

MINUTES OF	LICENSING PANEL
MEETING DATE	Thursday, 19 November 2020
MEMBERS PRESENT:	Councillors James Flannery (Chair), Jane Bell and Jacqui Mort
OFFICERS:	Tasneem Safdar (Shared Legal Services Team Leader), Chris Ward (Licensing Officer) and Coral Astbury (Democratic and Member Services Officer)
OTHER MEMBERS AND OFFICERS:	Councillor Jacky Alty, Stephanie Fairbrother (Licensing Officer) and Emma Cardie (Legal Executive)

11 Apologies for absence

None.

12 Declarations of Interests

None.

13 Tesco Stores Ltd

+The Panel met to consider a new application for a Premises Licence in respect of (*Tesco Stores Ltd, Liverpool Road, Penwortham, Preston, PR1 9XE*) pursuant to the provisions of Section 18 of the Licensing Act 2003.

Representatives on behalf of Tesco Stores Ltd were present at the hearing, the applicants Legal Representative, Christopher Rees-Gay was also in attendance and made representations on their behalf.

The Chair welcomed everyone to the meeting and outlined the procedure to be followed. Before the full hearing could commence the Panel were advised that a preliminary issue had been raised and would need to be considered.

A – Preliminary Issue

The Panel were advised that an objection had been received which alleged the applicant had not complied with Regulation 25 of the Licensing Act 2003 (Premises Licence and Club Premises Certificate) Regulations 2005. This was specifically in respect of the notice not being advertised for 28 days consecutively and not being displayed prominently on the external perimeter of the premises.

Ordinarily, this would be an issue which a Licensing Officer would have dealt with prior to a hearing, however as the Objector amplified her concerns it was decided that this required consideration. The objection was read out to the Panel by the Council's Licensing Officer.

The Council's Licensing Officer explained that the premises were currently a construction site and was in the process of being built. Officers had visited the site on three occasions and the notice was displayed on all three occasions. Regulation 25 requires that a notice, in the case of a premises covering an area more than 50 square meters, should be placed every fifty metres alongside the external perimeter. However, as the remainder of the external perimeter of the premises was surrounded by hedges, it was not practicable to place any notices elsewhere, except on Cop Lane, which is where the site access was.

The Applicant's Solicitor provided that the notices had been advertised correctly as required by Regulation 25 and evidence had been submitted to confirm this. The Council's Legal Advisor explained that in respect of the timeframe of displaying the notices, the Applicant had provided evidence to rebut the allegation in this regard and had complied with the notices being displayed for the 28-day period. The issue was whether the site notices could practicably be placed around the external perimeter of the site, which consisted of hedges, therefore it was impracticable to place a notice on hedges.

The Council's Legal Advisor advised the panel in respect of case law which deals with non-compliance of statutory requirements, in particular the Licensing Act 2003 (Premises Licenses and Club Premises certificate) Regulations 2005. Reference was made to the High Court Case of **R (D & D Bar Services Ltd) v Romford Magistrates Court & London Borough of Redbridge (2014)**.

The Council's Legal Advisor further explained, in respect of the timeframe of displaying the notice it would appear that the applicant had provided evidence to rebut the allegation in this regard and had complied with the notices being displayed for the 28-day period. The difficulty with this application was that the premises was still being built and is currently a building site. The notice was first placed at the site access entrance and near the bus stop on Cop Lane. There was no other access point. As the panel had been informed that the remainder of the external perimeter of the site, consisted of hedges, it was therefore impracticable to place a notice on hedges.

The panel was advised that it appeared that sufficient evidence had been provided to show substantial compliance by the Applicant with the procedural requirements of Regulation 25 of the Licensing Act 2003 (Premises licenses and Club Premises certificate) Regulations 2005. It was also explained that the Applicant had advertised the notice in a local newspaper and the notice had been displayed on the Council's website.

Furthermore, the Panel were asked to consider if there had been any substantial prejudice to any individuals. The Council's Legal Advisor provided to the panel that the further objections, which had been received outside of the consultation period, were similar to those objections which had been considered by the Panel. The panel were advised, given the full facts of the case, on balance the hearing should proceed.

RESOLVED: (Unanimously)

Members of the Panel agreed that the hearing should proceed.

B – The Hearing

The Council's Licensing Officer presented the report and provided that the Applicant had submitted a new Premises Licence application, pursuant to Section 17 of the Licensing Act 2003. The applicant sought permission to sell alcohol by retail for 24 hours a day, seven days a week, for off sales only. No other regulated entertainment had been applied for and the proposed opening hours of the store were in line with the request for off sales.

The Panel were advised that no representations had been received from any of the Responsible Authorities who are experts in identifying whether a new proposed premise would undermine any of the four licensing objectives. Conditions had already been agreed between the Applicant and Police with regards to several issues.

The Applicant's Solicitor stated that the application was for a 24-hour premises licence for off sales only and they were happy to proceed on that basis together with the additional conditions agreed with the Police. The Panel were advised that the applicant was a national retailer which sells alcohol along with other goods in over 3400 stores. The format of the store is to allow shoppers to do their weekly shop and to buy a variety of products.

The Applicant has 300,000 members of staff that sell alcohol and they are all trained in respect of the licensing policies and due diligence processes that Tesco's have. Nationally sales of alcohol are made up of 7-15% of the Applicant's annual turnover. Tesco has its own BIIAB accredited training centre. There are written training policies and formal training to all staff that sell alcohol is provided to all new members of staff and refresher training is provided to existing staff at Easter and before Christmas. Training is undertaken by a formal training package and individuals are given 1 to 1 training and by an interactive system.

The Panel were informed that the Tesco Store Manager and Designated Premises Supervisor for the premises will be Julian Blisset (present at the hearing). Mr Blisset has held a personal licence for 11 years and has been a Store Manager for 10 years and is therefore experienced. Mr Blisset wishes to work with the residents and his contact details will be provided to the Licensing Team to forward onto residents. There will be a designated communities champion who will be the lead for community purposes.

he Applicant's solicitor referred to the objections raised. Objection 1 had provided that allowing a 24-hour premises licence would attract those that are restricted in their drinking hours in other licensed premises to come along to Tesco to buy more alcohol. Mr Rees-Gay provided that all staff understand that it is a criminal offence to sell alcohol to anyone that is drunk by virtue of S141 Licensing Act 2003. Turning to the issues around Covid 19 and social distancing, the representative stated that appropriate measures had been put in place to deal with this when the store is open, however, that this is not a relevant factor for the panel to consider. In terms of public nuisance and crime and disorder, it was submitted that there was no evidence provide to the panel by the objectors in respect of this occurring. Nevertheless, as part of the agreed conditions with the Police, a risk assessment will be undertaken prior to the store opening as to determine whether an SIA qualified door staff are required. The panel were informed that Ms Hardish Purewal (who was also present) has a good relationship with the Police and any issues can be raised with her. In

terms of the floodgate's argument, the representative submitted, that this is irrelevant as each case must be considered on its own merits. Regarding littering, there is a cleaning contract in place whereby the store is litter picked especially the external areas like the car park.

The second objection was also responded to by the Applicants representative. He said that Mrs Heaton had referred to public nuisance but there is no evidence provided of this. The argument of not having any other premises of a 24- hour nature within the wider catchment area again raised issues in respect of determining each case on its merits.

The case of **Daniel Thwaites v Wirral Borough Magistrates Court (2008) EWHC** was mentioned, specifically because each case should be considered on the evidence before the panel, and it was the Applicant's representative submission that there is no negative evidence of crime and disorder and public nuisance and therefore the application should be granted as applied for.

Members sought clarification of any incidences at any stores opened 24 hours, by late night shoppers buying alcohol. In response, Ms Purewal stated that generally Tesco do not have any issues, however as supporters of community involvement it would be expected that the store manager would sort any issues out straightaway.

Prior to the panel going into private deliberations, the Council's Legal Advisor provided that the panel had several options in respect of the application. These were; to grant the Premises Licence subject to any conditions the Licensing authority considers appropriate for the promotion of the licensing objectives, to exclude from the scope of the licence any licensable activities to which the application relates, to reuse to specify a person in the licence as the premises supervisor or to reject the application.

In reaching its decision the panel considered the following:

- a) Both written and oral evidence presented in connection with the hearing
- b) The Licensing Act 2003 and the relevant regulations
- c) S182 Revised Guidance of the Licensing Act 2003
- d) South Ribble Borough Council – Licensing Policy
- e) Relevant Case Law

RESOLVED: (Unanimously)

1. The Panel followed the guidance given in the High Court case of **Daniel Thwaites v Wirral Borough Magistrates Court** during their deliberations. They were of the view that significant weight had to be apportioned to the fact that no representations had been received from any Responsible Authorities raising any concerns about the application, especially from the Police. Responsible Authorities were experts in their field. Furthermore, several agreed conditions which address the licensing objectives, specifically the prevention of public nuisance and the prevention of crime and disorder had been agreed by the Applicants with the Police – Appendix 1 page 45.
2. It was noted that the Applicant was a national retailer with thousands of stores all over the country. The Applicants have a training centre which is BIIAB approved and have written training policies. Formal training is provided to all

staff that sell alcohol and refresher training is provided twice a year. Furthermore, the DPS and store manager Mr Blisset is an experienced individual with over 10 years' experience. It also appears that the Applicant has a good working relationship with the Police and any issues can be raised with the store manager or the liaison officer.

3. Paragraphs 10.15 of the S182 guidance and Paragraph 19.4 of the Council's policy was also considered. No issues had been raised by the Responsible Authorities for restricting the hours for the sale of alcohol and therefore ordinarily shops and supermarkets should normally be free to provide the sale of alcohol for consumption off the premises at any times when the retail outlet is open. This was also given significant weight.
4. The Panel found that this was an application for the sale of alcohol for consumption off the premises. The store was not only providing alcohol but also other goods which would allow shoppers to do their weekly shop at different times, especially those working shift patterns. There was an element of customer convenience.
5. The other point which they considered was that although councillors could draw on their own local knowledge, they must measure their own views against the evidence presented to them. This is particularly important when there are no objections from Responsible Authorities. Again, in reference to the Thwaites case, the panel considered the objections carefully, however, found that the approach they had to apply was that unless there was some evidence; more than fear or speculation which would affect the licensing objectives then the application should be granted. Furthermore, the agreed conditions with the Police, the Applicants licensing policies, training package and littering policies in place deal with several of the concerns raised within the objections. The objection of not having any other licensed premises of a 24- hour nature within the wider catchment area was considered. However, the Panel felt that this was not a bar or a pub, and it was important to take into account of the type of premises it was; a supermarket, and each case had to be determined on its own merits.
6. The Panel were reminded of the level of evidence required and the fact that if they chose to grant with conditions, then those conditions had to be appropriate and proportionate in promoting the licensing objectives. The panel also considered that if there were any issues in the future and the licensing objectives were being undermined, residents did have a right to review the premises themselves, by virtue of s51 Licensing Act 2003.
7. In the circumstances, the Panel decided to grant the premises licence subject to the agreed conditions at appendix 1 – page 45/46, as these would address the issues raised and promote the licensing objectives. The panel felt that after careful consideration of the case before them, an appropriate and proportionate decision had been reached.
8. All parties to the hearing, have a right to appeal the decision to the Magistrates Court within 21 days.

Chair

Date