

**LICENSING SUB-COMMITTEE**

11 January 2010  
(9:30 am to 1:25 pm)

**PRESENT:** Councillors Hart, McGovern and Stuart

**10/Licsub/04 Appointment of Chair**

Cllr McGovern was appointed as Chair.

**10/Licsub/05 Application for New Premises Licence Tesco Stores Limited, 172 East Road**

**Present for this application:**

Attending for the applicant

Jeremy Bark – BLP Solicitors representing Tesco Stores Limited

Greg Bartley – Licensing Manager, Tesco Stores Limited

Ian Smith – Regional Manager, Tesco Stores Limited

Jo Henson – Store Manager, Tesco Stores Limited

Attending for the Responsible Authorities

Mr Gold – Legal Counsel representing Cambridgeshire Police

PC Peter Sinclair

PC Marc Thomas

Inspector Steve Kerridge

Robert Osbourne – Environmental Protection

Daniel Bayles – Environmental Protection

Attending for interested party

Nicola Harrison (County Councillor) representing a constituent

Joanne Dean

Iftikhar Ahmed

Jacqueline Petit

Lucy Walker (City Councillor)

**The Hearing:** The Licensing Manager presented her report and outlined the application. She stated that the Council, as the licensing authority,

had received an application for a new Premises Licence for Tesco Stores Limited

The Hearing was to consider the representations made by the Police, Environmental Protection and eleven Interested Parties. The Licensing Manager advised the Panel of the decision-making options available to them. The panel were advised that a new condition had been agreed between Environmental Protection and the applicant, to restrict the hours in which alcohol products could be disposed of in external bins.

### **Applicant**

The applicant addressed the committee and explained that the application was for a new premises licence for Tesco Stores Limited on East Road, Cambridge. The applicant addressed the issues of the cumulative impact zone. Whilst challenging the legitimacy of the zone, they agreed to present the cases for the application on the basis that the policy was valid. The applicant circulated with the agreement of all parties revised proposed conditions namely;

1. Restrictions on the sale of alcohol to only permit sales between 10am and 10pm, and acknowledged the ability of the sub-committee to further restrict the hours permitted.
2. The existence of the Think 25 policy.
3. Prohibition of the display or positioning of alcohol within 3 metres of the door, plus the intention to appoint 5/6 personal license holders and have dedicated door staff.
4. Commitment to provide information to the Police on receipt of a reasonable request
5. Increasing the corporate standard on the retention of CCTV information from 21 to 31 days
6. No ciders, beers or lagers over 5.5% to be sold. The applicant also indicated a willingness to not sell any cider products in the store.

The applicant outlined the background of the business, its different brands (Express, Metro and Extra) and its experience of operating in

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over 2000 premises in the UK, including sensitive environments. The following statements were made regarding the nature of the proposed business;

1. The Express format is not a pure off licence, with in the majority of store alcohol sales accounting for 7/8% of the total sales. The panel were advised that the majority of the stores were under 3000sqft in size and that sales were overwhelmingly non-alcoholic in nature.
2. The Express format had a limited product range with a maximum product range of circa 3000 products of which 80/120 products are alcohol based. It was further explained that 95% of the alcohol sales were with another product.
3. The applicant explained that the company currently operated six stores in the city without problems.

The applicant expanded on the explanation of the Think 25 policy, which the company had pioneered. The scheme was to challenge for identification from anyone appearing to be “under 25” and also explained the systems in place to prompt checkout staff. Tills had an automatic capability to display the minimum age in the form of a date that alcohol could be legally purchased.

The applicant further expanded on the policies in place to prevent under age sales, and that a number of different test purchase systems were operated by the company.

The applicant outlined in detail to the Sub-Committee the training made available to new members of staff in the form of induction and legal refresher training.

The applicant expanded on the information presented regarding training and explained a number of additional mechanisms such as Head Office communications; DVD and store based training were employed. It was noted that the Tesco UK Licensing Manager was a member of the Department of Culture, Media and Sport Advisory Committee on Licensing, and had been involved in pioneering (and reintegrating back into the business) best practice.

The applicant further expanded on the systems in place to minimise the

sale of alcohol to inappropriate groups. This included reference to the “you say no, we say no” policy and the associated support of senior management. The Sub-Committee were advised of the policy adopted by the company to retain a consistent management team for at least one year after opening.

The applicant further explored the issues about CCTV. The Sub-Committee was advised that the store would have a state of the art digital CCTV system, with fixed and motion cameras covering the key areas of the store.

The applicant drew the attention of the Sub-Committee to the layout plan in the pack, and reiterated a number of points previously stated in the submission related to the overall floor area covered by the alcohol products and the location of the products. The applicant explained that the store would not sell spirits in less than ½ bottle volume or individual cans.

In response to the issues raised Environmental Protection, the applicant outlined the delivery and refuse collection arrangements for the store. The Sub-Committee was advised that the store had implemented a number of initiatives to minimise the issues generated by deliveries.

The applicant explained that the store when fully staffed would employ 26/30 staff of which 6/7 would be on duty at any time, with management available for the majority of the day.

The applicant expanded on the policy of the company towards anti social behaviour. The Sub-Committee was informed that the store generated a “rogues gallery” of banned customers and worked closely with the relevant authorities to prevent problems in a proactive manner.

The applicant questioned the legitimacy of the cumulative impact zone policy and whether it applied to off licences and supermarkets.

As a final initial statement the applicant drew attention to the recent closure of the M&S in the Grafton, and therefore argued that as one licence was not being used there was no net increase.

### Interested Parties

1. *Was any there any relevance of the recent decision in relation to the refusal of the extended licence for Laxsham Day1?*

The Licensing Manager explained that all applications must be treated on their individual merits, and that no precedent had been set by that decision.

### Police

1. *Do you have any evidence of the assertion that the previous Marks and Spencer sold a significantly increased amount of alcohol products?*

The representative of the applicant explained that there was no data, although anecdotal evidence was provided to the committee.

2. *Would a four pack of beer and a packet of crisps qualify as part of the 95% of the sales of alcohol with another product?*

The representative of the applicant confirmed that the above-mentioned example would form part of the 95%.

### Councillors (Sub-Committee Members)

1. *Could you give an example of where practices have been changed to suit the local circumstances?*

The applicant gave examples regarding sites where the company operated in sensitive environments including the vicinity of schools; cumulative impact zones and culturally sensitive areas.

2. *Would it be possible to forbid untrained staff from selling alcohol?*

The applicant advised that whilst they would be willing to accept a revised condition to that effect, the management procedures in place precluded that scenario from occurring.

### Responsible Authorities

#### **Police Representation**

The Police sought clarification on the structure of the evidence they intended to present, and all parties agreed to the structure proposed.

Inspector Kerridge and PC Thomas addressed the committee reading from pre-prepared statements outlining the objections of Cambridge Police.

Legal Counsel for the Police questioned the two officers. Inspector Kerridge confirmed that the company had not discussed the application with the Police or submitted a copy of the vagrant/street drinking policy prior to the submission of the application.

1. *Would the restriction on the sale of no beer and lager above 5.5% ABV have an impact on the street drinking community?*

PC Thomas explained that the policy would have an impact on the habits of a % of street drinkers; but that the community associated with street drinking was fiscally minded and would seek the best value (cost – alcohol) that they could achieve.

2. *Would the sale of beer and lager in four packs or greater only, have an impact on the street drinking issues?*

PC Thomas advised that the community was characterised by limited means and tended to operate in groups, with pooling of finances a common practice.

3. *What effect does/will the Challenge 25 policy have?*

PC Thomas advised that whilst he was encouraged by the policy, it would have virtually no impact on the street drinking community because they often were older or looked older than 25. It was noted that there was a younger fringe of the street drinking community developing.

4. *What effect would the revised proposed hours of sale for alcohol?*

PC Thomas explained that it was positive that the applicant's shop were offering not to sell alcohol before 10am but there were other sources available, and he suspected that once their shop started

to sell alcohol, the street drinkers would get by until 10am.

In response to the submission the representative of the applicant sought clarification on a number of points raised by the Police representation.

Interested parties made the following points and statements

1. Significant concern about the displacement of street drinkers – *The Police highlighted the renewal of the “Section 30” dispersal order and the control mechanisms in place to ensure that it is regularly reviewed. He also stated that the areas flagged up outside the Section 30 area where the police continue to engage with the community, and said that those areas are relevant.*

Inspector Kerridge explained that further information was contained in the cumulative impact zone policy update that had been presented to the Sub-Committee. The applicant sought to clarify the status of the document, and all parties agreed a common understanding of the status.

The Sub-Committee asked the Police representatives the following questions.

1. *What is the reason for the peaks of “calls for service” at 9am and 5pm?*

The Police representative explained peaks would normally be expected to be seen after 7pm, but these peaks are common where street drinkers are drinking throughout the day.

2. *What effect did the closure of Marks and Spencer’s have on the street drinking issues?*

The Police highlighted the significant price differences between M and S and Tesco's. It was also noted that the existing licence remains in place for the Marks and Spencer site.

3. *Did the Grafton Centre security arrangements provide an additional reason for making comparison between the two stores impossible?*

The Police explained that historically there wasn't a problem with street life in the Grafton Centre.

### **Environmental Protection Representation**

Robert Osbourn addressed the Sub-Committee and explained that following consultation with the applicant that the representation had been withdrawn.

### **Interested Parties**

The Committee received representations from a number of interested parties and the following points were made;

- It was explained that many people don't contact the Police or other authorities regarding incidents of ASB and other "low level crime" fuelled by alcohol until desperate.
- Increasing concerns about the number of licensed premises in the area and the associated issues that they generate, such as anti-social behaviour. It was noted that many of the low-level anti-social behaviour issues were "off the radar" for the Police.
- Concern about the lack of local engagement and knowledge on the part of the applicant. It was noted that the applicant had required assistance to locate Jimmy's Night Shelter on the map, and was then question on the appropriateness of the following statement in the application "We do not apply for licences where there are known disorder issues". Scepticism about whether the application had been specifically tailored to the site, as the operating schedule was identical to the schedule submitted for another store operated by the same company.
- The visibility of alcohol misuse in the proximity of large number of school children. Concern that the level of the 5.5% abv would still permit the sale of Stella Artois.
- Significant concern about the viability of other local stores and the potential for local price wars, which may drive down the competition, which could increase the potential problems with street drinking.

- The difficulties faced in the area surround ASB, particularly during the day were highlighted.
- Support for the principle of the store, with the opposition focused on the alcohol sale element only.
- Concerns of St Matthews Primary School were highlighted, specifically around privacy; public safety; protection of young people from harm and the need to reduce the sale of alcohol in the area. Wrong to undermine the work done by the police and other agencies in a particularly sensitive area.

The applicant responded to the points raised and explained that the ability of stores to offer promotions was centrally controlled, and that the Express format stores were explicitly excluded from the promotions advertised in the press. A further proposed restriction was offered to preclude the sale of ciders, sherry or fortified wines.

In summary the Police made the following points.

- Challenged the assertion that the Cumulative Impact Policy didn't apply to the application. The presumption was that the application would be refused unless rebutted. It was emphasised that there was nothing in the applicant's operating schedule to rebut the presumption.
- Although the applicant had referred to the company's policy on street drinking, the operating schedule had not referred to it.
- No reference made by applicant to abv volume and given the difficulties with street drinkers, a small increase in the amount of alcohol available to them would be significant. The applicant was obliged to show that that would be no increase.
- Lack of evidence provided to the committee on the detail of the training provided, and questioned the legitimacy of the assertions made by applicant regarding the potential scale of alcohol sales.
- The potential effect on the local economy and the potential to increase problems in the local community due to price competition

between stores. Real concern was highlighted about the increase in supply.

- Lack of engagement with the Police prior to the application
- Failure to demonstrate that the Cumulative Impact policy shouldn't apply

The applicant challenged the summary presented by the Police on the issue of relevance of the cumulative impact zone.

In summary the applicant made the following points. The applicant is a responsible operator with extensive systems. Within Sub Committee's gift to further reduce the hours of sale of alcohol. Limited product range. Measures to control street drinkers access to alcohol included Challenge 25 policy, high staff levels, tailored hours. There were other mechanisms to tackle the existing problems in the area. The applicant wanted to be a key partner in tackling the issues and would do nothing to undermine efforts to improve the issues. Realised it was a sensitive area and applicant's shop would not have any impact on area.

The meeting adjourned at 12:20 pm and reconvened at 1:20pm.

**Resolved:** To refuse the application as the application site is within a cumulative impact area and it was for the applicant to rebut the presumption that the application should not be granted unless they could show that they would not add to the cumulative impact of licensed premises already operating in the area. The applicant failed to do so..

**CHAIR**