

LICENSING SUB COMMITTEE: 18 April 2018 at 10am

Applicant: Tesco Stores Ltd

Application Premises: Tesco Express South Oxhey

Application address: Prestwick Road, South Oxhey, Watford, Herts WD19 6EG

Type of Application: Variation of a Premises Licence

Date of Application: 22nd February 2018

Date by which a hearing must be commenced: 23rd April 2018.

Valid application made: Yes

1. Summary of application sought:

The application is for a premises licence to permit the following activities:-

Supply of Alcohol both off the premises / Open to the public.	
Monday to Sunday	06:00 – 23:00

The variation seeks to remove the embedded conditions / restrictions on the licence with regards to Christmas Day and Good Friday.

The application can be seen at **Appendix 1**

The applicant has described ways in which they intend to promote the four licensing objectives, this intent can be turned into conditions of the licence consistent to the operating schedule. After discussion with Tesco these have been modified to include:

- There must be a detailed training programme which ensures that comprehensive training is provided to employees having regard to their role and responsibilities and such training is regularly refreshed and appropriate records kept. The training record will be available on request to a Police Officer or Authorised Officer of the Licensing Authority.
- The premises must have digital CCTV system that covers many areas of the shop floor, including the main area which will be used for display of alcohol, the entrance and exit and the till area.
- Images from the CCTV must be retained for a minimum of 21 days. The images will be made available on request to a Police Officer or Authorised Officer of the Licensing Authority.
- The premises shall operate a Thick/Challenge 25 Policy.
- As part of the underlying system all tills shall be programmed to prompt the checkout assistant when an alcohol product is scanned at the till to follow the Thick/Challenge 25 policy.
- Staff shall receive appropriate training both relation to underlying law but also the company policy and systems and procedures. This training will be documented and repeated as often as the company believes to be appropriate.

Summary of premises history: -

The current licence permits the sale of alcohol for consumption off the premises only. This to take place Mondays to Saturdays between 08:00 and 23:00. Sundays 10:00 until 22:30, Good Friday between 08:00 and 22:30 and on Christmas Day 12:00 to 15:00 and 19:00 and 22:30.

There are no complaints on file since the Sub-Committee hearing of 10th May 2011.

The premise licence has a number of conditions attached to the licence, full details of the current premises licence are at **Appendix 2**.

2. List of Objectors / Representations

Responsible Authorities: None

Other Persons: .Five local residents. These can be seen at **Appendix 3**

3. Summary of Objections / Representations (the 4 Licensing Objectives)

Responsible Authorities: None

Relevant representations from “other persons”:

1. That the extended hours if granted would contribute to crime and disorder / public nuisance in the area.

4. Statutory Guidance

The Licensing Objectives and Aims:

Paragraph 1.2

The legislation provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken.

Paragraph 1.3

The Licensing Objectives:-

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

Paragraph 1.4

Each objective is of equal importance. There are no other statutory licensing objectives, so that the promotion of the four objectives is a paramount consideration at all times.

Paragraph 1.5

However, the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:

- Protecting the public and local residents, from crime, anti-social behaviour and noise nuisance caused by irresponsible licensed premises;
- Giving the Police and licensing authorities the powers they need to effectively manage and police the night-time economy and take action against those premises that are causing problems;
- Recognising the important role which pubs and other licensed premises play in our communities by minimising the regulatory burden on business, encouraging innovation and supporting responsible premises.
- Providing a regulatory framework for alcohol which reflects the needs of local communities and empowers local authorities to make and enforce decisions about the most appropriate licensing strategies for their local area; and
- Encouraging greater community involvement in licensing decisions and giving local residents the opportunity to have their say regarding licensing decisions that may impact upon them.

Determining Applications:

Paragraph 9.1 General.

When a licensing authority receives an application for a new premises licence or an application to vary an existing premises licence, it must determine whether the application has been made in accordance with section 17 of the 2003 Act, and in accordance with regulations made under sections 17(3) to (6), 34, 42, 54 and 55 of the 2003 Act. It must similarly determine applications for the grant of club premises certificates made in accordance with section 71 of the 2003 Act, and in accordance with regulations made under sections 71(4) to (7), 84, 91 and 92 of the 2003 Act. This means that the licensing authority must consider among other things whether the application has been properly advertised in accordance with those regulations.

Paragraph 9.3: Where representations are made.

Where a representation concerning the licensing objectives is made by a responsible authority about a proposed operating schedule and it is relevant the licensing authority's discretion will be engaged. It will also be engaged if another person makes relevant representations to the licensing authority, which are also not frivolous or vexatious. Relevant representations can be made in opposition to, or in support of, an application and can be made by any individual, body or business that has grounds to do so.

Paragraph 9.4:- Relevant, Vexatious and Frivolous Representations

A representation is "relevant" if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example a representation from a local businessperson about the commercial damage caused by competition from new licensed premises, would not be relevant. On the other hand, a representation from a businessperson that nuisance caused new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate, would be relevant. In other words, representations should relate to the impact of licensable activities carried on from premises on the objectives. For representations in relation to variations to be relevant, they should be confined to the subject matter of the variation. There is no requirement for a responsible authority or other person to produce a recorded history of problems at a premise, to support their representations, and in fact this would not be possible for new premises.

Hours of Trading:

Paragraph 10.13

The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding licensed opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

Paragraph 10.14

Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.

Paragraph 10.15

Shops, stores and supermarkets should normally 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 good reasons, based on the licensing objectives, for restricting those hours.

Licensing Hours

Paragraph 14.44

With regard to Licensing hours, the Government acknowledges that different licensing approaches may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions regarding opening hours as part of the implementation of its licensing policy statement and licensing authorities are best placed to make such decisions based on their local knowledge and in consultation with other responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

5. Licensing Policy (2016-2020)

LP1 - Fundamental Principles

LP1.1 In carrying out its licensing functions the Licensing Authority will promote the Licensing Act's four licensing objectives.

LP1.2 Purpose of Licensing policy.

To support and provide guidance to elected members.

To inform licence applicants.

To inform residents and businesses.

To support decisions made by the licensing Authority.

LP14 - CUMULATIVE STRESS

LP14.3 The Licensing Authority proposes to reserve its right to adopt a Cumulative Stress Policy (CSP) as provided for by the Secretary of State's Statutory Guidance. If this is ever applied, it might lead the Licensing Authority in turn to consider the question of whether the grant of any further premises licences or club premises certificates would undermine one or more of the licensing objectives.

LP17.0 – TRADING HOURS

LP17.1 With regard to Trading Hours the Licensing Authority proposes that proper consideration will always be given to the individual merits of an application. The Government strongly recommends that statements of licensing policy should recognise that longer licensing hours with regard to the sale of alcohol are important to ensure that concentrations of customers leaving premises simultaneously are avoided, and the Licensing Authority supports this view in principle.

LP17.2 The Licensing Authority recognises the potential for additional crime and disorder and / or public nuisance arising from extended licensing hours. Consequently, the Licensing Authority will scrutinise very carefully applications for extended licensing hours and, if determined appropriate, will seek to attach any necessary licence conditions for the promotion of the licensing objectives. For example, stricter conditions with regard to noise control will be expected in areas where the venue is in the vicinity of people's homes, but this should not unduly limit opening hours without regard to the individual merits of any application.

LP17.3 With regard to shops, stores and supermarkets, the normal scenario will be for such premises to provide sales of alcohol for consumption off the premises at any time when the retail outlet is open for shopping, unless there are very good reasons for restricting those hours.

LP17.4 In the interests of reducing crime, disorder and anti-social behaviour, the Licensing Authority will prefer applications from public houses, night-clubs, off-licenses and clubs that show in their operating schedules a responsible approach to alcohol sales by:

- Ending alcohol sales at a designated time before they close, i.e. a closing time later than "a last orders" time for alcohol sales;
- Specifying a time by which the premises will be emptied of patrons and closed;
- Not taking part in discounted drinking promotions.

LP19 – PREVENTION OF CRIME

LP19.1 Applicants for new premises licences and variations should discuss the crime prevention procedures in their premises with the responsible authorities and the licensing officer before making a formal application.

LP20 – PREVENTION OF PUBLIC NUISANCE

LP20.1 With regard to the prevention of public nuisance, the Licensing Authority will determine all new or varied licence applications considering all relevant factors, including:

- ◆ The nature of the activities at the premises;
- ◆ The hours of opening;
- ◆ Proximity to residential premises;

- ◆ Management of the premises ;
- ◆ The history of it's the premises' effect on neighbours and others in the vicinity;

LP20.2 The Licensing Authority will consider all proposed control measures, including;

- Effective and responsible management;
- Staff training;
- Adoption of best practice on noise control;
- Installation of suitable acoustic control measures;
- Where relevant, door supervision and management of customers as they enter and leave the premises.

LP20.3 Three Rivers has very many licensed premises that are close to or even enclosed by residential areas. Most of these are traditional community public houses and currently tolerated as the terminal hour is well established and neighbours know when they might expect any disturbances causing public nuisance to end.

LP20.4 It follows that operators of licensed premises that are in the vicinity of domestic premises (and in the vicinity of business/commercial premises, places of learning and places of worship) may find that applications for variations seeking;

- Extended hours of opening or trading
- The provision of regulated entertainment
- The provision of late night refreshment
- The supply of alcohol

may be subject to representations from such neighbours, their representative(s) and/or the Environmental Health Officer on the grounds that public nuisance might be caused by the intended activity. In most cases such representations will cause a local hearing, conducted by the Licensing Sub-Committee.

LP20.5 The Licensing Authority strongly encourages applicants to seek early discussions with the local Environmental Health Officer (or the responsible officer for pollution), with the aim of resolving how potential public nuisances might be effectively controlled, so that agreed measures might be built into the operating schedule as mutually acceptable conditions. In this way representations from the Environmental Health Officer may be avoided. The Council also encourages local mediation in certain situations that might be amenable to such a solution.

LP20.6 Many, but not all, public nuisance issues can be resolved through reasonably practical and effective control measures. If such measures are not detailed in the operating schedule accompanying the application, and if then a local hearing takes place, the application may well be viewed unfavourably by the Licensing Committee.

LP20.7 Licensed premises have a significant potential to impact adversely on communities through public nuisances that arise from their operation. The Licensing Authority wishes to maintain and protect the amenity of residents and other businesses from the consequence of the operation of licensed premises whilst recognising the valuable cultural, social and business importance that such premises provide.

LP20.8 The Licensing Authority intends to interpret "public nuisance" in its widest sense, and takes it to include such issues as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in normal activity in an area. Applicants need to be clear that

the Licensing Authority will normally apply stricter conditions, including controls on licensing hours, where licensed premises are in residential areas and where relevant representations have been received. Conversely, premises for which it can be demonstrated they have effective measures planned to prevent public nuisance, may be suitable for 24-hour opening.

LP21.0 PUBLIC SAFETY

LP21.1 The Licensing Authority is committed to ensuring that the safety of any person visiting or working in licensed premises is not compromised. To this end, applicants will be expected to demonstrate in their operating schedule that suitable and sufficient measures have been identified and will be implemented and maintained to ensure public safety, relevant to the individual style and characteristics of their premises and events.

6. Other Relevant Information:

It should be noted that Herts Police were notified of the application and information on Anti-Social behaviour was requested it should be noted that the response was that there are no early morning issues regarding ASB so the extended morning hours would not have an effect in that way. The officer was in contact with Tesco regarding a condition that a staff member from the premises who is conversant with the operation of the CCTV system shall be on the premises when the premises are open to the public. However, Tesco had not got back to her at the time this report was written.

7. Determination of application for a Premises Licence - Licensing Act 2003:

General Duties of the Licensing Authority:

Section 4 of the Licensing Act 2003 states:

1. A licensing authority must carry out its functions under this Act (licensing functions) with a view to promoting the licensing objectives.
2. The Licensing Objectives are:
 - The prevention of crime and disorder;
 - Public safety;
 - The prevention of public nuisance; and
 - The protection of children from harm.
3. In carrying out its licensing functions, a licensing authority must also have regard to –
 - a) its licensing statement (policy) published under section 5, and
 - b) any guidance issued by the Secretary of State under section 182.

7.1 Section 35(1) Licensing Act 2003, states that where a relevant licensing authority

(a) receives an application, made in accordance with section 34, to vary a premises licence, and

(b) is satisfied that the applicant has complied with any requirement imposed on him by virtue of subsection (5) of that section.

- (2) Subject to subsection (3) and section 36(6), the authority must grant the application.

- (3) Where relevant representations are made, the authority must—
- (a) hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and
 - (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.
- (4) The steps are—
- (a) to modify the conditions of the licence;
 - (b) to reject the whole or part of the application;
- and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.
- (5) In this section “relevant representations” means representations which—
- (a) are about the likely effect of the grant of the application on the promotion of the licensing objectives, and
 - (b) meet the requirements of subsection (6).
- (6) The requirements are—
- (a) that the representations are made by an interested party or responsible authority within the period prescribed under section 17(5)
 - (c) by virtue of section 34(5),
 - (b) that they have not been withdrawn, and
 - (c) in the case of representations made by an interested party (who is not also a responsible authority), that they are not, in the opinion of the relevant licensing authority, frivolous or vexatious.
- (7) Subsections (2) and (3) are subject to sections 19 to 21 as amended by Policing & Crime Act 2009 (which requires certain conditions to be included in premises licences).

Statutory Guidance.

Paragraph 9.35:

The licensing authority should give its decision within five working days of the conclusion of the hearing (or immediately in certain specified cases) and provide reasons to support it. This will be important if there is an appeal by any of the parties. Notification of a decision must be accompanied by information on the right of the party to appeal. After considering all the relevant issues, the licensing authority may grant the application subject to such conditions that are consistent with the operating schedule. Any conditions imposed must be appropriate for the promotion of the licensing objectives and should be discussed during the hearing; there is no power for the licensing authority to attach a condition that is merely aspirational. For example, conditions may not be attached which relate solely to the health of customers rather than their direct physical safety.

Paragraph 9.36:

Alternatively, the licensing authority may refuse the application on the grounds that this is appropriate for the promotion of the licensing objectives. It may also refuse to specify a designated premises supervisor and/or only allow certain requested licensable activities. In the interests of transparency, the licensing authority should publish hearings procedures in full on its website to ensure that those involved have the most current information.

Appendix 1: Application as made.

Appendix 2: Current Premise Licence.

Appendix 3: Representations Received.

Appendix 4: Agreement of conditions during consultation period.