

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A,
MONDAY 17 JUNE, 2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY, 17 JUNE, 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Ziaul Islam and Penny Cornish.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Poole - Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/170623

NOTICE OF RECORDING/WEBCAST

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/170623

DECLARATION OF INTERESTS

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

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Information on the Local Government Association’s Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

Councillor Sam Forsyth declared that she is the ward Councillor for Quinton but did not know the premises, applicant or objectors.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/170623 No apologies were submitted.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – NO.393, 393A
HAGLEY ROAD WEST, QUINTON, BIRMINGHAM, B32 2AL.**

4/170623 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On behalf of the Applicant

Nick Semper – The Licensing Guys – Agent
Reba Dandon – The Licensing Guys – Agent
Jordan Reid – Applicant

Those Making Representations

None of the objectors attended the meeting.

* * *

Councillor Sam Forsyth declared that she is the ward Councillor for Quinton but did not know the premises, applicant or objectors. None of the parties present had any objection to the Chair being part of proceedings.

The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

The Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present the report. Bhapinder Nandhra, Licensing Section, outlined the report.

The Chair then invited the applicant to make their submission, Nick Semper made the following points: -

- a) That the premises was not a Booze Buster off licence, or nightclub. It is a stylish eatery which was dedicated to providing a friendly and welcoming and neighbourhood and social networking experience.

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- b) The applicant had many years' experience of managing restaurants, cafes, pubs and a range of licensed premises.
- c) The premises offered great food, service and staff and he wanted to build on the current success with the provision of a selection of alcoholic beverages to complement the food menu.
- d) The application should be judged on its own merits.
- e) The application had been prepared and constructed in order to comply with all aspects of the City Council's Statement of Licensing Policy which would minimise the potential for any Licensing Objective being undermined.
- f) There were also a significant raft of conditions proposed.
- g) The burden was on the applicant to show the Committee that the proposed changes, supported by the re-existing operating scheduled and additional conditions were capable of promoting the Licensing Objectives.
- h) The objectors also had the burden of showing that the premises would undermine the Licensing Objectives and they needed to provide evidence.
- i) That the application could only be refused if the proposal was found, based on evidence, to be incapable of promoting the Licensing Objectives.
- j) The Section 182 Guidance, paragraph 9.43 stated that "The authority's determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve."
- k) There was no real evidence submitted by the objectors that would challenge or criticise the premises, Operating Schedule, applicant or designated premises supervisor.
- l) The responsible authorities were the experts in their individual fields, none of which had made any objections to the application.
- m) The representations made by local residents expressed concerns about street drinking, alcohol-fuelled violence and nuisance and violence the children occurring. However there was no evidence to support those concerns and the proposed conditions were comprehensive.
- n) In addition to comprehensive CCTV, Staff Training, Incidents & Refusals Logs, Challenge 25, they had offered the following Conditions:
 1. Alcohol sales may only be ancillary to a food order.
 2. Alcohol for consumption on the premises with a 'takeaway/collection' order may only be provided in sealed containers provided to the customer within the packing of a takeaway food order.
 3. Patrons are not permitted to remove drinks in open bottles/glasses or other open vessel from the licensed premises.

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4. Deliveries shall only to be made to bona fide business/commercial addresses or private residences and not to any public/open spaces (e.g. car parks, street corners, bus stops, public parks).
- o) The proposed conditions would ensure that alcohol misusing street drinkers would not be attracted to the premises. Therefore, the problems suggested by the objectors would simply not occur.
- p) There were two main reasons why fear and speculation are not admissible in these proceedings:
1. Para 9.43 of the s182 Guidance clearly states that “The authority’s determination should be evidence-based...” Fear and speculation on what might or might not happen at THESE premises and in the future as a consequence of any decision today is plainly not evidence. It is, with respect, merely conjecture.
 2. There was a ruling in the case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court [(Case No: CO/5533/2006) at the High Court of Justice Queen's Bench Division Administrative Court on 6 May 2008, [2008] EWHC 838 (Admin), 2008 WL 1968943,]. In the judgment, it was stated that conditions should only be attached to a Licence with a view to promoting the Licensing Objectives and that ‘real evidence’ must be presented to support the reason for imposing conditions or indeed refusing an application.
- q) Parliament has already provided a mechanism to deal with any future problems emanating from licensable activities at these or indeed any premises in the form of a Premises Licence Review provided by s51 of the Licensing Act 2003.

Members asked questions and Jordan Reid (applicant) responded: -

- a) That he had worked in hospitality since the age of 17 (10/11 years) in cafes, restaurants, bars.
- b) The premises was operating as a bistro. They started off as a café serving breakfast and coffees but they now had a larger menu serving light bites.
- c) They wanted to become an eatery/bistro and offer alcohol with food to customers.
- d) He had worked as a Manager at premises such as Nandos, Bella Italia, Zizi's Italian and some independents.

Nick Semper, on behalf of the applicant, was then invited to make a closing submission and as such, he made the following closing statements: -

- That commercial demand was not a consideration for the Licensing Committee.
- The amount of licensed premises was also not a consideration for the Committee.

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- There is no history or evidence that the premises caused issues and the responsible authorities were content with the application.
- He requested that the Committee approved the application.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and, following the announcement of a short decision, a full written decision was sent to all parties as follows;

5/170623

RESOLVED:-

That the application by Jordan Reid for a premises licence in respect of No. 393, 393A Hagley Road West, Quinton, Birmingham B32 2AL, be granted. Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

The applicant attended the meeting, represented by a licensing consultant. Neither of the persons who had submitted representations against the application attended.

The consultant addressed the Sub-Committee and explained that the application concerned an established and successful business. No 393 was a café-restaurant, and was not an off licence, nightclub or sports bar; it was “a successful and stylish eatery dedicated to providing a friendly and welcoming neighbourhood and social networking space”.

The applicant had many years’ experience of managing a range of licensed premises including restaurants, cafes and pubs. He wished to build upon his current success via the provision of alcoholic beverages to complement the extensive food menu.

The consultant reminded the Sub-Committee that each application had to be judged on its own facts and merits. He commented that the merits of the instant application were that it complied with all aspects of the City Council’s Statements of Licensing Policy, thereby minimising the potential that any of the licensing objectives would be undermined. A significant raft of conditions had been proposed which would be capable of promoting the licensing objectives and would not undermine them.

The consultant observed that the Sub-Committee could only refuse the application if the proposal were to be found, on the evidence, to not be capable of promoting the licensing objectives. The Sub-Committee noted this. Paragraph 9.43 of the Guidance issued by the Secretary of State under section 182 of the Act stated that the authority’s determination should be evidence based and justified as being appropriate to the promotion of the licensing objectives, and proportionate to what is intended to be achieved. The Sub-Committee noted this.

The consultant remarked that there was “no real evidence” in the representations (which were in the Committee Report) which challenged or criticised the premises, the operating schedule, the applicant or the proposed designated

premises supervisor. He commented that the issue was simply whether the style of operation at the No 393 premises, underpinned by the suite of conditions, would undermine the licensing objectives.

Regarding the representations, the consultant noted that none of the responsible authorities had objected. West Midlands Police were the experts in the prevention of crime, disorder and antisocial behaviour, but had not objected; likewise, the Environmental Health department within Birmingham City Council, who were the experts in noise pollution and the lead on the public nuisance licensing objectives, had no objection.

Moreover, no representations had been received from the Planning department, Trading Standards or Children's Services. The consultant remarked that in the opinion of all the responsible authorities, the application did not undermine the licensing objectives, otherwise they would have attended the meeting to argue against it, as was their statutory duty. The Sub-Committee accepted this.

Two representations had been received from neighbours. Both said that they were worried about street drinking, alcohol-fuelled violence & nuisance, and violence to children, which they feared might occur if the licence were to be granted. The consultant confirmed that he had written to both persons, and had tried to engage and explain the application, but the persons had not replied. The Sub-Committee further noted that neither of the persons had attended the meeting.

The consultant directed the attention of the Members to the operating schedule, and observed that it offered arrangements for comprehensive CCTV, staff training, Challenge 25, and incidents and refusals logs. In addition, it would be a condition of the licence that alcohol sales would only be ancillary to an order for food. Alcohol for consumption off the premises with a takeaway/collection order would only be provided in sealed containers provided to the customer within the packaging of a takeaway food order.

Patrons would not be permitted to remove drinks, open bottles or glasses or any other open vessel from the licensed premises. Delivery of orders would only be made to bona fide business or commercial addresses, or private residences, and not to any public or open spaces such as car parks, street corners, bus stops or public parks. The consultant remarked that street drinkers would not be attracted to this style of premises; nor would they be welcomed within it. Moreover, even if they were to enter, they would not be able to buy any alcohol without first purchasing food. The consultant remarked that they would be unlikely to do that when they could access alcohol elsewhere with no requirement to buy food. The Sub-Committee agreed with this.

He further noted that the objectors had speculated that if the licence were to be granted, problems might ensue. He reminded the Members that fear and speculation were not of any relevance. All decisions had to be evidence based, per paragraph 9.43 of the Guidance, rather than based on conjecture. The Sub-Committee accepted this.

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Counsel also drew Members' attention to relevant caselaw - *R (on the application of Daniel Thwaites plc) v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin)*, and reminded them that conditions could only be attached to a premises licence with a view to promoting the licensing objectives; in the event of problems, the Review procedure under the Act was available. The Sub-Committee noted all of this.

He observed that comments in the representations about how there were "already too many" licensed premises in the area should be disregarded, as paragraph 14.19 of the Guidance stated that need was not a relevant factor, and was not a matter for the licensing authority to consider when discharging its licensing function. The Sub-Committee accepted this.

The Sub-Committee then heard directly from the applicant, who confirmed that he had worked in the hospitality industry since he was 17 years old. He had run restaurants, cafes and bars up and down the country, for 11 years. He had been a manager at Bella Italia, Nando's, Zizzi's Italian, Patisserie Valerie and also some independent premises. The No 393 premises had started as a café serving breakfast and lunch, and now hoped to become a bistro offering alcohol.

The Sub-Committee noted that, under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk to the promotion of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact have an adverse effect on the licensing objectives.

Upon examining the representations in the Committee Report, the Members tended to agree with the consultant that the objections were rather speculative, especially as the site had been operating as a café without any problems, and the applicant was an experienced person who had worked in the licensed trade for years. The Sub-Committee considered that the fears expressed in the representations were perhaps not based on evidence.

The Members noted that the premises simply wished to offer alcohol to diners as an ancillary purchase to a food order. The comprehensive operating schedule had inbuilt safeguards regarding the upholding of the licensing objectives, and there was no adverse history attached to either the premises or the applicant. None of the responsible authorities were dissatisfied. The Members therefore accepted the submission of the consultant that there was no evidence before them that challenged the premises, the applicant, the operating schedule or the proposed designated premises supervisor in any way.

There were no reasons to suppose that the grant of the licence would place the promotion of the licensing objectives at risk. The Members were aware that if the authority gave weight to speculative opinions, it would fail to follow the Guidance issued under section 182 of the Act, and its own Statement of Licensing Policy.

When deliberating, the Sub-Committee noted that the operating schedule had been drafted with careful consideration of the licensing objectives, and had been found to be satisfactory by the responsible authorities. This was reassuring. The

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Sub-Committee determined that the application could safely be granted. The Members were satisfied that trading would be safe, and noted that all areas of concern had been satisfactorily addressed by the operating schedule.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State, the application for a premises licence, the written representations received, and the submissions made at the hearing by the consultant and by the applicant.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

The meeting ended at 1032 hours.

Chair