

## APPLICATION FOR VARIATION OF PREMISES LICENCE IN RESPECT OF 'TESCO HEREFORD 2, ABBOTSMEAD ROAD, BELMONT, HEREFORD, HR2 7XS' - LICENSING ACT 2003

Report By: Head Of Environmental Health And Trading Standards

### Wards Affected:

Belmont

#### 1. Purpose

To consider an application for variation of the premises licence in respect of Tesco Hereford 2, Abbotsmead Road, Hereford, HR2 7XS.

#### 2. Background Information

Applicant	<b>TESCO STORES LTD</b>	
Solicitor	<b>N/A</b>	
Type of application: <b>Variation</b>	Date received:	28 Days consultation
	<b>25/08/07</b>	<b>21/09/07</b>

The advertisement for the premises has not been seen at this time.

#### 3. Current Licence

The current premises licence was issued on the 4th October, 2005 following a Committee hearing which authorised the hours shown below with the conditions attached.

#### HOURS OF LICENSABLE ACTIVITY

	Supply of Alcohol	Open to the public
Monday	0800 - 0000	0800 - 0000
Tuesday	0001 - 0000	0001 - 0000
Wednesday	0001 - 0000	0001 - 0000
Thursday	0001 - 0000	0001 - 0000
Friday	0001 - 0000	0001 - 0000
Saturday	0001 - 2200	0001 - 2200
Sunday	1000 - 1600	1000 - 1600

**CONDITIONS**

The application was granted in respect of the hours of operation for the licensable activities described in the box above together with the following conditions

- The mandatory conditions of The Licensing Act 2003.
- There be methods devised to discourage drinking in public spaces in the vicinity of the premises.
- No person shall be permitted to enter, or continue to be in, the premises in an intoxicated state.
- All parts of the premises within the cartilage of the applicant's ownership shall be kept free of litter. There be sufficient litter bins provided within the cartilage and these be emptied in accordance with an effective operational schedule.

**4. Variation Licence Application**

The application for a variation has received representation from a local councillor and comments from the Environmental Health Officer.

**5. Summary of Application**

The licensable activity applied for is: -  
Supply of Alcohol Off Licence

**6. The following hours have been requested in respect of the sale of alcohol (*off the premises only*): -**

Monday to Saturday	08:00 hours - 22:30 hours
Sunday	10:00 hours -16:30 hours

**7. The hours the premises to be open to the public are: -**

Monday to Saturday	08:00 hours - 22:00 hours
Sunday	10:00 hours -16:00 hours

**8. Seasonal Variations**

There is no application for seasonal variation.

**9. Non Standard hours**

There is no application for non-standard hours.

**10. Removal of Conditions**

The applicant has not applied to remove any conditions.

**11. Summary of Representations**

Copies of the representations are shown within the background papers.

**West Mercia Police**

West Mercia Police have made no representation regarding this application.

**Environmental Health**

Environmental Health has comment in respect of the confusion over opening hours and trading hours.

**Fire Authority**

The Fire Authority has made no representation regarding this application.

**Interested Parties**

A representation has been received from a local councillor who is also a local resident. The representation addresses all four of the licensing objectives.

**12 Issues for Clarification**

The revised Guidance Notes issued under Section 182 of the Licensing Act 2003 by the Department of Culture Media and Sport under section 10.21 states: -

‘Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping’

The authority has requested the applicant to explain to the Committee why the application requests the supply of alcohol until 2230 hours on a Saturday and 1630 hours on a Sunday when the application states that the premise will close to the public 30 minutes before these times.

**13 Herefordshire Council Licensing Policy**

In making its decision the committee will be obliged to have regard to its own policy, the DCMS guidance and have regard to all documents specified within the DCMS Guidance.

**14 Options: -**

It is for the committee to take such steps below as it considers necessary for the promotion of the licensing objectives:

- Grant the licence subject to conditions that are consistent with the operating schedule accompanying the application and the mandatory conditions set out in the Licensing Act 2003.
- Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it necessary for the promotion of the licensing objectives and add mandatory condition set out in the Licensing Act 2003.
- To exclude from the scope of the licence any of the licensable activities to which the application relates.
- To refuse to specify a person in the licence as the premise supervisor
- To reject the application.

**15 Background Papers**

- Application Form
- Location Map
- Copy of Environmental Health Officers Comments
- Copy of Representation form

**Background papers are available for inspection in the Council Chamber, Brockington 30 minutes before the start of the hearing.**

## NOTES

**Guidance issued under section 182 of the Licensing Act 2003**

## RELEVANT, VEXATIOUS AND FRIVOLOUS REPRESENTATIONS

- 9.8. A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives. For example, a representation from a local businessman which argued that his business would be commercially damaged by a new licensed premises would not be relevant. On the other hand, a representation that nuisance caused by the new premises would deter customers from entering the local area and the steps proposed by the applicant to control that nuisance were inadequate would be relevant. There is no requirement for an interested party or responsible authority to produce a recorded history of problems at a premises to support their representations, and in fact this would not be possible for new premises. Further information for interested parties about the process for making representations is available in “Guidance for interested parties: Making representations” which can be found on the DCMS website.
- 9.9 The “cumulative impact” on the licensing objectives of a concentration of multiple licensed premises may also give rise to a relevant representation when an application for the grant or variation of a premises licence is being considered, but not in relation to an application for review which must relate to an individual premises.
- 9.10 It is for the licensing authority to determine whether any representation by an interested party is frivolous or vexatious on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness. An interested party who is aggrieved by a rejection of their representations on these grounds may challenge the authority’s decision by way of judicial review.
- 9.11. Licensing authorities should not take decisions on whether representations are relevant on the basis of any political judgement. This may be difficult for ward councillors receiving complaints from residents within their own wards. If consideration is not to be delegated, contrary to the recommendation in this Guidance, an assessment should be prepared by officials for consideration by the subcommittee before any decision is taken that necessitates a hearing. Any ward councillor who considers that their own interests are such that they are unable to consider the matter independently should disqualify themselves.
- 9.11. The Secretary of State recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation. The subsequent hearing would then provide an opportunity for the person or body making the representation to amplify and clarify it. If it then emerged, for example, that the representation should not be supported, the licensing authority could decide not to take any action in respect of the application.

**Hours of trading**

10.21 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

**Licensing Authorities power to exercise substantive discretionary powers.**

**The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.**

Contesting the validity of the Licensing policy that asks for certain requirements before the application has been submitted. In the summing up the Judge states; The scheme of the legislation is to leave it to applicants to determine what to include in their applications, subject to the requirements of Section 17 and the Regulations as to the prescribed form and the inclusion of a statement of specified matters in the operating schedule. An applicant who makes the right judgement, so that the application gives rise to no relevant representations, is entitled to the grant of a licence without the imposition of conditions. The licensing authority has no power at all to lay down the contents of an application and has no power to assess an application, or exercise substantive discretionary powers in relation to it, unless there are relevant representations and the decision – making function under section 18 (3) is engaged.

## NOTES

**Guidance issued under section 182 of the Licensing Act 2003, Section S18(7)****Relevant, vexatious and frivolous representations**

- 5.73 A representation would only be “relevant” if it relates to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives....
- 5.75 It is for the licensing authority to determine on its merits whether any representation by an interested party is frivolous or vexatious....

The licensing authority must determine this and make the decision on the basis of what might ordinarily be considered to be vexatious or frivolous. Vexation may arise because of disputes between rival businesses and local knowledge will therefore be invaluable in considering such matters. Frivolous representations would be essentially categorised by a lack of seriousness....

**The operating schedule**

- 5.46 The operating schedule will form part of the completed application form for a premises licence. An operating schedule should include information, which is necessary to enable any responsible authority or interested party to assess whether the steps to be taken to promote licensing objectives are satisfactory.

An operating schedule must also set out the following details: -

**the relevant licensable activities to be conducted on the premises;**

the times during which it is proposed that the relevant licensable activities are to take place (including the times during each day of the week, during particular holiday periods and during particular seasons, if it is likely that the times would be different during different parts of the year);

**Licensing Authorities power to exercise substantive discretionary powers.****The British Beer and Pub Association (2) The Association of Licensed Multiple Retailers (3) The British Institute of Inn keeping V Canterbury City Council.**

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