

NOTICE OF DETERMINATION
EXETER CITY COUNCIL (Licensing Authority)
LICENSING ACT 2003

Date of Hearing	08/01/2016
Application :	Review of Premises Licence
Name of premises	Convenience Food Store
Address	119-122 Old Tiverton Road
Licensing Sub Committee	Cllr K Hannan (Chair) Cllr P Holland Cllr N Shiel
Committee Legal Advisors	Baan Al-Khafaji (BA) Simon Copper (SC) (Observing)
Licensing Officer	Phillippa Lane (PL)
Democratic Services (Committees)	Howard Bassett (HB)
The Applicant	Solicitor for Devon and Cornwall Constabulary - Chris Rendle (CR) John Bean Police Licensing Officer (JB)
The Respondent	David Campbell (DC) - Counsel Mr L Singh (LS) and P. Singh (PS)
Hearing Duration	10:00hrs to 11.58 hrs

INTRODUCTION

BA set out the procedure for the hearing.

BA outlined the Application submitted by Chief Inspector Donna Braund of the Devon and Cornwall Constabulary to Review the Premises Licence held by Mr LS in respect of 119 to 122 Old Tiverton Road - Convenience Food Store. The reasons for the Application For Review were:

- (a) An alleged failure to adequately maintain and operate CCTV equipment to the satisfaction of the Chief Officer of Police; and
- (b) A failure to prevent the sale of alcohol to an intoxicated person contrary to Section 141 of the Licensing Act 2003.

Both issues were contrary to the licensing objectives of the prevention of crime and disorder and the prevention of public nuisance.

PROCEDURAL ISSUES

BA enquired about the following procedural matters:

- 1 Had the Constabulary served the Respondent with a copy of the Application to review the Premises Licence?;
- 2 Had the Licensing Authority advertised the application?
- 3 Had any representations been received by the Licensing Authority in response?

CR confirmed the application had been served by JB on LS on 12 November 2015.

PL confirmed that the Application to Review the Premises Licence had been advertised, copied at the Civic Centre and placed on the City Council website on 12 November 2015. The advertisement had been displayed for 28 days. No response had been received by the Licensing Authority as a result of the advertisement.

DC requested that an additional paper, namely a statement by PC Boundy and dated 13 August 2015 be submitted for consideration by the Licensing Sub Committee. BA advised that any additional/new information could only be accepted if it was a clarifying document since any evidence to be relied upon should already have been submitted with the application and served on the Respondent. The Applicant submitted that since the statement dated 13 August 2015 was about the third incident reported by the Police in respect of CCTV, it was a clarification document.

Having heard from DC, the Sub Committee agreed to consider the content of the statement.

APPLICANT'S CASE

CR set out the application on behalf of the Devon and Cornwall Constabulary as follows:-

He reported the following five incidents – three in respect of the CCTV equipment at the Continental Food Stores and two relating to the sale of alcohol.

- **First incident - 14 January 2013,**

A Police Officer had attended the Stores on 14 January 2013 to collect CCTV equipment for investigation which had been the fifth occasion that an officer had visited the shop regarding CCTV.

Prior to the above, on 11 January 2013, as set out in the papers, a police officer had questioned an individual under the influence of alcohol. He had been informed that the alcohol had been bought from the Continental Stores. The officer had visited the stores and had been advised by staff that the drink had been sold to the individual. The officer had explained that this was against the licence but the staff member had stated that as the individual had not been shouting or causing problems the staff had not considered the sale to have been problem.

On 28 January 2013, a Police Officer had spoken to Mr HS who had shown that the system was recording and playing back recorded material.

- **Second incident - 12 October 2014,**

Police Officers had called to collect CCTV footage regarding an alleged incident of assault on 12 October 2014 on an employee of the Continental Food Stores store outside the premises. Staff members had claimed that they did not know how to download the CCTV footage and had asked that the officer come back the following day to see a member of staff who could assist. On re-visiting the Premises the staff once again claimed that they did not know how to access the system. Visiting again on a third day, officers had been told that the person who could download was away for approximately ten days so there was no CCTV to collect. On one of the occasions when the police officers had been present, a conversation had been heard with the aggrieved to the effect that it was understood by other staff members that it had not been the intention of the aggrieved to make a complaint.

Following advice from Mr LS that there was only one staff member who could view the CCTV, Police Officers visited the Premises again on 22 October 2014 and a staff member had reviewed the CCTV but there had only been footage from 16 October 2014. When he had tried to download material from 13 October 2014, it appeared to have been deleted. Mr LS was advised that he needed to make sure other staff members were trained on using the system.

Lesley Carlo, had tried to engage Mr LS on a number of occasions in order to ensure the CCTV was working. At a third pre-arranged visit, on 6 November 2014, she had been told that the staff member who was able to operate the system was not present and that no instructions had been left for other staff members. On 12 November 2014, Lesley Carlo had obtained a USB memory stick and this had had been passed to the Devon and Cornwall Video Processing Unit. The Unit supervisor had advised that the footage could not be replayed through the Police equipment. Further, the system had compressed the files so much that a one hour clip was compressed to a data size of 15MB (in normal circumstances this would be 100MB+) and the visual image was compressed with also only a few frames per second. There were also other technical problems.

A number of visits had been made by JB from January 2015 seeking to ensure that CCTV was working but it was not until 28 April 2015 that he was finally satisfied that a new system had been installed at the Premises, conforming to downloading requirements; and

- **Third incident - 13 August 2015**

The most recent failure to obtain CCTV evidence had occurred on 13 August 2015 relating to an incident on 11 August 2015 when a delivery driver who had links to the Exeter Chiefs saw a male in the shop trying to sell two laptops with the Exeter Chiefs branding. These had been stolen from a University site on 11 August 2015. Footage from the CCTV cameras could not be downloaded onto a memory stick although it was possible to view the images.

CR submitted that as CCTV footage had not been available to assist the Police in the investigation of the alleged criminal incident, there was nothing to satisfy them that the CCTV would be operational at any future incidents requiring investigation.

CR also reported two alleged incidents relating to the sale of alcohol:-

- **Fourth incident - 11 January 2013**

A person who appeared to be drunk had been sold alcohol from the Premises and

- **Fifth incident - 10 June 2015**

Alcohol had been sold from the Premises to an individual who appeared to be inebriated.

CR stated that Mr KS had been advised that all staff should be trained in the operation of CCTV equipment. After the visit by JB, the Police Licensing Officer, on 25 April 2015, when the cameras had been found to be functioning satisfactorily, it was reasonable for the Police to assume that the CCTV would function properly in the future and that there was no need for a further check. However, as evidenced by 13 August 2015 incident, there had been yet another failure.

CR submitted that the Police had made significant efforts to ensure that the CCTV in the Continental Food Stores worked. However, in view of the failures demonstrated, the Police could not be confident that the cameras would work properly in the future. This was particularly relevant on this day, when St James Park, which was very close to the footstore, was to host a high profile football match between Exeter City Football Club and Liverpool Football Club. The Review was therefore requested out of frustration and inability to obtain proper evidence to assist in the investigation of criminal offenses which was therefore contrary to the licensing objective of the prevention of crime and disorder.

BA summarised the five incidents (occurring on 14 January 2013, 12 October 2014 and 13 August 2015 and the incidents relating to sale of alcohol occurring on 11 January 2013 and June 2015) referred to above by CR and asked whether the Police were seeking to remove the Designated Premises Holder or if they were recommending the addition of further Conditions to the Premises Licence. CR confirmed that they were not seeking the removal of the DPS nor were they suggesting any additional conditions. They were asking the Sub Committee to decide on appropriate action to be taken such as the removal of the sale alcohol as a licensed activity or the suspension of the sale of alcohol for a period of up to three months.

RESPONDENTS

DC stated that the Police, in addition to bringing forward an application for a premises review on the grounds of malfunctioning CCTV equipment, had reported two incidents where alcohol had been allegedly sold to individuals already inebriated. He submitted that reference to the latter was disproportionate, particularly as these had occurred over a three year period and given that, some 109,500 customers would have visited the Food Store over that period. Further, the Police had been

unable to provide any direct evidence relating to the sale of alcohol from the Premises to people already inebriated.

DC emphasised that, since the incident in mid-August 2015, no further checks of the CCTV equipment had been made by the Police. DC suggested that the Police could have checked whether the CCTV was working immediately prior to the Review Hearing, particularly after the Christmas period, in order for an update to have been provided to Members of the Sub Committee.

DC stated that all staff had been trained in the operation of the equipment and that there were no further issues with the operation of the CCTV.

With regard to the Police action following the alleged assault on 12 October 2014, DC referred to the limited capacity of the Devon and Cornwall Constabulary to examine the footage provided, and that, as it had not been of evidential value, he questioned whether the Police were in a position to advise on the most suitable equipment required.

He stated that, all known issues relating to the quality of the CCTV were resolved and that all staff of the Continental Food Stores had been trained as to how to use the system. Logs were being kept to show the system was working properly.

The Police, on inspection on 28 April 2015, were satisfied with the operation of the system.

With regard to the incident on 13 August 2015 relating to the theft of the Exeter Chiefs' laptops, he stated that there was no direct link to the Premises itself and the Police had not advised of any subsequent arrest or prosecution linked to this matter. In respect of this incident, stills had been provided to the Constabulary.

DC stated that the proprietors were a hard working family with two incidents, at most, regarding the sale of alcohol, for which no evidence had been presented.

Councillor KH stated that, as the CCTV cameras would assist the business in preventing or detecting crime in the premises, it was important for the owners to be able to operate and check the cameras themselves.

DC responded by saying that the footage could not be retained after 14 days because this would be a breach of privacy. He submitted that the Police reference to the forthcoming Exeter City v Liverpool match was a disproportionate concern. He stated that LS and his family (brother and two sons) had undertaken to up-grade the system in January 2015, that it had been functioning correctly in April 2015 and that the malfunction in August 2015 had come as a surprise. He said that the family was now being required to deal with a costly Review Hearing and that the Police had provided no warning that it was their intention to submit an Application to Review the Premises Licence in November.

Responding to Councillor KH, DC and Mr LS confirmed that all four family members were able to operate the CCTV, that is, Mr LS, his brother and Mr LS's two sons. DC stated that it was a well-run community shop.

Asked by BA why it had not been possible to operate the system in August 2015, Mr JS stated that the shop used a "wizard" system which was not compatible with a

Police system. DC confirmed that the footage provided could not be shown on the Police system although the Police Officer had taken stills of images.

Councillor PH, referring to the duty of the Licensing Authority to ensure that the four licensing objectives were being upheld, stated that monitoring CCTV equipment was integral to helping ensure these objectives were met and that the Police should expect to find a properly functioning system at all times. The availability of functioning equipment was important, as was the existence of a robust training regime for staff in the operation of the equipment.

Councillor PH also commented that it would have been helpful if the Police had checked the equipment after Christmas, prior to this hearing, for up to date evidence to have been made available to the Sub Committee as to whether the CCTV was working.

CLOSING SUBMISSIONS

DC stated that the respondents were a small, family run business that had been established for over 30 years. During that time the running of the business had not been a cause for concern.

CR stated that a further check of the CCTV system would not have altered the position of the Police as:-

- (a) the application requesting a review had initially been made in November and it was the evidence up to the date of that application which was relevant; and
- (b) the request for the Review was based on the failure of the Respondent to adequately satisfy the Police, after providing assurances on the previous occasions that further problems would not occur. At the latest incident in August 2015, the proprietor, LS, had been unable to operate the system and had required the assistance of his son PS.

DC stated that, as far as the Respondents were concerned, the CCTV equipment was now functioning correctly. Further, no crime had been recorded in relation to the operation of the licensed activity itself.

LEGAL ADVICE GIVEN

BA referred to Guidance introduced in March 2015 detailing the role of the Police as a responsible authority, particularly in respect of the prevention of crime and disorder.

BA advised the Licensing Authority may take such steps as it considers appropriate for the promotion of the licensing objectives. These steps include:-

- the modification of the conditions on the licence
- the exclusion of a licensable activity from the scope of the licence;
- the suspension of the Licence for a period not exceeding three months; and
- the removal of the Designated Premises Supervisor.

The Sub Committee retired to make its decision in the presence of the Corporate Manger Legal, City Council Litigation Solicitor and Democratic Service Officer (Committees) (HB)

THE SUB COMMITTEE'S DECISION:

The Sub Committee considered the Licence Holder's inability to provide access to the CCTV footage was a very serious matter since it potentially prevented the Constabulary from investigating potential criminal offences.

The Licensing Authority' was mindful of the Licencing Objectives and in particular the prevention of crime and disorder. As a result of that, the Licensing Authority resolved to add the following additional conditions to the Premises Licence:-

- (1) All staff working on the Premises must be trained in the maintenance and operation of the CCTV system every six months or whenever the CCTV equipment is updated or replaced, and that a record be kept of the name and date of the person so trained.

Records of the same must be made available for inspection by the Police or Licensing Authority on request;

- (2) A member of staff trained in the maintenance and operation of the CCTV system must be on duty to operate the system whenever the Premises is open and a record that this member of staff has checked that the CCTV system is operational at the beginning of their shift must be maintained and made available for inspection by the Police and the Licensing Authority on request.

The Licensing Authority took this matter very seriously and advised the Premises Licence holder that in the event that the Licence is brought forward for a second Review then it is likely that the Licensing Authority would take more rigorous action such as revoking the licence to sell alcohol or the removal of the Designated Premises Supervisor.