

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 4 AUGUST 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 4 AUGUST 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Nicky Brennan and Adam Higgs.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

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

NOTICE OF RECORDING/WEBCAST

- 1/040820 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/040820 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/040820 No apologies were submitted.
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**LICENSING ACT 2003 PREMISES LICENCE – VARIATION - EDEN MANNA
SUPERMARKET, 122 FRANCES ROAD, COTTERIDGE, BIRMINGHAM, B30
3DX**

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Anthony Gregson – Agent – Hospitality Training Solutions
Stacey Lukika – Employee and Applicant's wife.

Those Making Representations

Chris Jones – West Midlands Police (WMP)
Mary Locke – Local Ward Councillor.

* * *

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 Chairman then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy to outline the report.

Afterwards, the Chairman invited the applicant to make their submission. At which stage Anthony Gregson, made the following points on behalf of the applicant: -

- a) That the shop had been trading 17 months and was a vital part of the community; especially during the recent outbreak of Covid-19. The shop provided local residents with daily essentials. The applicant was putting himself at increased risk to ensure the residents felt comfortable and could get their daily essentials.
- b) Since the store had been open, there hadn't been any complaints.
- c) That the location of the premises did not pose a risk to children. Further, other premises close by were able to sell alcohol.
- d) The concerns needed evidencing before the application could be rejected.
- e) The grant application received objections in relation to children and an agreement was made at that hearing to 'show willing' to the local community. Which demonstrated the character of the applicant and his commitment to the area.

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- f) The alcohol in the shop had to be kept behind shutters. The reason for the variation was due to the expense of shutters, which meant they had to move the alcohol every day because the applicant could not afford shutters.
- g) The applicant had arthritis in his knee which was making moving the alcohol difficult.
- h) They believed that selling alcohol for the duration of the opening hours would not put children at risk.
- i) Children passed by many shops that sold alcohol on the way to school and would often go and buy sweets from such shops.
- j) They should not be the only shop that has a condition about alcohol not being sold in the morning.
- k) They had stuck by the guidance that was given at the time of the grant application and were not advertising outside even though other premises did.

Chris Jones on behalf of WMP made the following points: -

- a) That the original application last year requested a licence from 11am-midnight 7 days a week and the Committee decided to curtail the hours to 5:30pm-midnight Monday-Friday and 11am-midnight Saturday-Sunday. The initial hours applied for would not have impacted children, yet the Committee noted that the head teacher was concerned about children being vulnerable.
- b) The decision was accepted by the licence holder in that alcohol was not to be on view and must be covered with lockable shutters.
- c) The new application offered some extra conditions regarding CCTV, yet there was already a substantial CCTV condition on the licence.
- d) There was also another offered condition regarding external lighting, yet that did nothing to negate the Committee's concerns.
- e) The condition regarding no advertisements outside the premises also did nothing to negate concerns and alcohol could still be seen through the windows from the pavement.
- f) He attended the premises on 12 June, he was concerned at the amount of alcohol on display at the premises, the details of the visit were at pages 54-65.
- g) None of the alcohol was behind shutters.
- h) When Chris spoke to the PLH (Premises Licence Holder) about the issues he said he knew he was in breach of the conditions, but in mitigation said the shop was too small for the alcohol he had and moving it was therefore not practical.

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- i) Due to the concerns WMP requested the CCTV footage, yet they were told the system was broken and they did not have the password either. Another licence condition breach.
- j) The applicant knew the CCTV was not working, but was happy to continue trading even whilst in breach of his licence conditions.
- k) WMP revisited on 15 June to review the CCTV system once they had reset the password and the CCTV was working and had a new hard drive.
- l) WMP asked for the hard drive that was removed and the PLH said he didn't have it; the engineer had taken it. Therefore, they gave the applicant a week to recover the hard drive and they arranged to come back.
- m) The alcohol on that occasion was covered by sheets, but again this was not compliant with the Committee's imposed condition of lockable shutters.
- n) The PLH sent an email stating that the hard drive was not available, and the engineer had taken it, so they didn't know where it was. This posed various GDPR and Data Protection issues.
- o) There were no complaints since the premises opened but on 14 January 2020 there was a burglary reported and £2000 worth of vodka was stolen – an excessive amount of alcohol.
- p) The statement from PC Williams at page 69 raised issues about CCTV.
- q) The applicant and the conditions offered did not negate the concerns the original Licensing Committee had for the grant application.

Councillor Mary Locke, Local Ward Councillor made the following points: -

- a) She was the Councillor for this area and was objecting due to the premises being located opposite a primary school.
- b) The licensing objective of protecting children from harm was her concern.
- c) The hours were far too early (6am).
- d) The applicant had submitted documents showing other premises close to schools, however, the school closed several decades ago and the Council District Offices had also closed 5 years ago and were now empty.
- e) There was also a parent refuge nearby for parents who were fleeing from domestic violence.
- f) The head master who previously made an objection to the grant application had left the school and she was not sure if the new head master was aware of the application. However, she could not speak on their behalf.

- g) Safeguarding children is important and serious. Lockdown easing concerned her as schools would be getting back up and running.

In summing up, Cllr Mary Locke made the following points: -

- That the conditions agreed last time were fine and she did not feel the new hours requested were suitable.

In summing up, Chris Jones, on behalf of WMP made the following points: -

- That premises had not proven that they can address the concerns the Committee raised at the previous hearing.
- He did not have faith that the PLH would comply with the conditions of licence, given that they had already breached their current licence conditions.
- Therefore, the application should be refused.

In summing up, Anthony Gregson, on behalf of the applicant made the following points: -

- That the school had not chosen to object to the application.
- That it was not the case that children should be sheltered from alcohol and it didn't happen anywhere else, so it was not fair that it should happen with this premises.
- Variation applications were a new application and should not be compared with the original application.
- That the 6am opening hour was not for monetary gain, it was due to the applicant's health concerns.
- The applicant wasn't in attendance as he was very nervous, and English was his second language. He sometimes stuttered if he got nervous.
- That the CCTV condition was imposed, no evidence to say that he didn't have CCTV. As soon as the PLH realised the CCTV was not working he got it repaired. The circumstances about the hard drive were all speculation.
- The alcohol being on display was a mistake. The condition was imposed during school times, so he assumed that because children weren't at school due to Covid-19 he didn't have to cover the alcohol.
- The challenge 25 policy would protect children from harm.

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- The applicant did a very good job trying to promote the Licensing Objectives and to grant the application would be best for the business and the licensing objectives.

At this stage Stacey Lukika indicated that she wished to address the points made by the police officer.

The Chair advised that the time for addressing the Committee had gone and that she should have indicated she wished to speak when invited earlier in the meeting.

At this point the Chair advised that the Committee would be going into private session to seek legal advice. The Members, Committee Lawyer and Committee Manager joined a private teams meeting.

At 1112 the Members and officers re-joined the meeting having taken legal advice and the Chairman invited Stacey Lukika to make her points.

Stacey Lukika made the following points: -

- a) That they submitted the evidence for the burglary. There was a power cut so no one was in the premises at the time; they were not trading.
- b) The £2000 worth of vodka was incorrect – it was alcohol and cigarettes which was the reason it was a big amount.
- c) They haven't made any changes to the building.
- d) The investigation of the robbery was not done properly.
- e) 2 officers attended the premises, saw the shop was closed due to power cut and that was why the burglary occurred. It would not have happened if they were trading as they would have been in the premises.
- f) That she didn't know much about the licence as she wasn't a DPS. However, how would anyone know the CCTV wasn't working until it was checked. They couldn't sit and watch it all day to ensure it was always working.
- g) The screen said it was recording, it wasn't until they went to access it that they realised it was not working.
- h) That Councillor Locke misunderstood the condition so why couldn't they misunderstand it? The school was only open to key worker children, so there were hardly any children around.
- i) They did not sell alcohol before 1730 hours.
- j) Bars and Clubs were closed due to Covid-19 so the demand for alcohol in the shop increased so they had to increase their stock.

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- k) That there was a letter from the GP explaining her husband's health concerns.
- l) If they wanted to breach the conditions, they wouldn't have made a variation application.
- m) The school had no concerns and had not objected to the application.
- n) Her husband wanted to work with the community.
- o) They were being victimised for doing what they thought was right.
- p) If they weren't protecting children, why had no parents made objections.
- q) That the Councillor's objection last year was about crime and now it was about children. She had just objected for the sake of it.

The Chairman advised that Councillor Locke had the right to object, and this was a fresh application.

Stacey Lukika advised that the information submitted by WMP and Councillor Locke all made reference to the previous application and if it was deemed a new application then that information shouldn't be considered. Her final point was in relation to the objectors who she felt had approached the issues wrongly. She felt they should have sat the applicant down and tried to make him understand as there was a language barrier.

Councillor Locke advised that the school was open during lockdown.

Chris Jones, WMP advised that the premises had not proven or negated any concerns and had also breached their licence conditions. Further, the PLH did not give Chris the impression they he did not understand what was happening or being said when they carried out inspections.

Anthony Gregson reminded Members that it was a fresh application. The hours agreed at the grant hearing were agreed with the head teach and not imposed by the Committee – therefore because it wasn't a Committee concern it does not need to be negated.

Councillor Locke added that the hours agreed at the previous hearing were sufficient, she still had concerns about the protection of children.

The Committee Lawyer asked Stacey Lukika whether there were lockable shutters or blinds over the alcohol.

She responded to say that they did have blinds, but due to the increase in alcohol they did not have enough blinds, therefore they currently had no shutters or blinds.

The Committee Lawyer then asked Stacey Lukika to clarify what was stolen during the robbery.

She said she did not understand the importance of the question – it was not just vodka but other types of alcohol and cigarettes.

The Chair asked how many CCTV cameras were in the premises.

She stated that the premises had 4 CCTV cameras.

Anthony Gregson concluded that mistakes had been made however the police had the power to discuss and explain things to the licensee. The application was enough to show how children would be protected from harm and if there were any problems in the area, that would have been brought to the Committees attention. The applicant was an outstanding member of the community and was running a good store.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/040820

RESOLVED:-

That the application by Eden Manna Supermarket Ltd to vary the premises licence in respect of Eden Manna Supermarket, 122 Frances Road, Cotteridge, Birmingham B30 3DX, under section 34 of the Licensing Act 2003, be refused.

The Sub-Committee carefully considered the operating schedule put forward by the applicant, and the likely impact of the variation application, but is not satisfied that the protection of children from harm licensing objective would be promoted, due to the style of management displayed by the applicant - particularly given the observations made by West Midlands Police.

The applicant, via his agent, stated that the application to vary had not been made for any commercial reason; rather, it was because of the applicant's health problems, and to "ease the burden" on him. This was confirmed by the applicant's wife, who also attended the meeting and addressed the Sub-Committee. The applicant did not attend.

The Sub-Committee determined that the variation sought was substantial as it would extend the licensable hours, on all days of the week, far earlier into the hours of the morning and afternoon; moreover, the effect of the proposed operation would extend beyond the licensed premises itself. There was a primary school opposite the shop; there was also a parents' refuge nearby, which the Sub-Committee heard was used by those fleeing domestic violence.

Consequently, significant weight was attached to the representations made by West Midlands Police and a local Ward Councillor, relating to the impact of the proposed operation on those in the neighbourhood, especially children attending the primary school.

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Both of those making representations felt that only the existing hours for the sale of alcohol (as determined in the decision of the Sub-Committee in March 2019) gave proper protection from harm for local children. To bring the hours forward, such that alcohol would be on sale from 06.00 hours daily, risked undermining the licensing objective.

In addition, West Midlands Police expressed concerns that the conditions agreed and imposed in March 2019 were not in fact being observed by the applicant. The Police drew the attention of the Sub-Committee to the condition that *'the licence holder shall ensure that at times when the premises are open but alcohol is not for sale that alcohol is not on view and is covered by lockable blinds or shutters.'* Upon attending at the premises at 11.50 hours on a Friday, ie a day when alcohol was not to be sold until 17.30 hours, officers observed that alcohol was openly on display behind the sales counter in an open fridge and on shelving units, and could be seen from the public footpath.

When spoken to by officers, the applicant had stated that he was aware of his licence conditions and knew that he was in breach of them by displaying alcohol in the premises outside his licensable hours; however he stated that the shop was too small to store the amount of alcohol and that it was impracticable to keep removing it on and off display. This appeared to be a reference to his health condition, which made moving the alcohol difficult.

The Police had also been dissatisfied with the applicant's arrangements regarding CCTV, and considered him to not be following the relevant conditions of the licence. Accordingly the Police had not been persuaded that the new conditions proposed by the applicant would add anything to uphold the licensing objectives; the issue was the applicant's capability in promoting the licensing objectives.

The Sub-Committee agreed with this; the Members were not altogether impressed with the management style described, and noted in particular that the applicant had admitted breaching the condition regarding the display of alcohol outside the licensable hours. Whilst the Sub-Committee accepted that the applicant was providing a service to the community, this type of failure to follow conditions already on the licence hardly inspired confidence that the applicant was a suitable person to have his licensable hours extended such that he would be able to sell alcohol all day, starting from 06.00 hours, or that he would take his responsibilities under the Act seriously. Accordingly, the Sub-Committee resolved to refuse the application.

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 information in the application for a variation, the written representations received, and the submissions made at the hearing by the applicant's agent, the applicant's wife, West Midlands Police and the local Ward Councillor.

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

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Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

Please note, the meeting ended at 1152.