

Southend-on-Sea Borough Council

Agenda
Item No.

Report of Deputy Chief Executive (Place)
to
Licensing Sub Committee (B)
on
9th August 2019

Report prepared by: Lloyd Coombes

**Tesco Stores Limited, Petrol Station And Tesco Express, 500 Southchurch Road,
Southend-on-Sea, Essex
Application for the Variation of a Premises Licence**

Licensing Act 2003

A Part 1 Public Agenda Item

1. Purpose of Report

1.1 This report considers an application by Tesco Stores Limited for the variation of a Premises licence.

2. Recommendation

2.1 That the Sub-Committee determines the application.

2.2 Should the Sub-Committee decide to approve the application, the relevant mandatory licence conditions must be applied. (These are set out in Appendix 1).

2.3 Appendix 2 sets out possible conditions drawn from the operating schedule.

3. Background

3.1 The premises comprise an established petrol station and supermarket on the corner of Southchurch Road and Bellevue Avenue.

4. Proposals

4.1 The application was given to the Licensing Authority on 15 March 2019 and is for the variation of the Premises Licence

4.2 The consultation period was restarted twice due to improper display of the public notice.

4.3 Details of the variation application which are to be determined by the Sub-Committee can be briefly summarised as follows:

- a) Application to vary the current Premises Licence for the sale of alcohol for consumption off the premises daily without restriction.

- b) To permit the store to be open to the public 24 hours a day.
- 4.4 The proposals are more fully documented in the application form which has been copied to Sub-Committee Members.

5. Application Procedure

- 5.1 Applicants for variation of licence are required by law to send copies of their applications to all of the "Responsible Authorities". They are also required to display a notice giving brief details of the application in a prescribed form at the application site, and to publish the same information in a newspaper circulating in the area.
- 5.2 As a result of these procedures, representations have been received from seventeen local residents and one Councillor.
- 5.3 No representations were made by any of the Responsible Authorities. Conditions were agreed with Essex Police during the consultation period which can be found at **Appendix 3**.
- 5.4 Copies of the representations have been provided to the Sub-Committee Members. In accordance with the legislation, all parties have been invited to attend the hearing.

6 Matters for Consideration

Formal representations having been made and not withdrawn or resolved, the Licensing Authority is obliged to hold a hearing to consider them. Further, having regard to such representations, the Authority is required to take steps (if any) as it considers necessary for the promotion of the Licensing Objectives.

Thus, the Authority may:

- a) Approve the application as made, or
 - b) modify the conditions put forward, or
 - c) reject the whole or part of the application.
- 6.2 The Licensing Act 2003 requires that the Licensing Authority must carry out its functions under the Act with a view to promoting the Licensing Objectives. These are:
- a) The prevention of crime and disorder;
 - b) Public safety;
 - c) The prevention of public nuisance; and
 - d) The protection of children from harm.
- 6.3 In carrying out its licensing functions, the Licensing Authority must also have regard to:
- 1. Its Licensing Statement, and
 - 2. The guidance issued by the Secretary of State.

6.4 The Licensing Authority has, in accordance with the requirements of the Act, prepared and published a Statement of Licensing Policy, following formal consultation. Copies of this document, together with the statutory guidance, have been made available to all Licensing Committee Members.

7. Existing Licensing Controls

7.1 The premises have the benefit of a Premises Licence, held since 2011, which permits the sale of alcohol to take place (for consumption off the premises) between the hours of 06:00 and 00:00. The current opening hours also match these times

7.2 A copy of the premises licence has been supplied to the sub-committee

8. Background

8.1 The Council's Statement of Licensing Policy

9. Appendices

9.1 Appendix 1 - Mandatory conditions.

9.2 Appendix 2 - Conditions on the current licence not sought to be removed or varied.

9.3 Appendix 3 - Proposed additional conditions agreed with Essex Police, for the Sub-Committee's consideration.

MANDATORY CONDITIONS

The Licensing Act 2003 lays down certain mandatory conditions which must be applied to Premises Licences. These are summarised below:-

- 1) No supply of alcohol may be made under the premises licence
 - a) at a time when there is no designated premises supervisor in respect of the premises licence or
 - b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.
- 2) Every supply of alcohol under the premises licence must be made or authorised by a person who holds a personal licence.
- 3) Any individual who carries out security activities at the premises must be licensed by the Security Industry Authority.
- 4)
 - a) The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol.
 - b) The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy.
 - c) The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either—
 - (i) a holographic mark, or
 - (ii) an ultraviolet feature.
- 5) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price.
- 6) For the purposes of the condition 5—
 - (a) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; .
 - (b) “permitted price” is the price found by applying the formula— **$P = D + (D \times V)$** , where—
 - (i) P is the permitted price,
 - (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and
 - (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol;
 - (c) “relevant person” means, in relation to premises in respect of which there is

in force a premises licence—

(i) the holder of the premises licence,

(ii) the designated premises supervisor (if any) in respect of such a licence,

or

(iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence;

(d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and

(e) “valued added tax” means value added tax charged in accordance with the Value Added Tax Act 1994.

- 7) Where the permitted price given by sub-section (b) of condition 6 would (apart from this condition) not be a whole number of pennies, the price given by that sub-section shall be taken to be the price actually given by that sub-section rounded up to the nearest penny.
- 8) (i) Sub-section (ii) applies where the permitted price given by sub-section (b) of sub-section (ii) on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax.

(ii) The permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

APPENDIX 2

**CONDITIONS ON THE CURRENT LICENCE NOT SOUGHT TO BE REMOVED OR
VARIED**

- 1) Alcohol shall not be sold in an open container or be consumed in the licensed premises.

APPENDIX 3

ADDITIONAL CONDITIONS AGREED WITH ESSEX POLICE

- 1) All staff engaged in the sale of alcohol shall receive Age Restricted Sales training and on induction and then refresher training twice a year. Training records shall be kept on the premises (or otherwise be accessible on the premises) for a minimum of 12 months and made available to police, trading standards or licensing authority staff upon reasonable request.
- 2) A CCTV system shall be in operation at the premises and recorded images shall be retained for a period of 31 days. CCTV images shall be provided to the police and other responsible authorities as soon as is practicable and in any case within 48 hours of a request for such images, subject to any data protection legislation then in force.
- 3) An incident log shall be kept at the premises, and made available to police or licensing authority staff upon reasonable request.
- 4) A Challenge 25 scheme shall be operated, staff will be trained to ask any person who appears to be under the age of 25 years of age to produce a valid form of ID, this to include:
 - Proof of age card bearing the PASS Hologram;
 - Photocard driving licence;
 - Passport; or
 - Ministry of Defence Identity Card.
- 5) The premises shall clearly display signs in checkout area of the premises and where alcohol is displayed advising customers that a 'Challenge 25' policy is in force.
- 6) Beers, Ciders and Lagers with an alcohol by volume content above 6.5% abv will not be sold at the premises with the exception of premium or craft products.