RM13 7XB</p> <p><b>DETAILS OF APPLICATION</b></p> <p>Application for a review made by Trading Standards as a Responsible Authority, under section 51 of the Licensing Act 2003. This application was received by Havering's Licensing Authority on 29 April 2016.</p> <p><b>APPLICANT</b> Trading Standards, London Borough of Havering, Trading Standards Service, 5<sup>th</sup> Floor, Mercury House, Romford, Essex, RM1 3SL</p> <p><b>1. Grounds for review</b></p>
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		<p>The Grounds for the review were that the premises management had a lack of regard towards the promotion of the licensing objectives, leading to two failed test purchases of sale of alcohol to minors. Additionally there had been non-compliance with the licence conditions</p> <p><b>2. Details of Representations</b></p> <p><b>Trading Standards Submission</b></p> <p>Shel's Food and Wine was an off licence/ grocers trading from 3-4 Writtle Walk, Rainham, RM13 7BX. The shop was situation in a small parade of shops that were positioned in the middle of a housing estate. Britton's Secondary School was located significantly close at 0.4 miles from the premises.</p> <p>Mr Niranjam Arumagam took over the business in February 2015. Mr Arumugam was the holder of the premises licence and Designated Premises Supervisor.</p> <p>On 26<sup>th</sup> May 2015 information was received alleging that under age sales of e-cigarettes were taking place at Shel's Food and Wine. The Police were concerned that other age restricted products may also be being sold to underage children.</p> <p>On 4<sup>th</sup> August 2015, the premises were visited as part of an underage sales test purchase operation. The test purchase was made by a 15 year old female volunteer. The sales assistant asked the test purchaser her age, to which the volunteer replied 15. The sales assistant still sold her alcohol and said that she could have it on this occasion. The test purchaser was sold a 700ml bottle of WKD Alcopop. The sales assistant, Mr Thavarasalingyam Thauaseelam was issued with a Fixed Penalty Notice. The DPS and premises licence holder, Mr Niranjan Arumugam, arrived shortly afterwards and stated that</p>

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		<p>the till had an automatic prompt on it and logs the refusals. When tested the till prompt did not work. Mr Arumugam then "...went off for a short time and when he came back the till prompts were working".</p> <p>On 24<sup>th</sup> August 2015, the Designated Premises Supervisor and owner of the business, Mr Arumugam attended a meeting with Trading Standards, Police Licensing and the Licensing Authority where a number of issues were discussed, including the suggested wording for the licence conditions. On 25<sup>th</sup> August the Licensing Authority received an email from Mr Arumugam agreeing the changes and the conditions were added to the licence by way of variation.</p> <p>A further test purchase was carried out on 29<sup>th</sup> September, this time the underage sale was refused.</p> <p>On 30<sup>th</sup> October 2015 the premises was revisited and a bottle of Echo Falls wine was sold to a 17 year old female volunteer. The alcohol was sold by a sales assistant who was aged 16. There was an adult on the premises however he did not authorise the sale of alcohol. The DPS subsequently arrived at the premises. At this time Blunts were found to be on display, which the business had been previously advised not to have on display. The Blunts were removed from display.</p> <p>The Trading Standards service was concerned that on two occasions within a short period, the business had demonstrated an inability to prevent underage sales, despite engagement with responsible authorities.</p> <p>It was understood that the Designated Premises Supervisor had employed a representative from Dadds solicitors to train staff members in January 2016, however the Trading Standards service had lost confidence in the management of the business.</p>

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		<p>During the first sale in August 2015, the seller was told that the purchase of alcohol was 15 years old but alcohol was sold anyway to the minor. The second sale in October 2015 was made by a minor which was a serious aggravating factor in this case. Therefore Trading Standards believe that the failures are sufficiently serious that revocation of the licence should be considered.</p> <p>It was felt that all conditions on the licence were appropriate, however would welcome any further conditions that would help prevent any future underage sales at the premises and asked that the Licensing Sub-Committee consider suspension of the licence whilst the systems and procedures are brought up to an acceptable standard.</p> <p><b>Metropolitan Police Submission</b></p> <p>The Police service was committed to upholding the licensing objectives especially one of crime and disorder and prevention of harm to children.</p> <p>There had been two failures of under-age sales from this venue the first was sold to a 15 year old, even though the age of the volunteer had been established by the seller, the sale still took place, and the second one was committed by a child of 16 years old who served a 17 year old. The allegation of a member of staff being intoxicated whilst on the premises was a significant concern.</p> <p>Following the meeting on 24<sup>th</sup> August with the Designated Premises Supervisor and owner of the business, Mr Arumugam, Trading Standards Officers, Police Licensing and the Licensing Authority representatives the premises was put on an action plan to submit a minor variation addressing the following measures:</p>

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		<ul style="list-style-type: none"> <li>• Adapt and install CCTV</li> <li>• Adopt Challenge 25</li> <li>• Use a refusals book</li> <li>• Use a training programme for all staff</li> <li>• Use a daily register book</li> <li>• Attend a FTA course.</li> </ul> <p>Mr Arumagam had agreed and accepted all the conditions and they were added to the licence as a variation. However the Police had no confidence that Mr Arumagam had shown that he was upholding at least one of the licensing objectives, prevention of harm to children, as on two separate occasions staff had sold to underage test purchasers.</p> <p>Police had tried to engage with the premises after the first sale and this was not adhered to. Police felt that the revocation of the licence was proportionate to this review as there would be no other conditions that could be placed on the venue that would assist the Designated premises Supervisor in the upholding of the licensing objectives that had not already been addressed.</p> <p><b>Havering Children and Young People Services Submission</b></p> <p>Alice Peatling on behalf of the Children and Young People Services advised the Sub-Committee that the particular concerns were around the way in which the venue was operated because of its location within a housing estate, and the likelihood of unaccompanied children and young people frequenting the shop. It was a significant concern given the close proximity to the local secondary school.</p> <p>Trading Standards and the Police had offered support to the Designated Premises Supervisor, however there had been no meaningful or significant change. The duty to</p>

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		<p>safeguard children from harm had not been adhered to or taken seriously.</p> <p>Children and Young people services had concerns for the way in which the venue was operated and it supported the application of Trading Standards that the revocation of the licence be considered.</p> <p><b>Licensing Authority Submission</b></p> <p>Paul Campbell on behalf of the Licensing Authority advised the Sub-Committee that there were a number of Licensing Policies that would be expected to be upheld by any premises with a licence. The Licensing Authority had concerns about the way that the premises were managed and their promotion of the licensing objectives.</p> <p>The premises was a double unit shop in a row of 5 shops apart from the newsagents next door, there were no other premises within half a mile that sold alcohol. The Licensing Officer explained that within a 400 metre radius from the premises there were over 1000 residential properties as well as the secondary school. All premises must be fully aware of their obligations when selling age restricted products but the location of these premises and its catchment area for customers clearly shows that the highest level of age verification should be in place at the venue.</p> <p>Following the test purchase in August 2015 the licence was varied. This variation included a Challenge 25 policy, a Refusals Book and Training for all staff. This should have been put into place safeguards so that children cannot buy alcohol at the premises, however in October 2015; alcohol was sold to a 17 year old by a 16 year old assistant.</p> <p>This failed test purchase demonstrated there was poor management at the premises, the options were that the 16 year old had not been training, had complete disregard to the</p>

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		<p>training or did not understand the training that was given. Each of these scenarios raised issues regarding the management of the premises.</p> <p>The Licensing Authority, as a Responsible Authority, felt that the licensee had failed in Protecting Children from Harm and Preventing Crime at the premises.</p> <p>It was the duty of Licence Holder to promote the four Licensing Objectives, this had not been carried out at this premises, therefore it was the view of the Licensing Authority that unless robust measure were put in place following the failed test purchase in October 2015, serious consideration should be given to revoking the premises licence.</p> <p><b>Mr Aruguram Submission</b></p> <p>Mr Sivararan, Mr Aruguram’s representative stated that Mr Aruguram had been working in retail as a Designated Premises Supervisor since 2004, and had held a personal license since 2006. He had managed around 80 people and had 4 managers reporting to him.</p> <p>In 2009 Mr Aruguram purchased premises in Becontree Avenue, Dagenham, also call Shel’s Food and Wine. This premises had had no issues. The new store, in Rainham, was purchased in February 2013.</p> <p>Mr Sivararan stated that at the time of the alleged selling of e-cigarettes, these were not being sold at the time. Mr Aruguram was the Designated Premises Supervisor and understood the seriousness of protecting children from harm, as he was the father of three children himself.</p> <p>The Sub-Committee heard that Mr Aruguram understood the influence that alcohol and other age restricted products would have on children and that was why a zero policy was</p>

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		<p>in place to ensure that this did not happen.</p> <p>In relation to the first incident, this had never been challenged by officers and the employee who was on the premises at the time, was not intoxicated, instead it was stated that he had been eating very spicy Asian food which had given him the red eyes.</p> <p>In relation to the second incident, the 16 year old should not have been allowed behind the counter. Mr Aruguram stated that he had been told that he should only be filling shelves. He had been told previously that he was not to sell alcohol to anyone. All staff in the premises had experience of the licenced premises and had been trained by Dadds solicitors in January 2016. All staff had taken exams in under-age sales, and all staff held personal licences. There was also the Challenge 25 policy in the premises and a Refusal Log.</p> <p>Both the 16 year old and the authorised adult at the time of the second incident have now been dismissed.</p> <p>Mr Sivararan stated that the shop was in a local community and they relied on the community for their sale. They would therefore ensure that the Licensing rules were adhered to.</p> <p>The Sub-Committee asked if the Refusals Log was electronic and if it worked successfully. Mr Sivararan stated that they used both, the electronic version had an issue when it was first installed, however this had been fixed and print outs can be obtained at any time. An actual physical book was also now kept, which was given to the Sub-Committee to see.</p> <p>The Sub-Committee noted that the only logs were for May 2016, and there were no entries or refusals during June 2016. Mr Aruguram stated that there was now an awareness in</p>



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		<p>the local community that no under-age sales would be allowed in the premises.</p> <p>The Sub-Committee asked how long Mr Aruguram spent at the premises. He stated that he spends his time between both the shop in Rainham and the shop in Dagenham as well as visiting the cash and carry when necessary.</p> <p><b>3. Determination of application</b></p> <p>The Sub-Committee determined the application with a view to promoting the licensing objectives, which are:</p> <ul style="list-style-type: none"> <li>• The prevention of crime and disorder</li> <li>• Public safety</li> <li>• The prevention of public nuisance</li> <li>• The protection of children from harm</li> </ul> <p>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.</p> <p>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 Human Rights Act 1998.</p> <p><b>Decision:</b></p> <p>The Sub-Committee having considered very carefully all the oral and written submissions presented by the parties decided that the current Designated Premises Supervisor should be removed from the premises licence and that the following conditions should be added to the premises licence:</p>

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		<p>Licensable sales must only be made out by a Personal Licence holder.</p> <p>The reasons for this decision was to promote the following licensing objectives:</p> <ul style="list-style-type: none"> <li>• The prevention of crime and disorder; and</li> <li>• The protection of children from harm.</li> </ul> <p><b>4. Right of Appeal</b></p> <p>Any party to the decision or anyone who has made a relevant representation to the application may appeal to the Magistrates' Court <u>within 21 days of notification of the decision.</u></p> <p>Wendy Gough Clerk to the Sub-Committee</p>
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