

Licensing and Safety Committee – 12th September 2012

Report of the Director of Corporate Resources, Director of the Urban Environment

Underage Sales

Purpose of Report

1. To inform the Committee of the work undertaken in partnership by the Police, Trading Standards and Licensing in relation to sale of alcohol to children under the age of 18.

Background

2. The Council grant Premises Licences for the sale by retail of alcohol for consumption on or off the premises under the Licensing Act 2003.
3. This Act defines the parties holding important roles in the context of applications, inspections, enforcement and review of premises licences. These are as follows:-

<p>Authorised Persons - empowered to carry out inspection and enforcement roles (The Police are not included as they are separately empowered by the 2003 Act to carry out their duties)</p>	<ul style="list-style-type: none"> • Officers of the Licensing Authority • Fire Inspectors • Environmental Health
<p>Responsible Authorities - must be notified of applications and are entitled to make representations to the Licensing Authority in relation to the grant, variation or review of a premises licence.</p>	<ul style="list-style-type: none"> • Police • Fire Service • Environmental Health • Planning • Children’s Services • Primary Care Trust • Trading Standards • The Licensing Authority
<p>Other Persons – are entitled to make Representations to the Licensing Authority to the grant, variation or review of licences</p>	<ul style="list-style-type: none"> • Any individual or body or business regardless of proximity • Local Councillors

4. The Council **must** grant a Premises Licence unless relevant representations have been received from a Responsible Authority/Other Person.
5. The sale of alcohol to a person under the age of 18 is an offence under the Licensing Act 2003 and Trading Standards together with the Police undertake the enforcement role in this matter. For the most part it will be the local neighbourhood officers who liaise with Trading Standards.
6. The Police gather information in relation to underage sales and associated anti-social behaviour from various sources :-
 - The local community through PACT meetings (Police And Communities Together);
 - Interaction with local residents who identify locations of concern where individuals are acting in an anti-social manner associated with alcohol;
 - Partner agencies;
 - Logged incident calls from the public requesting Police action
7. The information obtained from the first three sources is followed up by local officers carrying out enquiries in relation to the identified licence premises to ascertain whether there are any breaches of the law.
8. Incident calls from the public are very often related to anti-social behaviour which is a primary aim for the Police to identify and action at the earliest opportunity. Accordingly the attending officer can very often glean information from the individuals concerned regarding where the alcohol in their possession was purchased.
9. When possible underage sales are identified the Police will liaise with Trading Standards to carry out 'test purchases' at the identified premises. Where a location has been identified as possibly being responsible for repeat incidents a dedicated incident number is generated and an individual Police officer assigned to monitor the situation, liaise with Trading Standards and be a single point of contact for the shop proprietor. This allows for continuity in the ongoing investigation and a means of regularly monitoring the activity of the store and the effectiveness of the measures being adopted.
10. Trading Standards Service has a duty under the Licensing Act 2003 (the Act) to enforce the provisions of the Act so far as they relate to sales of alcohol made on or from premises to which the public have access and also provides Trading Standards with the power to authorise test purchases to this end.
11. The Act also states that a person commits an offence if he sells alcohol to an individual aged under 18 and also states that a person who knowingly allows the sale of alcohol to an individual aged under 18 is committing an offence. This includes persons who work at the premises.
12. NHS Dudley has funded a full time Age Restricted Products Enforcement Officer post based within Trading Standards to focus on alcohol and tobacco enforcement. A 12-month contract has been agreed.
13. The Trading Standards Service proactively enforces the legislation concerning each product by utilising child volunteers to carry out test purchases at local

Sellers. Test purchasers serve to test the reality of a sales situation when a young person presents a product for purchase at a till. All test purchase exercises are conducted in accordance with Local Government Regulation codes of practice. Enforcement action by way of Fixed Penalty Notices (FPNs) or through the courts is likely to follow any sale subject to a decision being made in line with the Council's Enforcement Policy.

14. The Licensing Act 2003 sets out proceedings for reviewing premises licences which represents a key protection for the community where problems associated with the licensing objectives are occurring after the grant or variation of premises license. As a responsible authority the Trading Standards Service has the power to call for a review of an existing premises licence because of a matter arising in connection with any of the four licensing objectives namely the prevention of crime and disorder; public safety; the prevention of public nuisance; the protection of children from harm. Outcomes from the review process are summarised in paragraph 17.
15. Premises are targeted for test purchases due to intelligence received from partner agencies such as West Midlands Police and Her Majesty's Revenue and Customs, as well as by complaints from Councillors, members of the public and concerned parents. Premises in areas with higher than average tobacco and alcohol use among under 18s are also targeted by Trading Standards.
16. The enforcement of legislation related to the sale of alcohol to persons under 18 contributes in a positive manner to the reduction of crime and fear of crime across the Borough. In particular the Service achieves this by enforcing legislation relating to underage sales, through education and joint enforcement activities with the police and being an active partner in the Safe and Sound Partnership in particular the Crime and Reduction Implementation Group and Joint Activity Group.
17. Results achieved for the years highlighted below are as follows

Test Purchases 2010/2011	Sales 2010/11	% Sales 2010/11	Test Purchases 2011/2012	Sales 2011/2012	% Sales 2011/2012
74	6	8.1%	109	9	8.3%

Where illegal sales were made 11 Fixed Penalty notices were issued .A total of 13 requests were made for licence reviews of which there were 3 suspensions and one revocation. There are a number of matters pending with one premise being investigated for persistently selling alcohol under new legislation which came into force on 25th April 2012.

18. Following the issue of a penalty notice or a conviction for the sale of alcohol to a person under the age of 18, the Police and Trading Standards give careful consideration to the case and decide whether an application should be made to the Licensing Authority to review the premises licence.
19. If a review application is received the Licensing Authority must post a notice of the review, on the relevant premises and the Licensing Web page, which must

remain in place for 28 days. Following the expiry of the 28 days a meeting of the licensing and Safety Committee must be arranged within 20 working days and the applicant and defendant must have 10 working days notice of the date of the review.

20. A Sub- Committee of the Licensing and Safety Committee will hear the review and may take any of the following steps which it considers appropriate for the promotion of the licensing objectives i.e. The prevention of crime and disorder, Public Safety, The prevention of public nuisance and The protection of children from harm: -.
- To take no further action in the matter;
 - Issue an informal warning to the licence holder and / or recommend improvement within a particular period of time;
 - 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;
 - Exclude a licensable activity from the scope of the licence
 - 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.
21. Following a review of a premises licence where persistent sales of alcohol to children have occurred, the licensing authority should consider the revocation of the licence if it considers the outcome appropriate. Responsible authorities should consider taking steps to ensure that a review of the licence is routine in these cases. Persistent sale of alcohol to children is defined as:-
- The sale of alcohol to an individual on two or more different occasions within a period of 3 consecutive months.
22. In addition to the steps that the partner groups take in relation to underage sales and anti-social behaviour the Licensing Section chair a Licensing Forum which is attended by a representative of all the Responsible Authorities. This forum meets to share information in relation to problem premises and to formulate joint initiatives to prevent neighbour nuisance, anti-social behaviour and to assist licensees to promote the licensing objectives.
23. If the Licensing Section receive complaints in relation to neighbour nuisance, anti-social behaviour etc a Licensing Enforcement Officer will contact the complainant to obtain the precise details of the issue and if appropriate will contact Environmental Health and or Police to arrange a joint visit to the premises to discuss the matter with the Designated Premises Supervisor. This discussion will include setting out in detail the complaint(s) that have been received about the premises, advising the Designated Premises Supervisor of the steps that should be taken to alleviate the issues and agreeing a plan of action to be taken. This visit will be followed by a letter from the Licensing Office setting out in detail all matters discussed and the actions agreed to rectify the issues together with a final paragraph reminding the Designated Supervisor that failure to comply may result in an application to review his Premises Licence

being submitted. The Enforcement Officer will then contact the complainant to inform them of the actions taken and reassure them that the premises will continue to be closely monitored.

24. In the majority of cases this approach has been very successful without recourse to review of licence, however, if the premises continue to cause evidenced nuisance then one or more of the Responsible authorities will request a review of licence.
25. This report falls within the Council's responsibility for liquor licensing which has a direct link to the Council's key corporate priority that safety matters.

Finance

26. Financial implications from enforcing the Licensing Act 2003 regarding the sale of alcohol to persons under the age of 18 years are met from within existing budgets.

Law

27. The Trading Standards Service has a duty under Section 154 Licensing Act 2003 (the Act) to enforce the provisions of the Act so far as they relate to sales of alcohol made on or from premises to which the public have access and also provides Trading Standards with the power to authorise test purchases to this end.
28. Section 146 of the Act states that a person commits an offence if he sells alcohol to an individual aged under 18. S.147 of the Act states that a person who knowingly allows the sale of alcohol to an individual aged under 18 is committing an offence. This includes persons who work at the premises.
29. Section 147A(1)(a) of the Licensing Act 2003 (as amended), states that a person is guilty of an offence if on 2 or more occasions within a period of 3 consecutive months alcohol is unlawfully sold on the same premises to an individual aged under 18, at the time of each sale the premises were either licensed premises or premises authorised to be used for a permitted temporary activity by virtue of Part 5 and that person was a responsible person in relation to the premises each such time.

Equality Impact

30. This report takes into account the Council's policy on equal opportunities.
31. The licensing of premises and individuals will impact on children and young people through their attendance at licensed premises.
32. There has been no consultation or involvement with children and young people when formulating this report.

Recommendation

33. That the Committee note the information contained in this report.



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List of Background Papers