

Gloucester City Council

COMMITTEE	: LICENSING SUB-COMMITTEE
DATE	: 8 JUNE 2011
SUBJECT	: APPLICATION FOR A NEW PREMISES LICENCE FOR 254 PAINSWICK ROAD, GLOUCESTER, GL4 4BS
WARD	: MATSON & ROBINSWOOD
REPORT BY	: GROUP MANAGER, ENVIRONMENTAL HEALTH AND REGULATORY SERVICES
NO. OF APPENDICES	: A: APPLICATION FOR A PREMISES LICENCE FOR 254 PAINSWICK ROAD BY TESCO STORES LTD B: PLAN OF PREMISES C: LOCATION MAP OF 254 PAINSWICK ROAD D: REPRESENTATION FROM GLOUCESTERSHIRE POLICE E: LIST OF MANDATORY CONDITIONS
REFERENCE NO.	: ES21114

1. PURPOSE OF REPORT

- 1.1 To present to members an application for a new premises licence made under section 17 of the Licensing Act 2003 for 254 Painswick Road, Gloucester GL4 4BS, received from Tesco Stores Ltd.

2. RECOMMENDATIONS

- 2.1 Having considered the application, any relevant representations, the legislative provisions, the Council's Statement of Licensing Policy and the Home Secretary's Guidance, Members have the following options as considered necessary to promote the Licensing Objectives:
- (a) To accept the application and attach conditions as consistent with the operating schedule.
 - (b) To accept the application and modify the conditions of the licence which includes altering, omitting or adding new conditions.
 - (c) To reject the whole, or part of the application.

3. BACKGROUND

- 3.1 Members are advised that when considering an application for a new premises licence the following options are available to them by virtue of the Licensing Act 2003, Part 3, section 18, paragraphs 3 and 4:

(3) *'Where relevant representations are made, the authority must -*

- (a) *Hold a hearing to consider them, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and*

(b) Having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.

(4) The steps are –

(a) To grant the licence subject to: -

(i) The conditions mentioned in subsection (2)(a) modified to such extent as the authority considers necessary for the promotion of the licensing objectives; and

(ii) Any conditions which must under sections 19, 20 or 21 be included in the licence

(b) To exclude from the scope of the licence any of the licensable activities to which the application relates;

(c) To refuse to specify a person in the licence as the premises supervisor;

(d) To reject the application

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added.'

If none of these steps are required the application must be granted.

3.2 Members should note that this application has policy implications as detailed in section 5 of this report.

3.3 Members are reminded that all applications must be considered on their merits, and that findings on any issues of fact should be on the balance of probability.

4. APPLICATION

4.1 This is an application for a new premises licence made in accordance with Section 17 of the Licensing Act 2003. The application was received by the Licensing Authority on 12 April 2011 and has been advertised in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

4.2 The premises to which the application relates is described on page four of the application which is attached as **Appendix A**. As can be seen the application relates to a retail premises.

4.3 The application (**Appendix A**) requests the following licensable activities:

(a) The supply of alcohol (Section M) for consumption off the premises only from 06:00 hours to 23:00 hours seven days a week.

4.4 Opening hours (Section O) are also sought from 06:00 hours to 23:00 hours seven days a week.

4.5 A plan of the premises and map of the location of the premises are attached as **Appendix B** and **Appendix C** respectively.

- 4.6 The applicant has indicated at Section P the steps they intend to take to promote the licensing objectives.
- 4.7 One representation was received from Gloucestershire Constabulary, a responsible authority under the Licensing Act 2003, and is attached at **Appendix D**.
- 4.8 The applicant and interested parties have been given a Notice of Hearing in accordance with the Licensing Act 2003 (Hearings) Regulations 2005.

5. THE LICENSING POLICY STATEMENT AND GUIDANCE

- 5.1 Sections 3, 5 and 6 of Gloucester City Council's Licensing Policy Statement outline the authority's policy with regard to the licensing objectives. Section 7 refers specifically to licensing hours.
- 5.2 The relevant parts of the Amended Guidance issued under section 182 of the Licensing Act 2003 (October 2010) by the Home Secretary are Chapter 2, on the four licensing objectives, Chapter 8 on Applications for premises licences and Chapter 10 conditions attached to premises licence.
- 5.3 Paragraphs 10.1 to 10.18 deal with the attaching of conditions to licences and state that only necessary, proportionate conditions, which promote the licensing objectives, should be attached to the licence if it is granted. The Licensing Authority may then only impose such conditions as are necessary to promote the licensing objectives arising out of the consideration of the representations. It also states that the pools of conditions that are supplied by the Home Secretary should not be applied universally, irrespective of particular circumstances, but may be used as examples that can be tailored to suit individual premises and particular situations. It is also advised that any conditions the Licensing Authority sees fit to attach to the licence should not replicate any other legislation, such as the Licensing Act 2003 itself, or the Equality Act 2010.
- 5.4 A premises licence does not relieve the holder from any requirements under planning law. In cases where a planning restriction imposing a terminal hour for a premises has been set and this differs from the hours permitted by a premises licence, the licence holder must observe the earlier time.

6. CONCLUSIONS

- 6.1 Members should consider the relevant facts, guidance and representations and make a decision in accordance with the options outlined in paragraph 2.1 of this report.
- 6.2 Members should also be aware of a case heard in the Court of Appeal. *Daniel Thwaites v Wirral Borough Magistrates Court* [2008] EWHC 838 (Admin) concerned an appeal against a decision by the Magistrates to impose restrictions on the hours of operation of a licensed premises without proper evidence and by giving their own views excessive weight. The resulting decision to limit the hours of operation without it having been established that it was necessary to do so in order to promote the licensing objectives was ruled unlawful and the decision was quashed.

7. FINANCIAL IMPLICATIONS

7.1 There are no financial implications relating to this report.

8. LEGAL IMPLICATIONS

8.1 The Licensing Sub-Committee is asked to consider an application made under Section 17 for a premises licence to be determined under Section 18.

8.2 To consider the application, the Sub-Committee must be satisfied:

- a) the application is properly made.
- b) the applicant has given proper notice.
- c) the applicant has satisfied the advertising requirements.

8.3 The four licensing objectives must be considered of equal importance and 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.

8.4 The Sub-Committee must, having regard to the application and any relevant representations, decide on any of the options set out in the report at paragraph 2.1 (a)-(c).

8.5 The Sub-Committee has powers to adjourn or carry forward the hearing to additional specified dates.

8.6 For the purposes of determining an application, a "relevant representation" means a representation which:

- a) is relevant to one or more of the licensing objectives.
- b) is made by a responsible authority or an interested party within the prescribed period.
- c) has not been withdrawn.
- d) if having been made by an interested party (who is not also a responsible authority), that they are not in the opinion of the Licensing Authority frivolous or vexatious.

8.7 For these purposes an "interested party" are those who are living in the vicinity of the application premises and those involved in a business in the vicinity of the application premises. "In the vicinity" is essentially the physical/geographical proximity of the premises, in the context of local circumstances.

8.8 In deciding what action, if any, it should take, the Sub-Committee Members must direct their minds to the causes and concerns which the relevant representations identify. Any action should generally be directed to these causes and should always be no more than is a necessary and proportionate response. In particular, any detrimental financial impact of the Sub-Committees decision must be necessary and proportionate. The Sub-Committee is required to have regard to the DCMS Guidance when making its decision. However the Guidance does not cover every

possible situation, so long as the Guidance has been properly and carefully understood, the Sub-Committee may depart from it if they have reasons to do so. Full reasons must be given for any departure from the DCMS Guidance.

- 8.9 Following the case of *Daniel Thwaites v Wirral Borough Magistrates' Court* 2008, referred to in paragraph 6.2 of the report the Sub-Committee needs to avoid:
- a) speculating of what might happen in the absence of evidence that harm would or could happen.
 - b) not paying attention to Government Guidance where failing to follow it requires good reasons to be given
 - c) imposing conditions that do not promote the licensing objectives.
- 8.10 Where the Sub-Committee determines an application it must notify the following of its decision, and the reasons for it :
- a) the applicant.
 - b) the person who made the relevant representations.
 - c) the Police.
- 8.11 It should be noted by the Sub-Committee that in relation to this application, the Council has a number of roles through Council services. No response to the application has been received from the Environmental Health Pollution Control and Health and Safety Teams, or Development Control.
- 8.12 In considering the application, the Sub-Committee is solely performing the role of Licensing Authority. The Sub-Committee sits in a quasi-judicial capacity and must act impartially. It must offer a fair and unbiased hearing of the application. The Sub-Committee needs to disregard the wider Council objectives and other statutory roles and must direct themselves to making a determination solely based on the licensing law, Guidance and the Council's Statement of Licensing Policy.
- 8.13 As a quasi-judicial body, the Sub-Committee is obliged to consider the application in accordance with the Licensing Act 2003 (Hearings) Regulations 2005 and amending secondary legislation, and the rules of natural justice. The practical effect of this is that the Sub-Committee is required to consider the application on its merits. It must take into account only relevant factors and ignore irrelevant factors. The decision must be based on evidence, that is to say material, which tends logically to show the existence or non-existence of relevant facts, or the likelihood or unlikelihood of the occurrence of some future event, the occurrence of which would be relevant.
- 8.14 The Human Rights Act 1998 requires public bodies to ensure that everything they do is compatible with European Convention Rights, and it is unlawful for a public body to act incompatibly with these Rights. When determining an application the Sub-Committee must be aware of Human Rights considerations, specifically Article 6 (right to a fair trial) and Article 14 (prohibition of discrimination) for the applicant and Article 8 (right to respect for private and family life) for those making representations. The Sub-Committee needs to consider the balance between the rights of the applicant and those making representations to the application when making their decision.

8.15 The Sub-Committee has a duty under Section 17 of the Crime and Disorder Act 1998 when making its decision to do all it can to prevent crime and disorder in the City.

8.16 Interested Parties, Responsible Authorities and the applicant have the right to appeal the Sub-Committee's decision to the Magistrates' Court within a period of 21 days beginning with the day on which they were notified of the decision to be appealed against.

9. RISK MANAGEMENT IMPLICATIONS

9.1 There is a right of appeal to the Magistrates' Court for both the applicant and all interested parties. Costs may be awarded against the Council on successful appeal if the Council has not acted reasonably.

10. PREDICTIVE IMPACT ASSESSMENTS (EQUALITIES) AND COMMUNITY COHESION

10.1 None.

11. OTHER CORPORATE IMPLICATIONS

1. Community Safety

The four licensing objectives of the Licensing Act 2003 are designed to support community safety and are dealt with in the body of the report.

2. Environmental

As above – dealt with in the body of the report.

3. Staffing

None.

4. Trade Union

No comments.

Background Papers : Gloucester City Council Licensing Hearing Procedure

Published Papers : Licensing Act 2003
Licensing Act 2003 (Hearings) Regulations 2005
Gloucester City Council Licensing Policy Statement
Home Secretary (Home Office) Guidance issued under section 182 of the Licensing Act 2003 (Oct 2010)

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