

Eastbourne Borough Council

Decision of Licensing Sub Committee Hearing 1 November 2022

Application for a premises licence at Tesco Express at 83-85 Terminus Road, Eastbourne, BN21 3NJ from Tesco Stores Limited.

The hearing concerned a premises licence application, at Tesco Express at 83-85 Terminus Road, Eastbourne, BN21 3NJ, from Tesco Stores Limited.

The application was for the sale by retail of alcohol off the premises every day between 06:00hrs and 00:00hrs (midnight) and the provision of late-night refreshment every day between 23:00hrs and 00.00hrs (indoors only).

In discharging its functions, the Sub Committee considered the promotion of the relevant licensing objectives, the Council's own Licensing Policy, the Home Office Guidance ("the Guidance"), and the rules of natural justice.

It also took into account the information contained within the Specialist Advisor's report, presented by Jade Marshall. She referred to the additional information, received after the Report had been published, both supplied by the Applicant (offered conditions) and the additional information supplied by the Police (community impact statement). Both additional documents had been provided to all parties before the start of the hearing.

The Sub Committee considered the application and the oral representations made at the hearing by the Applicant's representative, Jeremy Bark, who was accompanied by Hardish Purewal (UK Licensing Manager) and Mark Favell (prospective Store Manager).

Jeremy Bark explained that immediately prior to the hearing he and the Police had had a constructive discussion and agreed certain conditions. Those were that the licensable hours for the retail sale of alcohol would be 06:00hrs until 23:00hrs. In addition, the Applicant withdrew the application for a late-night refreshment licence, relating to the coffee machine, as it intended to close the premises at 23:00hrs.

He noted that the Police had also agreed the conditions offered, as per the email to the Council on 31 October 2022, with the addition under the heading CCTV of "h) any breakdown or system failure will be notified to the Police within 48 hours, but with the intent that such notification should be done as soon as reasonably practicable".

Jeremy Bark pointed out that the Applicant had nationally 2,000 stores and that only between 4% to 11% of those products were alcohol and that was mainly wine. He added that there were no promotions of alcohol in Tesco Express stores unless part of a meal deal and that 95% of sales of alcohol were linked to other goods.

He explained that that Applicant had a Good Neighbour Policy to ensure that a minimal adverse impact on others. He pointed out that in the Council's Licensing Policy, on

page 3, that licensable hours were generally the same as opening hours which he stated was in line with the Guidance.

He commented on the Police statistics provided in its representation and questioned whether they demonstrated an increase in violence etc at the times suggested. He pointed to the removal by the Council from its Licensing Policy of the Cumulative Impact Zone which he suggested was because there had been no evidence of the need for the same.

He stated that the Applicant had a "Think 25" policy and that the Applicant had been one of the first to introduce a "Think 21" policy, so it had always been ahead of the curve. He outlined the comprehensive training given to staff ("Safe and Legal") and stated that the Applicant had been given an award for its age restriction training.

He pointed to the numerous and comprehensive policies that the Applicant had to deal with any issues raised by those making representations.

He confirmed that spirits and champagne would only be held behind the counter and a detailed plan was provided to the Members showing the same. He stated that was standard in the Applicant's stores, with minor exceptions, for example some Father's Day gifts which may contain spirit miniatures.

He also outlined the steps taken regarding the recycling of waste and deliveries.

In relation to security and the provision of SIA staff he informed the Members that he had been agreed with the Police a condition that on Thursday, Friday and Saturday nights from 20.00hrs until 23.00hrs that there would be one SIA staff present at the premises. He was content to offer that as a condition on the licence but pointed out that the use of SIA staff would be reviewed between 4 months to 6 months after premises were opened and that if the Applicant considered there to be no need to have the SIA staff an application may be made to vary the licence. He stated that should there be a security problem at the premises at other times then SIA staff, off the premises, were on call, and would be alerted. He added that there would be a constant risk assessment and that if the Applicant considered that more SIA staff were required those would be provided. He stated that the Applicant took security at its stores seriously and that at all times there would be at least two staff on duty. He explained that if SIA staff were not present then two members of staff would have bodycams. In answer to a question, he stated that as well as planned risk assessments every 8 weeks a risk assessment could be triggered by other events such as incidents within the premises, any concerns expressed by statutory agencies and on an ad hoc basis such as special events.

He stated that the Applicant would not tolerate any anti-social behaviour and anyone acting in an anti-social manner would be asked to stop and leave and if they did not do so then the Police would be called. He pointed out that at the Applicant's other stores the Applicant regularly banned troublemakers and the same practice would occur at these premises. He reiterated that the Applicant would not sell alcohol to known "problem people" and would work closely with the relevant statutory agencies. He explained that some other Tesco stores are in locations where street drinking occurred or are near to drug dependency units and that such issues were well managed at those locations. He stated that before the Applicant considered new

premises that such issues were carefully considered as it would not be in its interests to do otherwise.

Mark Favell was introduced as the prospective store manager, at least for the first 12 months of the premises opening, and it was explained that he had local knowledge and was very experienced in the running of such premises. In answer to a question, he explained that he was currently running a similar store in the locality and that he did not expect these premises to be much different.

In his closing remarks, Jeremy Bark stated that the Applicant gave great weight to the concerns of the Police. He did not consider that the application, as being asked for at the hearing, was inconsistent with the Council's Licensing Policy. Further he stated that the Applicant was experienced, and this would be a well-run premises.

Due regard by the Licensing Sub Committee was given to the written representations of Sussex Police. Those related to the prevention of crime and disorder and public nuisance. It was stated that the premises are located in a high harm hotspot for public place violent crime and significant anti-social behaviour. The written representations included the proposal that the premises should close at 22:00hrs rather than 00.00hrs, and that there be SIA staff present at the premises from 20.00hrs on a Friday, Saturday and Bank Holidays.

At the hearing, PC Daren Spalding and Phil Joseph for the Police were in attendance and confirmed that conditions had been agreed with the Applicant prior to the start of the hearing.

Nonetheless at the hearing the Police reiterated their concerns and referred to the supplementary community impact statement provided to the Council on 31 October 2022 which, amongst other things, further outlined the crime and anti-social behaviour in the area around the premises.

In his closing comments, Daren Spalding stated that the Police were content and accepted that the Applicant was a well-established company and that he was reassured because the premises would be managed by Mark Favell who was experienced.

Due regard was also given to the written representation made by a local resident (Adam Godden) at Appendix 4 of the Report who stated that the area around the premises was a crime hotspot and a location where the street community gathered and that the presence of these premises would mean they would linger in the area. He suggested conditions be imposed to be SIA door staff during the opening hours, to be an active member of local shopwatch scheme and high percentage alcohol to be behind the counter at all times.

At the hearing he stated that he wanted to raise his concerns about the premises, although he was aware of the agreed conditions with the Police. In answer to a question as to whether once the premises, which are currently empty, were occupied that would alleviate the issue of street drinkers and others congregating in the area he stated that he did not consider it be would remove that issue ,because it would still be between two premises which dispensed drugs (chemists). The Members noted that

Jeremy Bark commented, from his knowledge, that those chemists were not open later in the evening.

There was a further written representation, from an individual who was moving to Eastbourne, contained in Appendix 5, concerning the anti-social behaviour in the town centre and objecting to alcohol being available for sale from very early in the morning until late at night.

In its deliberations the Sub Committee considered which decision would be appropriate and proportionate from the options outlined in para. 8.1 of the Report.

Decision

The Sub Committee resolved to grant the premises licence as was applied for with the addition of the conditions offered in additional document supplied to the Council on 31 October 2022 and agreed with Police prior to the hearing.

Reasons for decision

The Sub Committee was content with the representations of the Applicant that the premises would be well managed in light of their experience as a national company running such stores with extensive policies and well-established practices. The Members were content with the offered and agreed conditions and believed that the grant of the licence would not undermine the licensing objectives. The Members welcomed that the Applicant and the Police had been able to agree the contested conditions before the hearing. The Sub Committee also noted the concerns of the other representators but considered that the agreed conditions and the information provided by the Applicant at the hearing should address those concerns.

The Licensing Act provides a right of appeal to the Magistrates' Court in respect of an application for a premises licence. An appeal must be commenced by notice of appeal being given by the appellant to the Magistrates' Court within a period of 21 days beginning on the date the appellant is notified in writing of the decision of the Licensing Sub Committee.

The decision will be provided in writing to all parties within five working days of the decision being made.