

East Herts Council Report

Licensing Sub-Committee

Date of Meeting: 6 April 2021

Report by: Jonathan Geall, Head of Housing and Health

Report title: Application for a Variation of a Premises Licence for Tesco, Bishop's Park Centre, Lancaster Way, (21/0069/PLV)

Ward(s) affected: Bishop's Stortford Silverleys

Summary

- An application for a variation of a premises licence has been received and representations against the application have been made by interested parties. Where representations are received against an application and not withdrawn there must be a Licensing Sub-Committee to decide that application. The report is to inform that decision.

RECOMMENDATION FOR LICENSING SUB-COMMITTEE:

(a) The application for a new premises licence be decided.

1.0 Proposal(s)

Members of the Licensing Sub-Committee should determine the application for a variation of a premises licence through consideration of the information contained in this report and appendices combined with submissions made at the Licensing Sub-Committee hearing.

2.0 Background

2.1 Under the Licensing Act 2003 and the council's Statement of Licensing Policy (herein 'the Policy'), an application for a new or variation to a licence or certificate is granted by officers under delegated authority if no valid representations are received.

2.2 Where valid representations are received the Licensing Authority's discretion is engaged. A Licensing Sub-Committee has the delegated authority to determine applications for new and varied licences and certificates. This decision must be made whilst having regard to the licensing objectives, the Licensing Authority's own Statement of Licensing Policy and to statutory guidance issued by the Secretary of State under section 182 of the Licensing Act 2003 (herein 'the Guidance').

2.3 The licensing objectives are:

- Prevention of Crime and Disorder
- Public Safety
- Prevention of public nuisance; and
- Protection of children from harm.

3.0 Reason(s)

3.1 The application for a variation to a premises licence was submitted by Tesco Stores Limited on 8th February 2021. The application has been correctly advertised in the newspaper and consulted upon as required by legislation and regulations.

3.2 The application seeks approval to vary the current premises licence by extending the supply of alcohol to 24 hours a day and amend condition 1 of Annex 3 to read 'Barriers on the car parks to be closed from store close and checks be made on this'.

3.3 The premises currently hold a premises licence for the supply

of alcohol between 06:00 on a Monday through to Midnight on a Friday, from 06:00 until Midnight Saturday and from 10:00 until 18:00 on a Sunday.

3.4

Day	Current Licence	Proposed variation	Difference
Monday	06:00 – 00:00	00:00 – 00:00	6 hrs
Tuesday – Friday	00:00 – 00:00	00:00 – 00:00	No Change
Saturday	06:00 – 00:00	00:00 – 00:00	6 hrs
Sunday	10:00 – 18:00	00:00 – 00:00	12 hrs

3.5 A redacted copy of the application form for a new premises licence is attached as **Appendix 'A'**.

3.6 Section 16 of 18 on the application form asks the applicant to describe any additional steps they intend to take to promote the four licensing objectives as a result of the application. The applicant has proposed the following conditions to replace the current Annex 2 conditions:

- 1) There is a detailed training programme which ensures that comprehensive training is provided to employees having regard to their role and the responsibilities and such training is regularly reviewed and appropriate records kept.
- 2) The premises will have digital CCTV system that covers many areas of the shop floor, including the main area which will be used for display of alcohol.
- 3) Images will be retained for a minimum of 21 days.
- 4) A member of the Management team will ordinarily be on the premises all the time the store is open and person will have responsibility for the premises whilst the premises are open.

- 5) The premises licence holder is fully aware of its responsibilities under a range of health and safety related legislation and has appropriate policies and procedures in place to be confident of complying with the relevant obligations which arise.
- 6) The company has a 'good neighbour' policy which seeks to ensure that the premises play an active part in the local community.
- 7) The premises will operate a Think 25 policy. The checkouts will be programmed to prompt the checkout assistant when an alcohol product is scanned at the till to follow the Think 25 policy.
- 8) The CCTV system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity.
- 9) Colleagues will receive appropriate training both in relation to the underlying law and the Tesco policy, systems and procedures. This training will be documented and repeated as often as Tesco believes to be appropriate.

3.7 During the statutory public consultation period the applicant varied the application to include the following conditions after consultation with Herts Police:

- 1) A digital closed circuit television (CCTV) system to be installed internally ensuring the following:-
 - a. All entry and exit points must be covered to enable frontal identification of every person entering the premises in any light condition
 - b. The CCTV system shall continually record whilst the premises is open for licensable activities and during

- times when customers remain on the premises.
- c. All recordings shall be stored for a minimum period of 31 days with date and time stamping. Recordings shall be made available upon reasonable request of the Police or authorised officer throughout the preceding 31 day period.
 - d. A staff member from the premises who is knowledgeable with the operation of the CCTV system shall be on the premises at all times when the premises are open to the public and this staff member must be able to show and supply if requested a Police or authorised officer recent date or footage with the absolute minimum of delay when requested.
 - e. Any faults with the CCTV system must be recorded and must be rectified without delay.
- 2) The age verification policy operated at the premises shall be 'Challenge 25'. This means that whilst alcohol may be sold to persons aged 18 years or over, any person who appears under 25 years of age shall be required to provide proof of age using an acceptable form of ID. The only forms of ID that may be accepted shall be:
- a. Proof of age card bearing the PASS hologram logo
 - b. Passport; or
 - c. UK photo driving licence
 - d. any ID approved by the Home Office
- 3) Notices advertising that the premises operate a 'Challenge 25' scheme shall be displayed in a clear and prominent position at the premises including inside at the premises where the main alcohol section is on show to the general public.
- 4) The Personal Licence Holder or Designated Premises Supervisor to ensure that all management and staff who

are not personal licence holders are fully trained and briefed on licensing objectives, responsible retailing of alcohol and Challenge 25 scheme and they are adhered to. Staff are to be given refresher training at least twice per year and this is to be documented and made available to an authorised officer on request.

- 5) An incident book or electronic log shall be maintained to record any activity related to drugs or of a violent, criminal or serious anti-social nature and be available for inspection at all times (when the premises is open) by an authorised officer of relevant responsible authority, it should record the following details:-
 - a. Time and date and nature of the incident,
 - b. People involved
 - c. Action taken
 - d. Details of the person responsible for the management of the premises at the time of the incident.
 - e. Refusals for the sale of alcohol will be made by declining the prompt on the electronic till point when an alcoholic product is scanned. Records of any major incidents following refusals will be kept electronically and made available to authorised officers on request.
- 6) Security to be employed at the premises following a regular risk assessment. A record must be kept of their SIA registration number and the dates and times when they are on duty.
- 7) The Premise Licence Holder or Designated Premises Supervisor to take reasonable steps to ensure no open vessels of alcohol are consumed outside the premises or in the car park and to take reasonable steps to ensure groups of people are not allowed to gather/loiter outside the premises.

- 3.8 During the 28 day statutory public consultation period four representations were received from Interested Parties, including two local ward councillors and two residents. These representations are attached as **Appendix 'B'**.

The representations from the local Councillors engage the prevention of public nuisance and public safety licensing objectives with the representations from the residents engaging the prevention of public nuisance and prevention of crime and disorder licensing objectives.

- 3.9 There have been no representations from any responsible authority.

A copy of the current premises licence and licence plan are attached as **Appendix 'C'**.

- 3.10 A plan of the area in which the premises is located is attached as **Appendix 'D'**. This can be used to illustrate the location of the premises in relation to residents and other businesses.

Policy and Guidance

- 3.17 Section 4 of the East Herts Statement of Licensing Policy (herein 'the Policy') details definitions of premises and location and operation of premises (differentiating between Town Centre locations and other areas). Under this section of the Policy the operation under which the application best fits would be defined as 'off licence'.
- 3.18 The proposed premise is not in a Town Centre location so it is classed as being in 'other areas'.
- 3.19 The table at 4.3 of the Policy details this authority's approach to hours for licensed premises when it has received relevant representations to an application. Notwithstanding that each

application is considered on its own merits the following hours would normally be granted to a 'off licence' in this type of location when valid and relevant representations have been received:

Will generally be allowed alcohol sales in accordance with the normal opening hours of the shop

- 3.20 Section 7.0 of the Policy contains information on how the Licensing Authority considers applications under the prevention of crime and disorder licensing objective. Paragraph 7.2 states:

'The Licensing Authority will expect the applicant to demonstrate how they will prevent disorderly conduct, prevent sale of alcohol to a person who is drunk, and prevent the obtaining of alcohol for a person who is drunk on the licensed premises, and how the licence holder will exercise these duties so as to prevent or reduce the risk of anti-social behaviour by customers occurring elsewhere after they have left the premises.'

- 3.21 Section 8.0 of the Policy contains information on how the Licensing Authority considers applications under the Public Safety licensing objective. Paragraph 8.2 states 'Conditions to promote public safety will be those that are appropriate, in particular circumstances of any individual premises or club premises, and will not duplicate other requirements of the law. Equally, the attachment of conditions to the premises licence or certificate will not in any way relieve employers of the statutory duty to comply with the requirements of other legislation including the Health and Safety at Work Act 1974, Associated Regulations and especially the requirements under the management of Health and Safety at Work Regulations 1999 and Regulatory Reform (Fire Safety) Order 2005, to undertake risk assessments. Employers should assess the risks, including risks from fire and take measures necessary to avoid and control these risks. Licence conditions enforcing

those requirements will therefore not be attached.'

3.22 Section 9 of the Policy relates to the prevention of public nuisance. Specifically section 9.3 of the Policy states:

'The Licensing Authority will expect applicants to demonstrate they have considered:

- *the proximity of residential accommodation;*
- *the type of use proposed, and the likely numbers of customers;*
- *proposed hours of operation and the frequency of activity;*
- *the steps taken or proposed to be taken by the applicant to prevent noise and vibration escaping from the premises, including music, noise from ventilation equipment, and human voices. This may include the installation of soundproofing, air conditioning, acoustic lobbies and sound limitation devices;*
- *the steps taken or proposed to be taken by the applicant to prevent disturbance by customers arriving at or leaving the premises. This will usually be of greater importance between 10 p.m. and 7 a.m. than at other times of the day;*
- *the steps taken or proposed to be taken by the applicant to prevent queuing (either by pedestrian or vehicular traffic). If some queuing is inevitable then queues should be diverted away from neighbouring premises or be otherwise managed to prevent disturbance or obstruction;*
- *the steps taken or proposed to be taken by the applicant to help ensure patrons and staff leave the premises quietly;*
- *the arrangements made or proposed for parking by patrons, and the effect of parking by patrons on local residents;*
- *the provision for public transport in the locality (including taxis and private hire vehicles) for patrons;*
- *the level of likely disturbance from associated vehicle movements;*
- *the use of smoking shelters, gardens and other open-air areas;*

- *the location of delivery and collection areas and delivery/collection times;*
- *the appropriate placing of external lighting, including security lighting;*
- *refuse storage and litter (including fly posters and illegal placards);*
- *the history of nuisance complaints against the premises, particularly where statutory notices have been served on the present licensees;*
- *the applicant's past success in controlling anti-social behaviour and preventing nuisance;*
- *odour nuisance, e.g. cooking smells;*
- *any other relevant activity likely to give rise to nuisance;*
- *any representations made by the Police, or other relevant agency or representative;*

This list is not exhaustive and the Licensing Authority remains aware of its obligation to consider each case on its merits.'

3.20 Paragraph 9.37 and 9.38 of the Guidance issued under section 182 of the Licensing Act 2003 states:

As a matter of practice, licensing authorities should seek to focus the hearing on the steps considered appropriate to promote the particular licensing objective or objectives that have given rise to the specific representation and avoid straying into undisputed areas. A responsible authority or other person may choose to rely on their written representation. They may not add further representations to those disclosed to the applicant prior to the hearing, but they may expand on their existing representation and should be allowed sufficient time to do so, within reasonable and practicable limits.

3.21 With paragraph 9.38 of the Guidance stating:

In determining the application with a view to promoting the licensing objectives in the overall interests of the local community,

the Licensing Authority must give appropriate weight to:

- *the steps that are appropriate to promote the licensing objectives;*
- *the representations (including supporting information) presented by all the parties;*
- *this Guidance;*
- *its own statement of licensing policy.*

3.22 Paragraphs 9.42-9.44 of the Guidance deal with how to determine actions that are appropriate for the promotion of the licensing objectives.

3.23 If Members are minded to impose conditions to mitigate concerns regarding the undermining of the licensing objectives then Chapter 10 of the Guidance deals with conditions attached to premises licences. Paragraphs 10.8-10.10, 10.13-10.15 would be particularly relevant.

Officer observations

3.24 Paragraph 10.15 of the Guidance is clear in that shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

3.25 The application requests longer hours for the sale of alcohol than opening hours so Members may wish to seek clarity from the applicant regarding the reasons for this.

3.26 The Interested Parties have suggested that the application would undermine the prevention of public nuisance and public safety licensing objectives. Members should consider whether the variation application for the extended hours requested would undermine the licensing objectives. Members can ask questions of both the applicant and the interested parties

before making their determination.

- 3.27 In relation to the prevention of crime and disorder. The Police have been consulted on this application and have not made any representation and chose to agree conditions therefore they are satisfied that the application would not undermine the licensing objectives.
- 3.28 So as to ascertain whether the proposed steps are adequate to promote the licensing objectives with the requested variation, the Sub-Committee should consider:
- the conditions that are already present on the licence, and
 - the conditions that are present on the application.
- 3.29 As stated in the Guidance, the authority's decision should be evidence based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.
- 3.30 Members should consider if they believe the applicant has provided evidence that the licence if granted would promote and not undermine the licensing objectives. This evidence should be balanced against the evidence given by those making representations that the licensing objective would be undermined.
- 3.31 If Members believe that the application would not undermine any of the licensing objectives then the application should be granted as requested.
- 3.32 Put in its simplest terms, what are the minimum measures that can be put in place to address the concerns? Refusal of the application should be the last option considered.
- 3.33 In considering additional conditions Members should decide whether these steps would in fact address their concerns if the

decision was made to grant the hours requested.

- 3.34 For conditions to be enforceable they need to be clear, unambiguous and free from subjective terms. If a condition cannot be enforced then it should not be placed on any granted licence.
- 3.35 Aside from adding conditions it is open to the Sub-Committee to limit the hours of operation under the licence but clear reasons for this step would need to be given. The hours can only be limited in relation to those applied for as part of the variation and cannot be limited beyond those on the current licence.
- 3.36 However, if simply limiting the hours beyond those requested does not mitigate Members' concerns regarding the promotion of the licensing objectives then the option to additionally impose appropriate and proportionate conditions is available.
- 3.37 When the Licensing Sub-Committee gives its decision to those in attendance it should be made clear to all parties how much weight has been attached to each submission and why and what evidence Members have relied upon when reaching their decision.

4.0 Options

- 4.1 The options open to the Licensing Sub-Committee are:
- grant the application if they feel the application would promote and not undermine the licensing objectives; or
 - grant the application as sought but at the same time modify the conditions of the licence volunteered by the applicant in the operating schedule, by altering or omitting or adding to them. This could include amending the times for the supply of alcohol or

- if Members believe that there is evidence that shows that there are no steps that can be taken to ensure that the application sought would promote the licensing objectives then the application should reject the whole or part of the application that would lead to the application undermining the licensing objectives.

4.2 When the Licensing Sub-Committee gives its decision to those in attendance it should be made clear to all parties how much weight has been attached to each submission and why and what evidence Members have relied upon when reaching their decision.

5.0 Risks

5.1 A decision on the application must be made and any decision made can be appealed at the Magistrate's Court. Therefore the Licensing Sub-Committee should ensure that when giving their decision on the application they give clear reasons on how and why they have made their decision. In doing so, the council's ability to defend its decision is strengthened and the risk of its decision being over-turned on appeal is lessened, although, of course, this risk can never be entirely removed.

6.0 Implications/Consultations

6.1 As with any application for a new premise licence, a variation of an existing premise licence or review of a premise licence there is a 28 day public consultation.

Community Safety

The report details the four licensing objectives, these objectives are detailed in paragraph 2.3, therefore Community Safety will be considered when determining the application.

Data Protection

Where the appendices have shown personal data this has been redacted.

Equalities

Consideration has made to the Equality Act 2010 and the Public Sector Equality Duty in this report and will be considered during the Licensing Sub-Committee hearing.

Environmental Sustainability

No

Financial

There will be a cost to the authority in holding the Licensing Sub-Committee hearing; this will be covered by the existing budget.

There would be a cost if the decision of the Licensing Sub-Committee is appealed to the Magistrates Court and the authority chooses to defend that appeal.

Health and Safety

No

Human Resources

No

Human Rights

As with all applications and Council functions, the Human Rights Act 1998 has been considered in this report and will be considered during the Licensing Sub-Committee hearing.

Legal

All statutory requirements have been considered in preparing this report.

Specific Wards

Yes – Bishop's Stortford - Silverleys

7.0 Background papers, appendices and other relevant material

- 7.1 Revised Guidance issued under section 182 of the Licensing Act 2003 (April 2018) -
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705327/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003_April_2018_.pdf
- 7.2 East Herts Statement of Licensing Policy 2016 –
https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Statement_of_Licensing_Policy.pdf
- 7.3 Night Time Economy (NTE) Position Statement –
https://cdn-eastherts.onwebcurl.com/s3fs-public/documents/Night_Time_Economy_NTE_Position_Statement.pdf
- 7.4 Appendix 'A' – Application for a variation of a Premise Licence.
- 7.5 Appendix 'B' – Representations against the application.
- 7.6 Appendix 'C' – Current Premises Licence and plan.
- 7.7 Appendix 'D' – Map showing location of the premises.

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