

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE D

THURSDAY, 28 JULY 2022 AT 2:00 PM

THIS MEETING WAS LIVE STREAMED AND CAN BE VIEWED HERE:

<https://youtu.be/9IXihTQHEvE>

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| Councillors Present: | Cllr Susan Fajana-Thomas(Chair) Cllr Sem Moema Cllr Gilbert Smyth |
| Officers in Attendance: | Amanda Nauth – Licensing and Corporate Lawyer Suba Sriramana – Principal Licensing Officer David Tuitt - Licensing Authority Representative Natalie Williams - Senior Governance Officer |
| Also in Attendance: | <u>Agenda item 5 - The Adam and Eve, 155 Homerton High Street E9 6AS.</u> Stephen Mulgrave - Applicant Felicity Tulloch - Applicant's Agent Other Persons - Cllr Sharon Patrick, Tom Rahilly, Catherine Armstrong and Tiffany Okhort, Emma Davenport, Pamela Harvey, and Marcia Harvey, <u>Agenda Item 6 - Tesco Express, 48 Matthias Road, N16 8LH</u> Jeremy Bark - Applicant's legal representative Lee Coveney - Area manager Other Persons - Representative from the Waldron House Residents Association, Stanislas Weinberger, David and Maria Aranzazu, Gabriela Lacaci Marco Bensa and Maureen Verbraeken |

1. Election of Chair

1.1 Cllr Fajana-Thomas was duly elected as Chair.

2. Apologies for Absence

2.1 There were no apologies received.

3. Declarations of Interest

3.1 Cllrs Fajana-Thomas, Moema and Smyth declared an interest in relation to agenda item 5. It was noted that Cllr Sharon Patrick and Cllr Lynne Troughton who were registered as 'Other Persons' to speak in objection to the application were both known to them as current Councillor colleagues. It was further noted that former Councillors Tom Rahilly and Rebecca Rennison who were also registered to speak as 'Other Persons' were also known to them as former Members of the Council. It was confirmed that they had not discussed the application with any of the 'Other Persons'.

4. Licensing Sub-Committee General Information and Hearing Procedure

4.1 The Licensing and Corporate Lawyer outlined the hearing procedure to be followed.

5. Premises Licence: The Adam and Eve - 165 Homerton High Street, E9 6AS

5.1 The sub-committee heard from the Principal Licensing Officer, the Applicant's legal representative, the applicant, the Licensing Authority and Other Persons. The sub-committee noted the additional information submitted by the Applicant and Other Persons as well as correspondence between Applicant and 'Other Person'. The application sought regulated entertainment, late night refreshment and on and off sales of alcohol.

5.2 During the course of submissions and a discussion of the application, the following points were highlighted:

- The premises operated as a pub. The Applicant's legal representative stated that the purpose of the application was to replace the existing licence which the Applicant considered to be outdated and no longer fit for purpose. The licence in place did not reflect the layout of the premises, the conditions did not address the issues of use of the external area(s) and noise control of patrons.
- The application requested a narrower remit with no bank holiday extended hours.
- The new licence would have 60 conditions which have been approved by the Responsible Authorities. Subsequently the Police and Environmental Health had withdrawn their objections.
- An acoustic report was commissioned, copies of which had been circulated and its findings implemented.
- Rose Pubs had operated the premises for over 10 years
- Two meetings had been held with local residents which were facilitated by the Licensing Authority following which the acoustic report as well as other suggested measures were implemented.

- The Licensing Authority's objection to the application primarily related to noise nuisance following a series of complaints. Concerns were also raised about the boundary walls of the garden which extended beyond the current plan.
- No planning issues or irregularities were reported.
- Representations submitted by 'Other Persons' were predominantly concerning noise nuisance emanating from the beer garden at the rear of the premises. Residents believed that the use of the rear garden had been extended without planning permission to include the bottle store which bordered residential premises.
- Residents had requested involvement in choosing the acoustic consultant to ensure neutrality but this was declined. It was believed that the report did not include peak noise levels.
- The pub was located in a largely residential area. Noise nuisance was described as crowd noise which included jeering, chanting, shouting and singing which happened even when relatively small numbers of people were present. This had significantly impacted the mental health of some neighbours in the vicinity.
- Residents believed that the application was submitted due to the likelihood of the licence being reviewed and therefore to normalise use of unauthorised areas.
- The Applicant reported that the outdoor space was used in a more prolific way during the pandemic. In the new plans, any areas that bordered neighbours' property were noted as having no customer access.
- Residents confirmed when use of the rear garden was as per the existing licence, there were no issues. Problems arose due to the unauthorised use of the wider space. Residents raised concerns regarding the incorporation of previously unlicensed areas of the garden which were included in the application.
- The Applicant and his legal representative confirmed that alcohol had never been served in the areas in question in the rear garden (bottle stores and covered area). Due to having off sales on the current licence, alcohol could be consumed in these areas.
- The capacity of the outside area based on the fire risk assessment was reported by the Applicant to be 120 people. All findings of the acoustic assessment as well as recommendations from Environmental Enforcement have been implemented.
- The Applicant was amenable to having a seated only condition for the outside area, but did not agree to the suggested limit of 40 patrons.
- Members raised concerns relating to the capacity of the outdoor area and lack of an operational management plan specifically for the outside area.

RESOLVED: The Licensing Sub-committee in considering this decision from the information presented to it within the report and at the hearing today has determined that having regard to the promotion of all the licensing objectives:

- The prevention of crime and disorder;
- Public safety;
- Prevention of public nuisance;
- The protection of children from harm; t

The application to vary a premises licence has been refused in accordance with Licensing Policies LP1, LP2, LP3, LP4, LP6 and LP11 within the Council's Statement of Licensing Policy.

Reasons for the decision

The Licensing Sub-committee, having heard from the Licensing Authority and Other Persons believed that granting the application would result in the licensing objectives being undermined, and would have a negative impact on the area. The Sub-committee took into consideration the representations of the Licensing Authority who objected to this application due the impact it would have on local residents. The Sub-committee also took into consideration 10 representations received on behalf of local residents who strongly objected to this application on the grounds of public nuisance. The Sub-committee noted that Environmental Enforcement and the Metropolitan Police Service withdrew their objections in advance of the hearing as they agreed conditions with the applicant.

The Sub-committee took into consideration the Licensing Authority and Other Persons (local resident's) representations that there were a number of noise complaints received since December 2020 relating to the conversion of the "Bottle Store" and the "Covered Yard" in the customer areas and within the existing licensed area. The SubCommittee heard that the Licensing Authority raised the noise complaints with the Applicant before the Coronavirus lockdown, however the Applicant failed to take any action and the noise complaints continued when the lockdown eased from April 2021.

The Sub-committee heard representations from the Licensing Authority that following ongoing noise complaints from April 2021 they visited the premises and found that additional seating had been installed in external areas abutting the boundary walls. The Applicant was asked to cease using the additional external areas, the "Bottle Store" and the "Covered Yard", and take steps to mitigate the noise nuisance that was continuing to affect the local residents.

The Sub-committee took very seriously that while the use of the external areas abutting the boundary walls ceased the Applicant did not take measures to prevent customers accessing the external areas even though they were aware of the impact that this would have on a number of local residents who live within close proximity of the existing premises. The Applicant's failure to take the necessary measures to prevent noise nuisance that was brought to their attention a number of times which was very disappointing to the Sub-committee and showed that they had no regard for their neighbours and the impact the noise nuisance was having on them.

The Sub-committee felt that the grant of a new licence will exacerbate the existing problems causing further noise nuisance and will continue to undermine the licensing objectives. The Sub-committee were concerned that there is nothing in the new application that addresses the existing problems given the concerns and unresolved problems of the existing premises. The Sub-committee were disappointed that the Applicant did not take the time to make the policy documents (Dispersion Policy and Smoking and Alfresco Dining Policy submitted specific to the premises to try and address the existing issues.



The Sub-committee had no confidence that the Applicant would uphold the licensing objectives in particular public nuisance.

The Sub-committee took seriously the concerns raised in the Licensing Authority's representations that instead of the Applicant trying to resolve the problems and issues associated with the premises for some time they decided to concentrate their efforts to increase the footprint of the premises to directly abut the perimeter wall.

The Sub-committee took into consideration the Noise report but felt the changes proposed were not enough to resolve the noise issues.

The Sub-committee felt the current premises licence is fit for purpose and does cover the back external areas, however, the Applicant has failed to manage the premises. The Sub-committee felt the Applicant needed to work on meeting conditions of the current licence and not renew or obtain a new licence.

The Sub-committee noted the Applicant wanted a new licence because they felt it would be better and would meet the licensing requirements.

The Sub-committee took into consideration the use of the outside space and felt the details were not clear.

The Sub-committee took into account local residents' concerns about the capacity of 120 outside. The Sub-committee were disappointed that no information on the capacity and the outside area was provided in advance of the hearing.

The Sub-committee are really concerned the Applicant may be in breach of their current licence. The Sub-committee felt it would be wrong to give a new licence when they cannot operate under the existing licence which is subject to enforcement action.

The sub-committee felt the Applicant did not prove their case and why a new licence should be granted. The sub-committee took into consideration the complaints from local residents and felt the Applicant needed to sort out their process and procedures and that should be demonstrated.

The sub-committee took into consideration that the licensee had implemented mitigation measures and was offering an external area management plan, however, it is not clear what impact these would have had. The noise report stated that the noise had reduced but the local residents have informed that the measures have made no difference.

The Sub-committee took into consideration that the Applicant is now seeking to regularise the external areas of the premises with operational hours in line with the internal areas. The sub-committee after considering the evidence presented felt that by granting this licence would lead to significant noise nuisance and disturbance to local residents in the area who have been reporting noise nuisance at the premises for some time. Therefore, the Sub-committee decided to refuse this application in its entirety.

6. Premises Licence: Tesco Express, Newington Gate Development 48 Mathias Road, Newington Green N16 8LH

6.1 The sub-committee heard from the Principal Licensing Officer, the Applicant's legal representative, the area Manager, the Licensing Authority and Other Persons. The application was for late night refreshment and to authorise the sale of alcohol for off sales. Environmental Enforcement had withdrawn their representations following agreement of conditions with the applicant. Representations remained from Environmental Protection who were not present and Other Persons.

6.2 During the course of discussion, the following points were noted:

- Tesco Express is its smallest form of convenience store aimed at people living and working in the area.
- Following discussions with residents the Applicant sought to reduce the opening hours and sale of alcohol to 0600 hours to 2300 hours subsequently removing late night refreshment.
- The Applicant believed this application not to be in a stress area and reported that Tesco was the first company to introduce Think 21 and Think 25.
- Employees were required to undertake induction and refresher training which was validated externally. There was extensive CCTV on the premises.
- Alcohol was described as a small and limited part of the offer typically accounting to approx 5-12% with spirits located behind the counter
- Planning permission was in place which limited deliveries between 0700 hours and 1900 hours.
- Representations submitted by 'Other Persons' in objection to the application, related to crime and disorder, public safety and public nuisance. Residents felt that the licence would exacerbate issues of forced entry into building, vandalism and antisocial behaviour which resulted in residents feeling unsafe.
- 'Other Persons' reported that the building comprised 73 flats and over three quarters of the apartments in the same building were occupied by vulnerable residents including over 55s, with mobility issues, children, single women and expectant mothers.
- Residents requested a later opening time in line with other shops in the locality and suggested that it would be useful if Tesco agreed to collect parcels for Waldron Road residents given the spate of thefts and anti-social behaviour.
- It was felt that the presence of a Tesco Express store would encourage drinking and loitering in the public courtyard area as well as tailgating into the building. It was also believed that the loading of cages at the front of the premises would limit access to the building.
- The Applicant's legal representative confirmed that Tesco would be content, if necessary for condition 12 to be imposed.
- Conditions 13-18 to be replaced by extra conditions
- The Applicant's legal representative confirmed that Tesco was the tenant. It was believed that Hackney Council was the freeholder for the building, with a sub lease to Anchor Housing. Separate service charging and refuse collection arrangements were in place

- It was confirmed that Tesco would be amenable to further reducing the opening hours and open at 0700 hours. Additionally, it was confirmed that there was adequate space in the warehouse at the back of the store to house empty cages, rubbish cages as well as the deliveries.
- The premises was approximately 300 metres away from the Newington Green store
- The legal representative did not believe that the store's presence would exacerbate any issues and instead said that the store would have a deterrent effect.
- Tesco was prepared to commit to regularly meet/liaise with residents and suggested the following condition ' The premises licence holder would liaise regularly with residents as required and where necessary will arrange meetings with the local residents'
- Members suggested quarterly meetings with residents using the Resident Association structure already in place.
- Residents expressed concerns relating to the lack of commitment from Tesco to assist in addressing any potential anti-social behaviour.

RESOLVED: The Licensing Sub-Committee in considering this decision from the information presented to it within the report and at the hearing has determined that having regard to the promotion of all the licensing objectives:

- The prevention of crime and disorder;
- Public safety;
- Prevention of public nuisance; and
- The protection of children from harm,

The application for a premises licence has been approved in accordance with the Council's Statement of Licensing Policy and the proposed conditions set out in paragraph 8.1 of the report as applied for with the following amendments agreed with the Applicant.

- The hours for licensable activities, shall be, as agreed:

Supply of Alcohol

Monday to Sunday 07:00 - 23:00

Hours open to the public

Monday to Sunday 07:00 - 23:00

- Conditions 13 to 18 to be removed from the licence.
- Conditions 10 and 11 to be removed from the licence.
- Late night, refreshment to be removed from the licence.

And additional conditions:

- The Premises Licence Holder shall organise and publicise a meeting for local residents to discuss the operation of the premises and address any issues at least every 3 months. The frequency of meetings may be varied by agreement between the Premises Licence Holder and local residents.

Reasons for the decision

The application for a premises licence for off-sales has been approved because the Licensing Sub-Committee was satisfied that the licensing objectives would not be undermined.

The Sub-committee considered both written representations and representations from the 22 local residents including from Walrond Residents Association objecting to the application. The Sub-committee also considered that there was a petition submitted objecting to the application for off sales of alcohol. The Sub-committee noted that there are 75 flats in the local residents building.

The Sub-committee also considered the representations made by Environmental Enforcement, who agreed conditions with the Applicant before the hearing, the Sub-committee also considered the representations of the Environmental Protection team and the conditions that they proposed, and it decided that conditions Conditions 10 and 11 are not necessary because they related to on sales and only condition 12 from Environmental Protection would remain on the premises licence.

The Sub-committee heard representations from the Applicants legal representative that the application has been amended with reduced hours from 06:00 to 23:00 in accordance with Policy LP4. The Sub-committee heard that this is one of the Applicants smallest stores, that they are a good operator, that they follow best practices and that the premises is not in a stress area. The Applicants legal representative contends that unless there was good evidence in accordance with Government guidance that the application should be granted. The Applicants representative made submissions that the Applicant uses Think 21 policy. The Applicant does have extensive auditing and they have training for staff on alcohol sales. The Sub-committee heard that the Applicant has a detailed licensing policy in their stores and CCTV on the entrance and tills and in the alcohol areas of the store. The Applicants representative stated that 5% of store products are alcohol.

The Sub-committee heard that they have two bins outside the store and they are cleared regularly, and the premises had a delivery policy from 07:00 to 19:00.

The Sub-committee heard that three quarters of the residential flats had vulnerable residents over the age of 55 and felt that they were not being considered by the Applicant when making an application for an alcohol licence. The Sub-committee heard that the local residents were seeking reduced opening hours, and delivery hours to mitigate any noise impact. The Sub-Committee heard that there were 65 incidents reported in the area.

The Sub-committee heard that local residents were not consulted about the application. The local residents made representations that if the hours would not be reduced that they would like the application to be refused because there is a high risk of antisocial behaviour and public nuisance if the premises is allowed to operate until late at night. The Sub-committee heard that there had been a number of issues with Tesco opening long hours. The Sub-committee heard there was a large courtyard for people to drink until all hours of the night. The Sub-committee heard that this courtyard and open space encourages noise nuisance which bounces off and affects local residents in the flats above. The Sub-committee was asked to reject the application by the local residents because there already appeared to be a pattern of behaviour, which makes it difficult for local residents to live in the area.

The Sub-committee also heard that store cages were left at the front of the premises on a regular basis, and it adds to security and loitering issues and also they make a great deal of noise which affects local residents.

The Sub-committee heard from local residents that they are opposed to the application because the Applicant would not consider what happens to their customers after they leave the premises and the impact on the area immediately outside the premises which leads to anti-social behaviour and public nuisance. The local residents were not confident that the Applicants staff were trained sufficiently. The local residents said that they had seen bicycles stolen from the area and they also had experiences of families and children being concerned about tailgating and safety concerns in their residential building.

The Sub-committee heard that the Applicant is responsible for the premises and the front entrance. The Applicant does not own the building or the courtyard outside. The Applicant's Representatives confirmed that after receiving the representations, the Applicant decided to reduce their hours to consider the local residents and because the Applicant wanted to work with them. The Applicant does not feel the fears and concerns of the local residence will materialise. The Applicant confirmed that they will be active and will clean and maintain the area immediately outside of the shop.

The Sub-committee took into account that the Applicant had a delivery assessment and they have a process for using the cages in front of the premises. They cannot use the space at the back of the premises for the cages.

The Sub-committee took into consideration that the Applicant agreed to reduce the hours further by opening from 07:00 closing by 23:00. They noted that space is a premium at this store. They have taken into consideration how their Newington Green Store is operated. The Applicant confirmed that the loading and unloading will not be at the front of the premises, which they hope will reassure local residents. There will be no late night refreshment as a result of the reduced hours, and that they have security teams who can help with issues.

The Sub-committee took into consideration that the Applicant agreed to have quarterly meetings with the local residence or more frequently if they choose, which will assist them in dealing with any issues arising. The Applicant's legal representative confirmed that the Applicant will be a good neighbour and they will do their best to listen to residents' concerns and meet with them regularly.

The Sub-committee heard that local residents had paid for two benches to be moved in the courtyard area which are now situated outside the Applicant's premises. The Sub-committee heard that the local residents were disappointed that the Applicant could not restrict drinkers outside of the premises.

The Sub-committee took into account that local residents felt that the Applicant needs to demonstrate that the licensing objectives have been met, and that the sale of alcohol does not lead to crime and disorder and antisocial behaviour in the residential area.

The Sub-committee informed the local residents during the hearing that while they sympathise with local residents and their concerns and experiences they do not want to give false hope that the objections will mean a refusal of the alcohol licence.

The Sub-committee made it clear that they cannot put responsibility on the Applicant as to what happens once customers leave the premises. They cannot control how the Applicant operates their premises beyond the scope of the Licensing regime. This is an application for an alcohol licence to supply alcohol that is taken off the premises.

The Sub-committee considers each application on its own merits.

The Sub-committee took into consideration that there was no evidence that concerns would be exacerbated. The Sub-committee heard that the Applicant, Tesco are a tenant of the premises and there were concerns about litter and antisocial behaviour occurring outside of the premises which impacts the local residents in the area. The Sub-committee heard concerns from local residents about how the issue of litter and social behaviour and public nuisance will be monitored if the Applicant starts using the outside space and what enforcement action can be taken to prevent public nuisance in the area.

The Sub-committee was satisfied that with the conditions and reduced hours in accordance with Policy LP4 for alcohol off sales that would help the premises operate responsibly, and the concerns of local residents would be overcome. The Sub-committee took into consideration that the Applicant agreed to the Environmental Enforcement conditions and they agreed to have regular meetings with the local residents.

Having taken all of the above factors into consideration the Licensing Sub-committee was satisfied that this application could be approved without the licensing objectives being undermined.

Public Informative:

The Premises Licence holder is advised to inform the Licensing Authority of the Planning Permission they have obtained for the premises.



Close of meeting.

Duration of Meeting - 2:00 - 5.50pm