

**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	Tesco Stores Ltd		
Solicitor	N/A		
Type of application: Variation	Date received: 05/08/05	28 Days consultation 02/09/05	Issue Deadline: 04/10/05

The Justices Licence has been seen and accepted, as has the advertisement for the premises.

3. Conversion Licence Application

The premises currently hold a Justices Off Licence. A conversion licence has been issued as follows; -

Licensable activity	Hours	
Sale of alcohol off the premises	Monday to Saturday	0800 – 2300 hours
	Sunday	1000 – 2230 hours
	Good Friday	0800 – 2230 hours
	Christmas Day	1200 – 1500 hours
		1900 – 2230 hours

4. Variation Licence Application

The application for a variation has received representation from 1 local resident.

5. Summary of Application

The licensable activity applied for is: -
Supply of Alcohol

6. The following hours have been requested in respect of the sale of alcohol (*Off Premises*): -
Monday to Sunday 0001 hours – 0000 hours
7. The hours the premises are open to the public are: -
Monday 0800 hours – 0000 hours
Tuesday to Friday 0001 hours – 0000 hours
Saturday 0001 hours – 2200 hours
Sundays 1000 hours – 1600 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**

Responsible Authorities

Have no representation to make regarding this application.

Interested Parties.

The Local Authority has received 1 letter of representation in respect of the application, from a local resident.

The concerns relate to: -

- Prevention of Crime & Disorder
- Public Safety
- Prevention of Public Nuisance
- Protection of Children from Harm

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

12. **Issues for Clarification**

This Authority has requested clarification on a particular point from the party shown.

The Applicant – Tesco Stores Ltd

Has been requested to provide clarification in respect of matters relating to the application as follows: -

Supply of Alcohol/Hours Premises Open to the Public

It is noted that the application applies to sell alcohol 24 hours a day, 7 days a week. Yet the premises are only to be open from 0800 hours Monday until 2200 hours on Saturday and from 1000 hours to 1600 hours on a Sunday. Clarification has therefore been sort as to the reason why the sale of alcohol is applied for during the period when the premises is closed.

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

- Copy of Representation
- Application Form
- Location Map

Background papers are available for inspection in the Library, Shirehall, Hereford, 30 minutes before the start of the hearing.

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.**

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.