



Purpose: For Decision

# Committee report

Committee	<b>LICENSING SUB COMMITTEE</b>
Date	<b>28 SEPTEMBER 2022</b>
Title	<b>TO DETERMINE AN APPLICATION FOR A PREMISES LICENCE UNDER SECTION 17 OF THE LICENSING ACT 2003 FOR TESCO, 36 HIGH STREET, NEWPORT, ISLE OF WIGHT, PO30 1SR.</b>
Report Author	<b>COLIN ROWLAND DIRECTOR OF NEIGHBOURHOODS</b>

---

## BACKGROUND

1. A premises licence issued under section 18 of the Licensing Act 2003 authorises the use of premises for the sale or supply of alcohol, the provision of regulated entertainment and the provision of late-night refreshment.
2. An application for a premises licence was submitted to the licensing authority on 29 July 2022, for a new Tesco store to be located at 36 High Street, Newport, Isle of Wight, PO30 1SR. (Appendix 1), along with a plan of the premises (Appendix 2).
3. Any person may make representations in respect of the application and if these are not resolved the licensing authority must hold a hearing to determine the application.

## CONSULTATION

4. The Licensing Act 2003 prescribes a twenty-eight day consultation period, commencing the day after the application has been correctly served. The applicant is required to submit a copy of the application to Responsible Authorities as defined in the Licensing Act, and to place a notice of the application at the premises and in a local newspaper.
5. The application for a premises licence was received on 29 July 2022. The application was advertised in the Isle of Wight County Press, at the premises and on the Council's website. The consultation period ended on 26 August 2022.

6. Specifically, the applicant Tesco Stores Limited, seeks to provide late night refreshment from 23:00 hours until midnight each day, and to supply alcohol for consumption off the premises during their operating hours of 06:00 hours and midnight each day.
7. The outcome of the consultation in respect of this application is as follows:

Responsible Authorities

Children's Services	No Representation made
Environmental Health	No Representation made
Fire and Rescue Service	No Representation made
Trading Standards Service	No Representation made
Planning Services	No Representation made
Police	No Representation made
NHS	No Representation made
Licensing Authority	No Representation made
Immigration Enforcement	No Representation made

8. None of the responsible authorities made any representations to the application.

Other Persons

9. One valid representation was received during the consultation and remains outstanding. This can be found at Appendix 3 and relates to the licensing objective of:
  - Prevention of crime and disorder
10. Mr Baker states that bad behaviour in Newport has led to police action on several occasions and it is his view that to grant this application and allow alcohol to be sold from 6am until midnight will fuel public disorder.
11. At the end of the consultation period, contact was made via email with Mr Baker and he was sent a copy of the applicant's operating schedule which details the measures that the company will adopt in order to uphold the licensing objectives.
12. Mr Baker was also advised that the application had been discussed with police licensing and they were satisfied that the measures detailed in the operating schedule are considered by them to be robust and proportionate. This email along with Mr Baker's reply can be found at Appendix 4.

## FINANCIAL/BUDGET IMPLICATIONS

13. Broadly, Council expenditure on licensing matters, and specifically those administered and enforced through Planning and Regulatory Services, balances income generated from fees.

## LEGAL IMPLICATIONS

14. The 28 day consultation period ended on 26 August 2022. Schedule 1 of the Licensing Act (Hearings) Regulations 2005 states that the application must be determined within 20 working days of the end of the consultation period.
15. The determination date for this application was 22 September but unfortunately the applicant's representatives have another hearing to attend on that day.
16. Regulation 13 states that, "an authority may extend a time limit provided for in these Regulations for a specified period where it considers this to be necessary in the public interest.  
  
(2) Where the authority has extended a time limit it must forthwith give a notice to the parties stating the period of the extension and the reasons for it."
17. The requirements of this regulation have been met.

### National Guidance

18. The following sections from the national guidance issued under section 182 of the Licensing Act 2003 are considered relevant to this application:
19. Each application on its own merits –
  - 1.16 Conditions on a premises licence or club premises certificate are important in setting the parameters within which premises can lawfully operate. The use of wording such as "must", "shall" and "will" is encouraged. Licence conditions:
    - must be appropriate for the promotion of the licensing objectives;
    - must be precise and enforceable;
    - must be unambiguous and clear in what they intend to achieve;
    - should not duplicate other statutory requirements or other duties or responsibilities placed on the employer by other legislation;
    - must be tailored to the individual type, location and characteristics of the premises and events concerned;
    - should not be standardised and may be unlawful when it cannot be demonstrated that they are appropriate for the promotion of the licensing objectives in an individual case;
    - should not replicate offences set out in the 2003 Act or other legislation;
    - should be proportionate, justifiable and be capable of being met;
    - cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff, but may impact on the behaviour of customers in the immediate vicinity of the premises or as they enter or leave; and

- should be written in a prescriptive format.

1.17 Each application must be considered on its own merits and in accordance with the licensing authority's statement of licensing policy; for example, if the application falls within the scope of a cumulative impact policy. Conditions attached to licences and certificates must be tailored to the individual type, location and characteristics of the premises and events concerned. This is essential to avoid the imposition of disproportionate and overly burdensome conditions on premises where there is no need for such conditions. Standardised conditions should be avoided and indeed may be unlawful where they cannot be shown to be appropriate for the promotion of the licensing objectives in an individual case.

## 17. **Crime and Disorder**

2.3 Conditions should be targeted on deterrence and preventing crime and disorder including the prevention of illegal working in licensed premises (see paragraph 10.10). For example, where there is good reason to suppose that disorder may take place, the presence of closed-circuit television (CCTV) cameras both inside and immediately outside the premises can actively deter disorder, nuisance, anti-social behaviour and crime generally. Some licence holders may wish to have cameras on their premises for the prevention of crime directed against the business itself, its staff, or its customers. But any condition may require a broader approach, and it may be appropriate to ensure that the precise location of cameras is set out on plans to ensure that certain areas are properly covered and there is no subsequent dispute over the terms of the condition.

2.5 Conditions relating to the management competency of designated premises supervisors should not normally be attached to premises licences. It will normally be the responsibility of the premises licence holder as an employer, and not the licensing authority, to ensure that the managers appointed at the premises are competent and appropriately trained. The designated premises supervisor is the key person who will usually be responsible for the day to day management of the premises by the premises licence holder, including the prevention of disorder. A condition of this kind may only be justified as appropriate in rare circumstances where it can be demonstrated that, in the circumstances associated with particular premises, poor management competency could give rise to issues of crime and disorder and public safety.

## 20. **Public nuisance**

2.15 The 2003 Act enables licensing authorities and responsible authorities, through representations, to consider what constitutes public nuisance and what is appropriate to prevent it in terms of conditions attached to specific premises licences and club premises certificates. It is therefore important that in considering the promotion of this licensing objective, licensing authorities and responsible authorities focus on the effect of the licensable activities at the specific premises on persons living and working (including those carrying on business) in the area around the premises which may be disproportionate

and unreasonable. The issues will mainly concern noise nuisance, light pollution, noxious smells and litter.

2.16 Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working in the area of the licensed premises. Public nuisance may also arise as a result of the adverse effects of artificial light, dust, odour and insects or where its effect is prejudicial to health.

2.21 Beyond the immediate area surrounding the premises, these are matters for the personal responsibility of individuals under the law. An individual who engages in anti-social behaviour is accountable in their own right. However, it would be perfectly reasonable for a licensing authority to impose a condition, following relevant representations, that requires the licence holder or club to place signs at the exits from the building encouraging patrons to be quiet until they leave the area, or that, if they wish to smoke, to do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night.

## 21. Determining actions that are appropriate for the promotion of the licensing objectives

9.44 Determination of whether an action or step is appropriate for the promotion of the licensing objectives requires an assessment of what action or step would be suitable to achieve that end. While this does not therefore require a licensing authority to decide that no lesser step will achieve the aim, the authority should aim to consider the potential burden that the condition would impose on the premises licence holder (such as the financial burden due to restrictions on licensable activities) as well as the potential benefit in terms of the promotion of the licensing objectives. However, it is imperative that the authority ensures that the factors which form the basis of its determination are limited to consideration of the promotion of the objectives and nothing outside those parameters. As with the consideration of licence variations, the licensing authority should consider wider issues such as other conditions already in place to mitigate potential negative impact on the promotion of the licensing objectives and the track record of the business. Further advice on determining what is appropriate when imposing conditions on a licence or certificate is provided in Chapter 10. The licensing authority is expected to come to its determination based on an assessment of the evidence on both the risks and benefits either for or against making the determination.

## 22. Proportionality

10.10 The 2003 Act requires that licensing conditions should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. Conditions should be determined on a case-by-case basis and standardised conditions which ignore these individual aspects should be avoided. For example, conditions should not be used to implement a general policy in a given area such as the use of CCTV, polycarbonate drinking vessels or identity scanners where they would not be appropriate to the specific premises. Conditions that are considered appropriate for the

prevention of illegal working in premises licensed to sell alcohol or late night refreshment might include requiring a premises licence holder to undertake right to work checks on all staff employed at the licensed premises or requiring that a copy of any document checked as part of a right to work check is retained at the licensed premises. Licensing authorities and other responsible authorities should be alive to the indirect costs that can arise because of conditions. These could be a deterrent to holding events that are valuable to the community or for the funding of good and important causes. Licensing authorities should therefore ensure that any conditions they impose are only those which are appropriate for the promotion of the licensing objectives.

## 23. Hours of trading

10.13 The Government acknowledges that different licensing strategies may be appropriate for the promotion of the licensing objectives in different areas. The 2003 Act gives the licensing authority power to make decisions about the hours during which premises can conduct licensable activities as part of the implementation of its licensing policy statement. Licensing authorities are best placed to make decisions about appropriate opening hours in their areas based on their local knowledge and in consultation with responsible authorities. However, licensing authorities must always consider each application and must not impose predetermined licensed opening hours, without giving individual consideration to the merits of each application.

10.15 Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.

### Implications under the Crime and Disorder Act 1998

24. Members are advised that without prejudice to any other obligation imposed on it, it shall be the duty of each authority to which this section applies to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent, crime and disorder in its area.

### Human Rights

25. Members are advised that this application must be considered against the background of the implications of the Human Rights Act 1998.

26. There are two convention rights, which need to be considered in this context:

#### Article 6 - Right to a Fair Trial

In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

It has been held that the fact that there is a right of appeal to the Magistrates' Court from any decision of the Licensing Authority is sufficient to make the Council's

licensing system compliant with the convention rights.

#### Article 1 - First Protocol Protection of Property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. In the case of Article 1 of the first protocol it states that “no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and the general principles of international law. The preceding provisions (of which articles 6 and 8 are but two) shall not however in any way impair the right of the state to enforce such laws as it deems necessary to control the use of the property in accordance with general interest or to secure the payment of taxes or other contributions or penalties”.

27. The Licensing Authority acknowledges the right of businesses in its area to operate, but equally acknowledges the fact that this must be balanced against the rights of residents not to be disturbed by unreasonable noise and nuisance caused by licensed premises. The Sub-Committee needs to be clear as to the rights granted and the need to ensure that the reasons given for any interference are proportionate and in accordance with the Council’s legitimate aim.
28. It is considered that the following paragraphs from the Licensing Authority’s Statement of Licensing Policy 2019 – 2024 have a bearing upon the application. Members’ attention in respect of this particular application is drawn to:

Paragraph 1	Introduction	All
Paragraph 2	Licensing Objectives	All
Paragraph 3	Licensable Activities	All
Paragraph 4	Integration of Strategies and Other Legislation	4.1 – 4.7 4.9 – 4.11
Paragraph 5	Approach to Licensing Applications	5.1 – 5.4 & 5.7
Paragraph 6	Major Events & Isle of Wight County Council Act	N/A
Paragraph 7	Cumulative Impact	N/A
Paragraph 8	Representations, Review, Appeals & Complaints	8.1 – 8.6, 8.11 – 8.15
Paragraph 9	Enforcement	N/A
Paragraph 10	Operating Schedules	10.1 – 10.5 10.19
Paragraph 11	Data Protection	All
Paragraph 12	Related Documents	All

## EQUALITY AND DIVERSITY

29. The council as a public body is subject to general and specific duties under equality and diversity legislation and as such has a duty to go beyond prohibition and publish and promote service improvements by engaging with the local community to assess the impact of any decision on the local community. As a requirement under the Equality Act 2010 and further improvements to diversity legislation all local authorities are required to impact assess their services, policies/strategies and decisions with regard to diversity legislation – race, disability, gender, age, sexual orientation and religion/belief. (NB: this list is not exhaustive; it does cover current legislation but future development could also include poverty and social inclusion as an example).
30. There is no requirement for an equality impact assessment to be carried out.

## OPTIONS

- Option 1 Grant the licence as per the application.
- Option 2: Grant the licence as per the application with any additional conditions that the Sub-Committee deem reasonable and proportionate to promote the licensing objectives.
- Option 3: Refuse the whole or part of the application.

## RISK MANAGEMENT

31. With regard to Option 1: To grant the licence as per the application may not address the concerns raised which may subsequently be appealed by those parties who have made representations.
32. With regard to Option 2: If members consider there is merit in the representation, and that anti-social behaviour or public disorder may arise as a result of the grant of the licence then this might be reduced by attaching conditions to the licence to promote the licensing objectives. Conditions must be appropriate and proportionate. Any decision to attach additional conditions may be appealed by all parties if they believe the conditions do not adequately promote the licensing objectives.
33. With regard to Option 3: If the Sub-Committee decides to refuse all or part of the application, the decision may be appealed by all parties.

## EVALUATION

34. Officers of the Police Licensing Unit have considered the application and have made no adverse comments.
35. They were advised that this matter is proceeding to a hearing and have stated that they are satisfied with the control measures that are proposed and that they have no evidence in order to provide a representation.
36. The applicant is a part of a large national chain with a proven track record in staff training. Staff are required to carry out training on induction and at regular intervals. Training is provided online and recorded, and reminders are automatically generated



37. Section 10.15 of the Section 182 guidance states that “Shops, stores and supermarkets should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet is open for shopping unless there are good reasons, based on the licensing objectives, for restricting those hours.”
38. There is no evidence to suggest that any of the other retail outlets in the town centre such as Lidl, Central Stores, Costcutter and Morrisons have any bearing on incidents of anti social behaviour in the town.
39. The sub-committee must have regard to all of the representations made and the evidence it hears as well as the national guidance issued under Section 182 of the Licensing Act 2003 and the Council’s own Statement of Licensing Policy.
40. The Committee should determine the application in accordance with section 35 of the Licensing Act 2003 and The Licensing Act (Hearings) Regulations 2005 and with a view to promoting the licensing objectives, which are:
  - The Prevention of Crime and Disorder
  - The Prevention of Public Nuisance
  - Public Safety
  - The Protection of Children from Harm

#### RECOMMENDATION

41. To grant the application in accordance with Option 1.

#### APPENDICES ATTACHED

- Appendix 1 Application for a Premises Licence
- Appendix 2 Plan of premises
- Appendix 3 Representation from Mr Baker
- Appendix 4 Communications between the Licensing department and Mr Baker

#### BACKGROUND PAPERS

- Isle of Wight Council Licensing Authority Statement of Licensing Policy 2019 – 2024.  
<http://www.iwight.com/azservices/documents/1226-Statement-of-Licensing-Policy-2014-2019-Adopted-v1.pdf>

Contact Point: Andrea Bull, Senior Licensing Officer, ☎ 823159 ext 6126  
e-mail [Andrea.bull@iow.gov.uk](mailto:Andrea.bull@iow.gov.uk)

COLIN ROWLAND  
Director of Neighbourhoods

