

Body: Licensing Sub Committee
Date: 13th May 2013
Subject: Application For a New Premises Licence For Tesco, 68 Grove Road, Eastbourne BN21 4UH
Report Of: Jay Virgo, Senior Specialist Advisor
Ward(s) Meads Ward
Purpose To determine an application for a new premises licence under the Licensing Act 2003.
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1.0 Introduction & Background

- 1.1 An application has been received by Eastbourne Borough Council, as the Licensing Authority, from Tesco Stores Ltd in relation to premises at 68 Grove Road, Eastbourne, BN21 4UH.
- 1.2 The premises is currently closed. Previously it was utilised as office space.

2.0 The Application

- 2.1 An application for grant of a new premises licence under the Licensing Act 2003 has been sought for the following activities:

Late night refreshment

23.00- 00.00 hours Monday - Sunday

Supply of alcohol (Off the premises only)

06.00 – 00.00 hours Monday - Sunday

Open to the Public

06.00– 00.00 hours Monday - Sunday

3.0 Licensing Objectives

- 3.1 When submitting an application for a premises licence under the Licensing Act 2003, the applicant is required to describe any steps they intend to take to promote the four Licensing Objectives as defined by the Licensing Act 2003. The Operating Schedule detailing these steps can be seen in the application form. This is included at Appendix 1.
- 3.2 A layout plan of the premises is included at Appendix 2.

4.0 Consultation Process

- 4.1 The Licensing Act 2003 requires applicants to advertise both on the premises, and in a local newspaper in order to inform the public of the application. A number of "Responsible Authorities" have also been consulted as part of the

process, allowing a consultation period of 28 days for representations to be made.

- 4.2 In this instance, as a result of the consultation process, a number of representations have been received. These are detailed at Section 8 of this report.

5.0 The Decision Making Process - The Licensing Objectives

- 5.1 In their decision making, the Licensing Sub Committee must act to promote the four Licensing Objectives. All carry equal weight as part of the process. The Licensing Objectives are:

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

6.0 Eastbourne Borough Council's Statement of Licensing Policy & Section 182 Guidance Issued

- 6.1 Copies of the Council's Statement of Licensing Policy have previously been circulated to Members. A copy is also retained in the Members Room or can be downloaded from www.eastbourne.gov.uk/licensing.

- 6.2 Whilst each application will be considered on its merits, the Licensing Sub Committee will have due regard to the Eastbourne Borough Council Statement of Licensing Policy 2011 – 2014, and Section 182 Guidance issued by the Department of Culture, Media and Sport, (revised in April 2012), and must act to promote the four Licensing Objectives.

- 6.3 Eastbourne Borough Council's Statement of Licensing Policy outlines the matters that the Authority will consider when determining matters under the Licensing Act 2003. An overview appears below.

6.4 The Prevention Of Crime and Disorder

The Council's Statement of Licensing Policy states that the Operating Schedule should include steps to ensure the deterrence and prevention of crime and disorder on and in the vicinity of premises. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

6.5 Public Safety

The Statement of Licensing Policy states that the Operating Schedule should include steps to ensure the physical safety of patrons. This might include the imposition of conditions regarding capacity and mechanisms to promote responsible drinking. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

6.6 Prevention of Public Nuisance

The Statement of Licensing Policy states that within the Operating Schedule,

applicants will be required to demonstrate how they intend to prevent nuisance arising, disturbance occurring and mechanisms to protect amenities. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

6.7 Protection of children from harm

The Statement of Licensing Policy requires that operating plans must specify the measures and management controls in place to protect children from harm. Conditions can be placed to restrict access to children from accessing the premises during certain times or when certain licensable activities are taking place. The restriction of types of licensable activity, hours and imposition of conditions may be considered and applied as appropriate.

7.0 Cumulative Impact

7.1 The premises in question is located within the Cumulative Impact Zone. It is recognised that the impact of the number, type and density of licensed premises in a given area may lead to problems of noise, nuisance, crime and disorder outside of, or a distance from licensed premises.

7.2 Cumulative Impact is defined as the "potential impact upon the Licensing Objectives of a significant number of licensed premises concentrated in an area," and is a proper matter for consideration by the Licensing Authority.

7.3 The Licensing Authority may receive representations from a Responsible Authority or 'Interested Party' that the cumulative effect of licences is leading to an area becoming saturated. This creates exceptional problems of disorder and nuisance, over and above the impact from individual premises which undermines the promotion of one or more of the licensing objectives.

7.4 Where valid representations are received, the Cumulative Impact Policy creates a rebuttable presumption that the application will be refused.

It is for the applicant to address the Cumulative Impact Policy and produce evidence to demonstrate that the matter:

- (a) Will not add to the cumulative impact caused by licensed premises and challenges already experienced in the area;
- (b) Will not undermine the promotion of the Licensing Objectives.

7.5 The Cumulative Impact Policy clearly states that licence applications in the Zone should be refused, unless Members are satisfied that the applicant has provided evidence to show that premises will not exacerbate existing issues in the locality, or undermine the promotion of the Licensing Objectives.

7.6 The full Cumulative Impact Policy can be found within the Council's Statement of Licensing Policy 2011 – 2014. Copies are available at www.eastbourne.gov.uk/licensing, in the Members Room and will be provided at the hearing.

8.0 **Representations**

- 8.1 A full copy of all representations is included at Appendix 3, however a summary appears below.

<p>Interested Parties</p> <p>There have been 4 representations from members of the public:</p> <p>Ms Scott Mr Hall Mr Booth Hayder Rasul</p> <p>The representations centre on the prevention of crime and disorder and the prevention of public nuisance (noise) Licensing Objectives.</p> <p>Concerns centre on the potential for noise, nuisance and alcohol fuelled disturbance in the area, especially from street drinkers.</p>
<p>Representations from Responsible Authorities</p> <p>There has been 1 representation from a responsible authority:</p> <ul style="list-style-type: none">➤ Sussex Police – Representation attached.➤ Eastbourne Borough Council Health and Environment Team - No representations.➤ Eastbourne Borough Council Health and Safety Department – No representations.➤ Eastbourne Borough Council Planning Department– No representations.➤ East Sussex Fire and Rescue Service – No representation➤ Area Child Protection Team– No representations➤ Trading Standards (East Sussex County Council) – No representations.➤ Primary Care Trust- No representations

- 8.2 The Sub Committee will need to have regard to any history or likelihood of noise, nuisance, crime and disorder at the site, or in the vicinity of the site. In addition, matters impacting upon public safety and strategies to protect children from harm will also need to be considered.
- 8.3 The Sub Committee may also consider any other matters that may negatively impact upon the Licensing Objectives and exercise their powers to impose conditions, or take the appropriate action as they see fit, in order to promote the Licensing Objectives.
- 8.4 In determining what, if any, conditions should be attached to a licence, these should only be imposed where it is considered necessary, proportionate and reasonable on a case by case basis.

8.5 The applicant, "interested parties" and/or Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives.

9.0 Mediation

9.1 The applicant sent an email with suggested revised changes to opening hours and the permitted hours for the sale of alcohol to Sussex Police and the Licensing Authority on the 17th April 2013. This also included a further list of conditions to be attached, subject to a premises licence being granted. The applicant sent a further email with revised sale of alcohol hours on the 24th April 2013. Copies of these emails are included at Appendix 4.

9.2 Sussex Police responded as per the correspondence on the 25th April 2013, subsequently withdrawing their representation. A copy of the email is included at Appendix 5.

9.3 The Police have subsequently agreed to withdraw their representation in accordance with the following amended conditions and licensable activities:

Supply of alcohol (Off the premises only)

09.00 – 22.00 hours Monday - Sunday

Open to the Public

06.00– 23.00 hours Monday - Sunday

- All spirits with an Alcohol by Volume (ABV) of over 12% will not be available for self service and will be displayed for sale behind the checkout area only and must be covered outside of the licensable hours.
- No alcohol will be displayed for sale within 3 metres of any public entrance/exit of the premises.
- A CCTV system shall be designed, installed and maintained in proper working order, to the satisfaction of, and in consultation with the Police. Such a system shall:

Be operated by properly trained staff;

Be in operation at all times that the premises are being used for a licensable activity;

Ensure coverage of all public entrances and exits to the licensed premises;

Ensure coverage of such other areas as may be required by the Licensing Authority and Police;

Provide continuous recording facilities for each camera to a good standard of clarity. Such recordings shall be retained (on tape or

otherwise) for a period of 28 days, and shall be supplied to the Licensing Authority or Police on request.

- No persons carrying open vessels of alcohol shall be admitted to the premises at any time;
- If the general public congregating outside the premises are causing anti-social behaviour, the management shall request that they leave, and if the problem persists the Police should be called to support;
- A person will have responsibility for the premises whilst the premises are open. Management will be trained to support the running of the premises including looking after customers and staff. The store will adhere to all rules and regulations relating to public safety;
- The premises will not stock any beer/lager/cider with an ABV of over 5.5%, without prior written agreement of the Police;
- When requested by either the Licensing Authority or Police the premises licence holder shall withdraw any brand of alcoholic drinks or size of bottle from sale at or from the premises;
- The Designated Premises Supervisor or other responsible person appointed by the Designated Premises Supervisor shall take part in Police led initiatives, as well as regularly attend any meetings organised by the Police in relation to those initiatives;
- The premises will not sell any cans/bottles of lager/ beer/ cider where the individual unit size is 440ml or less in packs of less than 4;
- Any customer will be banned from the premises if they are identified as attempting to purchase alcohol on behalf of persons under 18 and persons who are already prohibited from entering the store;
- A Challenge 25 scheme shall operate at the premises. All staff will be trained and refreshed on Challenge 25 policy. Training will be recorded and made available for inspection on the request of enforcement authorities. Any person who appears to be under the age of 25 shall not be served alcohol unless they produce an acceptable form of identification (Passport or PASS accredited card). Challenge 25 notices will be displayed in prominent positions throughout the premises;
- When alcohol is processed through the store tills, a till prompt will appear reminding the cashier of their responsibilities that they must sell alcohol legally. The cashier will have to make a positive action to continue the sale of alcohol.

9.4 The amended conditions in 8.3 supplement/replace the suggested conditions included in the operating schedule submitted in Appendix 1 with the application.

9.5 A copy of the revised conditions and hours were sent to the interested parties who had made representations. A copy of responses from Mr Craig Booth and Hayder Rasul maintaining their representations are included at Appendix 6.

10.0 Options open to the Sub Committee

10.1 The Sub Committee must have regard to the following:

- Eastbourne's Statement of Licensing Policy 2011-2014;
- Statutory guidance as amended in April 2012, under Section 182 of the Licensing Act 2003;
- Representations from the proposed Premises Licence Holder and/or the Designated Premises Supervisor;
- Representations from any Responsible Authority;
- Representations from "interested parties";
- Representations from Ward Councillors.

10.2 The Licensing Sub Committee must take the steps it considers necessary for the promotion of the Licensing Objectives and may:

- Grant the application in full as requested;
- Grant the application but modify it:
 - By altering hours or activities;
 - Adding conditions as necessary, or
 - Omit parts as considered necessary for the promotion of the Licensing Objectives.
- Reject the whole or part of the application.

11.0 Legal Considerations

11.1 The framework for the issue, variation and/or modification to applications is made under the Licensing Act 2003. The Department for Culture, Media and Sport has issued Guidance under Section 182 of the Act, amended in April 2012. This Guidance is provided in order to assist the Council in carrying out functions under the Act.

11.2 Furthermore, the Licensing Sub Committee must have regard to Eastbourne Borough Council's Statement of Licensing Policy 2011-2014.

12.0 Human Rights

12.1 The provisions of the Human Rights Act 1998, must be borne in mind by the Committee when taking licensing decisions under the Licensing Act 2003. Particular regard should be had to Article 1 of the First Protocol, which relates to the protection of property and the peaceful enjoyment of possessions and property, and Article 8 - which relates to the right to respect for private and family life, home and correspondence - should also be borne in mind. While the Human Rights Act makes it unlawful for a local authority to act or to fail to act in a way that is incompatible with a Convention right, Article 1 of the First Protocol and Article 8 are both qualified rights which means that interference - to a justifiable extent - may be permitted as long as what is

done:

- Has a basis in law;
- Is intended to pursue a legitimate purpose
- Is necessary and proportionate; and
- Is not discriminatory.

Background Material

- LACORS Guidance – Committee Hearings 2006
- Section 182 Statutory Guidance to the Licensing Act 2003 (April 2012)
- Hearing and Regulations, Licensing Act 2003
- Eastbourne Borough Council Licensing Statement 2011-2014
- Human Rights Act 1998