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| Report to: | Licensing Panel |
| Relevant Officer: | Sharon Davies, Head of Licensing Services |
| Date of Meeting: | 23 May 2017 |

APPLICATION TO VARY A PREMISES LICENCE – Tesco Express Whitegate Drive

1.0 Purpose of the report:

1.1 To consider an application to vary premises licence PL1346 issued in respect of Tesco Express, 96-98 Whitegate Drive.

2.0 Recommendation(s):

2.1 The panel is requested to consider the application and determine whether the granting of this variation would adversely impact on the licensing objectives.

3.0 Reasons for recommendation(s):

3.1 Representations have been received therefore there must be a hearing to determine the application.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

None, once an application and representations is received.

4.0 Background Information

4.1 On 9 March 2017, the licensing Service received an application from Tesco Stores Limited to vary the Premises Licence issued in respect of Tesco Express. 96-98 Whitegate Drive.

- 4.2 The licence currently authorises the sale of alcohol for consumption off the premises during the following times:

Weekdays, other than Christmas Day 08.00 – 23.00

Sundays, other than Christmas Day 10.00 – 22.30

Christmas Day 12.00 – 15.00 and 19.00 – 22.30

Good Friday 08.00 – 22.30

These were the standard hours attached to Justices' Off-Licences issued by the Magistrates' Court under the Licensing Act 1964.

- 4.3 The application requests permission to sell alcohol for consumption off the premises 07.00 – 23.00 hours daily and to remove the restrictions about sales on Good Friday and Christmas Day. A copy of the application is attached.
- 4.4 Representations have been received from Lancashire Constabulary, Public Health, the Licensing Authority and Councillors/members of the public. Copies of the representations are attached at Appendix 5a.

4.5 **Local policy considerations**

This premises is situated within Talbot Ward which is one of four wards that form part of the off-licence saturation policy. The effect of this policy is to create a rebuttable presumption that applications will be refused. To rebut this presumption, an applicant would be expected to show through the operating schedule, and where appropriate with supporting evidence, that the operation of the premises will not add to the cumulative impact already being experienced. The following sections of the policy are relevant:

4.8.3 This policy does not act as an absolute prohibition on the granting of new off licences however, the policy will only be overridden in genuinely exceptional cases where the applicant can demonstrate that the granting of the application will not undermine the policy and the reasons for it.

4.8.4 An application is not likely to be classed as exceptional merely on the ground that the premises have been or will be operated within the terms of its licence or that they are/will be well managed. This is to be expected of any application.

4.6 **National policy considerations**

9.12 – The police are an essential source of advice and information on the impact and potential impact of licensable activities, particularly on the crime and disorder objective. The licensing authority should accept all reasonable and proportionate representations made by the police unless the authority has evidence that do so would not be proportionate for the promotion of the licensing objectives.

9.43 – The authority’s decision should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.

14.36 – After receiving relevant representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case... if the licensing authority decides that an application should be refused, it will still need to show that the grant of the application would undermine the promotion of one of the licensing objectives and that appropriate conditions would be ineffective in preventing the problems involved.

4.7 Observations

This licence was not varied when it was converted from a Justices’ licence in 2005. This means that the only conditions on the licence are the mandatory conditions:

Annex 1 - Mandatory conditions

- 1 Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:
 - a) On weekdays, other than Christmas Day, 8 a.m. to 11 p.m.
 - b) On Sundays, other than on Christmas Day, 10 a.m. to 10.30 p.m.
 - c) On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m.
 - d) On Good Friday, 8 a.m. to 10.30 p.m.

The above restrictions do not prohibit:

- a) During the first twenty minutes after the above hours, the taking of the alcohol from the premises, unless the alcohol is supplied or taken in an open vessel;
 - b) The ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered;
 - c) The sale of alcohol to a trader or club for the purposes of the trade or club;
 - d) The sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty’s naval, military or air force;
- 2 Alcohol shall not be sold in an open container or be consumed in the licensed

premises.

- 3 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.
- 4 Every supply of alcohol under the premise licence must be made or authorised by a person who holds a personal licence.
- 5
 - (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 holographic mark or an ultraviolet feature.
- 6
 - (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) In this condition:
 - a. "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;
 - b. "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979;
 - 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. "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994.

(3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny.

(4) Where the permitted price 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, 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.

4.8 Does the information submitted include any exempt information? No

4.9 **List of Appendices:**

Appendix 5a: Application

Appendix 5b: Representation from Lancashire Constabulary

Appendix 5c: Representation from Public Health

Appendix 5d: Representation from the Licensing Authority

Appendix 5e: Representations from Councillors/members of the public

5.0 **Legal considerations:**

5.1 Please see local and national policy in the background information.

6.0 **Human Resources considerations:**

6.1 None.

7.0 Equalities considerations:

7.1 None.

8.0 Financial considerations:

8.1 None.