

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 8 JUNE 2022

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY JUNE 2022 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Diane Donaldson and Penny Wagg.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/080622 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/080622 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/080622 Apologies were submitted on behalf of Councillor Forsyth and Councillor Kooner and Councillor Davis and Councillor Donaldson were the nominated substitute Member.

APPOINTMENT OF SUB-COMMITTEE

4/080622 The appointment by the City Council of the Committee and Chair for the Municipal Year 2022/23 was noted.

Members were also reminded that the Sub Committee may nominate another Member of their respective Party Group on the Licensing and Public Protection Committee to attend in their place and any nominated Member must have had the formal training as set out in Paragraph 6.1 of the Licensing Committee Code of Practice for Councillors and Officers.

DELEGATIONS TO SUB-COMMITTEE

5/080622 The Members noted the delegations to the Sub-Committee as follows: -

To determine matters relating to the Licensing Act 2003, the Gambling Act 2005, Hackney Carriage Licenses, Private Hire Licences and any such business as may be referred to by the Assistant Director of Regulation and Enforcement.

MINUTES

6/080622 The Minutes of the meeting held on 27 October and the 20 April 2022 were confirmed and signed by the Chairman.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – TESCO EXPRESS, BOURNVILLE, LINDEN ROAD, BOURNVILLE, BIRMINGHAM, B30 1AP.

On Behalf of the Applicant

Jeremy Bark – Solicitor
Harish Purewal – Licensing Manager, Tesco.
Mark Halton – Consultant
Mark Podbury – Store Manager, Tesco.
Kevin Twynholm – Area Manager, Tesco.

On behalf of those making representations

Councillor Liz Clements – Local Ward Councillor.
Tracey Sealey – Local Resident.

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The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were raised.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Bhapinder Nandhra, to outline the report.

The Chair invited the applicant to make their submission and Jeremy Bark, on behalf of the applicant made the following statements: -

- a) Tesco Express is the smallest format that Tesco operate.
- b) It's a convenience store and customers generally have about a bag and a half of shopping.
- c) They sell food, drinks, alcohol, and other household items.
- d) The range of alcohol is carefully selected and typically they have about 120 products.
- e) The majority of which are white and red wines. Spirits are limited.
- f) The sales of alcohol range between 6-11% of the total sales.
- g) Its not an overwhelming off licence premises.
- h) 95% of alcohol sales are linked to other items/goods.
- i) During the Pandemic the company looked carefully at the business and the local residents were asking why there was no alcohol sales at the store.
- j) They had Mr Halton carry out observations and he supported the fact that the premises wouldn't undermine the licensing objectives.
- k) The Area Manager had worked with WMP (West Midlands Police). There was no noted problems as a result of this premises.
- l) There wasn't a Cumulative Impact Zone in operation in the area.
- m) The Tesco stores had a very carefully designed format, and everything was designed to ensure it didn't cause problems.
- n) This was not a premises selling cheap alcohol and they did not have localised promotions.
- o) There was sometimes a meal deal promotion where customers could get a bottle of wine with a meal at a reduced price.
- p) Tesco were an excellent operator.

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- q) They have a challenge 25 policy and also had a pop-up notification on the till to prompt staff when an age restricted product is scanned.
- r) The till also gave them the date of birth for anyone who was 18 on the day of the purchase to help employees work out whether someone was of legal age or not to buy age restricted products.
- s) They also had mystery shoppers to check that the challenge 25 policy was working.
- t) Alcohol and age restricted training was given and updated at least twice a year.
- u) They encouraged and empowered employees to refuse a sale wherever they felt it was appropriate.
- v) If staff refused a sale, managers always supported that refusal.
- w) They typically tried to have three personal licence holders in store.
- x) The store was due to be re-fitted as they wanted to upgrade the CCTV. However, there was no issues with it currently.
- y) The alcohol was not located near the entrance and spirits were located behind the counter.
- z) They had 22 members of staff and 4 managers.
- aa) The risk assessments suggested they didn't require security staff.
- bb) There had only been 10 incidents in the last 12 months. The maximum amount shop lifted was £20 in one incident.
- cc) All stores had bodycams and head sets.
- dd) There were 6 bins in the forecourt and the site was litter picked at least once a day.
- ee) Anti-social behaviour was not tolerated and anyone causing trouble was asked to leave the premises. If they refused to leave, they were banned from the store and the police would be called.
- ff) Risk assessments were carried out weekly.
- gg) The alcohol licence application hours matched the store opening hours. WMP had no concerns.
- hh) The conditions were in the bundle of documents.
- ii) They had a condition about ABV – they couldn't sell beers or ciders above 5.5ABV unless they were craft beers.

- jj) That the application should be judged on its own merits, what had gone on before was irrelevant.
- kk) The concerns raised were based on fears and no real evidence.
- ll) In the unlikely event that a problem occurred there is the option to review the licence.

Members asked questions and Mr Bark gave the following responses: -

- a) That although alcohol was another form of good for people to steal it was important to look at the nature of the area and the store itself.
- b) The area was reasonably trouble free.
- c) They had safeguards and precautions in place such as; spirits behind the counter, alcohol displays are situated away from the main entrance.
- d) They had high levels of staff and alcohol was in good visibility from the tills.

Mark Horton then answered questions from Members: -

- a) The conditions included things about the positioning of alcohol.
- b) The most problematic Tesco premises were situated in the more central locations within towns and city centres.
- c) He had carried out 7 days of observations and couldn't see a problem with shoplifting and the sale of alcohol being linked/
- d) He hadn't witnessed any anti-social behaviour in the area. He hadn't seen groups of youths hanging around, drunkenness, littering etc. He couldn't see the alcohol licence being a problem.

Kevin Twynholm added that this premises was at the bottom in terms of incidents; they only had a small number of incidents and all incidents were reported and logged.

Mark Podbury stated that it was a pleasant area to work in. He lived locally and 90% of employees at the store also lived locally.

The Chair then invited those making representations to present their case and Councillor Liz Clements made the following points: -

- a) That she lived within 4-5 minutes of the premises and she was also a customer. She felt that the store was valuable. She wanted to thank them for their work during the pandemic.
- b) She had been contacted by residents who were concerned.

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- c) There had been other applications from the same premises in 2007 and 2019, however it was unpopular and residents objected on both occasions as they were objected.
- d) It was a quiet residential area and the premises was open from 0730hours until 2230hours and they were applying for continuous alcohol sales during that time, which presented an increased risk of shoplifting.
- e) The store previously had a security guard, but not anymore.
- f) She hadn't witnessed staff wearing body cams or head sets.
- g) She was concerned that the sale of alcohol would attract shop lifters and put staff in a vulnerable position.
- h) There seemed to be very few staff in the premises when she had visited and there had been issues with cleanliness at the store too.
- i) One DPS (designated premises supervisor) was not good for the long operating hours.
- j) There were residential streets opposite and there had been issues with noise.
- k) Signs asking people to be quiet wasn't really enough.
- l) There were other licensed premises nearby therefore there wasn't really a need for this premises to have an alcohol licence. It was already a successful store without a licence.
- m) That Mrs Sealey had sent her photographs of the traffic issues. Parking was a problem and there was a major crash outside the premises.
- n) The store was operating successfully without a licence so why now did they need one?
- o) That she was a frequent patron of the premises and she did not witness a demand from customers for alcohol.
- p) That whilst she respected Mr Halton's report it was also the case that Tesco's commissioned independent experts with the intention that it reached a certain conclusion. The representation that he had observed no issues in the area did not feel consistent with the lived experience of the area.
- q) The premises wasn't selling alcohol so that's why it wasn't causing a problem.
- r) The level of local knowledge of the area seemed limited.
- s) People cherished the area.

Tracey Sealey was then invited to make her submissions and as such she made the following points: -

- a) That it was a good area.
- b) That she objected as the Council were 'white washing' and granting licences now. The last application in the area had over 500 objectors and the Council ignored the residents.
- c) Did the Council care about its constituents?
- d) That the staff in Tesco were wonderful.
- e) She hadn't seen Mark working there.
- f) She had not seen bodycams or headsets worn at the premises by staff.
- g) The traffic accidents on the main road were a regular occurrence and there was another near miss the other morning.
- h) The Council will say yes anyway, but it is not needed and there were other premises.
- i) It was just encouraging people to drink.

The Chair invited Tracey Sealey to make a closing submission and she made the following statements: -

- If granted this would cause problems.
- There were already issues such as traffic.

The Chair then invited Councillor Liz Clements to make her closing statements: -

- It was an unwelcomed development.
- She was not aware of a big movement of people wanting this.
- She had set out the reasons she objected to the application.
- She was really disappointed in the presentation from Tesco.
- Tesco aspired to be a good neighbour yet ignored the views and objections from residents.
- It was a valuable store.
- It was functioning well without alcohol.
- There was no need for the premises to have an alcohol licence.

The Chair then invited the applicant to make a closing submission and Jeremy Bark on behalf of Tesco made the following points: -

- It was an excellent application with an excellent operator.
- WMP had made no objection to the application.
- It was not a problematic premises.
- The application was consistent with the objectives, policy and the Section 182 guidance.
- That the picture put to the Committee was that they liked Bournville as it is, but that wasn't a relevant consideration.
- Traffic was not an issue.
- Bodycams were not specific to this premises, but all Tesco premises. They were trying to improve.
- It was a good application and the fears from the representations were not based on real evidence.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was announced and a copy of that decision was sent to all parties as follows;

7/080622

RESOLVED:-

That the application by Tesco Stores Ltd for a premises licence in respect of Tesco Express Bournville, Linden Road, Bournville, Birmingham B30 1AP, be granted. The licence will include those conditions which were agreed between the applicant and West Midlands Police in advance of the meeting, namely:

1. The premises licence holder shall carry out a risk assessment to determine the need to employ SIA security personnel at the premises. Where the premises licence holder identifies the need to employ security personnel at the premises as a result of such risk assessment then it shall so on the days and at the times as identified as requiring such provision. An initial risk assessment shall be carried out and shall be updated every 12 weeks unless circumstances dictate that it should be updated sooner
2. Where security personnel are employed at the premises then contact details for such persons shall be provided to the Police upon request and suitable arrangements shall be put in place to allow them to sign in and sign off duty and they shall be required to display appropriate identification of their SIA licence status
3. A digital record of incidents occurring at the premises shall be kept at the premises by the management team and made available on request to an authorised officer of the licensing authority or the Police. It should be completed within 24 hours of the incident and will record the following:

- (a) all crimes reported to the venue;
- (b) any serious incidents of disorder occurring within the premises;
- (c) any thefts or attempted thefts from the premises;
- (d) any serious issues in relation to the sale of alcohol within the premises;
- (e) any faults in the CCTV system; or
- (f) any visit by a relevant authority or emergency service

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will also form part of the licence issued.

The applicant company was a very experienced national retailer which managed alcohol licensed premises throughout the country, and was applying for the same for the Tesco Express branch at Bournville. West Midlands Police had approved the application with the addition of some conditions.

The solicitor for Tesco Stores Ltd addressed the Sub-Committee to explain that the “Express”-style format was the smallest type of premises operated by the company -a convenience store offering food, drinks and household items. It would be a small-scale operation, and alcohol sales would be a small part of the business. The shop would offer a carefully selected range of alcohol products, mainly wine and limited spirits. Alcohol would account for 6 to 11% of total sales. It was a well-managed premises in a safe area. Consequently, there was very little likelihood of any risk to the licensing objectives.

There had been considerable demand for alcohol products from patrons, many of whom had asked for them during the Covid-19 lockdowns in order that the premises would become a convenient “one stop shop” for all their requirements. The solicitor observed that Tesco was an excellent operator nationally, and was a good neighbour to those living nearby, having displayed a highly responsible approach to trading. Some years ago the company had been the first to expand the “Think 21” requirement to a “Think 25” requirement; all other retailers had followed.

The company would be operating under a format designed to ensure that the premises would not cause problems. The request was to operate to the company’s standard opening hours, and would not involve late-night or overnight trading. The shop would not be offering cheap alcohol, or the kind of promotions seen at the company’s large branches. The alcohol products would not be situated near the entrance of the shop.

There would be a management team of four, with four or five staff members on duty at busy periods, and two persons at other times. The risk assessment for door security staff had suggested that door staff were not needed. Bodycams and headsets were worn at all stores. There were six litter bins and a litter patrol was carried out once a day. Antisocial behaviour was not tolerated, and the company looked at the risk assessments regularly. Alcohol deliveries would be made together with all the other food products - not separately.

The company had engaged a retired Police Inspector to carry out observational visits to the area. He had produced a detailed Report which was included in the documents before the Sub-Committee. His Report had confirmed that there were

no problems in the area and that the licensing objectives would not be undermined by the grant of the licence. Similarly, no representations had been received from any responsible authority.

Both the store manager and the area manager confirmed that it was not any kind of 'problem' premises; indeed, in terms of the local area as a whole, this branch had the lowest number of incidents. The area manager confirmed that in the preceding six months, there had been only four incidents, and remarked that the company's practice was to put in extra measures where necessary. The average customer at the branch did not create issues. The store manager confirmed that he himself was a local resident, as were the majority of the staff at the branch.

The solicitor reminded the Sub-Committee that under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk of an undermining of the licensing objectives. Furthermore, he observed that the shop was not in the Bournville Village Trust area, and advised the Sub-Committee to look carefully at whether there was evidence that the proposed operation would undermine the licensing objectives. The applicant company was confident that it would not, and reiterated that there was significant demand from customers for an alcohol offer alongside food and household items.

Written representations had been received from those living nearby. These included a Ward Councillor and a local resident, both of whom also attended the meeting in person.

The Ward Councillor made submissions relating to the likelihood of an increase in crime and disorder - such as shoplifting, theft of petrol by driving off without making payment, and risks to security generally – all of which, she felt, could be created if the premises were to start to sell alcohol. It was her opinion that stocking alcohol would make the premises a magnet for shoplifters. She was concerned by the risk of an increase in public nuisance, such as noise, which she feared would be a consequence of permitting alcohol sales. She also raised concerns over public safety due to an increase in traffic on the roads.

The Ward Councillor stated that her fear was that offering alcohol would attract a different clientele to the shop. She further observed that the nearby Cotteridge Park, which was under a Public Space Protection Order, could become a focal point for antisocial behaviour if alcohol sales were to be permitted. She felt that local residents valued the quiet of the area. Whilst the Ward Councillor accepted that the shop was not inside the Bournville Village Trust site, she remarked that those general principles defined the Linden Road area, and that local people "cherished" them. She observed that she was disappointed that Tesco had stated that it was a "good neighbour" when in her opinion it had disregarded residents' views. She urged the Sub-Committee to reject the application, or at least to reduce the hours for alcohol sales.

These views were endorsed by the local resident, who expressed her fears about alcohol sales. She considered that very few residents wanted alcohol to be sold at the shop. She felt that the reason that the area was trouble-free was because the shop did not offer alcohol.

Members carefully considered the representations made by other persons but were not convinced that there was an overwhelming evidential and causal link between the issues raised and the effect on the licensing objectives. Neither West Midlands Police nor the Environmental Health department of the City Council had objected. These were the authorities on the prevention of crime and disorder, and the prevention of public nuisance.

The Sub-Committee considered that the applicant company had drafted a satisfactory operating schedule to ensure that the shop would be capable of upholding the licensing objectives. Certainly the Observational Report that had been submitted gave confirmation that there were no existing problems.

The view of those making representations, both the Ward Councillor and the resident, had been that there was a risk of antisocial behaviour, and consequently public nuisance, if alcohol sales were to be permitted. However, the Sub-Committee had observed that the applicant company was very experienced and took a highly responsible view of alcohol-licensed trading. The hours requested were very modest, and therefore the Sub-Committee saw no need to reduce them. The suggestion that public safety would be put at risk due to increased road traffic was speculative, as the premises was a small convenience store. Regarding the risk of increased crime such as shoplifting, and the potential for an increase in antisocial behaviour, the applicant company had a well-ordered management system and looked at such incidents carefully. All in all, the application inspired confidence.

Having deliberated the operating schedule put forward by the applicant, and the likely impact of the application, the Sub-Committee concluded that by granting this application with the conditions agreed by the Police, the four licensing objectives contained in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and very unlikely to jeopardise any of the licensing objectives, given that the applicant company was an experienced national retailer. The solicitor had observed that the application was entirely consistent with the Guidance issued under s182 and the City Council's own Statement of Licensing Policy; the Sub-Committee agreed with this.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State, the application for a premises licence, the written representations received and the submissions made at the hearing by the applicant company via its solicitor, the Ward Councillor, and the person (local resident) making representations.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

The meeting ended 1119 hours.

Chairman.....