

# ITEM 3

## Licensing Sub-Committee

6 February 2007

Report of: Licensing Officer  
Application: Review application by Milton Keynes Trading Standards Division in respect of Costcutters (aka Eagle Supermarket), 2 Harrier Court, Eaglestone, Milton Keynes  
Application Reference No: 092895

### 1. APPLICATION

#### Summary of application

This is an application for a review of a premise licence at a convenience store.

A copy of the application is included in Annex A together with two witness statements from trading standards officers following visits to the premise.

#### Existing Activities & hours

Supply of Alcohol (off sales only)

Monday to Saturdays 08:00 to 23:00

Sundays 10:00 to 22:30

Good Friday 08:00 to 22:30

Christmas Day 12:00 to 15:00 and 19:00 to 22:30

New Years Eve 23:00 to 05:00

## **2. BACKGROUND INFORMATION**

The current premise licence (Annex B) and is held jointly by three individuals. One of these – Mr Thavarajah also acts as the Designated Premise Supervisor. A plan of the premise is included at Annex C

The premise is situated in a predominantly residential area and is the only shop for the estate. There is an adjacent public house licensed for off sales of alcohol. A plan of the area is included in Annex D

In August 2006 the Licensing Authority wrote to the premise licence holders as a result of Trading Standards information in respect of underage sales. Annex E.

The existing licence holders are known to have held a Justices off licence for the shop from 2004. In 2005 this was converted to a premise licence by way of a transitional application. The police did not object. The conditions on the licence are therefore all mandatory / embedded and therefore have been no additional hours granted since the introduction of the Licensing Act 2003.

As part of the review application a poster must be displayed at the premise advertising the application. Various visits confirmed this was correctly displayed.

Details of licence reviews:

None previous.

## **3. REVIEW APPLICATION**

The Review application relates to two licensing objectives – the prevention of crime and disorder, and the protection of children from harm. The review follows repeat underage sales at the premise in 2006, one in February and one in November. These visits were made as part of a joint test purchasing operation with the Police.

Trading Standards have submitted evidence of various advisory visits made to the premise on the issue of underage sales in 2004, 2005 and 2006.

## **4. RESPONSIBLE AUTHORITIES**

Thames Valley Police have made a representation in support of the review application and confirm that Fixed Penalty Notices were served for underage sales on the dates given by Trading Standards. One of the notices was served on the premise licence holder Kandasamy Jayamanohar. Annex F

Karen Rogers on behalf of the Local Safeguarding Children's Board (LSCB) has made a representation in respect of the protection of children from harm. Annex G

No other responsible authorities have made representations

## **5. INTERESTED PARTIES**

No interested parties have made representations.

## **6. POLICY CONSIDERATIONS**

**The following paragraphs of the Licensing Authorities Statement of Licensing Policy apply to this application:**

3.2 The following factors will also be given due weight: -

- Each application will be determined on its own merits having regard to guidance issued under Section 182 of the Licensing Act 2003, and local criteria. The former will take precedence;
- The rules of natural justice will be applied at all times.
- The right of any individual, or body to apply for a variety of permissions is not undermined.
- The statutory right of any interested party or responsible authority to make appropriate representations or to seek a review in respect of an application where appropriate is accepted.
- The direct impact of the activities taking place at the licensed premises on members of the public living, working, or engaged in normal activity at or in the vicinity of the premises. (Note “ in the vicinity” will be decided upon by officers and members of the Licensing Authority as considered appropriate when considering an application, having regard to the characteristics of the neighbourhood) will be given due weight.

5.3.2 Any restriction on trading hours will be considered only where it is necessary to meet the licensing objectives

5.3.4. The Licensing Authority may set an earlier closing time where after representations having been made, it considers this appropriate having regard to the nature of the licensable activities, the amenity of the area, and the impact on the licensing objectives.

5.3.5 Shops, stores and supermarkets will be permitted to sell alcohol for consumption off the premises during their trading hours. However, in the case of an individual shop known to be the focus of crime, disorder, disturbance or anti-social behaviour, then subject to relevant representations being made a limit may be imposed on the licensing hours by the Licensing Authority.

### **7.3 Crime and Disorder**

7.3.1 Under Section 17 of the Crime and Disorder Act 1998, local authorities must have regard to the likely effect of carrying out of their functions on crime, disorder and anti-social behaviour; doing all they reasonably can to prevent these matters occurring.

9.7.1 The Council has a Trading Standards Division that operates within

Environmental Services. It has a role in ensuring that licensees comply with the law, particularly from a fair trading perspective regarding the composition, designation, labelling and declared measurement of both alcoholic and non-alcoholic drinks. Alcohol particularly, can be easily adulterated through dishonest trading practices.

9.7.2 Test purchasing programmes are undertaken along with formal samples being purchased. The team will liaise closely with the Licensing Team and the Police if formal action has been taken as a result of this action.

9.7.3. Contemplated enforcement action would be as set down in the Council's Environmental Services Enforcement Policy, that takes into account the Enforcement Concordat, and the Code for Crown Prosecutors.

9.7.4. The Licensing Authority supports the Proof of Age Standards Scheme ((PASS) which aims to approve and accredit proof of age schemes to assist in preventing underage access to unsuitable premises and the purchasing of alcohol. This scheme introduced by the British Retail Consortium and audited by the Trading Standards Institute, identifies reliable and secure proof of age schemes with the same hologram mark in order that retailers can easily distinguish accredited cards from forgeries or cards issued under unreliable schemes. However the only way to verify a person's age accurately is with reference to a:-

- Passport,
- Photo card driving licence
- Official identity card issued by HM forces or a European Union country bearing the photograph and date of birth of the holder.

9.7.5 The Licensing Act 2003 permits the use of children under 18 years to undertake test purchases, this is welcomed, and any action in this area will comply with the LACORS (Local Authorities Coordinators of Regulatory Services) and Trading Standards Institute Code of Practice on Test Purchasing.

9.7.6 Licensees will be expected to have in place satisfactory arrangements to demonstrate that their staff receive regular and adequate training on the law and practice relating to age restricted sales (including challenging purchasers, and checking identification. The training provided should be properly documented so that there is an adequate audit trail and records are available for inspection.

9.7.7 Registers of refused sales should be maintained where appropriate e.g. off licences and made available for inspection.

17.3 The Licensing Authority will have particular regard to representations received concerning premises where there is substantiated evidence that:-

- There have been convictions for serving alcohol to minors
- The premises have a reputation for underage drinking

- The premises have been associated with the taking or dealing in illegal drugs
- There is a substantial element of gambling taking place in the premises
- Entertainment of an adult or sexual nature takes place
- Where the supply of alcohol for consumption on the premises is the exclusive or primary purpose of the services provided at the premises
- There is a history of acts of violence, and incidents involving serious crime

In such circumstances if relevant representations are received then restrictions as licence conditions may be imposed to promote the licensing objective of the protection of children from harm.

18.1 The starting point for the Council's Licensing sub committee is in terms of seeking a reduction in crime and disorder throughout Milton Keynes, consistent with its statutory duty under section 17 of the Crime and Disorder Act 1998.

18.2 The Licensing Authority may consider the following matters in conjunction with their relationship with the crime and disorder licensing objective and any relevant representations received in respect of an individual premise. Further, it is accepted that they may not be relevant to all licensed premises

- The training given to staff in crime prevention measures appropriate to those premises
- The physical layout of the premises, particularly those premises that are used primarily or exclusively for the sale and consumption of alcohol and have little or no seating for patrons (High Volume Vertical Drinking establishments)
- The security arrangements
- The standards of 'house management' and the level of co-operation forthcoming from the licensee
- The procedures in place to conduct age verification checks

19.1.1 "Conditions will accurately reflect the individual style, location and characteristics of the particular premises, and be clear, unambiguous, and proportionate".

20.5.4 When determining applications the Licensing Authority will have regard to any Guidance issued by the Department for Culture, Media and Sport (DCMS).

22.1 The Act sets out the arrangements to enable a review of a premises licence where it is alleged that the licensing objectives are being breached. This arrangement will allow the Licensing Authority to make decisions with a light touch as they will be able to review individual premises if concerns arise at a later date from a responsible authority or an interested party. The Guidance to the Act will be used to ensure that all matters for review are considered appropriately. The process shall not be subject to abuse by disaffected parties. Matters for consideration must be relevant, and not vexatious, frivolous, or repetitious.

However matters involving the following: -

- a) Underage purchase and consumption of alcohol
- b) Where the police are frequently called to attend to incidents of disorder
- c) Where serious risks to children have been identified

may be considered as serious shortcomings by the Licensing sub committee at their hearings.

22.2 Where the Licensing Authority determines on review that the licensing objective of the prevention of crime and disorder is being undermined through the premises being used to further crimes, the Licensing Authority will seriously consider revocation of the licence or certificate, even in the first instance.

23.5 The Licensing sub committee will determine each case on its individual merits whilst taking into consideration the terms of this Policy document. Where the Licensing sub committee determines that it is appropriate to attach conditions to a licence or certificate it will ensure that those conditions are focused on the direct impact of the activities taking place at the premises concerned on members of the public living, working or engaged in normal activity in the area or in the premise concerned. Such conditions will be proportionate to the activity to be controlled and will only be imposed in the interests of the licensing objectives.

The Committee is reminded that the Human Rights Act 1998 guarantees the right to a fair hearing for all parties in the determination of their civil rights. The Act also provides for the protection of property, which may include licences in existence, and the protection of private and family life.

**The following paragraphs of the Licensing Act 2003 apply to this application**

Section 51 applies to this application

**The following paragraphs of the Secretary of States Guidance apply to this application**

2.22 Licensing authorities should also familiarise themselves with the LACORS and Trading Standards Institute (TSI) Code of Best Practice on Test Purchasing insofar as it relates to the test purchasing of alcohol by trading standards officers. LACORS continue to fulfil an important co-ordinating role in advising and informing licensing authorities about the requirements of the 2003 Act and the transitional period. LACORS' website may be viewed on **[www.lacors.gov.uk](http://www.lacors.gov.uk)**

4.18 The sale and supply of alcohol, because of its impact on the wider community and on crime and anti-social behaviour, carries with it greater responsibility than that associated with the provision of regulated entertainment and late night refreshment. This is why a personal licence is required by individuals who may be engaged in making and authorising such sales and supplies. Not every person retailing alcohol at premises licensed for that purpose needs to hold a personal licence, but every sale or supply of alcohol must be at least authorised by such a licence holder. Any premises at which alcohol is sold

or supplied may employ one or more personal licence holders. For example, there may be one owner or senior manager possessing a personal licence and several junior managers similarly qualified. The main purpose of the “designated premises supervisor” as defined in the 2003 Act is to ensure that there is always one specified individual, among these personal licence holders, who can be readily identified for the premises where a premises licence is in force. That person will normally have been given day to day responsibility for running the premises by the premises licence holder.

A DPS may supervise more than one premise so long as they are able to ensure that the four licensing objectives will be properly promoted on the premises and that licensing law and licence conditions will be complied with.

5.68A Responsible authorities should try to conclude any discussions with the applicant in good time before the hearing. If the application is amended at the last moment, the licensing committee should consider giving interested parties time to address the revised application before the hearing commences. The Regulations require that representations must be withdrawn 24 hours before the first day of any hearing. If they are withdrawn after this time, the hearing must proceed. Applicants should be encouraged to contact responsible authorities before formulating their applications so that the mediation process may begin before the statutory time limits come into effect after submission of an application. The hearing process must meet the requirements of regulations made by the Secretary of State and which may be viewed on the DCMS website.

5.68B There is no requirement in the Act for responsible authorities that have made representations to attend, but it is generally good practice and assists committees to reach more informed decisions. Where several responsible authorities within a local authority have made representations on an application, a single local authority officer may represent them at the hearing if the responsible authorities and the licensing authority agree.

5.68C As a matter of practice, licensing authorities should seek to focus the hearing on the steps needed to promote the particular licensing objective which has given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or interested party may choose to rely on their written representation which gave rise to the hearing. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may amplify their existing representation. In determining the application with a view to promoting the licensing objectives in the overall interests of the local community, the licensing authority must give appropriate weight to:

- . • the representations (including supporting information) presented by all the parties;
- . • this Guidance;
- . • its own statement of licensing policy; and

- the steps that are necessary to promote the licensing objectives.

5.71 With regard to applications to vary the hours during which alcohol may be sold in shops, stores and supermarkets, the Secretary of State recommends that the norm should be for such premises to be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are very good reasons for restricting those hours. Where representations are received from the police, for example, in the case of some shops known to be a focus of disorder and disturbance because youths gather there, a limitation may be necessary.

## **Reviews**

5.99 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.

5.100 At any stage, following the grant of a premises licence, a responsible authority, such as the police or the fire authority, or an interested party, such as a resident living in the vicinity of the premises, may ask the licensing authority to review the licence because of a matter arising at the premises in connection with any of the four licensing objectives. In addition, a review of the licence will normally follow any action by the police to close down the premises for up to 24 hours on grounds of disorder or noise nuisance as a result of a notice of magistrates' court's determination sent to the licensing authority. Licensing authorities may not initiate their own reviews of premises licences. Officers of the local authority who are specified as responsible authorities under the 2003 Act, such as environmental health officers, may however request reviews on any matter which relates to the promotion of one or more of the licensing objectives.

5.101 Representations made by a department of the local authority which is a responsible authority should be treated by the licensing authority in precisely the same way that they would treat representations made by any other body or individual.

5.102 In every case, the representation must relate to particular premises for which a premises licence is in existence and must be relevant to the promotion of the licensing objectives. Representations must be in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing.

5.103 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. It is therefore equally important that reviews are not used to drive a wedge between these groups in a way that would undermine the benefits of cooperation. It would therefore be good practice for authorised persons and responsible authorities to give licence holders early warning of their concerns about problems identified at the premises concerned and of the need for improvement. It is expected that a failure to respond to such warnings would lead to a decision to request a review.

5.106 Following receipt of a request for a review from a responsible authority or an interested party or in accordance with the closure procedures described in Part 8 of the 2003 Act, the licensing authority must arrange a hearing. The arrangements for the hearing must follow the provisions set out by the Secretary of State in regulations. The details may be viewed on the DCMS website. The Secretary of State considers it particularly important that the premises licence holder is fully aware of the representations made in respect of the premises, any evidence supporting the representations and that he or his legal representatives has therefore been able to prepare a response

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

5.108 The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. However, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvement – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.

5.109 Where the licensing authority considers that action under its statutory powers are necessary, it may take any of the following steps:

- . • to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- . • to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- . • to remove the designated premises supervisor, for example, because they

consider that the problems are the result of poor management;

- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

5.110 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible 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. For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual. 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 which impact upon the licensing objectives.

5.111 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Accordingly temporary changes or suspension of the licence for up to three months may be imposed. This could impact on the business holding the licence financially and would only be expected to be pursued as a necessary means of promoting the licensing objectives. Accordingly, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is necessary and proportionate to the promotion of the licensing objectives in the circumstances that gave rise to the application for a review

6.2 It is recommended that shops, stores and supermarkets selling alcohol should generally be permitted to match the hours during which they may sell alcohol with their normal trading hours during which other sales take place, unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance. Accordingly, if the law permits the shop to open for 24 hours or limits such opening, for example, on Sundays, the licensing authority should generally permit the sale of alcohol during those hours unless there are very good reasons as to why it is necessary not to do so.

6.3 Some shops may however be known to be a focus for disturbance because youths congregate there and engage in nuisance and anti-social behaviour, including trying to pressurise shop staff to make unlawful sales of alcohol. Where relevant representations are made by an interested party or a responsible authority (particularly, the police) concerning applications for premises licences for such places, or in connection with existing licences,

licensing authorities should consider a restriction on opening hours as one mechanism of combating such problems if this would be necessary.

7.25 Conditions are best targeted on deterrence and preventing crime and disorder. For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television cameras both inside and immediately outside the premises can actively deter disorder, nuisance and anti-social behaviour and crime generally. Some licensees may wish to have such cameras on their premises for the protection of their own staff and for the prevention of crime directed against the business itself or its customers. But any condition may require a broader approach, and it may be necessary to ensure that the precise location of cameras is set out on plans to ensure certain areas are properly covered and to ensure that there is no subsequent dispute over the terms of the condition. Similarly, the provision of requirements for door supervision may be necessary to ensure that people who are drunk or drug dealers or carrying firearms do not enter the premises, reducing the potential for crime and disorder, and that the police are informed of such instances where the knowledge about certain premises, its style or characteristics give rise to a need for such requirements.

## **7. OFFICERS OBSERVATIONS**

Any decision made by the Licensing Authority may be appealed by any party present within 21 days. Legal advice may need to be given on when any decision made has effect from. (i.e. from the committee decision date or after 21 days has elapsed)

### **Further details requested of the applicant (Trading Standards):**

1. An explanation of the relevance of the food safety reports attached to the review application
2. Photographs of the test purchase volunteers
3. Confirmation that the Code of Practice on Test Purchasing was correctly followed

### **Further details requested of Thames Valley Police:**

1. Explanation of GOSE as detailed in Lin Poizat's statement
2. Clarification on the police operations carried out on 15 February 2006 and 22 November 2006 in respect of underage sales
3. Clarification on what licensing objectives the police are making representation on

### **Further details requested of LSCB:**

Any direct evidence you have linking alcohol supplied from the premise to the licensing objective concerned

**Further Details requested of Premise Licence holders**

1. If a refusal log was maintained at the premise
2. Details of staff training in place in respect of age restricted sales
3. How is sale of alcohol at the premise supervised
4. How often the designated premise supervisor is on site
5. How are sales of alcohol authorised
6. How many personal licence holders are connected with the premise
7. Measures in place to prevent under age sales and how you have monitored the effectiveness of these
8. How are sales of alcohol at the premise supervised and authorised
9. Confirmation of Mr Thavarajahs home address (is it still 31 Severn Way, Bletchley?).

**8. ASSOCIATED PAPERS**

None

Contact Officer

For further information on this application please contact Ed Fisher on telephone 01908 252409 or e-mail: eddie.fisher@milton-keynes.gov.uk