

MEETING:	REGULATORY SUB-COMMITTEE
DATE:	02 SEPTEMBER 2014
TITLE OF REPORT:	APPLICATION FOR GRANT OF A PREMISES LICENCE IN RESPECT OF 'TESCO STORES LTD at TESCO EXPRESS, 141 WHITECROSS ROAD, HEREFORD, HR4 0LS' – LICENSING ACT 2003
REPORT BY:	LICENSING OFFICER

1. Classification

Open

2. Key Decision

This is not an executive decision

3. Wards Affected

St Nicholas

4. Purpose

To consider an application for the grant of a premises licence in respect of Tesco Express, Whitecross Road, Hereford, HR4 0LS

5. Recommendation(s)

THAT

The Sub-Committee determine the application with a view to promoting the licensing objectives in the overall interests of the local community. They should give appropriate weight to:

- The steps that are appropriate to promote the licensing objectives,
- The representations (including supporting information) presented by all parties,
- The Guidance issued to local authorities under Section 182 of the Licensing Act 2003, and
- The Herefordshire Council Licensing Policy.

6. Key Points Summary

- The application requests the granting a new premises licence for a retail premises selling a range of goods and services which includes the sale of alcohol for consumption off the premises.
- The Police, Trading Standards and The Licensing Authority have made representations in respect of the application. Agreement has not been reached.

7. Options

There are a number of options open to the Sub-Committee:

- a) 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,
- b) Grant the licence subject to modified conditions to that of the operating schedule where the committee considers it appropriate for the promotion of the licensing objectives and add mandatory conditions set out in the Licensing Act 2003,
- c) To exclude from the scope of the licence any of the licensable activities to which the application relates,
- d) To refuse to specify a person in the licence as the premise supervisor, or
- e) To reject the application.

8. Reasons for Recommendations

To ensure compliance with the legislation.

9. Introduction and Background

Background Information

Applicant	Tesco Stores Ltd Tesco House, Delamare Road, Cheshunt, Herts EN8 9SL	
Premises	Tesco Express, 141 Whitecross Road, Hereford HR4 0LS	
Solicitor	Not known	
Type of application: New	Date received: 2nd July 2014	28 Days consultation 30th July 2014

10. Licence Application

The application for a new premises licence has received representation and is brought before the committee for determination.

11. Summary of Application

The application requests that:

Sale/Supply of alcohol 06:00 – 23:00 Monday – Sunday
(For consumption off the premises)

12. Summary of Representations

A copy of the representations can be found within the background papers.

Representations have been made by:

Three (3) of the Responsible Authorities (**Police, Trading Standards** and the **Licensing Authority**)

13. Key Considerations

To consider what action should be taken, if any, to promote the four licensing objectives in accordance with the recommendation.

14. Equality and Human Rights

No implications have been identified.

15. Financial Implications

There are unlikely to be any financial implications at this time to the authority.

16. Community Impact

The granting of the licence as applied for may have an impact on the Community.

17. Legal Implications

The Committee should be aware of a number of stated cases which have appeared before the Administrative Court and are binding on the Licensing Authority.

The case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court (Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943, Before the Honourable Mrs Justice Black.

In this case it was summed up that: -

A licensing authority must have regard to guidance issued by the Secretary of State under section 182. Licensing authorities may depart from it if they have reason to do so but will need to give full reasons for their actions.

Furthermore the Thwaites case established that only conditions should be attached to a

licence with a view to promoting the Licensing objectives and that 'real evidence' must be presented to support the reason for imposing these conditions.

This judgement is further supported in the case of *The Queen on the Application of Bristol Council v Bristol Magistrates' Court*, CO/6920/2008 High Court of Justice Queen's Bench Division The Administrative Court, 24 February 2009, [2009] EWHC 625 (Admin) 2009 WL 648859 in which it was said:

'Licensing authorities should only impose conditions which are necessary and proportionate for the promotion for licensing objectives'.

In addition to this it was stated that any condition attached to the licence should be an enforceable condition.

18. Right of Appeal

Schedule 5 gives a right of appeal which states:

Schedule 5 gives a right of appeal to: -

Rejection of applications relating to premises licences

1 Where a licensing authority—

- (a) rejects an application for a premises licence under section 18,
 - (b) rejects (in whole or in part) an application to vary a premises licence under section 35,
 - (c) rejects an application to vary a premises licence to specify an individual as the premises supervisor under section 39, or
 - (d) rejects an application to transfer a premises licence under section 44,
- the applicant may appeal against the decision.

Decision to grant premises licence or impose conditions etc.

2(1) This paragraph applies where a licensing authority grants a premises licence under section 18.

(2) The holder of the licence may appeal against any decision—

(a) to impose conditions on the licence under subsection (2)(a) or (3)(b) of that section, or

(b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor).

(3) Where a person who made relevant representations in relation to the application desires to contend—

(a) that the licence ought not to have been granted, or

(b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section,

he may appeal against the decision.

(4) In sub-paragraph (3) "relevant representations" has the meaning given in section 18(6).

Section 9 states that any such appeal must be made to a Magistrates Court for the area in which the premises are situated within 21 days of notification of the decision.

19. Consultees

Responsible authorities and persons living within the vicinity or with a business interest within the vicinity of the premises.

A copy of the application was served on the responsible authorities. This was backed up by an email sent to them by the Licensing Authority.

The notice of application was displayed on the premises prior to the start of the consultation period and for a period of 28 days. In addition, notice of the application was required to be published in a newspaper which was circulated within the vicinity of the premises.

The applicant has produced a copy of the advertisement which is correct.

20. Risk Management

No risk identified

21. Appendices

- a. Application Form
- b. Police Representation
- c. Trading Standards Representation and Correspondence
- d. Local Authority Representation
- e. Local Authority Correspondence

22. Background Papers

Background papers are available for inspection in Shire4 Meeting Room, Shirehall, Hereford, HR1 2HX, 30 minutes before the start of the hearing.