

Licensing Act Sub-Committee – Record of Hearing held on Monday, 13 May 2013 at 6.00 pm

Members: Councillor Ungar (Chairman) Councillor Councillors Cooke and Murray

1 Declarations of Disclosable Pecuniary Interests (DPIs) by members as required under Section 31 of the Localism Act and of other interests under the Code of Conduct. (Please see note at end of agenda).

None were received.

2 New Premises Licence – Tesco, 68 Grove Road.

The Chairman introduced members and officers present and detailed the procedure to be followed at the meeting.

The Licensing Manager outlined the report regarding the application for a new premises licence for Tesco, 68 Grove Road Eastbourne.

The premises were located in the Cumulative Impact Zone defined as where a significant number of licensed premises are concentrated in an area. When an area becomes saturated it creates exceptional problems that undermine the promotion of one or more of the licensing objectives. When valid representations are received in respect of premises located within the area identified as being subject to the Council's Cumulative Impact Policy, a rebuttable presumption is created that the application is refused.

Originally Sussex Police had made a written representation objecting to the application on the grounds of the prevention of crime and disorder and prevention of public nuisance licensing objectives. Correspondence then occurred between Sussex Police and the applicant where revised changes were proposed to both the opening hours and permitted hours for the sale of alcohol, in addition to a list of conditions, detailed in the report that would promote the four licensing objectives. Following the acceptance of the conditions and revised changes to the operating schedule, Sussex Police withdrew their representation.

Representation had also been received from four members of the public, Ms Scott, Mr Hall, Mr Booth and Mr Rasul. The Sub-Committee was advised that all four maintained their representation despite the revised conditions and operating hours.

Mr Rasul was present at the meeting and would address the Sub-Committee in objection to the application.

The Sub-Committee asked for clarification to the premises opening hours. Despite the fact that the application had applied to open at 06.00 hours, Mr Bark, representing the applicant agreed to amend the operating hours in compliance with the planning conditions attached the premises that permitted

that the premises should not be open to customers outside 07.00 hours – 23.00 hours including bank holidays.

Mr Bark then addressed the Sub-Committee in support of the application. Mr Bark made reference to the Secretary of State Guidance to the Licensing Act 2003 to address the Cumulative Impact Policy. Mr Bark highlighted paragraph 13.29 of the guidance that stated that despite a rebuttable presumption being created, the applicant could still provide evidence in their operating schedule or conditions to demonstrate that there would be no negative cumulative impact on one or more of the licensing objectives.

Mr Bark explained that each application should be judged on its own merits, in response to some of the representations made that made reference to other premises that had been refused premises licence in connection with the Council's Cumulative Impact Policy.

Mr Bark then made reference to the representation made by Sussex Police that was subsequently withdrawn as they were of the opinion that the application was likely to meet the exceptional circumstances required to rebut the presumption of refusal of a new licence in accordance with the Cumulative Impact Policy.

Mr Bark then gave an overview of the Tesco brand, specifically the Tesco Express Convenience Stores. The Sub-Committee were informed that although alcohol was a small percentage of the products sold, it was an important part of the store. The majority of alcoholic products sold at a Tesco Express would be variations of red and white wine. Products associated with young drinkers such as spirits were carefully shelved in a controlled section behind the counter.

Mr Bark continued that Tesco had the best practice with legal compliance and operated the best training and systems policies that met the licensing objectives at all times. This was evident with the Think 25 Policy, that Tesco became the first company to introduce, where any person who appeared to be under the age of 25, would not be served alcohol unless they produce a suitable form of identification. The Sub-Committee were informed that when alcohol is scanned in at the till, the correct date of birth for someone legally allowed to purchase alcohol would appear to assist that member of staff.

Other evidence of Tesco's practices were detailed including a process every quarter where mystery shoppers aged 18-19 would enter Tesco shops, attempting to purchase alcohol testing the Think 25 Policy. Mr Bark reported a 100% success rate to this practice. Tesco had also introduced a Designated Premises Supervisor checklist that was a 4 page questionnaire that would be circulated to store managers on the topic of licensing conditions etc and returned to Tesco's Head Office within two weeks.

Mr Bark then explained to the Sub-Committee that every member of staff is given induction training with a refresher occurring twice a year. Modular training would be carried out on staff, which included work in the classroom and on the premises while on the job. Checkout awards had also been introduced to staff members with 28% dealing with age restrictive products.

The Sub-Committee were also made aware that no bonuses to staff were awarded relating to the selling of products in the store.

Further evidence of Tesco's high standard included a Tesco Age Restriction Product DVD that had been recognised by the British Institute of Record Innkeeping and this would be played three times a year to staff.

Mr Bark then made reference to Tesco's Retail and Alcohol Policy that empowered staff to refuse alcohol when any concern was raised. Even if a member of the public was aggrieved with a decision to refuse the sale of alcohol, the manager of the store would always back the refusal.

Mr Bark then detailed the CCTV system at the premises that would be designed, installed and maintained in proper working order, in consultation with Sussex Police. Mr Bark then produced a larger scale copy of the store layout, appended to the report that consolidated the condition that no alcohol would be displayed for sale within 3 metres of any public entrance/exit of the premises.

Mr Bark then gave an overview of the conditions that were attached to the licence if granted. This included the premises not selling any cans/bottles of lager/beer/cider where the individual unit size is 440ml or less in packs of less than 4, no persons carrying open vessels of alcohol being admitted to the premises and when requested by the Licensing Authority or the Police, the premise licence holder would withdraw any brand of alcoholic drinks or size of bottle from sale or at the premises. The Sub-Committee were then advised that there would always be around 6-7 members of the management team present at the premises at all times.

Addressing the issue of anti-social behaviour, Mr Bark explained that Tesco did not tolerate any form of anti-social behaviour inside or outside the premises and if any individual was causing problems, they would be requested to leave. If the problems continue to persist, the Police would be called to support. A Rogues Gallery had also been set up which held CCTV images of known and suspected criminals. Mr Bark also explained that Tesco stores meet with local Police twice a week to discuss events occurring in the stores. He stressed the importance of partnership between the two to combat anti social behaviour.

Mr Bark continued to detail the conditions attached to the application including the non sale of beer/lager/cider with an ABV (alcohol by volume) of over 5.5% without prior agreement of the Police and the banning of any customer from any Tesco premises if they are identified as attempting to purchase alcohol for an individual under 18 and persons who are already prohibited from entering the store. Further details of the conditions were contained in the report.

Mr Bark then advised the Sub-Committee that other Tesco stores located in the Cumulative Impact Zone such as the store in Seaside Road have operated without any incident despite not having the conditions that had been attached to this application.

He concluded by reiterating Sussex Police's opinion that the application was likely to meet the exceptional circumstances required to rebut the presumption of refusal and referenced 9.12 of the Secretary of State Guidance

that states the police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder licensing objective. Mr Bark informed that this was a first class application that would promote the four licensing objectives and not exacerbate existing issues in the area.

The Sub-Committee raised concerns that if this application would be granted, there would be three off licensed premises in a 300 yard street line and Tesco could trigger a price war between the three. Mr Bark responded that prices for Tesco products are not set locally and are instead set at head office. Any changes made would affect all stores across the country. Mr Bark also explained that there are no discounts in the Tesco Express format and Tesco is not aiming to compete in product range with the other stores. Mr Bark stated that if other non Tesco premises are pricing their products inappropriately, their licences should be reviewed.

The Sub-Committee questioned how the premises would deal with a member of the public who would buy a 4 pack of beer/cider/lager from the premises and proceed to sit on a park bench nearby and start drinking. Mr Bark responded by making reference to the proposed condition, attached to the application that if the general public congregate outside the premises and cause anti-social behaviour, the management team would request that they leave and if the problem persists, the Police would be called to support. Mr Bark also advised that even if that individual had not purchased alcohol from Tesco, the Police would still be notified. Mr Bark continued that constant communication would occur between Tesco and the Police.

Mr Rasul then addressed the Sub-Committee, in objection to the application. He questioned how the application could be granted when a recent application for a premises licence for Savers and Kass Convenience Store, both in the Cumulative Impact Zone had been refused. It was feared that if the application was granted, it would be unreasonable to refuse others located in the Cumulative Impact Zone and therefore the Council would face an increase in licence applications. He also suggested that CCTV being implemented would not prevent or reduce the anti-social behaviour in the area.

The Sub-Committee queried whether the Tesco store in Seaside Road; opened 2 years ago went to a Sub-Committee and rebutted the Cumulative Impact Policy. Mr Bark confirmed that a Sub-Committee did occur and having been present at the meeting, the issue of Cumulative Impact was raised.

Following all the evidence presented to the Sub-Committee, Mr Bark summarised on behalf of the applicant. He reiterated that this was an excellent application and with the revised conditions, agreed with Sussex Police, the issues arising from the Cumulative Impact Policy had been addressed. He advised the Sub-Committee to place great weight on the opinion of Sussex Police and informed them that no issues had arisen from

other Tesco stores located in the Cumulative Impact Zone. He concluded by stating that each application should be judged on its own merits.

Mr Rasul summarised by recommending that the application be refused and believed that if it was granted, a new application from Savers would also have to be approved.

Before the Sub-Committee retired to consider and determine the application, the Regulatory and Litigation Lawyer advised that the Sub-Committee need to consider the Secretary of State Section 182 Guidance, notably 13.29 as outlined earlier in the meeting, and also 13.35 that stated that special policies such as the Council's Cumulative Impact Policy should never be used as a ground for revoking an existing licence or certificate and the Sub-Committee must prove why the application would undermine the licensing objectives.

The Regulatory and Litigation Lawyer concluded by reiterating that Sussex Police did originally object to the application, but discussions with the applicant to revise the operating schedule and add conditions led to the withdrawal of the representation believing that the application would not exacerbate existing issues.

The Sub-Committee then retired to consider and determine the application having regard to the representations submitted, the four licensing objectives, guidance under Section 182 of the Licensing Act 2003, the Council's Statement of Licensing Policy and Cumulative Impact Policy.

Having taken into account all the relevant considerations the Sub-Committee reconvened and announced the decision as follows.

RESOLVED: That the new premises application in respect of Tesco be granted as set out in the attached appendix.

The meeting closed at 7.51 pm

Councillor Ungar (Chairman)