

LICENSING AND APPEALS SUB-COMMITTEE 9 th May 2012
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*PART 1 – PUBLIC DOCUMENT	AGENDA ITEM No.
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LICENSING ACT 2003

**APPLICATION BY TESCO STORES LIMITED FOR THE GRANT OF A PREMISES
LICENCE IN RESPECT OF TESCO, LYON COURT, WALSWORTH ROAD,
HITCHIN, HERTFORDSHIRE, SG4 9SP.**

REPORT OF THE SENIOR LICENSING AND ENFORCEMENT OFFICER

1. BACKGROUND

1.1 No premises licence under the Licensing Act 2003 is currently in place for the premises.

2. APPLICATION

2.1 The application is for the grant of a premises licence under Section 17 of the Licensing Act 2003.

2.2 The licensable activities and hours applied for are as follows:

3. APPLICATION PROCESS

- 3.1 On 16th March 2012, Tesco Stores Limited made an application for the grant of a Premises Licence.
- 3.2 The Applicant served copies of this application to the Police Authority and the other Responsible Authorities
- 3.3 A public notice was displayed on the premises for a period of not less than twenty-eight (28) days in accordance with the requirements of the Licensing Act 2003.
- 3.4 A newspaper advertisement was placed in a local newspaper in accordance with the Act.

4. REPRESENTATIONS

- 4.1 No representation was received from Hertfordshire Constabulary.
- 4.2 No representations were received from any other Responsible Authority.
- 4.3 Six representations were received from Interested Parties.
- 4.4 The Council's Scheme of Delegation in respect of the Licensing Act 2003 requires the Licensing Officer to determine whether a representation is relevant as specified by the Act.
- 4.5 One of the representations was deemed 'not relevant' by the Senior Licensing and Enforcement Officer as it did not relate to the impact or likely impact on the licensing objectives. This representation has not been included with this report.
- 4.6 Where representations include paragraphs that are not relevant to the Licensing Act 2003, these paragraphs have been clearly marked as 'not relevant' by the Senior Licensing and Enforcement Officer and should not be considered as part of the determination process. Interested parties must not refer to these paragraphs in any oral presentation at the hearing.
- 4.7 The five relevant representations are as follows:

4.8 After further consideration of their application, Tesco Stores Limited subsequently amended their application as follows:

- 4.9 The amendment was made voluntarily by the applicant and now forms part of the application being considered by the Sub-Committee.
- 4.10 The Applicant has been served with a copy of the representations.
- 4.11 The Applicant and the Interested Parties have been invited to attend the hearing to present their respective cases. They have been advised that they may be legally represented and of the Committee Hearing procedure.

5. OBSERVATIONS

- 5.1 In determining this application, the Sub-Committee must have regard to the representations and take such steps, as it considers necessary for the promotion of the Licensing Objectives.
- 5.2 In making its decision, the Licensing and Appeals Sub-Committee must act with a view to promoting the Licensing Objectives. It must also have regard to the Licensing Authority's Statement of Licensing Policy and National Guidance.
- 5.3 The Licensing and Appeals Sub-Committee has the following options when issuing the Decision Notice:
- i) Grant the Application as made
 - ii) Grant the Application with conditions. Conditions should only be added where they are necessary to promote the Licensing Objectives.
 - iii) Refuse the Application.

6. LICENSING POLICY CONSIDERATIONS

- 6.1 The following paragraphs from the Council's Statement of Licensing Policy 2011 may be relevant to this application. This section does not prevent the Sub-Committee from considering other paragraphs of the Statement of Licensing Policy where they deem it appropriate.

5.1

Each licence application will be decided by reference to this Policy, the National Guidance issued by the Secretary of State, relevant legislation and to the individual circumstances of the particular application. The Council may depart from the Policy where the individual circumstances of any application merit such a decision in the interests of the promotion of the Licensing Objectives. Full reasons will be given for decisions taken by the Council when undertaking its licensing functions.

5.6

The Council acknowledges that the licensing process can only seek to control measures within the direct control of the licensee and 'in the vicinity' of the premises. The Council does not consider that the term 'vicinity' can be generically defined and will consider its definition relative to the specific circumstances of each application. Generally, to be considered to be 'in the vicinity' of a premises, an interested party will need to demonstrate a causal link between the problems or likely problems caused at the premises, or in the immediate vicinity of the premises, in relation to the Licensing Objectives. For example, an interested party may be able to hear music from the premises within their property or they may see patrons leaving the premises and causing a nuisance immediately outside the premises.

5.9

The Council will carry out its licensing functions in the promotion of the Licensing Objectives and, in addition, will support the stated aims of the Act which are as follows:

- (i) the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting places of entertainment.*
- (ii) the introduction of better and more proportionate regulation to give businesses greater freedom and flexibility to meet their customers' expectations;*
- (iii) greater choice for consumers, including tourists, about where, when and how, they spend their leisure time;*
- (iv) the encouragement of more family friendly premises where younger children can be free to go with the family;*
- (v) the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns; and*
- (vi) the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring.*

9.1

Licensed premises may have significant potential to impact adversely on communities through public nuisances that arise from their operation. The Council interprets 'public nuisance' in its widest sense and takes it to include such things as noise, light, odour, litter and anti-social behaviour, where these matters impact on those living, working or otherwise engaged in activities in the vicinity of a particular premises. Ordinarily, the Council's Environmental Protection Team, in their role as a responsible authority, would take the lead in respect of nuisance issues.

12.1

The Council recognises that each application must be considered on its own merits and any conditions attached to licences and certificates must be tailored to the individual style and characteristics of the premises and activities concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises. A standardised approach to imposing conditions must be avoided and will only be lawful where they are deemed necessary to promote the Licensing Objectives in response to relevant representations.

12.2

Conditions will only be imposed when they are necessary for the promotion of the Licensing Objectives and will focus upon matters within the control of the individual licensee such as the premises, places or events being used for licensable activities. Conditions are likely to be focused towards the direct impact of those activities on persons living, working or otherwise engaged in activities in the vicinity.

7. RELEVANT EXTRACTS OF STATUTORY GUIDANCE

- 7.1 The Guidance issued by the Home Office under section 182 of the Licensing Act 2003 (October 2010) is currently under review due to amendments to Act introduced by the Police Reform and Social Responsibility Act 2011.

- 7.2 The current anticipated date for the publication of the revised Guidance is 25th April 2012, the date on which the majority of the amendments to the Licensing Act 2003 take effect.
- 7.3 Once the revised Guidance has been published, the Senior Licensing and Enforcement Officer will issue an addendum to this report to incorporate the paragraphs of the new Guidance that may be relevant to this application.
- 7.4 The addendum to the report will be issued to all parties prior to the hearing.

8. LICENSING OFFICER COMMENTS

- 8.1 The comments within this section of the report are provided by the Senior Licensing and Enforcement Officer to assist the Sub-Committee with the interpretation of the Act, the Guidance and existing case law. It is for the Sub-Committee to determine what weight they attach to this advice.
- 8.2 As paragraph 2.33 of the Guidance confirms, public nuisance under the Licensing Act 2003 has a wide interpretation and it is for the Sub-Committee to determine, based on the evidence, whether they consider these issues to be a public nuisance.
- 8.3 The Guidance states at paragraph 2.38 that conditions relating to public nuisance beyond the vicinity of the premises are not appropriate and the Council's Statement of Licensing Policy supports that view. Conditions that it would be either impracticable or impossible for the licence holder to control would clearly be inappropriate.
- 8.4 That said, if behaviour beyond the premises can be clearly linked to a premises and it is causing a public nuisance, it is wrong to say that the Licensing Act 2003 cannot address this. Whilst conditions may well be inappropriate, if the evidence deems it necessary, times and/or activities under the licence could be restricted or, indeed, the application could be refused.
- 8.5 The recent magistrates court case of *Kouttis v London Borough of Enfield*, 9th September 2011 considered this issue.
- 8.6 In a summary of the case provided by the Institute of Licensing it is reported that District Judge Daber considered an appeal against a decision of the local authority to restrict the hours of musical entertainment of a public house to mitigate the noise from patrons as they left the premises in response to representations from local residents. The appellant relied on the sections of the Guidance that state that "beyond the vicinity of the premises, these are matters for personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right" (para 2.38). It was also suggested that, given that certain residents were not disturbed, this did not amount to public nuisance within the meaning of para 2.33 of the Guidance as approved by Burton J in the Hope and Glory case.
- 8.7 The District Judge held that there was ample evidence of public nuisance, and that section 4 of the Act gave the licensing authority a positive duty to deal with it proportionately. In this case, no less interventionist way of dealing with the nuisance had been suggested. He held that not only was the authority not wrong, but that it was in fact right to reduce the hours as it had. The appeal was therefore dismissed.

8.8 As this was a decision of the Magistrates Court it would not be binding on other courts, however, it could be considered as persuasive.

9. CONTACT OFFICERS

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