

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE B
11 JUNE 2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 11 JUNE 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Saddak Miah in the Chair;

Councillors Sybil Spence and Penny Wagg.

ALSO PRESENT

David Kennedy – 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)

1/110624 **NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/110624 **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.

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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/110624 Apologies were submitted on behalf of Councillor Adam Higgs and Councillor Penny Wagg was the nominated substitute Members.

APPOINTMENT OF SUB-COMMITTEE

4/110623 The Sub-Committee noted the appointment by the City Council of the Sub-Committee and Chair for the Municipal Year 2024/25.

Members were reminded that they may nominate another Member of their respective Party Group on the Licensing and Public Protection Committee to attend in their place.

Any Member nominated must of had formal training as set out in Paragraph 6.1 of the Licensing Committee Code of Practice for Councillors and Officers.

DELEGATIONS OF SUB-COMMITTEE

5/110623 The delegations to the Sub-Committee as follows:-

To determine matters relating to the Licensing Act 2003, the Gambling Act 2005, hackney carriage licences private hire licences and such business as may be referred by the Director of Regulation and Enforcement.

MINUTES

6/110623 The public part of the Minutes of the meeting held on 23 April 2024 at 1000 hours, 7 May 2024 at 1000 hours were circulated and the Minutes as a whole were signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – VARIATION – HAYER SUPERMARKET, 270-271 ICKNIELD PORT ROAD, EDGBASTON, BIRMINGHAM, B16 0AG.

7/110623 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On Behalf of the Applicant

Duncan Craig – Barrister, St. Philips Chambers

Shokat Ali – Applicant

On Behalf of Those Making Representations

No one attended.

* * *

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. David Kennedy, Licensing Section, outlined the report.

The Chair then invited the applicant to make their submission, Duncan Craig on behalf of the applicant made the following points: -

- a) That the premises had never caused any problems, no review applications or minor variations. The premises had been open and trading since 2005.
- b) His client had been running the premises for approximately 1 years, but had been a personal licence holder since 2005 – he had been in the trade for 19 years.
- c) All the usual steps had been proposed in the application.
- d) That granting the application for a modest increase in hours would ensure a series of enforceable conditions were attached to the licence, that did not currently exist.
- e) Following discussions with West Midlands Police they had reduced the hours from the original application.
- f) The responsible authorities were the experts in their individual fields, and yet none had made representations. Demonstrating that they considered the application to be appropriate and proportionate.
- g) Many of the representations from other persons were concerned about 24 hour opening times, yet the application had been amended and the hours reduced.
- h) The further conditions would enhance the enforceability of the licence.
- i) There were also concerns about litter and broken glass but that could not be attributed to his client.
- j) His client was a responsible operator as demonstrated by his track record.
- k) The objectors also refer to other licensed premises in the area, but need was not a consideration under the Licensing Act.

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- l) The concerns regarding hours had been addressed by the amended application.
- m) The licence would be better balanced, and the additional conditions would be enforceable.
- n) He requested that the Committee granted the application.

Members asked questions and Duncan Craig, on behalf of the applicant gave the following responses: -

- a) The thrust of the objections were in relation to the original application for a 24 hour licence.
- b) Much of the other points raised by the objectors was not relevant.
- c) The litter and broken glass issue could not be attributed to his client.

The Chair then invited Duncan Craig to make a closing submission, he made the following closing statements: -

- a) The application had been significantly reduced from what it was and all the responsible authorities were happy.
- b) That he hoped the residents would be happy with the amended application.
- c) He requested that the application be granted.

At this stage the Members, Committee Lawyer and Committee Manager went into a separate private MS Teams meeting to deliberate and a full written decision was sent to all parties as follows;

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RESOLVED:-

That the application by Shokat Ali to vary the premises licence in respect of Hayer Supermarket, 270-271 Icknield Port Road, Edgbaston, Birmingham B16 0AG, under section 34 of the Licensing Act 2003, be granted as follows:

- The hours for the sale of alcohol shall be from 06:00 hours until 00:00 hours daily
- Premises to remain open to the public from 06:00 hours until 00:00 hours daily
- Those conditions agreed between the licence holder and West Midlands Police in advance of the meeting shall be adopted, namely:
 1. If for any reason the CCTV hard drive needs to be replaced the previous/old hard drive will be kept on site for a minimum of 28 days and made immediately available to any of the responsible authorities on request. The CCTV system will be checked once each week to ensure that it is in working order. The

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identity of the checker and the result of the check will be noted in the incident log and signed off by the DPS

2. The condition regarding minimum staffing to be removed
3. An incident register will be kept on the premises and made available at all times to any of the responsible authorities on request

Those other matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will continue to form part of the licence issued.

The licence holder attended the meeting with his brother. He was represented at the meeting by counsel, who explained to the Sub-Committee that the application had been reduced in scope considerably since it was initially submitted, following discussions between the licence holder and West Midlands Police. The original request for 24 hour operation had been significantly reduced, and the proposal now was for the sale of alcohol for consumption off the premises from 06.00 hours to 00.00 hours daily.

The licence, which had originally been a Justices' licence under the old licensing arrangements, and had been converted to the current form of licence in 2005, had no conditions attached to it beyond the mandatory conditions. Counsel observed that this was evidence that the premises had not caused any issues; the licence had never been reviewed, and nor had there been any need to request any minor variation. The Sub-Committee noted that the licence had caused no problems since November 2005.

The applicant had operated the Hayer Supermarket premises for about a year, but had been a personal licence holder since 2005, and had been involved with the convenience store sector of the licensed trade for 19 years.

Measures proposed by the applicant when submitting the application had addressed matters such as staff training, CCTV, firefighting equipment, public safety signage and the 'Challenge 25' scheme. Counsel observed that if the Sub-Committee were to grant the application for the modest increase in hours (24 hour operation was no longer the request), there would then be a series of enforceable new conditions on the licence. Those new conditions included an amendment to the CCTV condition at the request of the Police, and a requirement to have an incident register. The Sub-Committee noted that conditions endorsed by the Police would form part of the licence if the variation were to be granted.

Counsel drew the attention of the Members to the Guidance issued by the Secretary of State under section 182 of the Act, which at paragraph 9.13 stated that the responsible authorities are the experts in their fields; he noted that in the instant matter no responsible authorities had made any representations, as they considered the application to be appropriate and proportionate. West Midlands Police had confirmed that they were satisfied with the reduction in hours and the further conditions.

Regarding the objections from other persons, counsel noted that all the representations had been made on the basis that the application was for

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operation across 24 hours. Whilst the persons had not withdrawn their representations, and the representations were therefore still valid, the persons had not commented on the fact that the scope of the application had entirely changed; the request now was to increase the hours by only a relatively modest amount. The Sub-Committee noted this.

Other issues raised by those objecting referred to the presence of supported accommodation in the area; counsel observed that this did not bear any relation to the application. Regarding litter and broken glass in the area, some of which had been photographed and submitted by those making representations (the photographs were in the Committee Report), counsel asked the Sub-Committee to note that such issues were not attributable to the licence holder as he was a responsible operator, as demonstrated by his track record.

References to the number of licensed premises already in the neighbourhood were not of relevance, as there was no cumulative impact zone in force for the area. Counsel reminded the Sub-Committee that all the representations had been made when the application had originally been submitted, when the request then had been for operation across 24 hours; he therefore considered that all the concerns had been satisfactorily addressed, and indeed to the satisfaction of the Police. The Sub-Committee accepted this.

Regarding the petitions against the application, counsel observed that the individual representations should carry more weight, because those persons would have considered the content of their individual submission and have composed it themselves; he therefore asked the Members to discount the petitions as they were a 'generic' style of objection.

In conclusion, counsel observed that there had been some objections to the application, but none of those objecting had attended the meeting. The application had been scoped back significantly in terms of the requested hours for the sale of alcohol. The agreement over the conditions suggested by the Police meant that the licence would be much more focused on the promotion of the licensing objectives, via the new and enforceable conditions.

One Member expressed confusion about the objections generally, and why it was that people had objected. Counsel explained that the main issue was the initial proposal to operate across 24 hours, which was no longer requested by the applicant following discussions with the Police. Concern about supported accommodation in the local area was irrelevant to the application; counsel reminded the Sub-Committee that the application should be judged on its merits, and not on whether there was supported accommodation in the area. This also applied to the comments made about a local nature reserve. The Sub-Committee accepted this.

Regarding litter and broken glass, there was no evidence whatsoever that the licence holder or his premises were the cause of any litter in the area. The fact that other licensed premises in the area already offered alcohol was irrelevant, as "need" was not a consideration. Parking had also been raised as an issue, but was not a relevant consideration. Counsel remarked that there were no objections to the specifics of this particular application – the concerns raised

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simply referred to the area in which the Hayer Supermarket was located. The Members noted all of this.

When deliberating, the Sub-Committee carefully considered the proposal put forward by the licence holder, and the likely impact of the variation application. The Members bore in mind paragraph 9.12 of the Guidance issued under s182 of the Act, namely the need for robust evidence in decision making.

The representations which had been received had raised issues which were not directly connected with the operation of the premises; the Members agreed with counsel that the objections related to issues in the general area, rather than with the proposed operating style of this specific premises.

Moreover, none of those making representations attended the meeting, and so the Members did not have an opportunity to ask them questions about their views on either the revised (shortened) hours, or the new conditions. The Police were content now that the hours had been reduced and conditions agreed, and the other responsible authorities had not raised any concerns at all. This was reassuring.

The Sub-Committee considered that the variation proposal put forward by the licence holder was precise and enforceable, and would cover any potential risk adequately. The applicant had liaised with the Police and had accepted their suggestions. The shortening of the hours significantly reduced the likelihood of problems arising in connection with the operation. All in all, the application inspired confidence.

The Sub-Committee therefore resolved to vary the licence to the hours and conditions agreed between the licence holder and the Police.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Home Office, the application for the variation of the premises licence, the written representations received, and the submissions made at the hearing by counsel for the licence holder.

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.

EXCLUSION OF THE PUBLIC

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RESOLVED:-

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt Paragraph 3.
