

REPORT TO: Licensing Sub-Committee

MEETING DATE: 15 August 2013

BY: Executive Director (Support Services)

SUBJECT: Application for Late Hours Catering Licence
Tesco Stores Limited
Olivebank Road, Musselburgh

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1 PURPOSE

- 1.1 To advise the Sub-Committee of objections which have been received to an application by Tesco Stores Limited for a Late Hours Catering Licence in respect of the Tesco Extra store, Olivebank Road, Musselburgh.

2 RECOMMENDATIONS

- 2.1 That the Sub-Committee consider the terms of the objections received, copies of which are appended hereto, together with information supplied by Tesco Stores Limited in response thereto, and thereafter make a decision on the application before them.

3 BACKGROUND

- 3.1 Following the requisite consultation process, the Sub-Committee formally adopted at their meeting on 13 December 2012 an amendment to the resolution on the licensing of Late Hours Catering activities in terms of Section 42 of the Civic Government (Scotland) Act 1982. The amendment substituted the words “meals and refreshments” in the original resolution, with the word “food”. The change was necessitated by an equivalent change to the 1982 Act brought into effect by the Criminal Justice & Licensing (Scotland) Act 2010, as explained in the report to the Sub-Committee meeting on 13 December 2012.
- 3.2 In terms of the 1982 Act, the changes to the resolution would take effect after a period of nine months- i.e. in September 2013. As a result of the changes, certain parties who did not require a Late Hours Catering Licence in terms of the resolution as originally worded would be captured by the wider terms of the amended resolution and therefore require to

apply for a licence. Tesco Stores Limited fall into this category. The Tesco store in Musselburgh currently trades on a 24 hour basis, but has not previously required to hold a Late Hours Catering Licence as they were not selling what would be classed as “meals and refreshments” during the hours covered by the Late Hours Catering rules. They would, however, be deemed to be selling “food” in terms of the amended resolution.

- 3.3 As a consequence of this change of wording in the statute and the Council resolution, Tesco Stores Limited applied to the Council for a Late Hours Catering Licence, by application dated 11 April 2013. Tesco Stores Limited complied with the statutory requirement to advertise their application at their premises.
- 3.4 The Licensing Office has received a number of objections to this application, which are attached hereto. The Sub-Committee are required to consider the terms of the objections in determining the application. The objectors, the applicant, and Police Scotland have been invited to attend the meeting and the Sub-Committee will be entitled to hear from all parties in this connection. Police Scotland have no objections to the application.

4 POLICY IMPLICATIONS

- 4.1 The Council has a statutory duty as Licensing Authority to determine applications for a licence in terms of the 1982 Act and to consider the terms of any objections properly and timeously made to them regarding such applications.

5 EQUALITIES IMPACT ASSESSMENT

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

6 RESOURCE IMPLICATIONS

- 6.1 Financial - None
- 6.2 Personnel - None
- 6.3 Other - None

7 BACKGROUND PAPERS

- 7.1 Report to Licensing Sub-Committee 13.12.12

AUTHOR'S NAME	Morag Ferguson
DESIGNATION	Corporate Legal Advisor
CONTACT INFO	Ian Forrest, Senior Solicitor, x7389
DATE	26 July 2013

East Lothian Council Licensing Section
John Muir House
HADDINGTON

From: Marion and Peter Grandison
~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXXXXXXXXXXXXXXXX~~

26 April 2013

Dear Sirs

NOTICE OF LATE HOURS CATERING LICENCE

I wish to object to the above Application dated 11 April 2013 submitted by Tesco Stores Ltd and Andrew Bryce. The reasons for objection are as undernoted:-

1. The residents of Inveresk Road are constantly disturbed by people leaving Tesco Store, Musselburgh, late in the evening/early morning after purchasing food, the bulk of which inevitably ends up scattered in the street.
2. There is a noise element to this at present and with later hours being granted this disturbance can only increase in what is a residential area.

We look forward to hearing from you with your comments:

Regards

East Lothian Council
Licensing
29 APR 2013
Received

Judith Chalmers & Christopher Muir
[REDACTED]
[REDACTED]
[REDACTED]

East Lothian Council
Licensing

9 - MAY 2013

Received

East Lothian Council
Civic Licensing Section/Team
John Muir House
Haddington
East Lothian
EH41 3HA

Dear Sir / Madam,

Objection to Tesco Extra Musselburgh, Late Hours Catering Application dated 11/4/2013

We would like to express our objection to the application for an extended catering hours licence made by Tesco Extra Musselburgh. We have lived here for almost six years and experienced life both before and after the Tesco Extra store opened.

Since opening, we have been plagued by negative antisocial activities. The level of noise experienced between the hours of 11pm to 7am has dramatically increased. This unwanted invasion has had a direct impact on how we can use our property. It is often impossible to have an uninterrupted restful night of sleep in the front master bedroom. As a result, lack of sleep has often affected our quality of daily life and performance at work. The noise pollution has several sources and details on some of these are included below:

- Tesco Extra is being used as a late night carry-out store after pub/club closing time. This is especially problematic at weekends and holiday periods where wave after wave of drunken revellers proceed to and from Tesco (via Inveresk road). These groups are frequently shouting, often fighting and have caused increased vandalism and littering in the neighbourhood. The frequency of incidents resulted in the East Lothian Council Antisocial Behaviour Team issuing a letter of guidance to residents in our area in August 2012.
- Customers who take their dog shopping in the middle of the night. At 3am one night recently a dog was left to bark for approximately 30 minutes. As animal lovers we personally found this both a nuisance and very distressing.
- Intimidating groups of teenagers hang around the bus shelter and store entrance (between Tesco and the NHS building) and our street. Often causing damage to property and littering. Although not necessarily directly related, cars have been deliberately damaged. This recently led to a Police notice requesting any knowledge of an incident which took place in March 2013 to be reported.
- Increased volume of traffic because Inveresk Road is used as a car park. We are aware that it is a public highway with limited parking restrictions. However any rules are ignored by both staff and customers. The double yellow lines around the turning point are ignored and engines are often left idling. In addition residents

are denied access to and from their property due to the obstruction of off-road private parking areas. Again, this disturbance is made worse by the 24 hour nature of the store where Tesco's customers will street park at any time of day or night.

- Staff from Tesco stand outside the store on a cigarette break during a nightshift having a loud conversation often shouting at one another.
- From July 2012 numerous complaints have been made in person to the Manager at Tesco Extra due to the noise generated by the general opening and closing of the sliding entrance doors. This fault has yet to be fixed and the level and type of noise generated is very penetrating. There is nowhere within our property that we can go to escape this noise. Although there is an agreement that the doors closest to our home, remain closed overnight we have lost count of the number of times that we have been awoken by their operation between the hours of 11pm and 7am. We feel that this noise in particular and the fact that Tesco have not yet fixed the problem constitutes unreasonable harassment and shows that they have no concern to the welfare of the local resident community.
- Tesco staff using motorised external cleaning vehicles daily usually before 7am. We have also been rudely awoken by this on numerous occasions, most often at the weekend.
- Delivery vehicles unloading using the front doors before 7am. A daily example of this is the Menzies paper delivery lorry.
- Disturbance from vehicles during the night. This is especially true in the case of motorbikes that can often be heard tearing around the place between 11pm and 7am.

In addition to the increased levels of noise there has been an increase in the volume of litter in the area. This is generated by both the customers and the Store itself and can be packaging and food waste and often broken glass bottles are left abandoned on the street in a plastic Tesco carrier bag.

In summary Tesco Extra Musselburgh being open 24 hours a day has dramatically reduced the quality and value of life experienced by the residents of Inveresk Road. We both work hard and don't think it is unreasonable to expect relaxing peace in our own home without unwanted unnecessary disturbances especially between the hours of 11pm and 7am. We dearly hope that you value the quality of community life experienced by residents in your council wards above Tesco profit and help to eliminate the antisocial activities by voting against their application for a late hours catering licence.

Yours sincerely,

Winter, Maree

From: Herkes, Gillian on behalf of Licensing
Sent: 24 April 2013 10:05
To: Richardson, Debbie; Winter, Maree
Subject: FW: Tesco extended catering hours

From: Craig Smith [mailto:craig.smith@tesco.com]
Sent: 24 April 2013 09:56
To: Caldwell, John; Licensing
Subject: Tesco extended catering hours

Dear John

It's just been brought to my attention that Tesco Musselburgh have applied to extend their late catering hours.

I've had a look on the ELC website but can't see the application for this anywhere, and the notification notice outside Tesco is displayed in a very discrete place (at the top of the disabled access ramp, where hardly anyone will see it. Why do this when there's a noticeboard in the main entrance?).

So, I don't have many details to go on, but I'd like to lodge my objection to this for reasons that it pains me to have to go over again.

1. Anti Social Behaviour. As a neighbour of the store we've already had to suffer an increase in late night disturbances and anti-social behaviour since this store opened - if they're now going to be selling hot food later into the evening this will only get worse. It's now sadly got to the point that we rarely even report any incidents. Maybe we've been de-sensitised to it over the last few years, but as a recent example I woke on Sunday to find the side of my car, and several others, covered in broken egg. This is minor compared to the broken wing-mirrors, fights, shouting, broken glass etc. we usually have to suffer at the weekends, but it's just an indication that the problem is on-going, and that nothing is being done about it.

There's also been an increase lately in "boy racers" gathering in the car park at night. We hear their engines rev, brakes squealing and music blaring from our bedroom. This was the very reason Tesco in Bathgate had to close its doors overnight, but as I already suspect - I think WLC maybe have a bit more backbone in this department.

If this planning application is granted, this will only serve to confirm that Tesco, despite their "good neighbour" claims, really don't care. And also that ELC doesn't appear to care much about their constituents either.

2. Impact on other food establishments in the town. Musselburgh, as we all know, is struggling. The majority of the shoppers pound disappears into Tesco already, then it's gone from the town. High Street traders really don't need Tesco cornering another bit of the market.

Can you please ensure that this objection is lodged, as the letter hidden outside Tesco doesn't state an email address to submit objections to.

Regards
Craig Smith

