



HAMPSHIRE CONSTABULARY

APPENDIX C

Page 1 of 8

RESTRICTED

NEW GRANT OR VARIATION OF PREMISES LICENCE OR CLUB PREMISES CERTIFICATE FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY

Before completing this form please read the guidance notes on page 3.
Once completed please send your representation form to your local Licensing Authority.
You must keep a copy of the completed form for police records.

Hampshire Constabulary wish to make a representation(s) regarding the grant or variation of a Premises Licence or Club Premises Certificate issued under the Licensing Act 2003.

These representations must be made within 28 days

Postal address of premises or club premises:

SAINSBURY'S SUPERMARKET, FOXES ROAD, , ISLE OF WIGHT

Post town:

NEWPORT

Postcode:

PO30 5ZB

Name of premises licence holder or club holding club premises certificate (*if known*)

SAINSBURY'S SUPERMARKETS LTD

Police Details

Hampshire Constabulary is a responsible authority.

Name and address:

P.C. 3007 PAUL BRADLEY, NEWPORT POLICE STATION, HIGH STREET, NEWPORT, ISLE OF WIGHT PO30 1SZ

This application to object relates to the following licensing objective(s)

- 1) The prevention of crime and disorder
- 2) Public safety
- 3) The prevention of public nuisance
- 4) The protection of children from harm



*Please select
one or more
boxes*

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HAMPSHIRE CONSTABULARY

RESTRICTED

NEW GRANT OR VARIATION OF PREMISES LICENCE OR CLUB PREMISES CERTIFICATE FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY

State the ground(s) for representation *(please read guidance notes 1 & 2)*

Following an application from Sainsbury's supermarket, Newport in which they asked to increase their alcohol sales to 24 hours a day, 7 days a week the Chief Officer of Police submitted representations expressing concerns about the lack of detail. This lack of detail made it impossible for any assessment to be made as to the extent of the risks the application posed to the objectives. The application to object was made in relation to the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm.

Enquiries made at the time indicated that this application related to on-line sales and in the representations the Chief Officer of Police requested that information be provided as to what measures were to be put in place to ensure that alcohol is not supplied to underage or drunk persons, what training will be given to staff delivering alcohol and what proof of age checks would be required and at what point would it be checked. The question was also asked as to whether consideration had been given to restricting the times when orders containing alcohol would be delivered so as to avoid anti-social behaviour issues such as already inebriated people wishing to continue the party after the pubs have closed.

Police licensing officers have engaged in dialogue with solicitors representing Sainsbury's and clarification of the purpose of this application has been provided. The application is to allow staff at the store to prepare and process online orders overnight as the point of sale in relation to on-line orders comes when the item is appropriated for the contract (i.e. picked up for packing).

A condition has been volunteered and agreed to this effect. It is as follows;

For the purpose of this condition, the "Seasonal Periods" means the period from and including 10 December to 6 January each years and the period from and including the Monday prior to Good Friday up to and including Sunday following Easter Monday each year.

- Alcohol sales for consumption off the premises that occur between 2300 and 0600 are to be for online sales for delivery. This part of this condition does not apply during the Seasonal Periods.
- Alcohol sales for consumption off the premises that occur between 2400 and 0600 during the Seasonal Periods are to be for online sales for delivery.

This condition provides assurance that alcohol sales will not take place on the premises outside the current hours, however it does not deal with the other concerns previously raised.

Further information regarding measures employed by Sainsbury's to uphold the objectives were

RESTRICTED



HAMPSHIRE CONSTABULARY

RESTRICTED

NEW GRANT OR VARIATION OF PREMISES LICENCE OR CLUB PREMISES CERTIFICATE FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY

provided by the solicitor dealing with this application by means of a hyperlink to Sainsbury's website. The relevant sections which relate to delivery have been taken from that website are as follows;

13.3 You or someone aged 18 or over on your behalf must be available to receive and inspect the delivery. Under no circumstances will goods be left unattended.

13.4 We operate a 'Think 25' policy. If the person receiving the goods looks under 25 we will request proof of age. We may retain the goods if proof of age or an alternative adult is not available.

This information provides some reassurance that there is an age verification policy in place and that regardless of age restricted products being present, someone over 18 has to be present to accept delivery.

The Chief Officer of Police is of the view that any increase in risks posed to the objectives by this application can be off-set by appropriate conditions. It is on the issue of whether or not extra conditions are necessary or appropriate that an impasse has been reached.

Representatives for the applicant have quite rightly pointed out that they are simply applying to allow on-line orders containing alcohol to be prepared at night. They state that this physical act will have no impact on the licensing objectives. They also point out that if Sainsbury's wished to deliver alcohol 24 hours a day they could do that already, they just wouldn't be able to prepare the orders outside of their current permitted alcohol sales times.

This is clearly understood and it should be stressed that these representations should in no way imply that The Chief Officer of Police believes Sainsbury's to be irresponsible in the way it operates. With regards to Sainsbury's, Newport, the police hold no records that would indicate a lack of diligence with regards to the sale of alcohol. Nor are there any current issues which could be used to support the imposition of further conditions on the licence as it stands.

It has been argued that without evidence to demonstrate the need for further conditions, none should be imposed.

However the Chief Officer of Police is mindful of Section 3.10 of the Revised Home Office Guidance issued under Section 182 of the Licensing act 2003 which states,

"Persons who run premises providing 'alcohol delivery services' should notify the relevant licensing authority that they are operating such a service in their operating schedule. This ensures that the licensing authority can properly consider what conditions are appropriate. Premises with an existing premises licence, which choose to operate such a service in addition to their existing licensable activities, should contact their licensing authority for its view on whether this form of alcohol sale is already permitted or whether an application to vary the licence will be required.

RESTRICTED



HAMPSHIRE CONSTABULARY

RESTRICTED

NEW GRANT OR VARIATION OF PREMISES LICENCE OR CLUB PREMISES CERTIFICATE FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY

The current licence to which Sainsbury's, Newport operates takes no account of on-line sales and P.C. 3007 Bradley can find no record that the police were ever consulted on this matter. Had this happened, additional conditions to ensure the objectives were upheld would have been suggested.

Again, it is important to stress that there are no recorded incidents held by the police which provide evidence that Sainsbury's is not operating responsibly and in line with its current licence. However, this application relates to a change in the current licence and as per the above Home Office Guidance it is incumbent on the police to consider any risks posed to the objectives by these changes.

Various conditions have been put forward, however only those mentioned above, which were kindly volunteered by solicitors representing the applicant have been agreed.

Whilst the Chief Officer of Police fully acknowledges that Sainsbury's operate to existing company policies which support the licensing objectives, these are just policies. They are not conditions; they could be changed by the company if it so wished and they are not enforceable.

Policies are implemented by human staff, and humans are not infallible. The human element makes it necessary to ensure conditions provide an enforceable framework providing them with the boundaries in which they can operate, regardless of how responsible a company's operating policies are.

An example of the weaknesses with the licence in its current form are as follows. Conditions 9, 10 and 12 of annex 2 of the licence deal with training and age verification policies for staff selling alcohol. They specify cashiers, and all staff engaged or to be engaged in the sale of alcohol on the premises. Nowhere are the delivery drivers included.

Based on the information obtained by Sainsbury's website it seems reasonable to assume that delivery staff have had training on "Think 25" and alcohol awareness issues. However currently there is no legal requirement for Sainsbury's to provide them with training, for that training to be recorded or for them to provide a member of the police or other responsible authorities with a copy of those records on reasonable request should the need arise.

This does not support the mandatory condition 5 (3) of the premises licence which requires anyone serving alcohol, (ie the delivery driver) to request photographic I.D. from anyone appearing under 18 years of age. It also makes takes away the ability of the responsible authorities to require training logs to evidence due diligence on the part of the licence holder should any issues arise.

On the other hand, there is a legal requirement for them to give training to the staff member who appropriates the alcohol for the purpose of the contract. This staff member could conceivably work solely in the warehouse and never have any interaction with customers. However under the current licence this person will be required to undergo training which includes recognising the signs of drunkenness and refusal of sale due to intoxication. This makes little sense and does not serve to uphold the objectives in any way.

RESTRICTED



HAMPSHIRE CONSTABULARY

RESTRICTED

NEW GRANT OR VARIATION OF PREMISES LICENCE OR CLUB PREMISES CERTIFICATE FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY

The Chief Officer of Police considers the below conditions to be proportionate, reasonable and necessary to ensure the licensing objectives are upheld in this case. In the main they should not impact on the way Sainsbury's currently operates, for example the advertised delivery times at present are from 10:00 - 22:00 hours whereas the proposed condition relating to this allows for deliveries outside of those times.

Whilst we fully understand the viewpoint the applicant has put forward during our discussions The Chief Officer of Police has a Duty to recommend conditions to address any risk to the objectives where those risks are observed.

State any conditions that the Police seek to negate the need for a hearing

As well as the already agreed condition which is;

1) For the purpose of this condition, the "Seasonal Periods" means the period from and including 10 December to 6 January each years and the period from and including the Monday prior to Good Friday up to and including Sunday following Easter Monday each year.

- Alcohol sales for consumption off the premises that occur between 2300 and 0600 are to be for online sales for delivery. This part of this condition does not apply during the Seasonal Periods.
- Alcohol sales for consumption off the premises that occur between 2400 and 0600 during the Seasonal Periods are to be for online sales for delivery.

The Chief Officer of police believes the following conditions are necessary and proportionate.

2) All alcohol deliveries shall be restricted to a legitimate residential or business premises. Alcohol shall not be delivered to a public place.

3) For the purpose of this condition, the "Seasonal Periods" means the period from and including 10 December to 6 January each years and the period from and including the Monday prior to Good Friday up to and including Sunday following Easter Monday each year.

- Delivery of orders containing age restricted alcoholic products may only take place between 06:00 and 23:00 hours. This part of this condition does not apply during the Seasonal Periods.
- Delivery of orders containing age restricted alcoholic products may only take place between 06:00 and 24:00 hours during the Seasonal Periods.

RESTRICTED

**HAMPSHIRE CONSTABULARY****RESTRICTED****NEW GRANT OR VARIATION OF PREMISES LICENCE
OR CLUB PREMISES CERTIFICATE
FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY**

4) All persons engaged in the sale and delivery of alcohol shall receive training or instruction to prevent the sale to anyone who is drunk or apparently under the age of 18 years. Staff members shall receive such training on induction, also at intervals not greater than one year apart. A record shall be made of:-

- the date the training or instruction was delivered,
- its content, and
- the names of the members of staff who received it.

The record shall be produced to a police officer or an authorised officer from the local authority on reasonable request.

5) The 'Think 25' scheme will be adopted at the point of delivery of alcohol. Any refusals made will be recorded and a record provided to a police officer or an authorised officer of the local authority on reasonable request.

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003 TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS REPRESENTATION

Part 3 – Signatures *(please read guidance note 3)***Recommendation of Police Officer**

Consideration to be given as to whether it is appropriate to add conditions in this case and if so, whether the conditions suggested are proportionate.

Signature of Police Officer Completing

Signature: P.C. 3007 Bradley

Date: 15/09/2017

Recommendation of Police Sergeant**RESTRICTED**

**HAMPSHIRE CONSTABULARY**

Page 7 of 8

RESTRICTED**NEW GRANT OR VARIATION OF PREMISES LICENCE
OR CLUB PREMISES CERTIFICATE
FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY**

Having reviewed this report i fully agree with and support the conditons and ratioanle documented by Pc Bradley.

Signature of Police Sergeant

Signature: PS 2404 Stuart Snow

Date: 15/09/2017

Decision of Police Licensing Inspector

I fully agree with and support the conditions proposed by PC Bradley.

I feel this rationale has outlined the necessity and proportionality to proceed, it is unfortunate that a mutual way forward could not have been agreed with Sainsbury's.

PC Bradley has been right and fair in his rationale. He has pointed out that Sainsbury's are a responsible operator, there is no adverse history relating to this venue in Newport, IOW.

PC BRADLEY has also complimented their nationwide company policies and procedures, however, herein lies the issue. These company policies and procedures are not enforceable conditions, should the licensing objectives be compromised

I have seriously deliberated the merits of authorising this process, I appreciate PC Bradley has documented the moot, legal points in detail to outline all parties' perspective.

The underlying risk is that despite these unenforceable company policies there still remains a risk to the promotion of the licensing objectives.

The wider issue around the increase of alcohol delivery sales requires the same level of safeguarding of the licensing objectives, especially where 'point of sale' differs to point of 'supply'. Conditions imposed can only serve to mitigate these risks and promote the licensing objectives

Signature of Police Licensing Inspector

Signature: Inspector 2841 Justin ROBERTS

Date: 17/07/2019

NOTES FOR GUIDANCE

1. The ground(s) for representation must be based on one of the licensing objectives.
2. Please list any additional information or details, for example dates of problems which are included in the grounds for representation if available.

RESTRICTED



HAMPSHIRE CONSTABULARY

RESTRICTED

**NEW GRANT OR VARIATION OF PREMISES LICENCE
OR CLUB PREMISES CERTIFICATE
FORM FOR REPRESENTATIONS FROM HAMPSHIRE CONSTABULARY**

3. The representation form must be signed.

RESTRICTED