

CAMBRIDGE CITY COUNCIL

REPORT OF: The Licensing Manager

TO: Licensing Sub-Committee

17th August 2009

APPLICATION: Application for a new Premises licence:
Tesco Stores Ltd, 163-167 Mill Road, Cambridge

WARD: Romsey

1 INTRODUCTION

1.1 To consider and determine this application for a new premises licence for Tesco Stores Ltd, 163-167 Mill Road, taking into account the representation of the responsible authority detailed in paragraph 4, the interested parties detailed in paragraph 5 and the policy considerations detailed in paragraph 6 of the report.

1.2 Tesco Stores Ltd is seeking a new premises licence as follows:

Sale/supply of alcohol (off the premises)

Mon – Sun 06:00 to 23:00

Hours premises are open

Mon – Sun 06:00 to 23:00

1.3 A copy of the application and plan is attached at Appendix A.

1.4 The Sub-Committee's decision must be made with a view to promoting one or more of the four licensing objectives, namely:

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) the prevention of public nuisance; and
- (d) the protection of children from harm.

2 BACKGROUND

2.1 The applicant describes the premises as a retail premises selling a range of goods and services including the sale of alcohol for consumption off the premises. Sales will be made from the supermarket sales floor. Previously Wilkinson's, there is no history of grant of a premises licence under the Licensing Act 2003. The existing planning use is as A1 shops use. There are no restrictions on opening hours or restrictions on the sale of goods.

2.2 Mill Road is subject to a special policy on cumulative impact. The special policy creates a rebuttable presumption that applications within cumulative impact areas for new premises licences will normally be refused if relevant representations are received about the cumulative impact on the licensing

objectives, unless the applicant can demonstrate why the operation of the premises involved will not add to the cumulative impact already being experienced. Applicants will need to address the special policy issues in their operating schedule in order to rebut such a presumption. The special policy is set out in section 5 of the Council's Statement of Licensing Policy.

3. LICENSING OBJECTIVES ADDRESSED BY APPLICANT

- 3.1 The Operating Schedule submitted by the applicant in part P of the application addresses the four licensing objectives. The applicant has proposed a number of steps in support of the licensing objectives. Paragraphs 8.28-8.32 and Section 10 of the government guidance refer to the operating schedule and licence conditions. Proposals can be translated directly into conditions attached to the premises licence. They should be realistic and within the control of the applicant/management responsible for running the premises.

The following would be considered as appropriate conditions:

General

Written training policies and formal training programmes shall be in place with training and reviews/ refresher materials being regularly reviewed.

The Prevention of Crime & Disorder

Digital CCTV equipment with recording facilities shall be installed and operated at the premises to provide coverage for the area used for beer and wine and shall be maintained in working order. Images will be retained for 21 days and made available on enforcement request.

A member of the management team shall be on the premises all the time the store is open.

Public Safety

The store will adhere to all rules and regulations relating to public safety.

A member of the management team will be on the premises at all times the store is open and will be trained to support the running of the premises and in looking after the safety of the public and staff.

The protection of children from harm

The DPS or relevant person will actively operate a 'Think 25 policy'. This will include a voluntary agreement to only accept identity cards with the 'Pass' accreditation, passports, photo ID driving licences, any National identity card as ruled by any British Court as a bona-fide recognised form of identification, or any future identification card as approved by central government, as bona-fide recognised forms of identification.

Staff will be trained and regularly refreshed in the corporate 'Think 25' policy.

Staff will be trained to look at the customer and 'Think 25' when selling alcohol.

The store will display signage around the premises of the 'Think 25' policy.

4. REPRESENTATIONS FROM RESPONSIBLE AUTHORITIES

- 4.1 A representation has been received from the Police relating to all four licensing objectives. The police believe that the grant of a premises licence in this case would be contrary to the requirement for the licensing authority to carry out its functions with a view to promoting the four licensing objectives. The belief is based upon existing statistical analysis of evidence in incidents of criminal and anti-social behaviour, nuisance and disorder in and around the vicinity of the premises. Mill Road has been identified as an area where the cumulative impact of the grant of additional premises licences would be such that there would be an increase in such undesirable activities regardless of the manner in which the premises are operated. The police believe that the grant of such a licence would have a negative cumulative impact and result in adverse consequences for the prevention of public nuisance, the protection of public safety and the protection of children from harm. The representation has been attached in its entirety at Appendix B.

- 4.2 No representations have been received from, Cambridgeshire Fire & Rescue, the Environmental Health Managers, Planning, Child Protection and Trading Standards, the remaining Responsible Authorities.

5. REPRESENTATIONS FROM INTERESTED PARTIES

- 5.1 A total of one hundred and twenty three representations have been received from 'interested parties' defined as: persons living in the vicinity; persons involved in a business in that vicinity and bodies representing persons living or involved in such a business. The ordinary meaning of vicinity is 'near'. The representations refer to all four licensing objectives. One of the representations includes a petition containing 36 names and addresses. The representations are attached in their entirety at Appendix C. Not all matters raised within the representations may be relevant matters for consideration under the Licensing Act 2003.

6 POLICY CONSIDERATIONS

- 6.1 In carrying out its licensing functions, the Licensing Authority must have regard to its Statement of Licensing Policy and any statutory guidance issued under Section 182 of the Licensing Act 2003.

- 6.2 **The Council's Statement of Licensing Policy:** the following sections/paragraphs are applicable to this application:

- Objectives, section 2.4
- Fundamental principles, section 4
- Cumulative impact, section 5
- Licensing Hours, section 6
- Licence Conditions, section 8
- Planning, section 9.4

- 6.3 **The Statutory Guidance:** the following sections/paragraphs are applicable to this application:

Sections 2.32 – 2.40 of the guidance cover public nuisance. Section 2.32 considers it important that that licensing authorities focus on impacts of the licensable activities at the premises on persons living and working in the vicinity that are disproportionate and unreasonable.

Section 8.5 – 8.11 covers interested parties.

Section 9 covers the determination of applications, with sections 9.3 – 9.13 giving guidance to cover situations where representations have been made. Sections 9.4 –9.6 address the issues of relevance and vicinity. Section 9.12 recommends that in borderline cases the benefit of doubt should be given to the interested party making the representation. The subsequent hearing would provide an opportunity for the person to amplify and clarify it. If it then emerged that the representation should not be supported, the licensing authority could decide not to take any action.

Section 10.15 – 10.18 covers duplication and other statutory provisions. The Guidance states that the Licensing Act 2003 does not affect the continued use of the powers of an environmental health officer in respect of statutory noise

nuisance under the Environmental Protection Act 1990.

Sections 13.24 -13.39 cover cumulative impact. Section 13.29 sets out the effects of adopting a cumulative impact policy. There is a rebuttable presumption that applications for new premises licences will normally be refused, following relevant representations, unless the applicant can demonstrate in their operating schedule that there will be no negative cumulative impact on one or more of the licensing objectives.

Sections 13.40-13.42 cover licensing hours. Section 13.41 states that providing consumers with greater choice and flexibility is an important consideration, but should always be balanced carefully against the duty to promote the four licensing objectives and the rights of local residents to peace and quiet. Section 13.42 states that shops, stores and supermarkets are free to provide sales of alcohol for consumption off the premises at any time 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.

Sections 13.64-13.68 cover planning and building control. Section 13.65 states that the planning and licensing regimes involve consideration of different (albeit related) matters. For instance, licensing considers public nuisance whereas planning considers amenity. As such licensing applications should not be a re-run of the planning application. Licensing committees are not bound by decisions made by a planning committee and vice versa.

Annex D (page 128) covers conditions relating to the prevention of public nuisance. The Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005 provide some protection to the general public from the effects of noise nuisance. The police can close premises that are causing nuisance resulting from noise emanating from the premises. The Secretary of States guidance states that these matters should be considered before deciding whether or not conditions are necessary for the prevention of public nuisance.

- 6.4 Members should only impose conditions, which are proportionate and are necessary to promote the licensing objectives (10.11 & 10.13). Conditions which are imprecise or difficult for a licence holder to observe should be avoided (10.4).

7. CONCLUSIONS

- 7.1 The Licensing Authority has a duty under the Licensing Act 2003 by promoting the Licensing Objectives. Each objective has equal importance. In carrying out its licensing functions, the Licensing Authority must also have regard to its Statement of Licensing Policy, any Statutory Guidance under the Licensing Act 2003 and is bound by the Human Rights Act 1998. The Council must also fulfil its obligations under Section 17 of the Crime and Disorder Act 1998 to do all that it reasonably can to prevent crime and disorder in Cambridge.

8. OPTIONS

- 8.1 Members should, having regard to the representation, take such steps as they consider are necessary for the promotion of the licensing objectives.
- 8.2 The steps are to grant the licence subject to conditions, modified as necessary, to exclude a licensable activity, or to reject the application. Conditions are modified if they are altered, omitted or any new condition added. (Licensing Act 2003 section 18(4) & (5)).
- 8.3 Members should consider Section 13.29 of the Act and Section 5 of Cambridge City Council's Statement of Licensing Policy relating to cumulative impact. Licences will normally be refused, following relevant representation, unless the applicant can demonstrate in the operating schedule (see section 3 above) that there will be no negative cumulative impact on one or more of the licensing objectives.

9 RECOMMENDATION

- 9.1 That members' determine the application on its individual merits.

BACKGROUND PAPERS:

The following are the background papers that were used in the preparation of this report:
Guidance issued under section 182 of the Licensing Act 2003
The Council's Statement of Licensing Policy

To inspect these documents contact Christine Allison on ext. 7899.

The author and contact officer for queries on the report is Christine Allison, on extension 7899.

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