

Public Document Pack

Date of meeting Tuesday, 11th December, 2012
Time 10.00 am
Venue Committee Room 2. Civic Offices, Merrial Street,
Newcastle-under-Lyme, Staffs ST5 2AG
Contact Julia Cleary 01782 742227

Licensing Sub-Committee

AGENDA

PART 1- OPEN AGENDA

- | | | |
|---|---|-----------------|
| 1 | Human Rights Guidance Notes | (Pages 1 - 2) |
| 2 | Natural Justice Guidance Notes | (Pages 3 - 4) |
| 3 | Procedure to be followed by the Sub-Committee | (Pages 5 - 6) |
| 4 | Agenda | (Pages 7 - 8) |
| 5 | Background Information | (Pages 9 - 16) |
| 6 | Conditions Consistent with the Operating Schedule | (Pages 17 - 18) |
| 7 | Conditions agreed between the Applicant, Staffordshire Police and Staffordshire Trading Standards | (Pages 19 - 20) |

Members: Councillors Cooper, Hambleton and Mrs Williams

'Members of the Council: If you identify any personal training / development requirements from the items included in this agenda or through issues raised during the meeting, please bring them to the attention of the Committee Clerk at the close of the meeting'

Officers will be in attendance prior to the meeting for informal discussions on agenda items.

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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.

GUIDANCE NOTES

NATURAL JUSTICE AND FAIRNESS

These are the principles used in the determination of just or fair processes and stem from the common law legal system.

According to Roman law, certain basic legal principles were so obvious that they should be applied universally without the need to be enacted into the law.

The rules of natural justice are now regularly applied by courts in both common law and civil law jurisdictions.

Natural justice operates on the principles that man is basically good, that a person of good intent should not be harmed and one should treat others as they would like to be treated.

Natural justice includes the notion of procedural fairness and may incorporate the following guidelines:-

- A person accused of a crime, or at risk of some form of loss, should be given adequate notice about the proceedings (including any charges);
- A person making a decision should declare any personal interest they may have in the proceedings;
- A person who makes a decision should be unbiased and act in good faith. He therefore cannot be one of the parties in the case, or have an interest in the outcome. This is expressed in the Latin maxim, *nemo iudex in causa sua*: “no man is permitted to be judge in his own cause”;
- Proceedings should be conducted so they are fair to all the parties – expressed in the Latin maxim, *audi alteram* : “let the other side be heard”;
- Each party to a proceeding is entitled to ask questions and contradict the evidence of the opposing party;
- A decision-maker should take into account relevant considerations and extenuating circumstances, and ignore irrelevant considerations;
- Justice should be seen to be done. If the community is satisfied that justice has been done they will continue to place their faith in the courts.

Where a person’s legal rights are concerned, the principles of natural justice are bolstered by Article 6 of the European Convention on Human Rights which is now incorporated into domestic law.

THE RULE AGAINST BIAS

It is elementary to the rules of natural justice that the deciding body is to be free from bias.

The rule is that the body must be and be seen to be impartial, independent and disinterested.

There are two broad categories of bias:

- (a) Actual Bias: when the decision-maker has an economic interest in the outcome of the case (also known as a material or pecuniary interest) subject to the De Minimum doctrine;
- (b) Reasonable Apprehension: unbiased appearance is an essential part of procedural fairness. The test is whether, having regard to the circumstances, a well informed person (“reasonably informed bystander”) would consider that the interest might have an influence on the exercise of the decision-maker’s duties.

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 interested party or the responsible authority which 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 party or responsible authority.
6. Any person who has made relevant representations will then call any witness in support.
7. The applicant will then have an opportunity to question that witness.
8. Members of the Sub-Committee will then have the opportunity to question that person.
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 and in response to the relevant representations which have been made.
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 witnesses 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.

Application for a Premise Licence, Swift Service Station, Clayton Road.

Submitted by: Democratic Services Manager

Portfolio: Safer Communities

Ward(s) affected: Seabridge and Clayton Wards

Purpose of the Report

An application for a premise licence has been received for Swift Service Station, Clayton. An agreement regarding conditions has been reached between the applicant, Staffordshire Police and Staffordshire Trading Standards. Copies of the agreement and email correspondence is attached to this agenda.

Recommendations

The Sub-Committee are requested to resolve that the conditions agreed between the applicant, the Police and Staffordshire Trading Standards be attached to the licence and the licence granted.

1. Details of Application

Applicants: Kumar Sharma

Premises: Swift Service Station, Clayton Road, Newcastle under Lyme, Staffs, ST5 4DH.

Application for: A well established local forecourt with a retail selling space in excess of 370 square feet, serving both the local community and those from further afield. The store offers a range of fresh foods, groceries and other products.

Details of Application:

SUPPLY OF ALCOHOL (off the premises)
Monday to Sunday: 06.00 to 22.00.
OPENING HOURS OF THE PREMISE
Monday to Sunday: 06.00 to 22.00

2. Consultation

Agreement has been made between the applicant, Staffordshire Police and Staffordshire Trading Standards regarding conditions to be attached to the licence.

3. 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:-

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

(c) Statutory Guidance

- (i) National guidance which promotes best practice ensuring consistent application of licensing powers and promotes fairness and equal treatment and proportionality came into force on 28 June 2007.

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

4. 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 appropriate for the promotion of the licensing objectives as set out in paragraph above:-

- (a) Grant the application as requested
- (b) to 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 appropriate in order to promote the licensing objectives.

***Premises Licence
Application***
on behalf of
SWIFT SERVICE STATION
CLAYTON ROAD
NEWCASTLE UNDER LYME
ST5 4DH

Background History

This is a well established independent local store. The shop has undergone a full refurbishment which resulted in the creation of a convenience store with a retail selling area in excess of 370 sq ft. There is ample customer car parking.

The Shop

This purpose built shop has been designed to serve both the local community and those from further a-field. The business trades as a convenience store offering a range of fresh foods, groceries and other products and the off-licence is an important part of the service that the shop is expected to provide.

The Operation

The store is operated by the manager, assisted by a team of full & part time staff most of whom live locally. The designated premises supervisor, trained and certified through the new APLH training scheme will be responsible for training all staff and keeping and maintaining ongoing training records utilising the **Premises Licence Manual**. The **Challenge 21** trading initiative is also used supported by the refusals system with records kept in the **Refusals Book** to tie in with the CCTV system.

Security

The **CCTV system** benefit from a **24-hour recorder** and a **31 day library** which can be made available to Police if required. The store also benefits from a **Full Alarm system** with panic buttons.

Store Frontage



Retail Trading Area

370 sq ft plus

Opening Hours

Monday	06.00 hours to 22.00 hours
Tuesday	06.00 hours to 22.00 hours
Wednesday	06.00 hours to 22.00 hours
Thursday	06.00 hours to 22.00 hours
Friday	06.00 hours to 22.00 hours
Saturday	06.00 hours to 22.00 hours
Sunday	06.00 hours to 22.00 hours

Summary

Convenience trading format
Premise licence Manual
Challenge 21
Refusals Book
CCTV cameras
24 hour recorder with 31 day library
Full Alarm system
Panic buttons

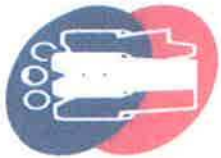
Existing internal view



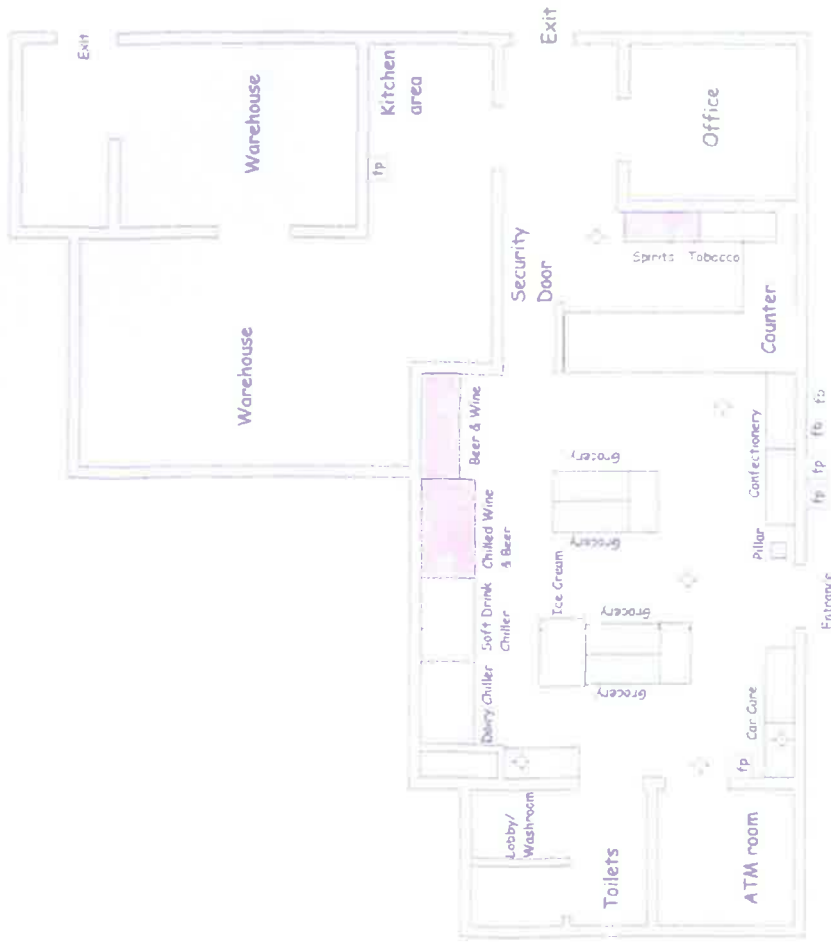








RB Retail & Licensing
Services Limited



- Key**
- fp Fire Extinguisher - Powder
 - fb Fire Extinguisher - CO2
 - fb Fire Bucket
 - Security Camera

Swift Service Station
Clayton Road
Newcastle under Lyme
PT25 4DH
Scale- 1:100
Drawing Reference; RB/0757
Drawn by: R Baker RB Retail & Licensing
10TH October 2012

All retail selling areas to be licensed for alcohol display. Copyright - RB Retail & Licensing Services Limited, 23 Magister Drive, Lee on the Solent, Portsmouth PO123 8GE, Site dimensions to be used at all times

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Agenda Item 6

P Describe the steps you intend to take to promote the four licensing objectives:

a) General – all four licensing objectives (b,c,d,e) (please read guidance note 9)

CCTV SYSTEM WITH RECORDING FACILITIES IN PLACE AT SITE, APPROPRIATE STAFF TRAINING TO BE SATISFACTORILY COMPLETED AND RECORDED. TRAINING RECORDS CAN BE MADE AVAILABLE FOR INSPECTION UPON REASONABLE REQUEST BY A RELEVANT OFFICER OF A RESPONSIBLE AUTHORITY. APPROPRIATE TRAINING MANUAL, REFUSALS BOOK, CHALLENGE 21 AND PASS ACCREDITED PROOF OF AGE INITIATIVE TO BE OPERATED BY ALL STAFF. APPROPRIATELY WORDED NOTICES DISPLAYED PROMINENTLY REQUESTING CUSTOMERS TO RESPECT LOCAL RESIDENTS WHEN LEAVING THE PREMISES.

b) The prevention of crime and disorder

CCTV SYSTEM WITH RECORDING FACILITIES IN PLACE AT SITE, SPIRITS LOCATED BEHIND THE COUNTER, APPROPRIATE STAFF TRAINING TO BE SATISFACTORILY COMPLETED AND RECORDED. TRAINING RECORDS CAN BE MADE AVAILABLE FOR INSPECTION UPON REASONABLE REQUEST BY A RELEVANT OFFICER OF A RESPONSIBLE AUTHORITY.

c) Public safety

CCTV SYSTEM WITH RECORDING FACILITIES IN PLACE AT SITE. APPROPRIATELY WORDED NOTICES DISPLAYED PROMINENTLY REQUESTING CUSTOMERS TO RESPECT LOCAL RESIDENTS WHEN LEAVING THE PREMISES.

d) The prevention of public nuisance

APPROPRIATE STAFF TRAINING TO BE SATISFACTORILY COMPLETED AND RECORDED. TRAINING RECORDS CAN BE MADE AVAILABLE FOR INSPECTION UPON REASONABLE REQUEST BY A RELEVANT OFFICER OF A RESPONSIBLE AUTHORITY.

e) The protection of children from harm

APPROPRIATE STAFF TRAINING TO BE SATISFACTORILY COMPLETED AND RECORDED. TRAINING RECORDS CAN BE MADE AVAILABLE FOR INSPECTION UPON REASONABLE REQUEST BY A RELEVANT OFFICER OF A RESPONSIBLE AUTHORITY. REFUSALS BOOK, SPIRITS LOCATED BEHIND THE COUNTER, CHALLENGE 21 AND PASS ACCREDITED PROOF OF AGE INITIATIVE TO BE OPERATED BY ALL STAFF.

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Agenda Item 7

Conditions agreed between Police and Trading Standards & applicant regarding premises licence application - Swift service Station, Clayton Road, Newcastle under Lyme, ST5 4DH.

1. The premises must adopt a "Challenge 25" scheme to tackle underage sales. All staff are to be fully trained in its use before being allowed to sell alcohol. Challenge 25 is defined as requiring any customer who appears to be under 25 years of age and unknown to the staff member serving as a person who is aged 18 or over, and who wishes to purchase alcohol to first provide identification to verify their age. The following forms of Identification will only be accepted - photo driving licence, "PASS" accredited proof of age scheme card or a passport. NO ID NO SALE.
2. The premise licence holder should ensure that a record is kept of all staff training and it is fully updated at all times and this training must be refreshed at least every six calendar months. Both initial and subsequent refresher training in relation to the sale of alcohol will contain a written test to be undertaken by the staff member.
3. The records of training (including written tests) must be kept at the licensed premises and be made available to Police Officers or Trading Standards Officer upon reasonable request or at least no later than 24 hours after initial request.
4. A refusals book must be held at the premises and contain details of the time and date of any sales that are refused in relation to persons that are under age. The book must also contain details of the staff member refusing the sale. This book must be checked on a weekly basis by the designated premises supervisor and endorsed accordingly by the DPS signing the book with the time and date of inspection.
5. A till prompt system will be installed and utilised by all staff.
6. No sale of alcohol to be made through a "serving hatch". All sales of alcohol to be made within the licensed premise.
7. CCTV must be installed to the approval of the Police Licensing Officer (PLO) and cover all public area's. The CCTV unit shall be positioned in a secure part of the licensed premises. Access to the system should be provided without undue delay to the Police & Trading Standards officers and no later than 24 hours after initial request.
8. The CCTV system must be maintained so as to be fully operational and recording 24 hours every day.
9. All images should be kept for a 31 day period. Copies of recorded images will be provided without undue delay and no later than 24 hours after initial request by authorised staff to Police officers and to Trading Standards officers.
10. There will be notices displayed throughout the premises stating that CCTV is in operation.
11. The CCTV system clock should be set correctly and maintained (taking account of GMT and BST).
12. The CCTV system should be fully maintained in accordance with the manufacturers/installers instructions and a record kept of the maintenance undertaken.
13. Appropriately worded signage will be displayed prominently around the premises both internally and externally, advising customers that it is an offence to consume alcohol on the premises and on the forecourt.

**Conditions agreed between Police and Trading Standards & applicant
regarding premises licence application - Swift service Station, Clayton Road,
Newcastle under Lyme, ST5 4DH.**

Further condition

Trading standards required a further condition that the Police have not requested regarding Challenge 25. For the sake of completeness I will include it on this document and tweak it to ensure it is measurable and relevant:

14. Challenge 25 posters will be displayed prominently on the premises near to the customer entrance, the counter area and near to the alcohol display area.