

Item: 5

Licensing Committee: 27 April 2023.

Civic Government (Scotland) Act 1982.

Application for Renewal of Late Hours Catering Licence.

**Tesco Stores Limited and Brenda Fenion – Tesco Store,
18 Pickaquoy Road, Kirkwall.**

**Report by Corporate Director for Strategy, Performance and
Business Solutions.**

1. Purpose of Report

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

3. Application

3.1.

On 27 January 2023, Tesco Stores Limited and Brenda Fenion lodged an application for renewal of late hours catering licence for a period of three years.

3.2.

Food businesses must obtain a late hours catering licence under section 42 of the Civic Government (Scotland) Act 1982 from the Council for the use of premises between the hours of 23:00 and 05.00 for the sale or consumption by the public of food, on or off the premises.

3.3.

The application requests the following late hours catering trading hours:

- 23:00 to 24:00 Mondays to Saturdays during January to November inclusive each year.

- 23:00 to 05:00 on 19/20 to 23/24 December inclusive each year.
- 23:00 to 24:00 Mondays to Saturdays on the remaining trading days during December each year.

3.4.

The operating hours requested between 19/20 December and 23/24 December inclusive each year at section 3.3 above are outwith Council policy, as detailed in section 5 below.

3.5.

A copy of the application was forwarded to the statutory consultees on 26 January 2023 intimating that any objection or representation should be received by 24 February 2023. No objections or representations were received.

3.6.

The applicants were advised that they required to attend or be represented at the meeting and that the meeting would take place in the Council Chamber and that they could attend either in person or remotely through Microsoft Teams.

4. Recurrent Applications

Tesco Stores Limited has held late hours catering licences in respect of the premises for the operating hours detailed at section 3.3 above with effect from 22 February 2013. Applications for renewal of licence for the same operating hours have been agreed at meetings of the Licensing Sub-committee and Committee in February 2013, January 2014, March 2017 and June 2020 and are now before the Committee again.

5. Council Policy

5.1.

On 20 January 2011, the Licensing Sub-committee, after public consultation, approved a policy generally permitting the following maximum trading hours for late hours catering licences:

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

5.2.

In the present application, the operating hours requested between 19/20 December and 23/24 December inclusive each year, as set out at section 3.3 above, are outwith policy.

5.3.

The Council has adopted standard conditions to be attached to late hours catering licences, which can be found in the Related Downloads section [here](#).

6. 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.

7. Financial Implications

The appropriate application fee of £476.00 has been paid.

8. Legal Aspects

8.1.

Applications for grant or renewal of licences must be considered within three months and determined within nine 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.

8.2.

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

8.3.

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.

8.4.

A licensing authority shall:

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

8.5.

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.

8.6.

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.

8.7.

Grounds for refusal include:

8.7.1.

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

8.7.2.

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.

8.7.3.

There is other good reason for refusing the application.

8.8.

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.

8.9.

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.

8.10.

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.

8.11.

The Committee cannot refuse an application based on policy alone. Each application requires to be considered on its merits, having regard to policy. If the Committee is not disposed to depart from its policy having regards to the merits of the application before it, the Committee must be able to provide legitimate reasons for its decision and demonstrate that this was based upon due consideration of the material information before it and was not a blanket application of policy without relevant matters having been taken into account.

9. Contact Officers

Karen Greaves, Corporate Director for Strategy, Performance and Business Solutions, extension 2202, Email karen.greaves@orkney.gov.uk.

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

Sheila Tulloch, Service Manager (Legal Services), extension 2213, Email sheila.tulloch@orkney.gov.uk.

Elaine Sinclair, Legal Clerk, extension 2232, email elaine.sinclair-hill@orkney.gov.uk.