

Item: 6

Licensing Committee: 18 June 2020.

Civic Government (Scotland) Act 1982.

Application for Renewal of Late Hours Catering Licence.

Tesco Stores Ltd and Andy Tennant – Tesco Store, 18 Pickaquoy Road, Kirkwall.

Report by Executive Director of Corporate Services.

1. Purpose of Report

To determine an application for renewal of late hours catering licence from Tesco Stores Ltd and Andy Tennant in respect of the Tesco Store, 18 Pickaquoy Road, Kirkwall.

2. Recommendations

It is recommended:

2.1.

That the Licensing Committee determines the application for renewal of late hours catering licence from Tesco Stores Ltd and Andy Tennant in respect of the Tesco Store, 18 Pickaquoy Road, Kirkwall.

3. Introduction

3.1.

At its meeting on 16 March 2017, the Licensing Sub-committee resolved, in terms of delegated powers, that an application from Tesco Stores Ltd and Stephen McEwan for renewal of late hours catering licence in respect of Tesco Store, 18 Pickaquoy Road, Kirkwall, be granted for a period of three years, subject to the Council's standard conditions, and with the following operating hours:

- 23:00 – 24:00 Mondays to Saturdays during January to November inclusive each year.
- 23:00 – 05:00 Tuesday, 19 December/Wednesday, 20 December 2017.
- 23:00 – 05:00 Wednesday, 20 December/Thursday, 21 December 2017.
- 23:00 – 05:00 Thursday, 21 December/Friday, 22 December 2017.
- 23:00 – 05:00 Friday, 22 December/Saturday, 23 December 2017.
- 23:00 – 05:00 Saturday, 23 December/Sunday, 24 December 2017.
- 23:00 – 05:00 Wednesday, 19 December/Thursday, 20 December 2018.

- 23:00 – 05:00 Thursday, 20 December/Friday, 21 December 2018.
- 23:00 – 05:00 Friday, 21 December/Saturday, 22 December 2018.
- 23:00 – 05:00 Saturday, 22 December/Sunday, 23 December 2018.
- 23:00 – 05:00 Sunday, 23 December/Monday, 24 December 2018.
- 23:00 – 05:00 Thursday, 19 December/Friday, 20 December 2019.
- 23:00 – 05:00 Friday, 20 December/Saturday, 21 December 2019.
- 23:00 – 05:00 Saturday, 21 December/Sunday, 22 December 2019.
- 23:00 – 05:00 Sunday, 22 December/Monday, 23 December 2019.
- 23:00 – 05:00 Monday, 23 December/Tuesday, 24 December 2019.
- 23:00 – 24:00 Mondays to Saturdays on the remaining non-24 hour days during December each year.

3.2.

The Head of Legal Services issued late hours catering licence 1/17 to Tesco Stores Ltd. This had effect until 21 February 2020 and continues to have effect in accordance with legislation, detailed in section 7 below.

3.3.

Tesco Stores Ltd have held late hours catering licences for similar operating hours in respect of the premises with effect from 22 February 2013.

4. Application

4.1.

On 20 January 2020, Tesco Stores Ltd and Andy Tennant lodged an application for renewal of late hours catering licence for a period of three years.

4.2.

The application requests the following late hours catering trading hours:

- 23:00 – 24:00 Mondays to Saturdays during January to November inclusive each year.
- 23:00 – 05:00 on 19/20 to 23/24 December inclusive each year.
- 23:00 – 24:00 Mondays to Saturdays on the remaining non-24-hour days during December each year.

4.3.

The operating hours requested between 19/20 December and 23/24 December inclusive each year at section 4.2 above are outwith policy.

4.3.1.

Council policy generally permits the following maximum trading hours for late hours catering licences:

- 23:00 – 24:00 Sundays to Thursdays.
- 23:00 – 01:30 Fridays/Saturdays and Saturdays/Sundays.

4.3.2.

The Council has adopted standard conditions to be attached to late hours catering licences. These are published at <https://www.orkney.gov.uk/Service-Directory/L/Late-Hours-Catering.htm>

4.4.

A copy of the application was forwarded to the statutory consultees on 23 January 2020 intimating that any objection or representation should be received by 17 February 2020. No objections or representations were received.

4.5.

The applicants were advised that they required to attend or be represented at the Meeting of the Licensing Committee on 23 April 2020. That Meeting was cancelled due to the national Covid-19 situation. The applicants were subsequently advised that the application would require to be considered at the meeting on 18 June 2020. They were asked to attend the Meeting and were advised that the attendance by them and by all other parties would require to be remote attendance via Microsoft Teams.

5. Corporate Governance

This report relates to the Council complying with its statutory duties as a Licensing Authority and therefore does not directly support and contribute to improved outcomes for communities as outlined in the Council Plan and the Local Outcomes Improvement Plan.

6. Financial Implications

The appropriate application fee of £427.00 has been paid.

7. Legal Aspects

7.1.

Applications for grant or renewal of licences must be considered within 3 months and determined within 12 months of the date when the application was made, otherwise the application will be deemed to be granted or renewed for a period of one year.

7.2.

Any objection or representation must comply with specific criteria, including being in writing.

7.3.

Objections or representations regarding applications must be made to the licensing authority within 28 days of the date when the application was made to them.

7.4.

A licensing authority shall:

- Grant or renew a licence.
- Refuse to grant or renew the licence.

7.5.

In granting or renewing a licence, the authority's standard conditions will normally apply. These could be removed by the authority or amended. The authority could also attach additional conditions as appropriate.

7.6.

A licensing authority shall refuse an application to grant or renew a licence if it finds that certain grounds for refusal apply and otherwise shall grant the application.

7.7.

Grounds for refusal include:

7.7.1.

In the opinion of the licensing authority, the applicant is not a fit and proper person to be the holder of the licence.

7.7.2.

Where the licence applied for relates to an activity consisting of or including the use of premises, those premises are not suitable or convenient for the conduct of the activity having regard to:

- The location, character or condition of the premises.
- The nature and extent of the proposed activity.
- The kind of persons likely to be in the premises.
- The possibility of undue public nuisance.
- Public order or public safety.

7.7.3.

There is other good reason for refusing the application.

7.8.

In considering whether an applicant is a fit and proper person to be the holder of the licence, case law has established that there is no onus on an applicant to satisfy a licensing authority that s/he is a fit and proper person to hold a licence. Rather, the onus is upon the licensing authority to have a reasonable basis for reaching a decision on whether the applicant is a fit and proper person to hold a licence.

7.9.

Where an application for the grant or renewal of a licence is refused, a licensing authority shall not, within one year of their refusal, entertain a subsequent application from the same applicant for the same kind of licence in respect of the same activity in the same area unless, in their opinion, there has been, since the refusal, a material change of circumstances.

7.10.

Where an application for renewal of licence is made before its expiry the existing licence shall continue to have effect until:

- The time when the licence applied for is granted or renewed, whether as a result of an appeal or not, or has been deemed to have been granted or renewed.
- Where the licensing authority has refused that application, the time within which an appeal against that decision may be made has elapsed.
- Where such an appeal has been lodged, the time when it has been abandoned or determined.

7.11.

Each application requires to be considered on its own merits.

8. Contact Officers

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Gavin Mitchell, Head of Legal Services, extension 2233, email gavin.mitchell@orkney.gov.uk.

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