

GUILDFORD BOROUGH COUNCIL

LICENSING ACT 2003 RECORD OF HEARING AND DECISION TAKEN BY THE LICENSING SUB-COMMITTEE	
DATE OF HEARING	Monday 7 December 2020
SUB-COMMITTEE MEMBERS PRESENT:	Councillor Dennis Booth (Chairman) Councillor Gordon Jackson Councillor Ann McShee
OFFICERS PRESENT:	Sophie Butcher, Democratic Services Officer Peter Muir, Licensing Officer Bridget Peplow, Senior Specialist Lawyer (Litigation & Employment) Mike Smith, Licensing Team Leader (observing)
DISCLOSURES OF INTEREST BY MEMBERS PRESENT:	None.
PREMISES:	Tesco Stores Ltd, Retail Unit, Queen Elizabeth Park, Guildford, Surrey, GU2 9JX
TYPE OF APPLICATION:	Application for a new Premises Licence.
DETAILS OF APPLICATION SOUGHT:	A new premises licence to allow the sale of alcohol for consumption off the premises between 6 am and 11.00 pm, seven days a week.
APPLICANT:	Tesco Stores Limited, Tesco House, Shire Park, Kestrel Way, Welwyn Garden City, Hertfordshire, AL7 1GA
IN ATTENDANCE ON BEHALF OF APPLICANT:	Mr Ionut Hentea (Designated Premises Supervisor) Ms Hardish Purewal (Licensing Officer for Tesco) Mr Christopher Rees-Gay (Legal Representative for Tesco) Mr Scott Walder (Area Manager for Tesco)
OTHER PERSONS IN ATTENDANCE:	Mr Nick Holloway (Director of Queen Elizabeth Park Residents Association) Mr Andrew Rogoyski Councillor Pauline Searle

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DETAILS OF DECISION TAKEN

In arriving at its decision, the Sub-Committee took into account the relevant representations submitted verbally and in writing. The Sub-Committee was also made aware that the following sections of the Licensing Policy were relevant:

- Section 4: (Fundamental Principles)
- Section 11: (Licensing Hours)
- Section 12. 2: (Prevention of Crime and Disorder)
- Section 12.4 (Prevention of Public Nuisance)
- Section 12.5 (Protection of Children from Harm)
- Section 13 (Licence conditions)

The following sections of the Guidance issued in April 2018 by the Secretary of State under Section 182 of the Licensing Act 2003 are relevant:

Paragraph 1.16 - Licence conditions – General principles

Paragraph 1.17 – Each application on its own merits

Paragraphs 2.1-2.6 –Crime and Disorder

Paragraphs 2.15-2.21 – Public nuisance

Paragraphs 2.22-2.31 – Protection of Children from Harm

Paragraphs 9.31-9.41 – Hearings

Paragraphs 9.42-9.44 – Determining actions that are appropriate for the promotion of the licensing objectives

Paragraphs 10.1-10.66 – Conditions

The Sub-Committee received a report from the Licensing Officer that the application was for a new premises licence for Tesco Stores Ltd to allow the sale of alcohol for consumption off the premises between 6am and 11.00 pm, seven days a week. The premises was located in a retail unit on Queen Elizabeth Park, in a residential area. The applicant had originally applied for a licence until midnight but had submitted revised hours for the sale of alcohol and hours of operation, reduced by one hour from 6am – 11pm. Budgens had previously been located on the site and surrendered its licence in 2015. A planning application for Tesco Stores Ltd, for this site, had also been received by the Council but was a separate matter. If different hours were granted by the Licensing and Planning Authorities, the more restrictive hours would apply. The Sub-Committee noted section 2.4 of the report which detailed how Tesco Stores Ltd would endeavour to comply with the four licensing objectives. A total of seven representations had been received in relation to the application, two of which were from the local Ward Councillors. The Sub-Committee was advised that it must consider the application according to its own merits. The Sub-Committee were advised that they should look to grant the application. However, in light of the relevant representations, it could impose additional conditions on the licence which were appropriate for the promotion of the licensing objectives, proportionate and which dealt with the concerns of those

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making representations; exclude any of the licensable activities from the scope of the licence; refuse to specify a person as the premises supervisor; or reject the application.

The Chairman invited Mr Christopher Rees-Gay (legal representative) to make his representation on behalf of the applicant. He raised the following points:

- Tesco had submitted reduced hours for the sale of alcohol from 6am until 11pm as opposed to midnight.
- Tesco had a total of 3,400 stores with premises licences, with 2000 stores operating in an Express store format.
- All Tesco's staff were trained in the sale of alcohol with excellent training standards maintained. Refresher training was routinely given at Easter and Christmas.
- Only 7-15% of sales by Tesco were accounted for by alcohol.
- The application proposed was for a new premises licence at an Express Tesco Store which would create seventeen jobs for people in the local area.
- The Designated Premises Supervisor (DPS) had worked for Tesco for ten years. If residents had concerns, they were encouraged to contact the DPS, Mr Ionut Hentea, who was keen to resolve any issues at a local level.
- Monies had been raised for various local community charities totalling £178,000 for the Guildford area. Local food banks would be contacted and donated to by the store.
- The reason why Tesco Stores wished to sell alcohol from 6am was to accommodate those people wishing to buy their ready meals and bottle of wine prior to going to work, to the gym or doing nightshift work and would prevent them from having to make an additional journey at 8am.
- The statutory guidance in respect of the Licensing Act 2003 was that licences would be granted to shops/supermarkets to sell alcohol during their hours of trading unless there was a very good reason not to do so.
- The application had been made available to all Responsible Authorities and no objections had been received from them.
- A total of seven representations had been received, and in response to concerns raised by local residents regarding the hours requested in which to sell alcohol, a reduction by one hour, until 11pm as opposed to midnight, had been submitted by Tesco Stores Ltd.
- In relation to concerns raised regarding alleged crime and disorder, it was important to note that those issues had been associated with the Budgens store that was previously located on that site and not Tesco's.
- In relation to concerns raised regarding anti-social behaviour, all Tesco's staff were trained to deal with such incidences, should they occur. Nevertheless, the DPS and Tesco's management would do everything in their power to ensure that such issues would not happen.
- In relation to concerns raised regarding under-age drinking, this was again an issue with the previous store, Budgens, that occupied the site. Tesco Stores Ltd operated the Challenge 25 Policy very successfully whilst also preventing proxy sales from taking place (older individuals buying alcohol for those under-age).
- In relation to an alleged increase in litter caused by the new store, Tesco operated a 'Clean as You Go' policy which would therefore prevent this from happening.

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- The opening hours of the Store was a matter for the planning authority. The need for the hours was not a relevant licensing consideration.
- The Licensing Authority always had the power to review a licence should it be seen that Tesco was not adhering to the licensing objectives.

The Chairman invited Mr Hentea (DPS) for the store to make his submission:

- He confirmed that he had been a DPS in various shops for at least twelve years and had a lot of experience of dealing with the public and the types of incidents that could occur.

The Chairman invited the Ward Councillor, Pauline Searle to make her representation on behalf of the local residents. She made the following points:

- She was very concerned about the proposed licensed hours for the new Tesco Express Store in Queen Elizabeth Park.
- All local Tesco Express stores were open until 11pm and not midnight.
- She referred the Sub-Committee to the original planning application submitted in 2003 where the opening hours for Budgens were more restrictive than that proposed by Tesco. This was to protect the amenities enjoyed by local residents.
- She was concerned that the new premises licence would promote anti-social behaviour, caused by the sale of alcohol from 6am until 11pm, as well as generating noise and litter which would also have a knock-on effect on the quality of life for many of the residents located close to the site.
- Of particular concern were the hours of operation proposed on a Sunday which were perceived as too long and unreasonable.

The Chairman invited Mr Rogoyski to make his representation in objection to the application. He made the following points:

- Queen Elizabeth Park was a quiet residential area with very few people around after 9pm. A small number of youths were found to congregate around the site which Tesco wished to locate to. In the mornings, nitrous oxide canisters were found scattered nearby.
- When Budgens was previously located on this site, anti-social behaviour started to happen around 10pm with undesirables buying alcohol and causing a nuisance. Regular disturbances occurred and the police attended the site at least 2-3 times a week. On one occasion, a tree was cut down by youths and thrown around and street furniture was damaged.
- Whilst it was appreciated that the Tesco's staff would undergo Challenge 25 training, it was often a different experience when a young cashier was confronted with intimidating behaviour by those wishing to buy alcohol who were under-age.
- The exit to the store was not overseen by residential properties and therefore the safety of vulnerable people was a concern.
- Despite the police not making a representation as a responsible authority, which was surprising, it should not be taken as a fact that they were therefore giving tacit approval for the proposed premises licence.
- Often broken glass was cleared up by local residents to prevent young children from being hurt.

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- The store was currently being constructed and was already causing problems for the local community in terms of noise and mislaid post. Tesco had a 'Good Neighbours Policy' however upon contacting Tesco to date nobody seemed to know what was exactly in the policy and what commitment they made to the local communities of which they were a part.
- He supported the existence of the store as it provided a useful service to the community. The hours of operation proposed for the sale of alcohol was however perceived to be too much.

The Chairman invited Mr Holloway to make his representation in objection to the application. He made the following points:

- He was the Director of the Queen Elizabeth Park Resident's Association and was therefore speaking on behalf of those residents.
- He was concerned that the proposed hours for the sale of alcohol were too long and would impact upon the local residents that lived nearby.
- Vandalism was an issue associated with the site caused by young drunks who shouted and were abusive on their way home.
- He had tried to contact the Tesco's team about his concerns some time ago, but frustratingly it had taken a long time to establish a point of contact, who in the end did not respond to repeated requests for a meeting to be set up between Tesco's representatives and local residents. Had the meeting taken place then some of the issues of concern could have been more easily dealt with by now.
- The hours of operation were anti-social and create anti-social behaviour that would be of detriment to the local residents.
- He referred the Sub-Committee to a Budgens which was located on the Fairfield Estate and opened from 7am – 8pm and stated that Budgens was in fact owned by Tesco. Waitrose located nearby was also open from 8am – 8pm everyday apart from Fridays when it was open until 9pm.
- The Queen Elizabeth Park Estate opened in 2003 and at that time, local residents spent £35,000 on replacement lighting which was being repeatedly vandalised by youths.

The Sub-Committee noted that a large Tesco was located close to the Royal Surrey Hospital and had a premises licence to sell alcohol from 8am and therefore asked if it would be possible to apply a similar starting time to this Tesco Express. It was confirmed that different considerations applied to larger stores and smaller local convenience stores. In addition, Tesco's Licensing Officer, Ms Hardish Purewal, confirmed that the licence which applied for the larger store was in fact for 24 hours, starting at 8am on a Monday although this did not necessarily reflect the hours actually operated.

The Sub-Committee considered that a large number of issues raised by the objectors were related to planning. The only matters which the Sub-Committee could consider were any issues directly related to the sale of alcohol and the premises licence being applied for. The Sub-Committee requested clarification on what the Tesco's policy was in relation to controlling the gathering of youths in areas that were under their control and land ownership. Mr Rees-Gay (Tesco's legal representative) stated that there would be security at the store. This would be on a risk-based assessment, and he believed that there might be 56 hours per week of security provision. The risk assessment would cover any hotspot areas. In addition, Ms Purewal (Tesco's Licensing Officer) stressed that anti-social behaviour was not wanted at their store and it was therefore in their interests to ensure that such issues did not arise. In response to further clarification sought as to whether a Security Guard would be instore or outside it was clarified that this was decided according to a Risk Assessment. A Security Guard would be deployed

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instore, in the main, and then the Store Manager would phone the police if needed. In response to a query raised regarding the size of the proposed store, it was confirmed that it would be less than half the size of the previous Budgens store. It would be under 10,000 feet in size and the other half of the building would become a veterinary surgery.

The Ward Councillor, Pauline Searle stated that when Budgens was previously onsite, there were community policemen available, which was not the case now owing to budget cuts. Budgens also had CCTV cameras that overlooked the car park. The Sub-Committee therefore queried whether Tesco intended to work closely with the police and whether they would install a similar CCTV system and emergency alarm.

Ms Purewal confirmed that Tesco does have panic alarms and undertook some work with the Met Police on using a Mosquito deterrent device, however, it transpired, owing to human rights issues that they could not use the system. Given that it was a new Tesco Express, it would be kitted out with the latest security cameras which would be linked to a central control hub. Tesco always worked closely with the police and had an open-door policy to encourage the neighbourhood police to come into the store and have a cup of tea or use the staff restroom to eat their lunch. In addition, Tesco was in touch with Guildford Police's Licensing Officer, Colin Whitear so that any issues could be swiftly dealt with.

The Sub-Committee noted that Tesco had a very comprehensive training package for their staff and queried what happened when a member of staff failed a test. It was confirmed that staff would need to re-take the test until it was passed satisfactorily. In addition, if a local community event was being held, staff would undergo 'Think 25' training.

The Sub-Committee noted that a safety and security device called a 'Mosquito' could not be used by Tesco for legal reasons. It was also noted that the device was still sold but when it had been used previously, in relation to Budgens, it had proved ineffective.

The parties were invited to make their final submissions:

The Ward Councillor, Pauline Searle stated that she was supportive of having a Tesco Express located onsite but the hours had to be right to accommodate the concerns of the local community. It was noted that she had requested a meeting between Tesco and local residents, but a response was not forthcoming from Tesco. It was therefore crucial that the concerns of residents were now fully taken on board.

Mr Rogoyski, in objection to the application made the following final submission:

The hours of operation for the proposed store had to be right for what was otherwise a quiet residential area. There were four faces of the existing building that represented blind spots at night. Security guards and external CCTV were therefore needed. It was clear that the representatives from Tesco were not familiar with the site in question.

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Mr Holloway, in objection to the application made the following final submission:

Bellfields Estate was located nearby as well as being close to Queen Elizabeth Park which was accessed via Hopkin Close and was a major source of noise. The potential Tesco would bring a huge number of people across the bridge looking to buy alcohol and in turn cause a nuisance.

Mr Christopher Rees-Gay (Legal Representative for Tesco) made the following final submission:

The store proposed would be much smaller and easier to manage than the previous store onsite, Budgens. The staff and management were all trained to high standards in challenging underage alcohol sales. The 'Good Neighbour Policy', as promoted by Tesco, but which local residents had found difficult to access, had been noted, and would be followed up by Tesco representatives with residents directly. A lot of the points raised by objectors were specifically in relation to planning, such as the timing of deliveries and opening hours and were not relevant to this hearing. The need for the licence was also not relevant. Tesco was a premium operator and would bring new employment to the area. It was noted that whilst Budgens was now owned by Tesco, this was not the case when the previous store was open. Lastly, no representations had been received from the Responsible Authorities, such as the Police or Licensing.

The Licensing Officer, Peter Muir, was invited to sum up. He confirmed that the Licensing Sub-Committee should look to grant the new premises licence but could take into consideration the representations received and apply conditions as appropriate. A premises should normally be able to sell alcohol during the times in which it was open. A lot of the issues raised by objectors related to planning matters only.

The Senior Specialist Lawyer, Bridget Peplow re-iterated that the Sub-Committee was just considering the premises licence application in relation to the sale of alcohol. Any other issues such as opening hours of the store were subject to planning. If the planning application which had also been submitted for this premises was granted, then the operating times agreed as part of that application, if shorter, would apply. Lastly, Tesco was not responsible for general anti-social behaviour in the local area where those responsible were not under the control of Tesco.

Having considered the submissions made by the applicant and other persons who had made representations, the Sub-Committee:

RESOLVED to grant the new premises licence to allow the sale of alcohol for consumption off the premises between 6 am and 11pm, seven days a week for Tesco Stores Ltd, Retail Unit, Queen Elizabeth Park, Guildford, Surrey, GU2 9JX subject to the licensable activities and hours (as revised by the applicant and accepted by the Sub-Committee):

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Activities	Mon	Tues	Wed	Thurs	Fri	Sat	Sun
(1) Supply of alcohol							
Off the premises	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00
Times premises are open to public							
	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00	06:00 – 23:00

The Sub-Committee imposed the following additional condition:

- A security guard shall be on the premises every day between the hours of 8pm and 11pm.

The following additional conditions consistent with the application operating schedule dated 16 October 2020 will also apply:

Additional conditions consistent with the application operating schedule dated 16 October 2020

1. The licence holder shall ensure that policies, procedures and systems are in place to ensure that they sell alcohol in a responsible manner.
2. The licence holder shall operate a detailed training programme which ensures that comprehensive training is provided to employees having regard to their role and responsibilities. Such training shall be regularly reviewed, and appropriate records kept. Records shall be made available, on reasonable request, to an authorised officer of a responsible authority.
3. The premises shall have a working digital CCTV system providing coverage of the shop floor including the main area used for the display of alcohol.
4. CCTV footage shall be retained for a minimum of 21 days, and made available, subject to data protection legislation, on reasonable request to an authorised officer of a responsible authority.
5. A member of the management team, who has responsibility for the premises shall be on the premises whenever the store is open to the public.
6. The premises shall operate a “Think 25” policy. The checkouts shall be programmed to prompt the checkout assistant, when an alcohol product is scanned at the till, to follow the “Think 25” policy. Members of staff shall receive appropriate training both in relation to the underlying law and the Tesco policy, systems and procedures. This training shall be documented and repeated at appropriate intervals. A record of this training shall be made available, on reasonable request, to an authorised officer of a responsible authority.

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The following mandatory conditions will apply:

Mandatory condition - Door supervision

1. Where at specified times one or more individuals must be at the premises to carry out a security activity, all such individuals must be licensed by the 'Security Industry Authority (SIA).

Mandatory condition - Sales of alcohol

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 the 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

Mandatory condition - Age verification policy

1. 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.
2. 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.
3. 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—
 - a. a holographic mark, or
 - b. an ultraviolet feature.

Mandatory condition - Permitted price for alcohol

1. 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.
2. For the purposes of the condition set out in paragraph 1—
 - 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—

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- 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. "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.
3. Where the permitted price given by Paragraph (b) of paragraph 2 would (apart from this paragraph) not be a whole number of pennies, the price given by that sub-paragraph shall be taken to be the price actually given by that sub-paragraph rounded up to the nearest penny.
 4. (1) Sub-paragraph (2) applies where the permitted price given by Paragraph (b) of paragraph 2 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.
(2) 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.

Mandatory condition - Door supervision

Where at specified times one or more individuals must be at the premises to carry out a security activity, all such individuals must be licensed by the Security Industry Authority (SIA).

REASON FOR DECISION:

In reaching their decision to approve the amended application for the new premises licence, the Sub-Committee considered both written and oral representations from the applicant and other persons including the Ward Councillor. The Sub-Committee noted that prior to the hearing, as a result of the representations received, the applicant had reduced the terminal hour for the sale of alcohol and closing time of the store to 11pm as opposed to midnight.

The Sub-Committee sympathised with local residents with regard to their previous experiences with the Budgens store located on the site in terms of anti-social behaviour, crime and disorder and public nuisance. Whilst a correlation had been identified by the objectors between the sale of alcohol and the resultant bad behaviour of youths, this was directly associated with another store and did not relate to the existing applicant, Tesco Stores Ltd. The Sub-Committee noted that whilst the applicant now operated Budgens stores, this had not been the case when the previous licence was in existence. The Sub-Committee was satisfied that Tesco had in place a robust training programme for its staff to successfully combat issues such as the underage purchase of alcohol. In addition, the DPS, Mr Ionut Hentea, recruited for this store, along with management, wished to foster good community relations which the Sub-Committee actively encouraged. A meeting was recommended to take place between all relevant parties, local residents, ward councillors and Tesco's representatives to discuss any issues of concern. The proposed store was also significantly smaller than the previous Budgens store and so would be easier to manage overall.

The Sub-Committee considered applying a condition requiring that CCTV cameras were located in appropriate areas outside the store that would be dark at night and could be areas where anti-social behaviour would take place. The Sub-Committee discussed this with the applicant who stated that they might not be able to comply with such a condition, for example in the car park area, owing to data protection issues. The Sub-Committee asked whether Tesco would agree to liaise with the Licensing Officer, Peter Muir to confirm the appropriate positions in which CCTV

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cameras could be placed. The applicant was concerned that imposing such a condition would be vague and lacking in clarity. The Sub-Committee agreed that it did not have sufficient information to impose a condition but strongly recommended that Tesco considered installing CCTV outside in the areas that were dark and vulnerable to anti-social behaviour. The Sub-Committee considered that, based on the previous history of a store in that location, there was a risk that under-age drinkers may be attracted to the store and anti-social behaviour could result. The Sub-Committee was satisfied that Tesco could put in place appropriate measures to mitigate this risk. After discussion with Tesco, they imposed an additional condition requiring Tesco to have a security guard on the premises daily between the hours of 8pm and 11pm'. Tesco stated that such a condition was acceptable, and they were able to comply with it.

The Sub-Committee was mindful that a lot of the issues raised in relation to the residents' enjoyment of their amenities and deliveries were relevant to planning only. The Sub-Committee noted that a premises licence should normally be granted for the hours that a store was open. There was no good reason, in this case, for limiting the licensing hours. The applicant had clear processes in place to prevent crime and disorder and/or public nuisance. The Sub-Committee noted that a review of the licence could be called for if problems did arise.

Signature of Chairman:

Dated: