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## Licensing Act 2003 Sub Committee

12 November 2009

Report of the Director of Neighbourhood Services

### **Section 35(3)(a) Application for the Variation of a premise licence for Sainsbury's, 17 Beckfield Lane, York YO26 5PN**

#### **Summary**

1. This report seeks Members determination of an application for the variation of a premise licence, which has been made under the Licensing Act 2003.
2. Application reference number: CYC-009512
3. Name of applicant: Sainsbury's Supermarkets Ltd
4. Type of authorisation applied for: Variation of premises licence.
5. Summary of application: The nature of the application is to extend the existing hours for the sale of alcohol, so as to start at 06:00 hours and end at 24:00 hours every day and to include the provision of late night refreshment until 24:00 hours. Opening hours shall be up to 24 hours a day. The applicant also wishes to remove the conditions in Annex 2 of the premises licence and replace them with conditions shown in the Promotion of Licensing Objectives.

#### **Background**

6. A copy of the existing premise licence is attached at Annex 1.
7. A copy of the application to vary the licence is attached at Annex 2.

#### **Promotion Of Licensing Objectives**

8. The operating schedule submitted by the applicant shows that the licensing objectives would be met as follows:
9. The prevention of crime and disorder: 1.) A CCTV system will be installed, or the existing system maintained, such system to be fit for the purpose. 2.) The system will incorporate a camera covering each of the entrance doors and the alcohol display areas and will be capable of providing an image which is regarded as identification standard. The precise positions of the cameras may be agreed, subject to compliance with data protection legislation, with the police from time to time. 3.) The system will incorporate a recording facility and

any recording shall be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with data protection legislation, to the police for inspection on request. 4.) The system will display on any recording the correct time and date of the recording. 5.) A system will be in place to maintain the quality of the recorded image.

10. Public Safety. 1) The applicant will at all times maintain adequate levels of staff. Such staff levels will be disclosed, on request, to the licensing authority and police.
11. Public Nuisance. 1) Signage will be displayed at the exit to the premises requesting customers leaving the premises late at night to do so quietly and with consideration so as not to disturb nearby residents.
12. The protection of children from harm. 1) All cashiers will be trained to require evidence of age from any person seeking to buy alcohol and appearing to the cashier to be under the age of 18. This evidence shall be photographic, such as passport or photographic driving licence until other effective technology (e.g. thumb print or pupil recognition) is adopted by the licence holder. 2.) Prominent notices will be displayed at points of sale advising customers that they may be asked to provide evidence of age.

### **Special Policy Consideration**

13. This premise is not located within the special policy area.

### **Consultation**

14. Consultation was carried out by the applicant in accordance with s13, and s17(5) of the Act and Regulation 42, Parts 2 and 4 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005, which concern the displaying of a notice on the premises and an advertisement in a local paper giving details of the application and serving a copy of the application on all responsible authorities. The applicant complied with all statutory requirements. In addition the relevant ward councillors and/or parish council were notified by way of register.
15. There was however confusion created by the display of a supplementary notice in the store's window stating that the shop would not be utilising the additional hours if granted. The notice was apparently displayed by local staff and not by Sainsbury's or their solicitors. It was the view of officers that this secondary notice created sufficient confusion that additional steps needed to be taken. It was agreed with the applicant's solicitors on 16<sup>th</sup> September that the notice period be extended for a further 28 days and the supplementary notice be removed. Officers also wrote to each of the representors and informed the relevant ward councillors.

### **Summary of Representations made by Responsible Authorities**

16. City of York Council Environmental Protection Unit: Make representations on the grounds of prevention of public nuisance licensing objective. A copy of the representation is attached at Annex 3.

### **Summary of Representations made by Interested Parties**

17. Representations have been received from a total of 225 interested parties shown on Annex 4 of which those listed 1–8 have submitted individual representations whilst the rest have submitted pro-formas. Their representations are attached at Annex 5.
18. The location of the residential properties owned by the interested parties in relation to the premises subject to this application is shown on the map attached at Annex 6.
19. An “interested party” is defined at s13(3) of the Act as being a person living in the vicinity of the premises, a body representing persons who live in that vicinity, a person involved in a business in that vicinity, or a body representing persons involved in such businesses.
20. Members are reminded that representations are only “relevant” if they relate to the likely effect of the grant of the licence on the promotion of at least one of the licensing objectives.

### **Planning Issues**

21. There are no planning issues or conditions relevant to this application.

### **Options**

22. By virtue of s18(4) of the Act, the Committee have the following options available to them in making their decision:-
23. Option 1: Grant the variation of the licence in the terms applied for.
24. Option 2: Grant the variation of the licence with modified/additional conditions imposed by the licensing committee.
25. Option 3: Grant the variation of the licence to exclude any of the licensable activities to which the application relates and modify/add conditions accordingly.
26. Option 4: Reject the application.

### **Analysis**

27. The following could be the result of any decision made this Sub Committee:-
28. Option 1: This decision could be appealed at Magistrates Court by any of the representors.

29. Option 2: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
30. Option 3: This decision could be appealed at Magistrates Court by the applicant or any of the representors.
31. Option 4: This decision could be appealed at Magistrates Court by the applicant.

### **Corporate Priorities**

32. The Licensing Act 2003 has 4 objectives the prevention of crime and disorder, public safety, prevention of public nuisance and the protection of children from harm.
33. The promotion of the licensing objectives will support the Council's priority to make York a safer city with low crime rates and high opinions of the city's safety record.

### **Implications**

34.
  - **Financial** - N/A
  - **Human Resources (HR)** – N/A
  - **Equalities** – N/A
  - **Legal** – This decision could be appealed at Magistrates Court by the applicant or any of the representors.
  - **Crime and Disorder** - The Committee is reminded of their duty under the Crime and Disorder Act 1998 to consider the crime and disorder implications of their decisions and the authority's responsibility to co-operate in the reduction of crime and disorder in the city.
  - **Information Technology (IT)** – N/A
  - **Property** – N/A
  - **Other** – none

### **Risk Management**

35. All Members of the Licensing Act 2003 Committee have received full training on the Act and the regulations governing hearings. They are aware that any

decision made which is unreasonable or unlawful could be open to challenge resulting in loss of image, reputation and potential financial penalty.

36. The report details the options available to the panel in determining the application and recommends that a decision be reached. There are no risks involved with this recommendation.

## Recommendations

37. Members determine the application.  
Reason: To address the representations received as required by the Licensing Act 2003.

## Contact Details

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**Report Approved**  **Date** 27 October 2009

## Specialist Implications Officer(s):

Head of Legal & Democratic Legal Services

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**Wards Affected: Acomb**

**For further information please contact the author of the report**

## Background Papers:

- Annex 1** - Copy of existing premises licence
- Annex 2** - Copy of application form
- Annex 3** - Copy of representation from Environmental Protection Unit
- Annex 4** - List of Interested Parties
- Annex 5** - Copy of representations from Interested Parties
- Annex 6** - Map showing general area from which representations received.
- Annex 7** - Mandatory Conditions
- Annex 8** - Legislation and Policy Considerations