

**LICENSING SUBCOMMITTEE**

17 August 2009  
10.00am – 2.38am

**Present:** Councillors Dixon (Chair), Benstead and McGovern

**09/lic/42 Declarations of Interest**

The following member declared the personal interest shown:

<b>Councillor</b>	<b>Interest</b>
McGovern	Member of the Campaign for Real Ale

**09/lic/43 Procedure to be Followed**

The procedure for hearings of the subcommittee set out on the agenda was noted.

**09/lic/44 Application for a new Premises Licence by Tesco Stores Ltd at 163-167 Mill Road, Cambridge**

**Present for this application:**

<b>For the Applicant</b>	<b>Responsible Authority</b>	<b>Interested Parties</b>	<b>Ward Councillors</b>
Jeremy Bark (Berwin Leighton Paisner LLP)	Jeremy Phillips (Counsel)	Angus Campbell	Smart
Terry Barber	Sarah Hamilton (Weightmans Solicitors)	Jonathan Marks	Bradnack
Greg Bartley (Tesco Licensing Manager)	Inspector Marcia Nichols	Dr Ruth Deyermond	Sadiq
	PS Simon Cross	Janette Evely	
	PC Pete Sinclair	Sheila Jeffery Leonard Freeman	

**The Hearing:** The Licensing Manager presented her report and outlined the application being made. She stated that the Council, as the licensing authority, had received an application for a new Premises Licence in respect of the premises to be known as Tesco Stores Ltd, 163-167 Mill Road, Cambridge on 25<sup>th</sup> June 2009.

The application was for a new premises licence to allow the following:

Sale/supply of alcohol (off the premises)

Monday to Sunday 06.00 to 23.00

Hours premises open to the public

Monday to Sunday 06.00 to 23.00

She stated that there had not been a history of a grant for premises licence and as Mill Road was a cumulative impact area, the committee would have to determine whether to allow the grant of the licence. The applicant would have to demonstrate that another licensed premises would not have a negative impact based on the four licensing objectives.

One representation was received from the Police, and 123 were received from interested parties. Two were in support, 36 signed a petition, 6 were deemed outside of the area and 3 did not provide their addresses and therefore could not be taken into account. The representations covered 54 different streets and all representations were attached in the report.

She emphasized that Planning and Licensing matters were governed by different legislation and each application should be considered on its own merits. She asked Members to consider paragraph 13.29 of the guidance and section 5 of the statement to policy.

Jeremy Bark addressed the committee and said that, in his view, the government guidance at paragraph 13.33 concerning the cumulative impact policy did not explicitly make reference to the prohibition of the sale of alcohol at supermarkets and off licences. Cambridgeshire Constabulary's submission on 17 September 2007 on cumulative impact zones for the City Centre, Mill Road and Cambridge Leisure Centre, also echoed this point.

The plan of the new Tesco Express indicated a small footprint of area given to the sale of alcohol, which amounted to 7% to 8% of its overall turnover. Alcohol was part of the weekly shop and as this was to be a local convenience store, it would service the needs of the local community. It was not a 'destination' venue with a high turnover.

Mr Bark went into detail about the extensive level of staff training which included watching the 'Think 21' DVD, receiving a two week induction, and a quarterly legal refresher which tackled underage sale and proxy purchase amongst other things. In addition to this, employees were regularly audited and the aim was to target 95% of staff reading the staff publication which highlighted local information.

Mr Bark stated that the manager's office would be located next to the checkout desk in order to give immediate support to staff and to retain control of the shop floor. He said that Tesco had an excellent relationship with the Police, and the representation made by them was in no way specifically directed at Tesco but at any proposed additional outlet. The Area Manager of the Cambridge Leisure Centre Tesco Express regularly met with the Police at least once a week.

Cambridge had five successful Tesco Express stores one of which was in a cumulative impact zone. It also operated other stores successfully in similarly challenging locations in the country, such as Brighton and Blackpool.

He felt that the overall impact of granting the licence would be minimal as they had proposed eleven further conditions which would serve to deter any nuisance:

1. A Challenge 25 scheme shall operate at the premises. All staff will be trained and refreshed on the Challenge 25 policy. Training will be recorded and made available for inspection on request of enforcement authority.
2. Challenge 25 Notices will be displayed in prominent positions throughout the premises.
3. Sales of alcohol will always be processed through the store's tills which will be programmed so that a prompt will appear reminding the cashier on their responsibilities to ensure they sell alcohol legally and of the company's Challenge 25 scheme. The cashier will have to respond to the till prompt to affirm and continue with any sale of alcohol.
4. No display of alcohol shall be located within 3 meters of the entrance/exit of the premises.
5. Ordinarily, there shall be a minimum of 2 Personal Licence holders based at and employed from the store.
6. Ordinarily, a Security Guard shall be employed at the store during the hours when licensable activity takes place.
7. On police request, the store to provide contact details of any member of staff, including any external security guard employed at store.
8. A CCTV system will be operated within the premises and images will be retained for a minimum period of 31 days and made available to the police or licensing authority upon reasonable request.
9. No beer, cider and lager with an abv over 5.5% shall be sold from these premises unless the prior written consent of the Police has been obtained.
10. A maximum of 10% of the trading area of the store shall be used for the display of alcohol at any time.
11. The hours for the sale of alcohol shall be between 10am and 10pm on any day.

The Members of the Sub-Committee asked the applicant's representative the following questions to which the response was as shown below:

- How many stores are located in cumulative impact zones in the UK?

*There is one in Brighton that has been opened for six months and another in Blackpool. Around 70 to 80 stores operate within 50 cumulative impact policy areas which cover sensitive areas such as deprived areas and local schools situated nearby.*

- Is it correct that some stores were open already when a cumulative impact zone was declared?

*Yes, this applied to the stores in Bristol, Brighton and London.*

- Do you know why the cumulative impact zone was declared in those examples?

*There were a number of factors for London. Brighton faced the issue of street drinkers.*

- You stated that there will 'ordinarily' be a minimum of two Personal Licence holders at the store, when will there be an exception to this?

*If, for instance, a member of staff cannot get into work because of unexpected childcare problems, there would be at least one Personal Licence holder at the store. Perhaps the word 'ordinarily' at number five of the proposed conditions could be changed to 'save in exceptional circumstances'.*

- Will the soft drinks be kept away from the alcohol?

*The alcohol will be directly adjacent to the soft drinks. However the hours of selling alcohol will be considerably shorter than the opening hours. As a result, the tills have been functioned to allow the transaction of alcohol only during the permitted hours of the sale of alcohol.*

Jeremy Phillips addressed the Committee and stated that he was representing the Responsible Authority. He stated that the Police's survey of 8 supermarkets showed that 's' sold the cheapest alcohol.

The Responsible Authority's representations were based on the four licensing objectives. The cumulative impact zone was established on 22 May 2008 based upon the submission of detailed evidence by Police. Mill Road had a high incidence of drinking and drug taking, and was subject to a Dispersal Order. Out of the total area of the licensing jurisdiction of 4,070 hectares, only 2.5% was affected by the cumulative impact zone. A significant extent of Mill Road was covered by the zone.

He stated that even with the best of intentions, an additional outlet on Mill Road would lead to occasions where problems would inevitably occur. Although he appreciated that Tesco would devise the best system it could, in reality no system was capable of avoiding any of the existing problems. The grant of the licence would only serve to add to the problem.

Both Inspector Marcia Nichols and PS Simon Cross read from their Witness Statements that were attached in the second bundle to the committee report.

The Members of the Sub-Committee asked the following questions of the Police as a Responsible Authority:

- What is the impact of the different times for street drinking?

*It starts when street drinkers get up in the morning. Many are based in hostel accommodation and by 7pm to 8pm they become incapable of walking far and tend to drift away.*

- When are the peak times for offences? Is there any distinction between street drinking and general disorder ?

*The peak of activity tends to be between 10pm to 2am and usually relates to disorder offences.*

- There has been a dramatic decrease in drinking activity, however another report suggests there has been an increase?

*The decrease reported is thought due to the effective partnership work that has been going on in the area for 18 months between the Police, the Council and various agencies. However, there are still incidents relating to alcohol-fuelled violence.*

The Chair invited Interested Parties to speak.

Dr Ruth Deyermond introduced herself and stated that she was speaking on behalf of the 'No Mill Road' campaign. They were concerned about granting the store a licence due to the longstanding problems on Mill Road. This was the first alcohol licence application to come since the designation of a cumulative impact zone which was designed to address such an application.

She emphasized that violence and anti-social behaviour were not confined to the weekends and that it happened throughout the day. Granting the licence would not allow the Tesco security guard to disperse people elsewhere than within the curtilage of the property.

She stated they were concerned that the proportion of the space devoted to alcohol sales had doubled reducing the space for non-food items. Tesco's

strategy to alcohol was similar to strategies used in other places in the UK where stores were not located in a cumulative impact zone.

Despite attempts made by Tesco the problems would continue to exist. The Tesco Express in Brighton and Blackpool had been suspended for sales to underage drinkers. Nine of the 11 proposed conditions were not specific to this 's branch but had been applied to other stores opening. In summary, granting the licence would conflict with the four licensing objectives.

Janette Evely stated that she objected to the application on the ground of protection to children from harm. She often encountered street drinking which was particularly disturbing when taking school children on trips and outings. It was important for children to feel safe.

Angus Campbell stated that he had experienced alcohol related anti-social behaviour which led to noise and littering at early hours of the morning. He had been approached for proxy purchasing and felt threatened at times.

Jonathan Marks stated that alcohol fuelled anti-social behavior happened on a regular basis and at anytime during the day and night. His family had been subjected to violence and as a result he asked the Subcommittee to reject the application for a licence as it would increase the risk to residents as Tesco provided extremely competitive prices for alcohol.

Clair Milligan addressed the committee and stated that although the Dispersal Orders were in force, daytime drinking was still present and people were still to be seen in a drunken state. Tesco's proposal to operate the Challenge 25 policy would not prevent people from drinking as it was common knowledge that street drinkers tended to be much older than 25 years. People would take advantage of the competitive prices Tesco had to offer.

Sheila Jeffery stated that as a resident of 25 years, there had been an increase in nuisance and litter with cans and broken bottles being left around. There were certain hotspot areas that were used by drinkers such as the children's play area.

Leonard Freeman stated that he had been a resident in the area for 30 years. There would be four alcohol outlets within 100 meters of the new Tesco Express. As a result, it would have a detrimental impact on the area.

The Chair invited Ward Councillors to speak.

Cllr Smart, speaking on behalf of residents, stated that alcohol was a 24-hour problem in Mill Road. The council and police were working very closely

together which had improved the situation and reduced the problems. However Tesco Express sold alcohol at cheap prices.

Cllr Bradnack stated that he would speak on behalf of four people. He stated that if the licence were granted it would make a mockery out of the cumulative impact area. It would be detrimental to the four licensing objectives where public safety would be reduced, and there would be an increase in harassment, alarm and distress.

Cllr Sadiq stated that he represented a group of residents. He stated that there was a proven transit route that went through roads such as Rustat Road, a route through his ward. The drunken activities led to broken windows, persistent drinking, assault and mugging. He stated that although he acknowledged the usefulness of the Challenge 25 policy, proxy purchasing was all too easy. The harm to children had to be taken into account. In essence, Tesco would create crime, disorder and long-term damage to children.

The Chair asked the Police representatives to summarize their position.

Jeremy Phillips stated that the first 7 or 8 conditions proposed by the applicant were relatively standard. Condition 9 would not stop the high strength of lagers from being sold. Condition 10 implied that a large space would be allocated for the alcohol. Condition 11 would not be completely effective as the problem occurred 24 hours a day. Therefore whatever steps Tesco took, they would not be able to escape an area that had multiple serious problems.

The Applicants were asked to summarize their position.

Jeremy Bark stated that in his view, the Lacors Guidance to Local Authorities implied that the cumulative impact zoning did not apply to off licences and supermarkets. The problems on Mill Road such as drug dealing and drug dependency were not necessarily as a result of alcohol licensing. Making decisions based on fear rather than evidence would not be the correct approach. Tesco did not specifically sell alcohol cheaply but did sell it at competitive prices. Tesco Express was intended to serve the local community and had a limited alcohol range. It would have a range of systems in place and they would be happy to propose an extra condition to display no external advertising of alcohol.

Members of the Sub-Committee retired at 1.55pm to consider the application and returned at 2.35pm.

**The Decision:** In reaching the decision on the application, the Sub-Committee considered the material presented at the hearing both orally and in writing and the representations made before and at the hearing, the Council's Statement of Licensing Policy and in particular the cumulative impact policy, the legislation and the statutory guidance under the Licensing Act 2003 and the legal advice received during the hearing.

In this case, the Sub-Committee had to balance the interests of the applicant with those of the wider community. The decision was reached on its individual merits, bearing in mind that these premises are in a mixed commercial and residential area.

The Sub Committee found the following facts :-

1. The special policy relating to cumulative impact applies to all licensed premises in Mill Road.
2. The police evidence that there is a cumulative impact problem throughout the day.
3. There is a rebuttable presumption that applications for new premises licences will normally be refused, following representation, 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.
4. The applicants did not demonstrate that they would promote the licensing objectives and did not adequately address the cumulative impact policy.

The Sub committee did not take into consideration:

1. The price of alcohol
2. The identity of the applicant or its policy in other stores
3. The outcome of other applications
4. Any planning matters

The Sub Committee refused the application for the following reason :

The applicant did not adequately address in its operating schedule or at the hearing the cumulative impact policy and its rebuttable presumption of refusal.

With effect from: 17<sup>th</sup> August 2009

The Meeting concluded at 2.38pm

**Chair**