

TORRIDGE DISTRICT COUNCIL

LICENSING HEARING

Council Chamber, Town Hall, Bideford

16 July 2014 at 10.30am

PRESENT:	
Licensing Sub-Committee:	Councillor R Johnson (Chair) Councillor M Langmead Councillor M Footitt Mr T Nicholls – Licensing Manager Mr J Hollis – Solicitor Mrs A Hocking – Licensing Assistant
Applicant Representative	Mr Jeremy Bark – Solicitor for Tesco Stores Ltd Mr Rob Gooding - Store Manager Mr Chris Preece - Operations Manager (from 12 Noon)
Objectors:	Mrs J Skinner, 104 Bay View Road, Northam, Bideford Mr and Mrs M Stevens, Panoramic House, Littleham, Bideford

The Chair opened the meeting and introduced the members of the Licensing sub-committee and Torrridge District Council staff present. He explained that the hearing had been convened to consider an application for a premises licence under s.17 of the Licensing Act 2003 for Tesco Stores Limited, Golf Links Road, Westward Ho!, Bideford, Devon, EX39 1LH.

The Councillors present declared that they had no personal or disclosable pecuniary interest in the application and the Chair confirmed there was no political dimension to the hearing.

The Chair invited the applicant's representative and the objectors to identify themselves.

The Chair then explained the procedure for the hearing and invited the Licensing Manager to present his report.

The Licensing Manager advised that the application had been brought before the Licensing sub-Committee for determination because a number of relevant representations had been received.

The Licensing Manager gave a brief overview of the location and context of the premises. He pointed out that there were a number of licensed premises within 100 metres of the premises including two off licences, two public houses, a restaurant, café and two amusement arcades. This is a popular area with tourists, is a focal point of the village with a high footfall and is the 'gateway' to the beach. The Licensing Manager circulated photographs of the premises and location to all parties.

The Licensing Manager advised that the application was to permit the retail sale of alcohol for consumption off the premises Monday to Sunday from 6.00am to 11.00pm.

The Licensing Manager confirmed that no objections had been received from Responsible Authorities. Three relevant representations had been received from other persons. Apologies were received from Mr D Stevens who was unable to attend the hearing. The Licensing Manager advised that the sub-Committee must still consider his written representation.

The Licensing Manager then outlined the key policy issues for the sub-Committee to consider when determining the application and the relevance of the representations to the licensing objectives.

The Licensing Manager noted that the applicant's operating schedule was virtually identical to the schedule for the Bideford store. He suggested this was poor practice as government guidance clearly states that applicants should give consideration to the character of the local area and physical environment when preparing their application. The Licensing Manager said that, in his opinion, the applicant had paid scant regard to this requirement.

The Licensing Manager pointed out that many of the objectors' concerns related to the need for another off-licence in Westward Ho! and the proposed location. These were planning matters and the Licensing Manager advised the sub-Committee that they could not be taken into consideration when determining the application.

The Licensing Manager pointed out that off-licences, if well managed, do not generally give rise to increased crime and disorder. He pointed out that, because this was an application for a new premises licence there was no evidence on which the sub-Committee could base its decision. The sub-Committee must therefore make its judgement based on risk.

The Licensing Manager explained to the objectors that a licence can be called in for review if problems arise in the future.

In conclusion, the Licensing Manager explained the options open to the sub-Committee when determining the application. He informed the sub-Committee that they must have regard to the Council's Licensing Policy, Home Office guidance, his report and the evidence presented at the hearing when determining the application.

The Chair then invited the applicant's solicitor to present his case.

Mr Bark pointed out that the scheme of the Licensing Act is to be permissive and therefore decisions must be evidence based not risk based. The fact that there were no objections from Responsible Authorities could be regarded as evidence. The application is for a convenience store not an off-licence. The sale of alcohol in such stores is generally between 7% and 9% of total sales. The hours for the licensing application were submitted in line with the planning application. Mr Bark said he did not accept the Licensing Manager's criticism of the operating schedule which was adequate for a store of this size.

Mr Bark stated that Tesco is a leading retail company and committed to best retail practice. Policy aims and objectives are clear and staff are trained to refuse alcohol sales in accordance with the company's Think 25 scheme. Till prompts are extensively used to prevent unauthorised sales. Mr Bark stated that there will be 10 CCTV cameras inside the store covering each till point with one camera focussing on the entrance of the building.

Mr Bark confirmed that alcohol will be delivered to the store with other goods and therefore this is not a licensing issue. Refuse collection will be kept to a minimum to reduce public nuisance and two litter bins will be placed at the front of the store for public use. In conclusion Mr Bark stated that the store will be effectively staffed and well managed and Tesco intend to become an active member of the community.

The Chair expressed concern regarding noise levels from the store in the early morning, especially from deliveries to the store.

Mr Bark confirmed that the Council's Planning Service had approved the opening hours and there would be a maximum of two deliveries per day. Delivery slots had been agreed with the Highways Authority. Mr Bark advised that there might be some deliveries before 8.00 am.

Councillor Footitt asked why the operating schedule was the same as that for the Bideford store bearing in mind Home Office guidance.

Mr Bark pointed out that Tesco operate a large number of stores and that there is bound to be a degree of commonality in operating schedules as a result. All Tesco Express stores are same size and layout and will therefore have similar operating requirements.

The Licensing Manager stated that paragraphs 8.33 and 8.34 of the Guidance make clear that applicants must consider the character of the local area when preparing their application. He said that, for a company with the resources of Tesco, this should not be a difficult task and it was disappointing that the company had not made greater efforts to comply with the Guidance.

Councillor Langmead enquired how Tesco would become an active member of community.

Mr Bark advised that one member of staff will be appointed to regularly liaise with the community and the police to discuss relevant issues.

The Chair expressed concern about the potential for litter arising from the proposed store. Mr Bark stated that two litter bins would be positioned outside the store and that cleaners would be employed. Mr Gooding said that a member of staff would be employed to patrol the car park and ensure that the exterior of the premises was kept clean. Staff would also carry out inspections of the exterior of the premises every hour.

The Chair stated that he was still concerned about deliveries to the store and questioned the size and practicality of the delivery area in the car park.

Mr Bark accepted that the delivery area was not large but should be sufficient to accommodate the smaller type of lorry which would deliver to the store.

The Chair then invited the objectors to speak.

Mrs Skinner declared that in her opinion the grant of a licence would change the character of Westward Ho! and a third off-licence was not needed in the area. She expressed concern about the potential for increased levels of anti-social behaviour and harm to children resulting from the sale of cheap alcohol. She was strongly of the opinion that a Tesco store in this location would be detrimental to Westward Ho! as a whole.

Mrs Stevens expressed concern about public safety and animal welfare particularly as she had recently seen broken glass in the area. She was of the opinion that the site was too close to the beach and burrows to be licensed for off-sales of alcohol.

The Licensing Manager re-iterated that location is not a licensing matter and this would have been considered by the Planning Authority.

The Council's Solicitor confirmed that Tesco could only be responsible for the conduct of customers in the immediate vicinity of the premises.

The Chair invited the applicant's representative to give a final summary.

In conclusion Mr Bart confirmed that Tesco is an excellent operator and gave examples of standards and practices. He maintained that all the issues raised by the objectors were covered in the operating schedule. He said that a Tesco Express is very different from a large Tesco store and that alcohol is part of a broad offering of products. He stated that the company supports minimum pricing and does not sell low cost alcohol. Staff will be fully trained to refuse alcohol sales if in any doubt. He reminded the sub-Committee that the legislation is permissive and that the application should be granted unless there were good reasons to refuse. He said that the company would agree to a condition that all deliveries of alcohol to the store should be incorporated with deliveries of other goods.

The sub-Committee then retired to consider its decision.

On return, the Chair stated that the sub-Committee had given careful consideration to the application, the concerns raised in the representations and the evidence presented at the hearing. The sub-Committee noted the principal concern expressed by objectors was the potential for increased levels of drunkenness and disorder and reduced levels of public safety if the application was granted. Other concerns raised were the potential for noise nuisance, anti-social behaviour and harm to children arising from the sale of alcohol.

The sub-Committee noted that some of the concerns raised by the objectors related to planning rather than licensing issues and the objectors were advised that these matters could not be taken into consideration when determining the application. The sub-Committee noted that no concerns had been raised by residents living in close proximity to the proposed store.

The sub-Committee was of the opinion that there would be little risk of increased levels of crime and disorder if the application was granted. The sub-Committee also felt that the grant of a licence would not undermine the licensing objectives of public safety or the protection of children from harm. The sub-Committee did express concerns about the proposed opening hours and felt there was a risk of noise nuisance to nearby residents caused by the store opening at 6.00 am and by deliveries to the store. The sub-Committee was also concerned about the potential for litter caused by customers using the premises.

The sub-Committee therefore decided to grant the application with the following conditions:

- the mandatory licence conditions prescribed under ss. 19 and 19A of the Act;
- conditions consistent with the Operating Schedule;
- a condition volunteered by there applicant at the hearing, namely:
“All deliveries of alcohol will be incorporated into deliveries of other goods to the store”
- the following additional condition:
“A minimum of 2 litterbins will be provided outside the premises and emptied at least twice a day or as required to prevent any over-accumulation of waste”

Reason: to prevent public nuisance caused by littering in the immediate vicinity of the premises.

In reaching their decision, the sub-Committee had regard to paragraphs 1.4, 1.16, 8.33, 8.34, 10.11 and 10.12 of Home Office Guidance issued under s.182 of the Act and to paragraphs 3.1, 5.3.1 and 5.3.7 of the Authority's Statement of Licensing Policy.

The Chair advised all parties to the hearing that they had the right to appeal the sub-Committee's decision. Any appeal must be made to the Magistrates' Court within 21 days.

In his closing remarks, the Chair suggested to the applicant that, in future, closer regard should be paid to the need to consider local issues when submitting a licence application in accordance with Home Office guidance.

The hearing was concluded at 12.55.