

Licensing Act 2003



Licensing and Gambling Acts Casework Sub-Committee

Notification of determination

Hearing under Sections 17 and 18 of the Act, and the Licensing Act 2003 (Hearings) Regulations 2005 in respect of an application made to Oxford City Council for a Premises Licence

Date of hearing:	24th August 2021
Place:	Remote hearing via 'Zoom'
Case No.	21/02290/PREM
Applicant	Raveendrakumar Sellathurai
Premises:	Budgens
Premises address:	Retail Unit, Parade Green, James Wolfe Road, Oxford, OX4 2WP
Licensing Sub-Committee Councillors:	Cllr Imogen Thomas (Chair), Cllr Ajaz Rehman, Cllr Chris Jarvis
Legal Advisor:	Daniel Smith
Licensing Officer:	Richard Masters
Clerk:	Lucy Longford

The Sub-Committee heard representations from the following:

Licensing Authority: Richard Masters (Senior Licensing Compliance Officer)

Richard Masters (**RM**) presented the Licensing Authority's report, stating that the applicant has applied for a premises licence and seeks to provide the sale of alcohol for consumption off site from 07:00 hours – 23:00 hours daily. **RM** explained the application has attracted a representation from Thames Valley Police (**TVP**) highlighting concerns about how the application may fail to promote licensing objectives with the prevention of crime and protection of children from harm.

Chris Mitchener (**CM**) was here to represent the applicant, Raveendrakumar Sellathurai, explaining that he was there due to TVP wanting the applicant to accept a large amount of conditions.

Councillor Imogen Thomas (**CIT**) invited anyone who had any questions to speak.

Daniel Smith (**DS**) queried with **RM** that it was clear from the papers that this wasn't an objection from **TVP** as such, it was a concern about the way things are put in the application and the proposed conditions.

CIT invited Chris Mitchener (**CM**) to speak on behalf of the applicant.

CM read out each condition that TVP want to put in place and the reasoning's behind it. **CM** also reiterated that the application did not receive any objections other than the concerns raised by **TVP**. **CM** informed the Committee that **TVP** stated that if they did not agree to the conditions then the application would go to committee as the area of command would not accept the application. **CM** confirmed that Alcohol will represent about 15-20% of the business.

CM confirmed that they had not received any objections, just those from **TVP** with a raft of conditions added.

CM clarified some conditions they have offered including all staff individual trained and have to take a written test to understand the responsibility to them. No more than 6 monthly intervals to retest, a refusal log is kept at site with a challenge 25 in place and have an incident log including any faulty CCTV or refusals etc. CCTV 28 day rolling system, if any orders are made by telephone for collection or delivery then only those aged over 18 years can make the purchase and it must be paid for at the time by credit or debit and delivered to proper domestic or business premises and the card will have to be produced for authentication purposes.

CIT handed over for questions.

Councillor Ajaz Rehman (**CAR**) presented a few questions for Chris Mitchener, the first one regarding the applicant being experienced and also the delivery service with regards to what measures would be taken in order to be able to verify someone's age over the phone and who are your delivery drivers.

CM explained the normal procedure is that people are asked what evidence they can produce in order to show they are over the age of 18 at the time of delivery and that evidence would have to be produced.

CAR questioned the safety of the drivers and whether they would have CCTV on them and what the process would be around that.

CM confirmed all the companies they would use for deliveries have procedures in place to protect their drivers and they have appropriate guidance in place for confrontation avoidance.

CAR also queries whether the applicant has run a similar delivery scheme in the past or at present in order to determine their experience. **CAR** also asked **CM** what companies they would be using for the deliveries.

CM confirmed that the applicant had a licensed forecourt until recently in Aylesbury so he has been running that for a number of years and is very experienced in the whole operation. Deliveries, haven't but it in place yet but will be someone well versed in it.

CM explained that the applicant wasn't suggesting deliveries will be main part of business if used at all but the majority of representation that came in was about deliveries and guidance

from **TVP**.

CIT regardless if it's going to be a part of the business we would need to make sure it's considered and done properly.

CIT asked if there were any further questions at this point.

DS pointed out that due to technical difficulties Alex Bloomfield (**AB**) had missed a large amount of the applicants representation but he should be given the opportunity to ask a question at this stage should he wish to.

AB confirmed he had no questions at this stage and had caught most of the conversation.

CIT queried that there was an issue regarding the 28 days as appose to 31 day period for the CCTV camera and asked **CM** for further clarification.

CM explained 28 is more logical than a 31 day roll.

CIT also mentioned the application stated not having external areas but there may be external areas which may be appropriate to have CCTV.

CM informed the group that they don't have any external areas other than the pavement. He stated they have had instances before where people aren't happy to have cameras outside because of data protection. However confirming they are happy to have cameras outside if people are happy to, although feel it's more a pub condition rather than a shop condition.

CIT queried whether there was an issue with the proof of age evidence needing to have a hologram.

CM understanding has been that all government stated photo ID has to have a hologram and is the thing we depend on as we need to see the hologram is there.

CIT asked for more information regarding the home delivery should it become a big part of the business, and the safety of the staff including how they would be trained, how often they would get training and the protocol around it.

CM asked whether the proposed guidance had been circulated as **CM** had sent information around about that.

RM confirmed this was in the additional material.

DS confirmed he had seen it, as did **CIT**.

CIT asked whether anyone had any further questions at this stage.

CIT it would be useful to hear from Alex so that we can hear both perspectives.

AB confirmed there are a lot of conditions and it is a big ask but the officers try and risk assess the best they can and go back to the applicant as to where the biggest risks are. Alex agreed there has been a lot of talk about statistics but when alcohol offences occur a lot of the time it is hidden harm, it gets reported to **TVP** much later down the line.

AB gave an example of an incident that happened a report of a gentleman acting suspicious

in a residential area, all police units in the area were dispatched but the gentleman was a lost delivery driver instead. Alex reiterated that if the driver had high visibility equipment on then this would have mitigated residents' concerns therefore saving police resources. **AB** confirmed they had pulled together the raft of conditions which cover the issues that TVP are starting to pick up on with regards to remote and home delivery.

AB explained that as a Police Licensing Officer he has drafted a raft of conditions and has gone to the applicant to explain where the concerns sit. **AB** has no concerns around re-wording it but wants to ensure it is safe and responsible and covers all aspects of the process.

AB further stated that if the applicant stated reasons why they can't have such conditions like high vis or 31 days is too many days to roll their CCTV and find conditions that works around them then it would work for TVP if it met the needs.

AB confirmed that it's not about enforcement but more so supporting businesses and being an advisory role to work with businesses, the conditions will help assist with dealing with issues regarding hidden harm.

AB stated that if he could understand why certain conditions weren't palatable to **CM's** client then there could be a way to tailor them back.

AB confirmed a lot of the conditions put forward by **CM** do address TVP's issues and concerns and happy to work and agree conditions with the applicant. **AB** stated he was happy to go through each condition and give a rational why but TVP are quite satisfied from the additional material provided by **CM** and are happy with the proposed conditions.

CIT highlighted that the condition regarding high visibility jackets aren't in the applicants list of conditions that they had drafted and queried with **AB** whether is there anything else in the applicant's conditions that does not marry up or that would be absolutely vital to include.

AB explained there were some things missing but questioned whether they are absolutely vital and stated they could live without them being included. Most of the areas are covered by the documentation **CM** provided.

CIT asked if anyone had any further questions.

CM raised that high vis jackets are something that the trade have discussed as far as deliveries are concerned, if it's a driver in a marked van then a high vis jacket is very important but there is a concern that if you are in an unmarked vehicle then its sometimes better that they are not readily identifiable in certain areas. **CM** gave an example of an Uber driver as they may not want to wear a high vis jacket as they might not want to be classed as a driver with goods they are carrying.

CIT asked **CM** if he had any questions for **AB** at this point as he would get a chance to summarise later on.

CM stated if TVP want to make high vis a condition then they are happy to add it as a condition but there is an undercurrent of concern.

AB explained there are more benefits to the high vis than not however he did not think it was a reason to decide a high vis jacket isn't necessarily appropriate for a licensing activity.

CIT queried if anyone else wanted to ask **AB** any questions.

CIT moved on to summaries as there were no queries for **AB**.

CIT asked **CM** to summarise.

CM stated **AB** has been very fair and made it clear the representation isn't made against the grant of the licence and the Act is clear they must be guided by TVP and the officers. **CM** is comfortable that this application is being treated by its own individual merits and they have issued a set of comprehensive conditions which was requested that the Sub-Committee consider in relation to the TVP conditions for reasons previously discussed.

CM would ask the licence is granted along with the conditions and are happy to include the high vis condition.

CIT handed back to **AB** to summarise, highlighting whether there are any differences the Committee need to take into consideration.

AB explained that TVP put forward what they thought were appropriate conditions and they still stand now, however they understand it better and **AB** is in agreement that they are a bit over the top and in light of what he has seen and the conditions **CM** has put forward **AB** has no issue with those being granted and they cover the main areas of concern for TVP. **AB** confirmed they would be satisfied with the conditions **CM** has put forward this evening.

CIT handed over to **RM** for summary.

RM confirmed there was nothing further to add.

Decision and Reasons of the Sub-Committee

1. The Sub-Committee heard from all parties and had regard to the Council's Statement of Licensing Policy, in particular Policies LH8 (Hours for off sales of alcohol), PP11 (Supply of alcohol for consumption off the premises) and the Home Office Statutory Guidance.
2. The Sub-Committee noted the supplementary *offered undertaking/conditions* submitted by the Applicant (attached – appendix One) and that Thames Valley Police (TVP) were now content that these measures would address their concerns. Nevertheless, having considered the TVP representation the Sub-Committee found it was appropriate, in the interests of preventing crime and disorder, for alcohol delivery drivers to be required to wear high visibility clothing.

The Application is GRANTED with the attachment of all conditions proposed by the Applicant (attached – appendix One) AND the following additional condition:

1. All delivery drivers to wear Hi Viz Jackets when making deliveries.

Signed:

A handwritten signature in black ink, appearing to read 'Imogen Thomas'. The signature is written in a cursive, slightly stylized font.

Cllr Imogen Thomas - Chair of Licensing Sub-committee

Notes:

- A. The applicant, and any responsible authority or interested party that has made representations upon the application has a right of appeal to the Magistrates' Court against this decision. If you wish to appeal you must do so within 21 days of being notified of the decision.

Undertakings given by way of the Operating Schedule

FULL ALARM SYSTEM, CCTV SYSTEM WITH 28 DAY RECORDING FACILITIES WITH ACCESS BY THE POLICE AND RESPONSIBLE AUTHORITIES UPON REQUEST TO THE DPS OR HIS DELEGATE, TRAINED STAFF WITH RECORDED INITIAL ALCOHOL TRAINING REGIME AND ONGOING 6 MONTHLY RECORDED REFRESHER TRAINING COPIES OF WHICH TO BE MADE AVAILABLE TO THE RESPONSIBLE AUTHORITIES OR THE POLICE UPON REQUEST TO THE DPS OR HIS DELEGATE, CHALLENGE 25 AND PROOF OF AGE INITIATIVE TO BE APPLIED TO ANY CUSTOMERS WHO APPEAR TO BE UNDER THE AGE OF 25, SUPPORTED BY FULL RECORDED STAFF TRAINING AND INSTORE CHALLENGE SIGNAGE, REFUSALS SYSTEM WITH REFUSALS BOOK OR COMPUTERISED TILL SYSTEM TO BE UTILISED TO RECORD ALL ALCOHOL REFUSALS TO BE MADE AVAILABLE TO THE RESPONSIBLE AUTHORITIES AND THE POLICE UPON REQUEST AND COPY KEPT FOR 12 MONTHS, AND A SEPERATE INCIDENT LOG TO BE MAINTAINED AND MADE AVAILABLE TO THE RESPONSIBLE AUTHORITIES OR THE POLICE UPON REQUEST TO THE DPS OR HIS DELEGATE, ALL ONLINE/TELEPHONE DELIVERED AND COLLECTED SALES TO FOLLOW A SET PROCEDURE TO ENSURE THAT ANY ORDER PLACED IS MADE BY AND RECEIVED BY CUSTOMERS AGED OVER 18

Conditions

Staffing, training

The Premises Licence Holder shall ensure that all staff employed at the premises whose duties include the sale or supply of alcohol shall undertake and complete a relevant programme of training prior to them being authorised to sell or supply alcohol and to prove their understanding of their responsibilities by taking and passing a written test - which may be computerised in the future - before being authorised to sell alcohol in writing on behalf of the DPS such training shall consist of providing staff with an understanding of:

The need to ensure the responsible sale and supply of alcohol

The need to refuse the sale and supply of alcohol to persons who are intoxicated or underage

The need to identify and refuse Proxy Sales

The need to seek credible age verification from persons seeking to be sold or supplied alcohol who may appear under the age of 25 years old

Where subsequent issues related to the training is brought to the premises licence holder's attention by either the Licensing Authority and/or responsible authorities named in the Licensing Act, the premises licence holder will make amendments as directed by that authority

Records of the training programme shall be maintained and made available to Authorised Officers upon request to the DPS or the manager.

The Premises Licence holder shall provide a “refresher” training session to all relevant staff members as and when deemed necessary on a case by case evaluation, but as a minimum requirement the refresher training session shall be provided to all staff on at least one occasion every six months.

Refusals

A refusals book will be held at the premises which will be maintained for a rolling minimum period of twelve months and shall record:

Any refusals on grounds of age and/or intoxication (to include date, time, member of staff involved, reason for refusal as well as a brief physical description of the person refused).

In the event the premises provides a remote ordering/ home delivery ordering service for alcohol the refusals book will record:

Any refusals and the reason for that refusal

Any further action or outcome from this (ie refund given subsequently / this address/person now barred etc)

Incident Book

An Incident Book will be held at the premises which will be maintained for a rolling minimum period of twelve months and shall record:

Weekly checks of the CCTV, to ensure it is fully operational and any faults are dealt with including the time of the check and the person that carried it out.

Any calls to or visits by any responsible authorities and the reasons for the call or visit

The Designated Premises Supervisor, or in their absence duly appointed member of staff, shall check both the refusals book and the incident book on a weekly basis ensuring that it is completed and up-to-date, sign both each time that they are checked, and make both available for inspection by any Authorised Officer throughout the trading hours of the premises.

Age verification – challenge 25

- a) Evidence of age in the form of photographic identification (ID) shall be requested from any person appearing to those selling or supplying alcohol to be under the age of 25 and who is attempting to buy alcohol.
- b) Acceptable identification for the purpose of this condition is that issued by a government

agency bearing a holographic mark with a photograph and date of birth, or the Proof of Age Standards Scheme (PASS) approved age cards.

c) Notices shall be strategically and prominently placed at points of sale advising customers that they may be asked to provide evidence of age.

d) A refusals book to record every instance that sales of alcohol are refused shall be maintained.

e) The refusals book shall document the date and time a refusal of sale is made and the member of staff refusing the sale.

f) The refusal book shall be available for inspection by the police or authorised local authority officers at all times.

Alcohol delivery

1. All sales of alcohol for delivery must be paid at the time of ordering using a debit or credit card.

2. All delivery persons must be aged 18 years or more.

3. The alcohol must be packaged separately from goods that aren't subject to age related sales, so that it can easily be retrieved to prevent an illegal sale.

4. Details of the order (including the type, amount of alcohol, name and address of the customer) shall be kept at the licensed premises and must be shown on the printout despatched with the order.

5. All delivery drivers and riders must allow any police or authorised local authority officers to inspect any alcohol or order details on request.

6. The delivery of alcohol shall be made only to a residential or business address and the customer to be clearly resident inside the building. The delivery of alcohol will not be made or completed to a person in a public place (for example a street corner, park or bus stop).

7. The person taking the order and /or making the delivery must ensure that the recipient is 18 years of age. A check shall be made to ensure the person accepting the delivery has the debit/credit card used for the purchase. If they appear under 25 years of age, photographic ID will be required before the alcohol is handed over. Examples of appropriate ID include a passport, photographic driving licence, military ID and the Proof of Age Standards Scheme (PASS) approved age cards.

8. Where a third party courier is used to supply alcohol, they will be instructed to provide an age verification service or adopt a policy of checking age and ID at the time of delivery. The courier must adopt a policy of not allowing minors to sign for and accept deliveries. A record of all couriers used and the system that they use to verify age will be kept and produced upon request from the police or authorised local authority officers to the DPS or Manager.

CCTV

A CCTV system will be installed and maintained. The CCTV system will incorporate the following basic requirements:

Be switched on and fully operational when the licensable activities are being carried out.

Record for a minimum rolling period of 28 days

Have a camera covering any entrance which will provide a facial shot of identification quality.

Have cameras covering any pertinent public areas

Have a means of copying any footage to another medium as evidence if requested by the Police

Have a member of staff working at all times whilst the licence is in operation that is able to operate the system and in particular be able to provide copies of any footage requested by The Police to the DPS or Manager and in any event within 24 hours

A system shall be in place to maintain the quality of the recorded image and a complete audit trail maintained. The system will comply with other essential legislation, and all signs as required will be clearly displayed

Display

Spirits will only be mechanised behind the point of sale counter and these items will only be accessible to the public via a member of staff providing it.

No super-strength beer, lagers or ciders of 6 %ABV (alcohol by volume) or above shall be sold from the premises in plastic bottles or cans .

Notices

Prominent, clear notices shall be displayed at all exit points to advise customers to respect the needs of the local community and of acceptable behaviour in public spaces.