

Agenda Item 6

Licensing & Enforcement Sub Committee

20 October 2009

Application for a premises licence to be granted under the Licensing Act 2003

Summary

The report summarises an application for a premises licence to be granted.

Recommendation

That members consider the application for a premises licence to be granted under the Licensing Act 2003 - To permit the sale of alcohol for consumption off the premises at Tesco, 4-6 Rolle Street, Exmouth, Devon, EX8 1HE.

a) **Reasons for Recommendation**

To comply with statutory processes.

b) **Alternative Options**

To either grant, refuse or modify the application.

c) **Risk Considerations**

None

d) **Policy and Budgetary Considerations**

The Council's Licensing Policy is referred to in the body of the report. There is a possibility of the Council having to pay the applicant's court costs if a successful appeal is brought against the decisions made today.

e) **Date for Review of Decision**

The council's decision may be appealed to the Magistrates Court. The Licensing Act 2003 also contains review provisions.

1 Description of Application

- 1.1 An application has been received from Tesco Stores Ltd for the grant of a premises licence at 4 – 6 Rolle Street, Exmouth, Devon, EX8 1HE.
- 1.2 The premises are currently vacant having previously been the Job Centre. It is the applicant's intention to refurbish the building as retail premises with the area for public trade on the ground floor.
- 1.3 The proposed timings and licensable activities applied for are produced in table form at **Appendix A**.
- 1.4 A plan of the premises will be available at the meeting to show the layout of the establishment and the areas of licensable activity.

Mediation Meeting

- 1.5 A mediation meeting chaired by the Licensing Authority and attended by the Applicants and the Interested Party was held at Exmouth Town Hall on 7 October 2009. All matters of the application and representations were discussed but no agreed position was reached.

2 Statutory Bodies' Response

- 2.1 Devon & Cornwall Constabulary
No Representations received.
- 2.2 Devon Fire & Rescue Service
No representations have been received.
- 2.3 Area Child Protection Committee and Local Safeguarding Children Board
No representations have been received
- 2.4 Devon Trading Standards
No representations have been received
- 2.5 East Devon District Council, Environmental Health Service
No representations received.
- 2.6 East Devon District Council, Planning & Countryside Service
No representations have been received

3 Representations and Responses to Notices of Hearing

- 3.1 A representation was received from one interested party being a person involved in a business in the vicinity of the premises. Details of the representation are attached at **Appendix B**.
- 3.2 Details of the response to the statutory Notice of Hearing are attached at **Appendix C**.

4 Proposed Operating Schedule and Designated Premises Supervisor

- 4.1 The applicants have prepared an Operating Schedule setting out the steps they propose to take to promote the licensing objectives. A copy of the proposed Operating Schedule, numbered for ease of reference is attached at **Appendix D**.
- 4.2 The proposed Designated Premises Supervisor identified in this application is Greg Bartley. Mr Bartley holds a personal licence reference HARLOW/PERS/0094 issued by Harlow District Council.
- 4.3 There is however a pending application to change the Designated Premises Supervisor, should the licence be granted, to the new store manager Colin Stevens.

5 Relevant Licensing Policy Considerations

Licensing Objectives

- 5.1 Section 2.1 of the Policy states: 'The Licensing Authority has a duty under the Act to carry out its licensing functions with a view to promoting the four licensing objectives.' These objectives are the only matters to be taken into account in determining the application and any conditions attached must be necessary to achieve the licensing objectives.
- 5.2 Section 2.2 of the Policy states: A licence will only be granted where the licensing authority is satisfied that these objectives have been met.
- 5.3 Section 2.3 of the Policy lists the kind of measures the licensing authority will be expecting to see taken into account to promote the objectives.

- 5.4 Section 2.9 of the Policy states: The licensing authority will also have regard to wider considerations affecting the residential population and the amenity of any area. These include littering and fouling, noise, street crime and the capacity of the infrastructure and police resources to cope with the influx of people, particularly at night.

Conditions

- 5.5 Section 4 of the policy sets out what the Sub Committee should consider before imposing conditions on a licence.

- 5.6 The **Guidance** issued under Section 182 Licensing Act 2003 also states:

The licensing authority may not impose any conditions unless its discretion has been engaged following receipt of relevant representations and it has been satisfied at a hearing of the necessity to impose conditions. It may then only impose conditions that are necessary to promote one or more of the four licensing objectives. Such conditions must also be expressed in unequivocal and unambiguous terms to avoid legal dispute.

It is perfectly possible that in certain cases, because the test is one of necessity, where there are other legislative provisions which are relevant and must be observed by the applicant, no additional conditions at all are needed to promote the licensing objectives.

The Act requires that licensing conditions should be tailored to the size, style, characteristics and activities taking place at the premises concerned.

Licensing authorities should therefore ensure that any conditions they impose are only those which are necessary for the promotion of the licensing objectives, which means that they must not go further than what is needed for that purpose.

Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties.

- 5.7 **Cumulative Impact**

Section 5.1 of the policy states: The cumulative impact of licensed premises on the promotion of the licensing objectives is a matter which the licensing authority can take into account. This should not however, be equated with 'need' which relates more to the commercial demand for a particular type of premises. The issue of 'need' is a matter for planning consideration or for the market to decide and does not form part of this licensing policy statement.

Section 5.2 of the policy states: The licensing authority may receive representations from either a responsible authority or an interested party that the cumulative impact of new licences is leading to an area becoming saturated with premises of a particular type, making it a focal point and thereby creating exceptional problems of disorder and nuisance over and above the impact from the individual premises themselves. In such cases the issue of cumulative impact can be taken into account when considering the individual merits of any application. The onus is on any person or organisation making such representations to prove any assertion that the addition of the premises concerned would cause the cumulative impact claimed

The **Guidance** issued under Section 182 Licensing Act 2003 also states:

There can be confusion about the difference between "need" and the "cumulative impact" of premises on the licensing objectives, for example, on crime and disorder. "Need" concerns the commercial demand for another pub or restaurant or hotel. This is not a matter

for a licensing authority in discharging its licensing functions or for its statement of licensing policy. "Need" is a matter for planning committees and for the market.

It would normally not be justifiable to adopt a special policy on the basis of a concentration of shops, stores or supermarkets selling alcohol for consumption off the premises. Special policies will usually address the impact of a concentration of licensed premises selling alcohol for consumption on the premises.

Statements of licensing policy should indicate that shops, stores and supermarkets, are 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. For example, a limitation may be appropriate following police representations in the case of some shops known to be a focus of disorder and disturbance because youths gather there. Statements of licensing policy should therefore reflect this general approach.

Licensing Hours

- 5.8 Section 6.1 of the Policy states: The Licensing Authority will deal with the issue of licensing hours on the individual merits of each application. However, when issuing a licence with licensing hours beyond midnight higher standards of control will generally need to be included in operating schedules to promote the licensing objectives especially for premises which are situated near residential areas. There is no presumption within the legislation for longer opening hours and the licensing objectives are paramount in any consideration of an application.
- 5.9 Section 6.3 of the Policy states: The terminal hours will normally be approved where the applicant can show that the proposal would not adversely affect the licensing objectives unless, after hearing relevant representation the licensing authority believe it necessary, proportionate and reasonable to restrict the hours required.
- 5.10 Section 6.5 of the policy states: Shops, stores and supermarkets will generally be permitted to sell alcohol for consumption off the premises during the normal hours they intend to open for shopping purposes unless there are exceptional reasons relating to the licensing objectives, in particular the prevention of crime and disorder and public nuisance.

6. Observations

- 6.1 The application being considered is for the grant of a Premises Licence to permit :
- the supply of alcohol for consumption off the premises
- 6.2 A Representation has been received from an interested party who believes that if the licence is granted it will fail to promote one of the four licensing objectives being 'the prevention of crime and disorder'.
- 6.3 The representation received expresses an opinion that a business selling alcohol is not needed in the Rolle Street area of Exmouth as there are already an adequate number of shops and pubs to cater for the public in that area. The interested party is also concerned that in his opinion Tesco has an irresponsible attitude towards the promotion of cheap alcohol sales and will not be able to control the sale of alcohol to underage youngsters. He states that the addition of this new store selling alcohol between 6:00 am and 11:00 pm daily will contribute towards the current problem of underage drinking in the area.
- 6.4 Attached at **Appendix G** is a list of off licensed premises showing licensing hours in the locality of the proposed new Tesco store.

- 6.5 The Sub Committee will now need to consider whether to grant this application as it stands or in the light of the representations to refuse the application or grant it in a different form. To assist the Sub Committee a set of conditions have been prepared at **Appendix E** that members may wish to consider having heard from both the applicant and the interested party. The conditions are suggested to replace those offered by the applicant with conditions that reflect the applicants intentions but offer a more concise and enforceable operating schedule.
- 6.6 A location plan is attached at **Appendix F**.
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Legal Implications

1. As relevant representations have been made in respect of the application, this hearing must be held. (Relevant representations are about the likely effect of the grant of the application on the promotion of the licensing objectives, by interested parties or responsible authorities). The sub-committee must disregard any information or evidence not relevant to the licensing objectives.
2. The sub-committee must consider this application in accordance with Section 4 of the Licensing Act 2003, which requires that licensing functions must be carried out with a view to promoting the four licensing objectives. The licensing authority must also have regard to its own licensing policy and the Secretary of State's guidance, but may depart from both if it has good reason to do so. Those reasons should be stated.
3. Section 18 of the Act requires the licensing authority to grant a premises licence unless it considers additional steps are needed for the promotion of the licensing objectives having regard to any relevant representations.

The steps are:

- (a) to grant the licence subject to:-
 - (i) the conditions in the operating schedule modified to such extent as members consider necessary for the promotion of the licensing objectives, and
 - (ii) any condition which must under sections 19, 20 or 21 be included in the licence;
- (b) to exclude from the scope of the licence any of the licensable activities to which the application relates
- (c) to refuse to specify a person in the licence as the premises supervisor
- (d) to reject the application.

The conditions of the licence are modified if any are altered or omitted or any new condition is added. Different conditions may be applied to different parts of the premises, and to different licensable activities. The sub-committee must give its reasons for its decision to take any of these steps. Similarly, if any part of an application is rejected, the sub-committee must give its reasons.

4. The Act requires mandatory conditions to be imposed where supplying alcohol or exhibiting films are approved as licensed activities. It also requires a mandatory condition to be imposed where door supervisors or other individuals carrying out security activities are conditions on the licence.

(a) Section 19 - Mandatory conditions relating to the supply of alcohol

No alcohol may be supplied unless there is a designated premises supervisor who also holds a personal licence.

Every supply of alcohol under a premises licence must be made or authorised by a personal licensee

(b) Section 20 - Mandatory condition relating to exhibition of films-not relevant in this case

Children may only be admitted to films in accordance with the classification recommendations of the British Board of Film Classification, or as recommended by the licensing authority.

(c) Section 21 - Door Supervision

Where door supervisors are specified by condition, those individuals must be licensed by the SIA.

5. The sub-committee will need to consider the hours of operation proposed in relation to the licensable activities in the light of the promotion of the licensing objectives, the effectiveness of the operating schedule proposed by the applicant, the representations received, the location of the premises in relation to residential and other commercial properties including other licensed premises, the history of the management of the premises and how it is proposed to be run in the future, the evidence produced of any problems in the past, and the likely impact of any extension of hours and activities. These issues, and any other relevant ones, may be explored at the hearing.

6. Human Rights Act 1998

- 6.1 The sub-committee must also have regard to the provisions of the Human Rights Act 1998 when determining this application. The 1998 Act made the European Convention of Human Rights directly enforceable in British courts. The relevant provisions are Article 6 (right to a fair trial), Article 8 (right to respect for private and family life), Article 11 (freedom of association) and Article 1 of the First Protocol (right to peaceful enjoyment of one's possessions). These provisions are explained below. Essentially, they require the sub-committee to identify correctly the competing interests, give each appropriate weight in the circumstances of the case, and balance them against each other in order to arrive at a fair and reasonable decision.
- 6.2 Under Article 6, "everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law". The procedures established by this Council for hearings under the Licensing Act 2003 are compliant with Article 6.
- 6.3 Under Article 8, "everyone has the right to respect for his private and family life, his home and his correspondence". This right may not be interfered with except in accordance with the law and as may be "necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". In Licensing Act cases this means that the sub-committee must have regard to the effect of its decisions on local residents, and balance their interests against those of the public at large (e.g. the customers of the premises under consideration) and the people operating the business from the premises.
- 6.4 Under Article 11, "everyone has the right to freedom of peaceful assembly and to freedom of association with others" except where it is lawful to restrict that freedom in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others". In Licensing Act cases this means, for example, that the sub-committee is entitled to impose conditions to ensure that patrons of licensed premises do not unreasonably disturb others living or working nearby. Again, the sub-committee should balance the competing interests.

6.5 Article 1 of the First Protocol (that is, the first amendment to the Convention) says that every natural or legal person (meaning a human being or a company) is entitled to peaceful enjoyment of his possessions, except where the law provides for restrictions on that right in the public interest. This means, for example, that it is compliant with the Convention to impose restrictions, such as those provided in the Licensing Act 2003, upon business premises where it is in the public interest to do so. On the other hand the same applies to the owners and occupiers of neighbouring premises.

7. Appeals.

If the sub-committee imposes conditions on the licence with which the applicant disagrees, or modifies the licensable activities permitted or refuses to specify a person a designated premises supervisor, he or she may appeal within 21 days of notification of the decision to the Magistrates' Court. The applicant may also appeal if an application for a premises licence is rejected. Those making relevant representations may appeal if they believe that the licence should not have been granted, or that, when granting the licence, the licensing authority ought to have imposed different or additional conditions or excluded a licensable activity or refused to specify a person as designated premises supervisor. The magistrates' court may dismiss the appeal, or substitute its own decision, or send back the case to the licensing authority with directions as to how the case is to be dealt with. The magistrates' court may make any costs order it thinks fit.

8. Review provisions.

If extended hours/licensable activities are granted, the Licensing Act contains review provisions which enable those living or running businesses in the vicinity of the premises, bodies representing them or any of the responsible authorities to apply to this licensing authority for a review of the licence. A hearing follows which enables the sub-committee to use the normal powers at a hearing (set out above) but also to suspend the licence for a period of up to three months or to revoke it.

9 Police Closure

A senior police officer may close any premises for 24 hours (this can be extended) where so/he reasonably believes there is or is likely imminently to be disorder on, or in or in the vicinity of the premises and their closure is necessary in the interests of public safety. Closure can also be effected if public nuisance is being caused by noise coming from the premises and closure of the premises is necessary to prevent that nuisance

Financial Implications

No apparent financial implications

Appendices

- Appendix A - Requested times and activities in table form
- Appendix B - Details of representations received
- Appendix C - Details of responses to the Notice of Hearing
- Appendix D - Applicants proposed Operating Schedule
- Appendix E - Items for consideration
- Appendix F - Plan
- Appendix G - Details of similar licensed premises in the local area

Background Papers

- Licensing Application dated 24 August 2009

- The District Council's Statement of Licensing Policy

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Licensing & Enforcement Sub Committee