



Legal and Democratic Services

19 January 2010

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Dear Councillor

Licensing and Control Sub Committee - B

A meeting of the Licensing and Control Sub Committee - B will be held on **27 January 2010 at 10:00am** in the Council Chamber to consider the business set out in the following Agenda.

Yours sincerely

Executive Head of Legal and Democratic Services

LICENSING AND CONTROL SUB COMMITTEE - B

**Councillors Jacqui Marsh (Chairman), Roger Oakley and Mary Lermite plus
Councillor Michael Donin(Reserve)***

*This licensing authority will only allow licensing decisions to be taken by a minimum of three Councillors. In the event of one Councillor being unable to attend, their place will be taken by another Councillor taken from the membership of the full Licensing and Control Committee - B. In the event of this happening all parties will be informed of the change of membership at the beginning of the meeting.

AGENDA

1. **Welcome**

2. **Apologies and Reconstitution of Membership (if appropriate)**

To note any apologies for absence and resulting reconstitution of the membership of the Sub Committee, if appropriate.

3. **Declarations of Interest**

Members and Officers are invited to make any declarations of personal and/or prejudicial interest they may have in relation to items on this agenda. The declaration should refer both to the nature of the interest as well as its existence.

Members and officers may seek advice upon any relevant interest from a legal officer prior to the meeting.

4. **Application for a Variation of a Premises Licence**

Location: Tesco
New Road West Durrington Worthing BN13 3PB

Applicant: Tesco Stores Limited

Ward

Northbrook

Please note that the Procedure to be followed by the Sub Committee will be circulated at the start of the meeting.

Meeting: **Licensing and Control Committee B – Sub Committee**

Ward: Durrington

Date: 27 January 2010
Venue: Worthing Town Hall
Time 10.00hrs

Agenda Item No: 4

**Author: Executive Head of Housing, Health
and Community Safety**

APPLICATION FOR A NEW PREMISES LICENCE AT

**Tesco
New Road, West Durrington, Worthing, BN13 3PB**

1. RECOMMENDATION

- 1.1 That a Sub Committee of Licensing & Control Committee “B” consider and determine the application from
Tesco Stores Ltd.
for a new Premises Licence to sell Alcohol for consumption off the premises.

2. REASONS FOR HEARING

- 2.1 The application has been the subject of a formal representation by a Responsible Authority as defined in the Act and it therefore falls to members to determine.

3. BACKGROUND

- 3.1 Tesco Stores Ltd made an application to Worthing Borough Council on the 3 December 2009 for a new Premises Licence at its new Tesco store in New Road, Durrington.
- 3.2 A plan of the area is attached (**Appendix A**)
- 3.3 A plan of the premises is attached. (**Appendix B**) (*This will be displayed at the meeting if too large to include in the report*)

- 3.4 The application is for authorisation to sell alcohol for consumption off the premises. **(Appendix C)**
- 3.5 A copy of the relevant representation received from a responsible authority. **(Appendix D)**

4. THE APPLICATION

- 4.1 The Application is attached at **Appendix C**. However, in summary, Tesco Stores Ltd. is applying for:

Authorisation for the sale of alcohol, for consumption off the premises, 24 hours a day.

The proposed opening hours of the premises to match.

- 4.2 The new store is replacing the current store that is based on the adjacent site. The current store holds a premises licence authorising the sale of alcohol, for consumption off the premises, between:
10.00hrs – 16.00hrs on Sunday
06.00hrs – 00.00hrs Monday to Saturday
Though for three weeks prior to Christmas and 1 week post Christmas alcohol may be sold 24 hours a day should the store be open these times.
- 4.3 The applicant has completed an operating schedule as to how they intend to address the Licensing Objectives as recommended by the Secretary of State in section 5.47 of the Guidance issued under section 182 of the Licensing Act 2003.
- 4.4 The proposed designated supervisor detailed in the application was Greg Bartley but this has been amended to Jonathan Shannon who holds a personal licence issued by the London Borough of Bromley Council.

5. PROMOTION OF LICENSING OBJECTIVES

- 5.1 The Licensing Act 2003 and regulations require that the Council, as local licensing authority, carries out its functions with a view to promoting the four licensing objectives:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance;
 - the protection of children from harm.
- 5.2 In carrying out its licensing functions, the licensing authority must also have regard to Guidance issued by the Secretary of State and its own Statement of Licensing Policy. Members are advised that the following sections of the Worthing Borough Council's Policy may be particularly relevant to consideration of this matter, though of course the Policy in its entirety must be considered. Sections indicated relate to

paragraph numbers in the Policy itself:

- 5.1 *“Licensed premises, especially those offering late night/early morning entertainment, alcohol and refreshment for large numbers of people, can be a source of crime and disorder problems”.*
- 5.2 *“The Council will expect Operating Schedules to satisfactorily address these issues from the design of the premises through to the daily operation of the business, including, where appropriate, the arrangements proposed in respect of prevention of both alcohol and drug misuse”.*
- 5.5 *“In addition to the requirements for the Council to promote the licensing objectives, it also has a duty under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in the Borough. The Council will consider attaching Conditions to licences and permissions to deter and prevent crime and disorder within the vicinity if relevant representations are received. Whether or not incidents can be regarded as being in the vicinity of licensed premises is a question of fact and will depend on the particular circumstances of the case.”*
- 6.2 *“The Council recognises that longer licensing hours for the sale of alcohol may avoid large numbers of people leaving premises at the same time, which in turn could reduce the friction focused on late night fast outlets, taxi ranks, and other sources of transport that can lead to disorder and disturbance. Nevertheless, they may need to be satisfied that suitable arrangements are in place to ensure public transport is available at appropriate times and that the licensing objectives regarding the Prevention of Nuisance or of Crime & Disorder are not compromised. This aspect should, therefore, be addressed in operating schedules in the appropriate circumstances.”*
- 6.5 *“The Council will generally consider the licensing of shops, stores and supermarkets to sell alcohol for consumption off the premises at any times they are open for shopping. However, it may consider there are very good reasons for restricting those hours, for example, where police or residents representations are made in respect of isolated shops known to be the focus of disorder and disturbance.”*
- 8.1 *“Licensed premises, especially those operating late at night and in the early hours of the morning, can cause a range of nuisances impacting on people living, working or sleeping in the vicinity of the premises or wider afield.”*
- 8.6 *“The Council will consider attaching Conditions to licences and permissions relevant to public nuisance, but will seek to avoid duplication with the requirements of other regulatory regimes.”*

6. CONSULTATION

- 6.1 The application has been subject to the statutory consultation and statutory public advertisement arrangements in accordance with the provisions of the Act, in respect of which representations have been received from the following:

“Responsible Authorities ” – 1 Representation.

7. **RELEVANT REPRESENTATIONS & RECOMMENDED CONDITIONS**

7.1 Details of the representation received from the Responsible Authority are reproduced in full at **Appendix D**. It is considered to relate to the statutory licensing objectives as follows:

The Prevention of Crime and Disorder.

The Prevention of Public Nuisance.

The Protection of Children from Harm

7.2 Those making representation have been invited to attend the Sub-Committee and included in this report is the letter of representation reproduced in full.

8. **MEDIATION**

8.1 Mediation between the parties has been ongoing but agreement on the exact wording of the conditions that Tesco Stores Ltd would volunteer to the operating schedule to satisfy Sussex Police has not been reached.

9. **CONSIDERATION**

9.1 Tessa Jowell, Secretary of State for Culture, Media and Sport in her forward to the Guidance issued under section 182 of the Licensing Act 2003 said:

“The legislation provides a clear focus on the promotion of the four statutory licensing objectives which must now be addressed when licensing functions are undertaken, as noted at paragraph 8. However, the modernisation of the legislation has also been pursued to support a number of other key aims and purposes. These are of vital importance and should be principal aims for all involved in licensing work. They include:

- the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet their customers’ expectations;*
- greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
- the encouragement of more family friendly premises where younger children can be free to go with the family;*
- the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities;*
- the regeneration of areas that need the increased investment and employment opportunities that a thriving and safe night-time economy can bring; and*
- the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behavior associated with the behavior of some people visiting places of entertainment.”*

9.2 Members must take into consideration the following when determining this

application:

- The four statutory licensing objectives
- Worthing Borough Council's Statement of Licensing Policy
- Guidance issued by the Secretary of State
- The relevant representation from the Responsible Authority

9.3 These are the only matters to be addressed by the authority when considering this application. The statutory Licensing objectives are the only grounds on which representations can be made, and the only grounds on which an authority will be able to refuse an application or impose conditions in addition to statutory conditions and those proposed by the applicant in the Operating Schedule.

9.4 When considering this application for a premises licence the following options are available to the Sub-Committee :

- a. To grant the licence, as requested,
- b. To grant the licence, as requested, with additional conditions appropriate to the promotion of the specific licensing objectives on which relevant representations have been received.
- c. Reject the whole or part of the application.

Members may also:

- d. Grant the licence but exclude certain licensable activities from the licence,
- e. Refuse to specify a particular person as a premises supervisor,
- f. Approve different parts of the premises for different activities.

9.5 Members are required to give reasons for their decision.

10. **LEGAL IMPLICATIONS**

10.1 Under Section 181 and Schedule 5 of the Act, the following rights of appeal to the Magistrates' Court in respect of applications for a premises licence include:

- (1) The applicant may appeal against any decision to modify the conditions of the licence.
- (2) The applicant may appeal against a rejection in whole or part of an application.
- (3) A person who has made relevant representations may appeal against a licence being granted, or against the modification or lack of modification of any conditions.

10.2 Members are reminded that the Act allows for the local licensing authority to undertake a review following the grant of a premises licence, when requested to do so by a responsible authority, such as the police, or the fire authority, or an interested party, such as a resident living in the vicinity of the premises. The government's guidance states: "*The proceedings set out in the 2003 Act for*

reviewing premises licences represent a key protection for the community where problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. It is the existence of these procedures which should, in general, allow licensing authorities to apply a light touch bureaucracy to the grant and variation of premises licences by providing a review mechanism when concerns relating to the licensing objectives arise later in respect of individual premises.”

- 10.3 In determining this application, the principles of the Human Rights Act 1998 must be taken into consideration and the convention rights of both individuals and businesses will be given due weight. The Act acknowledges that local authorities are entitled, amongst other things, to act where this is in the “general interest”. Should it be decided to refuse to grant this application, or to attach conditions, the rights of appeal that exist through the Magistrates’ Court will ensure that the principles of the Human Rights Act are adhered to.
- 10.4 Members must consider each application on its own merits, and in accordance with the principles of natural justice, as well as the provisions of the Licensing Act 2003. All relevant factors must be taken into account, and all irrelevant factors must be disregarded.
- 10.5 All applications, before Committee, must be considered against the backdrop of anti-discriminatory legislation, such as the Race Relations Act 1976 as amended 2000, and the Sex Discrimination Act 1975, and also in accordance with the Council's stated policy on Equal Opportunities.
- 10.6 In accordance with Section 17 of the Crime and Disorder Act 1998 the Council is under a duty to exercise its functions with due regard to the likely effect on, and the need to do all it reasonably can to prevent, crime and disorder in its areas. The possible crime and disorder implications are clearly relevant factors in the consideration of all applications and this is re-emphasised by the Licensing Act 2003 itself. In giving "due regard" to these possible implications members will consider and weigh up all the information available and representations made, including those from interested parties and the responsible authorities particularly the Police.

11. OTHER IMPLICATIONS

- 11.1 Any decision taken will have regard for the local environment and, in particular, any conditions attached for the purposes of preventing public nuisance will take this principle into account. There are no significant direct race relations or equal opportunity implications that have been identified.

12. RECOMMENDATION

- 12.1 Members are requested to determine the application for a new Premises Licence made by Tesco Stores Ltd for their new Tesco store in New Road, Durrington, Worthing and give reasons for that determination.**

**Paul Spedding
Executive Head of Housing, Health and Community Safety**

Principal Author and Contact Officer:

Simon Jones
Licensing Inspector
Ext. 1407

Background Papers:

Licensing Act 2003
Guidance issued under section 182 of the Licensing Act 2003
Worthing Borough Council's Statement of Licensing Policy

Appendices:

- Appendix A - Plan of area.
- Appendix B - Plan of the building will be displayed at the meeting.
- Appendix C - The Application Form
- Appendix D - Copy of the representation received from a Responsible Authority.

Portland House
Worthing

Ref: SJ/Lic.U/LA03/NEW – Tesco New Road 0379
Date: 12 January 2010.

SUB COMMITTEE
of the
LICENSING AND CONTROL COMMITTEE 'B'

MINUTES
of the
PROCEEDINGS
held on
Wednesday 27 January 2010 at 10:00am

Sub Committee Membership: Councillors Jacqui Marsh (Chairman),
Roger Oakley and Mary Lermite

Application for a new Premises Licence at

Tesco
New Road
West Durrington
Worthing
BN13 3PB

Applicant: Tesco Stores Ltd

Present:	Simon Jones Julie Watson Rowan Sky	Licensing Inspector Solicitor Senior Democratic Services Officer
	Jeremy Bark Greg Bartley John Shannon	Applicant's Solicitor Tesco Licensing Manager Store Manager and DPS
	Mike Webb PC David Whitcombe	Sussex Police Sussex Police

1. APOLOGIES AND RECONSTITUTION OF MEMBERSHIP

None.

2. DECLARATIONS OF INTEREST

Councillor Roger Oakley declared a personal interest as a former officer of Sussex Police and a former colleague Mike Webb.

3. PROCEDURE

The proceedings were as set out on the Procedure Note circulated to all those present.

4. APPLICATION FOR A PREMISES LICENCE

The application was for a new premises licence for Tesco, New Road, West Durrington for the sale of alcohol for consumption off the premises.

5. AMENDMENTS TO THE APPLICATION

The applicant requested that the application be amended, with the addition of the following 4 conditions:

- 5.1 *"The store to comply with the National Company's written training policies, formal training programmes etc to meet all licensing objectives; in particular,*

the 'Think 25' policy which is to be brought to customers' attention at the checkout and whenever alcohol is displayed for sale."

- 5.2 *"The store will liaise with Police and enforcement authorities should the need arise."*
- 5.3 *"All staff will be trained and regularly refreshed in the corporate 'Think 25' policy. Persons looking under 25 will be required to produce recognised proof that they are over 18 before a sale of alcohol, tobacco or other controlled substance will be authorised. Tills will issue prompts to remind staff of their responsibility every time a sale of alcohol takes place. Signage informing staff and customers of the 'Think 25' policy will be displayed."*
- 5.4 *"The store must be prepared to make use of dedicated security staff at sensitive times, in consultation with Sussex Police, each such individual must be licensed by the Security Industry Authority".*

6. PROCEEDINGS

The Licensing Inspector provided a detailed outline of the application which had been made available to those present. Included in the documents was a plan of the area, a copy of the application and the representation received from Sussex Police.

Mike Webb, on behalf of Sussex Police, outlined the objections to the application in relation to the licensing objectives, highlighting that the location of the new store is within a residential area which is known to have a relatively high occurrence of anti-social behaviour and disorder issues. He asked the Sub Committee to consider those conditions proposed in the representation submitted (at Appendix D of the report). He extended proposed condition 3 to require that a qualified personal licence holder (PLH) to be present on duty or rostered to be on duty at all times the store is open for the sale of alcohol.

Jeremy Bark addressed the Sub Committee on behalf of Tesco Stores Ltd. He provided a detailed outline of the company's policies on staff training, Challenge 25 and store security. He confirmed that the applicant would agree to proposed conditions 1, 4 and 6 as put forward by Sussex Police, and wished to amend their application to reflect this.

In relation to proposed condition 2, he noted that all permanent alcohol displays would be covered by CCTV, as well as other cameras around the store and at the entrance and tills. However, his clients would not agree to supply CCTV coverage of any additional, temporary displays of alcohol.

With regard to the requirement for a PLH to be present in store at all opening times, he suggested that this proposed condition was not necessary or appropriate. He described Tesco's training and policies in relation to the sale of age restricted products and suggested these were comprehensive and extended beyond the requirements of PLHs.

Mr Bark requested that the wording "Refusals will be logged on the database and weekly reports can be produced." be deleted from proposed condition 5 as this would be restrictive and inappropriate for this large store. The police agreed. He noted that the store will operate an automated 'Challenge 25' prompt and refusals system via the electronic tills, in conjunction with the company's policies and staff training.

The Sub Committee retired to consider its decision at 11:30am

The Sub Committee returned at 12:20pm

7. RESOLUTION

7.1 It was RESOLVED that the amended application for Tesco's was: granted as applied for.

8. ADDITIONAL CONDITIONS AGREED / VOLUNTEERED BY THE APPLICANT:

8.1 None.

9 ADDITIONAL CONDITIONS TO BE IMPOSED ON THE LICENSE:

9.1 The premises will install digital CCTV cameras covering many areas of the shop including those areas where alcohol is displayed and where it is sold (the tills). The images will be stored for 28 days and made available upon enforcement request.

9.2 Ordinarily a member of the management team will be on the premises at all times the store is open for the sale of alcohol and will, be trained to manage the store including looking after the safety of the public. An individual will be made responsible for the premises whilst it is open to the public in their absence. Any duty manager on duty or rostered to be on duty shall be the holder of a personal license.

10. REASONS

10.1 We have imposed these two conditions after hearing the evidence given by the police today. We accept the evidence that this area is the second busiest area in Worthing for problems of anti-social behaviour by local youths. We agree that a 24hr license does have the potential to impact on crime and disorder, public nuisance and the protection of children from harm. Accordingly we find it entirely appropriate to impose these two conditions requested by the police.

10.2 We think it is particularly necessary that duty managers rostered to be on duty are holders of a personal license. Although the Tesco's training provided to managers is extensive, it is not a nationally recognised accreditation or subject to any external scrutiny. Nor does it impose any external obligations on the duty manager as does a personal license. Requiring this higher accreditation is a proportionate and necessary response to the police

representations made today, particularly with such a large store at this location.

11. ADDITIONAL OBSERVATIONS BY MEMBERS

None.

The proceedings finished at 12:25pm
