

**Report to:** Licensing Sub-Committee

**Date:** 1<sup>st</sup> November 2022

**Title:** Application for a new Premises Licence. Tesco Express, 83-85 Terminus Road, Eastbourne BN21 3NJ

**Report of:** Director of Service Delivery

**Ward(s):** Devonshire Ward

**Purpose of report:** To consider representations made against the new Premises Licence application under the Licensing Act 2003 and make a decision on the application.

**Officer recommendation(s):** To consider representations made against the new Premises Licence application under the Licensing Act 2003 and make a decision on the application.

**Reasons for recommendations:** Relevant representations made within consultation period

**Contact Officer(s):** Name: Jade Marshall  
Post title: Specialist Advisor - Licensing  
E-mail: jade.marshall@lewes-eastbourne.gov.uk  
Telephone number: 07984 552275

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## **1 Introduction**

- 1.1 Eastbourne Borough Council received an application for a new Premises Licence under the Licensing Act 2003 for Tesco Express, 83-85 Terminus Road, Eastbourne, BN21 3NJ from Tesco Stores Limited. The application is included at **Appendix 1**.
- 1.2 Alongside the application a plan of the premises was submitted, and this can be found at **Appendix 2**.
- 1.3 83-85 Terminus Road is a commercial premises on the main street in Eastbourne High Street. Previously occupied by the clothing shop Monsoon.

## **2 The Application**

- 2.1 An application for the grant of a new premises licence under the Licensing Act 2003 for the following licensable activities:
- 2.2 **Sale by Retail of Alcohol (Off the premises only)**  
Every Day 06:00hrs until 00:00hrs.

### 2.3 **Provision of Late Night Refreshment (Indoors only)**

Every Day 23:00hrs until 00:00hrs.

### 2.4 **Opening Hours**

Every Day 06:00hrs until 00:00hrs.

### 2.5 **General Description**

Tesco is a large national operator with companywide policies and procedures. This premises is planned to be a Tesco Express of which there are currently many in Eastbourne.

## 3 **Licensing Objectives**

3.1 When applying for a new 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**.

## 4 **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. The application details are also advertised on the council's website. Several "Responsible Authorities" have also been consulted as part of the process. There was a consultation period of 28 days, from the 8<sup>th</sup> September 2022 until midnight on the 5<sup>th</sup> October 2022, for representations to be made. The applicant conformed with all the requirements as laid out within The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005.

4.2 During the consultation period one representation was made by a Responsible Authority, Sussex Police. This can be found at **Appendix 3**. Please note although the Police's Representation Letter states the 5<sup>th</sup> September, I have confirmed with them that this was indeed a typo and was instead meant to read the 5<sup>th</sup> October.

4.3 Two more representations were received from members of the public. These can be found at **Appendix 4 and 5**.

4.4 Members are asked to note that not all the information provided within these representations is valid against the four Licensing Objectives within the Licensing Act 2003.

## 5 **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.

5.2 A representation is a 'relevant representation' if it is about the likely effect of the grant of the licence on the promotion of the licensing objectives. The objector must establish that such a consequence is a likely effect of a grant (i.e., more probable than not).

## 6 **Eastbourne Borough Council's Statement of Licensing Policy & Section 182 Guidance**

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.

6.2 Whilst each application will be considered on its merits, the Licensing Sub-Committee will act to promote the four licensing objectives and have due regard to:

- Eastbourne Borough Council's Statement of Licensing Policy 2019 - 2024.
- Section 182 Guidance issued by the Home Office.

Eastbourne Borough Council's Statement of Licensing Policy outlines the matters that the Authority will consider when determining matters under the Licensing Act 2003.

6.3 Members are asked to consider, in particular, section 12 Prevention of Crime and Disorder and section 14 Prevention of Public Nuisance of the Statement of Licensing Policy when making a decision on this application.

## 7 **Representations**

7.1 A copy of the representations are included at **Appendix 3, 4 and 5**.

7.2 The applicant was unable to come to an agreement with Sussex Police after the Police had asked the Applicant to vary the store closing times from 23.00hrs to 22.00hrs and, to have SIA staff present at the premises door from 20.00hrs on a Friday, Saturday and Bank Holidays. It was not deemed productive to try to mediate with the other representators.

7.3 **Two** representations have been received, these representators have made comments under Prevention of Public Nuisance and Crime and Disorder.

7.4 The following summarises whether representations have been received from responsible authorities:

- **Sussex Police** - Representation received, relating to Prevention of Crime and Disorder and Public Nuisance.
- **Eastbourne Borough Council (Specialist Advisor) Environmental Health** - No representation.

- **Eastbourne Borough Council (Specialist Advisor) Health and Safety** - No representation.
- **Eastbourne Borough Council (Specialist Advisor) Planning** - No representation.
- **Eastbourne Borough Council (Specialist Advisor) Licensing** - No representation.
- **East Sussex Fire and Rescue Service** - No representation.
- **Area Child Protection Team** - No representations.
- **Trading Standards (East Sussex County Council)** - No representation.
- **Primary Care Trust** - No representation.

## **8 Options open to the Sub-Committee**

8.1 The Licensing Sub-Committee shall take the steps it considers appropriate for the promotion of the Licensing Objectives and may:

- Grant the Licence in the same terms as it was applied for.
- Grant the Licence but modify the conditions as appropriate for the promotion of the licensing objectives.
- Grant the Licence but modify the hours of licensable activity as appropriate for the promotion of the licensing objectives.
- Reject the application.

8.2 The Sub-Committee are asked to note the procedures relating to this hearing which are contained in The Licensing Act 2003 (Hearing) Regulations 2005 as amended.

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 appropriate and proportionate on a case-by-case basis. The applicant, any person or any Responsible Authorities may also suggest conditions to address concerns as a means to promote the Licensing Objectives. The Sub-Committee may not impose any condition unless its discretion has been exercised following receipt of a relevant representation and is satisfied that it is appropriate to promote one or more of the licensing objectives.

## **9 Financial appraisal**

9.1 There are no specific financial implications arising from this application as the cost of delivering the licensing function is fully covered by the Licensing fees.

9.2 A decision made by the Sub Committee may be appealed by any party to the proceedings to a Magistrates' Court. Costs associated with this matter and incurred by any party, may in certain circumstances be awarded against the

Council. The impact of these additional costs (if any) will therefore need to be met from within existing revenue budgets.

## **10 Legal implications**

- 10.1 Under section 18 Licensing Act 2003 (as amended), following receipt of an application for a premises licence if relevant representations are received, unless all parties agree that a hearing is unnecessary, the Licensing Authority must hold a hearing. At the hearing the Sub Committee shall, having regard to the representation, take such steps as it considers appropriate for the promotion of the licensing objectives. The relevant options are outlined in para. 8.1 of this Report.
- 10.2 The Licensing Sub Committee should be mindful of requirements and responsibilities placed on them by other legislation, in addition to those contained within the Licensing Act 2003. These include, but are not limited to, having due regard to the Equality Act 2020, the Human Rights Act 1998 and the Crime and Disorder Act 1998.
- 10.3 Under section 181 and Schedule 5 Licensing Act 2003 there is a right of appeal to the Magistrates' Court in respect of applications for new licences. This right of appeal is open both to the applicant and to any person who has made relevant representations. The appeal application must be made within 21 days of the written notification of the Sub Committee's decision to the appellant.
- 10.4 The Legal section considered this Report on 21 October 2022 (IKEN – 11419-EBC-MW).

## **11 Risk management implications**

- 11.1 There are no risks associated with the content of this report.

## **12 Equality analysis**

- 12.1 An Equality Analysis is not constructive in this instance.

## **13 Environmental sustainability implications**

- 13.1 There are no sustainability and/or carbon reduction implications associated with this report.

## **14 Appendices**

- 14.1
- Appendix 1 - Application for a new premises licence.
  - Appendix 2 - Plan of premises.
  - Appendix 3 - Police Representation.
  - Appendix 4 - Representation from a member of the public.

- Appendix 5 - Representation from a member of the public.

## **15 Background papers**

15.1 The background papers used in compiling this report were as follows:

- Section 182 Statutory Guidance to the Licensing Act 2003 available [here](#)
- Eastbourne Borough Council Licensing Statement 2019-2024 available [here](#)
- Human Rights Act 1998
- Equality Act 2010
- Crime and Disorder Act 1998.