

When calling or telephoning please ask for

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26 February 2010

To the Chair and Members  
of the  
LICENSING SUB-COMMITTEE

Dear Sir/Madam

A meeting of the **LICENSING SUB-COMMITTEE** will be held in the **COUNCIL CHAMBER, CIVIC OFFICES, MERRIAL STREET, NEWCASTLE** on **MONDAY, 8 MARCH 2010** at **10am**.

### **A G E N D A**

Details of the procedure to be followed by the Sub-Committee together with Guidance Notes relating to Human Rights Act 1988 are attached.

1. To consider the report of your Officers on items requiring decisions.

Yours faithfully

**P W CLISBY**

Head of Central Services

## **GUIDANCE NOTES**

### **HUMAN RIGHTS ACT 1998**

In considering allegations against Members you should have regard to the provisions of the Human Rights Act 1998 which embody the rules of natural justice.

### **Rights and Freedoms to be considered when determining matters**

#### **ARTICLE 6: RIGHT TO A FAIR TRIAL**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly, but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
  - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
  - (b) to have adequate time and facilities for the preparation of his defence;
  - (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means, to pay for legal assistance, to be given it free when the interests of justice so require;
  - (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

#### **ARTICLE 8: RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### **ARTICLE 10: FREEDOM OF EXPRESSION**

1. Everyone has the right to freedom of expression. These rights shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of

health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

#### ARTICLE 14: PROHIBITION OF DISCRIMINATION

The enjoyment of the rights and freedoms set fourth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NB This is not a substantive right, but comes into play if other rights are likely to have been infringed. The prohibition is wide, but not exhaustive

#### ARTICLE 1: OF THE FIRST PROTOCOL PROTECTION OF PROPERTY

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

NB Possessions, in this context, includes the right to apply for a licence, the right to hold and retain a licence and the goodwill of a business.

NOTE In this context it is also particularly important for members to observe the rule against bias.

## **PROCEDURE TO BE FOLLOWED BY THE LICENSING SUB-COMMITTEE**

### **NOTE:**

All hearings will normally be held in public. However, the Licensing Sub-Committee may exclude the public 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 that part of the hearing taking place in public. A party or that party's representatives may be treated as a member of the public and therefore excluded from the meeting for all or part of the hearing, and all parties have the right to be represented and to call witnesses.

The Clerk to the Committee will have the right to ask questions on behalf of the Committee of any party to the proceedings.

### **PROCEDURE:**

1. The Chair of the Sub-Committee will open the meeting and introduce the members of the committee and call upon the parties to identify themselves and their representatives and to identify any witnesses they intend to call.
2. The Chair of the Sub-Committee will call upon the Clerk to the Committee to explain to the parties the procedures which will be followed at the hearing. Unless the Chair directs otherwise, each party will normally have a maximum period of one hour in which to give further information and call any witnesses in support of their case. In every case, all parties will have an equal maximum period.
3. The Chair of the Sub-Committee will then normally call upon the person who has made a relevant representation against the grant of an application to provide evidence in support of their representation.
4. The applicant will then have an opportunity to question that person.
5. Members of the Sub-Committee will then have the opportunity to question that person.
6. Any person who has made relevant representations will then call any witness in support.
7. The applicant will then have the opportunity to question that witness.
8. Members of the Sub-Committee will have the opportunity to question that witness.
9. Stages 6 to 8 will then be repeated for each person making relevant representations.
10. The applicant will then have the opportunity to give evidence in response to the application.
11. The interested party or responsible authority will then have an opportunity to question the applicant.
12. Members of the Sub-Committee will then have the opportunity to question the applicant.

13. Stages 10 to 12 will be repeated for any witness on behalf of the holder of the applicant.
14. The interested party or responsible authority will have the right to address the Sub-Committee..
15. The applicant will have the right to address the Sub-Committee in summing up his case.
16. All parties will then leave the room while the Sub-Committee consider their decision.
17. The Sub-Committee will normally make their determination at the conclusion of the hearing but when this is not possible, will make its determination within the period of five working days beginning with the day on which the hearing was held..

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO THE  
LICENSING SUB-COMMITTEE**

**8 March 2010**

1. **APPLICATION FOR A PREMISE LICENCE IN RESPECT OF  
1 HEATON TERRACE, PORTHILL**

1. **Details of Application**

- |                                      |   |
|--------------------------------------|---|
| (a) <u>Applicant</u>                 | Archers Stores Ltd.   |
| (b) <u>Premises</u>                  | 1 Heaton Terrace, Porthill.                                       |
| (c) <u>Application for</u>           | Premise Licence   |
| (d) <u>Licensable activity hours</u> | Monday to Friday 0700 to 2100<br>Saturday and Sunday 0800 to 2100 |
| (e) <u>Location</u>                  | The Premises are situated in a<br>Residential Area.               |

2. **Application**

The Application is for a premise licence to permit the Sale of Alcohol off the premises.

Monday to Friday	0700 to 2100
Saturday and Sunday	0800 to 2100

3. **Steps proposed by applicant to promote the licensing objectives in respect of the  
variation application**

(a) **General**

The directors of the company, who both hold personal licenses and have each had 13 years experience of running convenience stores with off-licences, take the responsibility very seriously. Initially, they will be personally responsible for running the store and will undertake the training of staff in conjunction with Staffordshire Trading Standards who have assisted with staff training at their other two convenience stores. This will ensure that all four licensing objectives are consistently met, the details of the proposed measures being outlined below. The Challenge 21 system will be used along with a refusals system with records kept in a Refusals Book to tie in with the CCTV system. Statutory notices, posters and shelf edge labels will be used to remind customers of the legalities. The EPOS system will have reminders for staff to check age each time an age restricted item is sold.

(b) **The Prevention of Crime and Disorder**

The company's store in Biddulph is a member of Offwatch and participates fully in the scheme. If such a scheme is run locally to Porthill, the company will join that. If not, we will work closely with Staffordshire Police to ensure that any additional

measures they recommend are adopted. We would hope that this would include advice from the police concerning the identity of any persons likely to cause us a problem, either through shoplifting or disorderly conduct, and our advice to the police of anyone identified by us as likely to cause such problems elsewhere. A digital CCTV system will be installed with at least 31 days recording capacity and the ability to download onto disc. The shop is fully alarmed. Most of the alcohol will be stored on the shop floor; the only store-room is within the premises; the windows are barred and there is no separate access or rear entry to the premises.

(c) Public Safety

The shop is to be completed, gutted and refitted with new flooring and ceiling as well as completely new shopfittings and refrigeration. The premises is less than 100sqft and it is unlikely that more than 10 customers and 2-3 staff would ever be present at any one time. The risk to safety is therefore minimal. However, there is only one access door to the premises and staff will be fully trained in emergency procedures in the event of a fire. Similarly, staff will be trained to handle difficult customers and defuse potentially danger situations with recourse to the police being made if necessary. In the event of a robbery the company's staff are always told not to put themselves or other members of the public in danger and to comply with any demands made. When the refit has been done, a risk assessment will be undertaken and staff made aware of the results. Minor risks, such as wet floors, will always be highlighted by the use of clear signs.

(d) The Prevention of Public Nuisance

Staff will be trained to ensure that they do not sell alcohol to customers who are already drunk to otherwise intoxicated and to contact the police if any customer is disruptive. Young people will be discouraged from congregating outside the store and the co-operation of the police will be sought to move them on if necessary. A litter bin will be provided and regularly emptied but it will be made clear to customers that alcohol should not be consumed within the environs of the store and that the bin is therefore not for containers of alcohol. Liaison with the police as outlined above will also ensure that no public nuisance is caused. It is not our intention to stay open later than 9pm.

(e) The Protection of Children From Harm

All staff will be fully trained to ensure that they do not sell alcohol or tobacco to children under the age of 18 or to anyone that they suspect may be supplying alcohol to children. A Challenge 21 system will be adopted but, in common with staff at the company's other shops, staff will be encouraged to request ID from anyone that they think is under 25. The only forms of ID which the company accepts in its shops are passport or driving licence. We have always co-operated fully with Trading Standards and the police to ensure compliance. As stated above, this includes membership of Offwatch in Biddulph and undertaking training with Staffordshire Trading Standards. We have been subject to test purchases on a number of occasions and have always "passed the test". In addition, when we took over the shop in Biddulph it had a bad reputation and we have worked closely with the police to turn this around. The licensed area within the shop will not be near areas to which children are likely to be attracted, e.g. sweets, soft drinks and crisps.

### 3. **Consultation**

The responsible authorities have been notified of the application. The applicant has advertised the application as required, by way of a poster at the premises and an advertisement in the local paper. The following representations have been received.

(a) **Interested Parties**

There have been 29 objections from an Interested Parties. These are attached (pink paper).

(b) **Responsible Authorities**

There have been no representations from Responsible Authorities.

There has been 1 letter of support. This is attached (yellow paper).

### 4. **Policy Considerations**

(a) **Licensing Objectives**

The Licensing Act 2003 requires the Council to carry out its various licensing functions so as to promote the following four licensing objectives:-

- (i) The prevention of crime and disorder.
- (ii) Public safety.
- (iii) The prevention of public nuisance.
- (iv) The protection of children from harm.

(b) **Policy Statement**

The Licensing Act 2003 required the Council to publish a 'Statement of Licensing Policy' that set out the policies the Council will generally apply to promote the licensing objectives when making decisions on applications made under the Act.

The Council made a number of policy decisions in its Statement of Licensing Policy. The following policy decisions are relevant to this application:-

- (i) Paragraph 2.9 – Trading Hours
- (ii) Paragraph 2.15 and 4.1 - Public Safety
- (iii) Paragraph 4.4 - Prevention of Crime and Disorder
- (iv) Paragraph 4.2 Public Nuisance

(c) **Statutory Guidance**

- (i) National guidance regarding the control areas outside the premises is laid down in paragraph 2.4 and 13.17; and
- (ii) National guidance regarding licensing hours is laid out in paragraphs 13.40 and 13.41.

Copies of the Council's Statement of Licensing Policy and the Government's Statutory Guidance will be available at the Sub-Committee meeting.



5. **Comments**

In making their decision on the application, the Sub-Committee are also obliged to have regard to Statutory Guidance and the Council's own Statement of Licensing Policy. The Sub-Committee must also have regard to all the representations made and the evidence they hear. However, the Sub-Committee must disregard any objections that do not relate to the promotion of the four licensing objectives.

The Sub-Committee must take such of the following steps as they consider necessary for the promotion of the licensing objectives as set out in paragraph 5(a) above:-

- (a) Grant the application as requested; or
- (b) Reject or amend the application.

The Sub-Committee are asked to note that they may not reject the application merely because they consider it desirable to do so. It must actually be necessary in order to promote the licensing objectives.

7. **Conditions**

If the Sub Committee are minded to grant the application with no modification or no additional conditions, then the conditions to be attached to the licence are taken from the operating schedule are at Appendix 'C' (grey paper).

## **OPERATING SCHEDULE – 1 HEATON TERRACE, PORTHILL**

### **General**

The Management of the store who are experienced Personal Licence Holders will run the store and train all staff. This will ensure that all the licensing objectives are met.

Statutory notices, posters and shelf edgings will be used to remind customers of the legalities.

The EPOS system will have reminders for staff to check ID each time an age-restricted item is sold.

### **Prevention of Crime and Disorder**

Will work closely with Staffordshire Police to ensure that any recommendations are met.

A digital CCTV system will be installed with 31 days recording capacity and the ability to download to disc.

Full alarm system at premises.

No rear process to premises.

The only store room will have bars fitted to windows.

### **Public Safety**

All staff trained to deal with any emergency procedures and difficult customers.

Risk Assessments to be undertaken.

Minor risks i.e. wet floors will be highlighted with the use of signage.

### **Prevention of Public Nuisance**

Refusals log to be kept in a manner approved by Staffordshire Police.

Provision of litter bins outside premises.

### **Protection of Children From Harm**

Staff trained to ensure that age restricted items are not sold to anyone under 18 years of age.

A challenge 21 scheme will operate, ID to be requested from anyone who appears to be under '25'.

Co-operation with Trading Standards and Staffordshire Police.