

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 6 NOVEMBER 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 6 NOVEMBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Mary Locke and Izzy Knowles.

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)

1/061123 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.

2/061123 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

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interests flowchart which provides a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/061123 Apologies were submitted on behalf of Councillors Phil Davis and Simon Morrall and Councillors Diane Donaldson and Izzy Knowles were the nominated substitute Members.

MINUTES

4/061123 That the Public section of the Minutes of the meeting held on 16 October 2023 at 1000 hours were noted and the Minutes as a whole were circulated and confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – BURGER AND SAUCE, 55 BIRMINGHAM ROAD, SUTTON COLDFIELD, B72 1QF.

On Behalf of the Applicant

Mohammed Malik – Agent

On Behalf of Those Making Representations

Maria Widdows – Local Resident
Paul Baker – Local Resident
Carl Edwards – Local Resident

* * *

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

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. David Kennedy, Licensing Section, outlined the report.

At this stage the chair invited the applicant/their representative to make their presentation and Mohammed Malik made the following points: -

- a) That all the objectors had the same concerns about noise, litter and nuisance. However, the issues were not necessarily associated with the premises.
- b) Drugs and alcohol could not be attributed to the premises but they did not condone or encourage it.
- c) The refused people entry if they were intoxicated and caused trouble.

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- d) The premises was part of a franchise and had a good reputation, they wouldn't do anything to jeopardise that.
- e) That the actions of other businesses should not be used as a reason to object the application.
- f) They had agreed to amend the hours as a result of discussions with West Midlands Police.
- g) They wanted to work with the authorities and the local community and were trying their best to meet the needs of everyone.
- h) The site had parking at the rear and Tesco also had parking spaces, therefore parking outside the front of the premises should not happen.

The Members were invited to ask questions and Mohammed Malik gave the following responses: -

- a) That deliveries would be processed through Deliveroo and Just Eats.
- b) That they would try their best to ensure that all rules regarding noise and drivers/cars was enforced.
- c) They had rear access to the premises and therefore delivery drivers would use the rear access when the premises was shut to the public. Further, they would also close the shutters at the front of the premises.
- d) The rear entrance was to the basement and wasn't on the same level as the occupants of the flats above.
- e) That produce deliveries would be carried out first thing in the morning before the premises even opened. They would also be through the basement.
- f) The parking at Tesco isn't dedicated to Tesco customers, its for anyone visiting the street. Once Tesco closed at 11pm there would be more spaces available.
- g) Any litter caused from the premises directly would be disposed of and removed from outside the premises.
- h) There was a demand from customers for later deliveries which is why they were requesting longer hours.
- i) The premises had two parking spaces at the front of the premises for customers.

The Chair invited those making representations to make their case and Maria Widdows made the following points: -

- a) That she lived at 54 Birmingham Road, opposite the filter lane.

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- b) That there were a few things to consider: firstly, the positioning of the premises. It was close to residents.
- c) Parking was also a problem.
- d) Most premises closed around 2300 hours and that meant the street was quiet into the night, she was concerned about noise from the premises beyond 2300 hours.
- e) She supported local businesses, but beyond 2300 hours.
- f) She did not want to hear music playing or engines running at 2300 hours when her family was trying to sleep.
- g) Pizza Hut had closed.
- h) That she couldn't see the premises enforcing people being quiet, not playing music in cars and switching engines off.
- i) That they already had delivery drivers along that stretch of road, and it was really dangerous trying to get out of her drive when they were parked up delivering.
- j) The parking at the front of the premises is pavement and often people were mounting the curb and parking illegally. She had emailed the local Councillor many times regarding the issue.
- k) She had also emailed the local Councillor regarding litter which was a constant issue along that stretch of road. She had picked up litter herself from Burger and Sauce.
- l) That people lived in flats above the premises and there was going to be issues with noise – particularly people speaking/talking beyond 2300 hours.
- m) That they wouldn't be serving the local community after 2300 hours, it was mainly for deliveries and that would be going out of the local area.
- n) Many other premises operating later were further down the road where there were less residents. Therefore the location of the premises was a cause for concern.
- o) That she was supportive of the business, just not beyond 2300 hours.

The Chair then invited Paul Baker to make his objection and he made the following points: -

- a) That he supported Maria Widdows points and that was generally the view of most people.

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- b) That he was pleased to see the application had been amended. However, the issue was location. It was very near residential properties and further away from the town centre.
- c) That deliveries of pedal bikes weren't such an issue. The issue was cars and the noise associated with them. The application was requesting hours that were too late.
- d) The hours needed to be more reasonable in the local residential area.
- e) There was already an issue with litter.
- f) That the idea of the shutters being down was welcomed.
- g) That even though the application had been amended the hours were still too late.

The Chair then invited Carl Edwards to make his objection and he made the following points: -

- a) That he lived above the premises and he shared the same concerns as Maria Widdows and Paul Baker.
- b) That he was affected by noise and anti-social behaviour, but he wasn't saying it came from the premises as there was also a bar across the road. He was concerned that people leaving the bar would then go to Burger and Sauce and attract further people into the residential area.
- c) The lower end of the street had less residential, but Burger and Sauce was much closer to residential properties.
- d) There were issues with litter, drunkenness and people visiting Burger and Sauce would create a disturbance for the residents.
- e) That he appreciated the times had been amended.
- f) Parking on the street was directly under his window and it was a disturbance.
- g) The parking round the back of the premises was private and had limited spaces.
- h) The residents liked to park near the entrance due to safety and they were concerned that delivery drivers may occupy those spaces.
- i) There was a big issue with litter when the premises first opened, however since speaking to the premises the issues had resolved.

Councillors asked questions and Carl Edwards advised that there are no designated delivery spaces in the rear car park. Deliveries currently did not cause any issues but there is no designated spaces for them.

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The Chair invited those making representations to make a closing submission. Carl Edwards and Paul Baker had nothing further to add. Maria Widdows made the following closing statements: -

- That she wanted to see the hours reduced significantly, in line with other businesses in the area.
- Generally the other premises had people dining in and then leaving once they had finished their meal. This premises was a fast food style venue whereby people would come and eat much quicker and the footfall would be greater which would result in more disruption.
- The premises would attract people to the area and she was concerned that it would also attract nuisance and disturbance.
- The hours needed addressing to ensure that residents weren't negatively impacted.

The Chair invited Maria Mohammed Malik to make a closing submission on behalf of the applicant, he made the following closing statements: -

- That they appreciated everyone's concerns in relation to disturbance, drunkenness and anti-social behaviour. However, their application should not be judged by problems at other premises.
- Anyone causing issues or under the influence would be refused entry. They would also escalate any issues to the police if necessary.
- They have CCTV which would be given to the police as evidence if requested.
- They would do all they could to ensure that problems didn't arise, but existing problems were not down to them.

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

5/061123 **RESOLVED**:-

That the application by SH & AM Foods Limited for a premises licence in respect of Burger and Sauce, 55 Birmingham Road, Sutton Coldfield B72 1QF, be granted with the hours amended by the Sub-Committee as follows:

The provision of Late Night Refreshment will operate from:

- (Sunday to Thursday) 23:00 until 00:30 hours, with delivery only from 23:30
- (Friday and Saturday) 23:00 until 01:00 hours, with delivery only from 00:00

Subject to access to the premises being restricted to delivery personnel only from 23.30 hours (Sunday to Thursday) and 00.00 hours (Friday & Saturday) premises to remain open to the public from:

- (Sunday to Thursday) 11:00 until 00:30am
- (Friday and Saturday) 11:00 until 01:00am

Those conditions agreed between the applicant company and West Midlands Police in advance of the meeting, as modified by the Sub Committee at the hearing, shall also be adopted, namely:

- No public access to the premises after 23.30 Sunday to Thursday, and 00.00 Friday & Saturday
- Delivery drivers will wait for their order inside the premises and not sit outside in/on their vehicles
- Delivery drivers will not keep their engines running while outside the premises
- Delivery drivers will not play music audible from outside their vehicle while outside the premises
- Deliveries will only be made to residential or business address and not delivered to open spaces
- The premises will display prominent signage informing customers of the closure time of the premises to the public
- No alcohol in open containers allowed on the premises
- No children under 18 years old allowed on the premises after 23.00 unless accompanied by an appropriate adult

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

The applicant company was represented at the meeting by its agent. Several persons had submitted written representations, all of which were in the Committee Report. Three of them also attended the meeting in person.

The agent addressed the Sub-Committee and acknowledged that all of those making representations had raised the same concerns - noise late at night, litter, and antisocial behaviour connected with other (unrelated) premises nearby, which were operating to late hours, such as bars. He observed that any ongoing issues with drugs and antisocial behaviour in the vicinity were out of the applicant company's control, and asked that the Sub-Committee not judge the application on the basis of problems created at other premises. The Burger and Sauce premises was confident that it would not exacerbate these problems, as anybody appearing to be 'under the influence' would be refused entry, and CCTV was in operation in the premises.

The premises operated as part of a franchise business with stores nationwide; the agent remarked that the business had "a reputable brand image in providing fresh food and excellent customer service". The premises would not be serving alcohol or playing loud music, and the staff would be ensuring that no litter from the premises was left outside at closing time.

The applicant company had been happy to amend the times to those proposed by the responsible authorities. The agent observed that this showed that the premises was willing to accept change, and to ensure it cooperated with the responsible authorities, and moreover to not cause any disturbance to local residents.

The agent noted that parking was of great concern to those who had made representations, but informed the Sub-Committee that the site did have off-road parking on the forecourt. Further parking spaces were available nearby. He therefore disagreed with the comments in the representations that there would be a risk of patrons parking on residential streets. Moreover, most shops in the neighbourhood closed at 23:00 hours; the agent observed that there would therefore be plenty of parking for the premises' delivery drivers to use at night.

The late-night operation would be for delivery only, with no public access to the premises after certain hours. The conditions suggested by the responsible authorities included provisions to cover the potential for public nuisance created by the delivery drivers – for example not to keep their engines running, or to play audible music. The premises was also prepared to consider using the rear access to the premises at late hours, and to put the shutters down so the shop front appeared to be closed to customers; if required. However, Members were concerned that to use the access to the rear might still cause disturbance to residents living directly above the premises.

The applicant company had noted that there was demand for late night refreshment as patrons had been asking for deliveries at later hours. The premises wished to offer this as it would help to grow the business. The intention was to provide a service which had been requested by the premises' customers.

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. The Members considered the written representations carefully, and also heard directly from three local residents, who attended the meeting to address the Sub-Committee.

The first resident's concern was the late hours; whilst she was supportive of local businesses and empty premises being used, she was concerned about the potential for noise created by delivery drivers at night. She doubted that the premises would be able to enforce whether the delivery drivers were in their cars, or whether they were leaving the engines running. She was also unhappy about litter in the vicinity, although she acknowledged that this was created by numerous premises, not just Burger and Sauce.

She considered that it did not matter whether the front or rear access was used by the delivery drivers at night; she felt that disturbance would be created for those living directly above the premises no matter which access was used. She appreciated that the business wished to expand, but was worried that this would be at the cost of the residents that lived close by. She also felt that food for late-

night delivery would not be for local residents, but for those living further afield. She wanted the hours of operation to end at 23:00.

The second resident endorsed these comments. He understood the need to support local businesses, and although he was pleased that the hours originally requested had been dramatically reduced after discussions with the responsible authorities, he felt that the issue was that the location of the premises was towards the residential area in Sutton Coldfield, rather than further down towards the town centre.

The potential for noise nuisance worried him greatly, and he considered that the hours, even with the amendment, were “just too late given the noise nuisance disruption factor”. He asked that the Sub-Committee further reduce the hours, remarking that shorter hours would be what he would expect in a more residential area like the Birmingham Road/While Road vicinity (rather than a town centre).

The third resident, who lived in the row of flats directly above the retail premises below, shared the concerns of the first two residents. He feared that the Burger and Sauce premises could attract persons further into the residential area at night, rather than those persons leaving bars to then start heading towards the town centre. His worry was “the noise and antisocial behaviour being brought in directly underneath us”. He had noted the shortened hours, but felt that they were still late, and preferred that they should be in line with other nearby premises.

When deliberating, the Sub-Committee noted that the operating schedule had been drafted with regard to the licensing objectives, and had been approved (with amended hours and some additional conditions) by West Midlands Police and Environmental Health. The other responsible authorities had also found all to be in order.

However, the Members found the submissions from residents to be highly persuasive in terms of the direct impact on those living very close by – particularly those residents occupying properties situated above the row of shops. All the residents making submissions felt that the shortened hours were still too long; having heard of the effect that late-night trading was likely to have on the residents in terms of noise levels at night, the Members considered that the level of risk to the public nuisance objective warranted a further shortening of the hours.

Having reduced the hours further, the Sub-Committee resolved that the application could safely be granted together with the additional conditions proposed by the responsible authorities, as the operating schedule properly addressed the promotion of the licensing objectives. The Sub-Committee was satisfied that trading would be unlikely to create a likelihood of public nuisance. The application was therefore granted with hours reduced further, and with additional conditions.

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

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made at the hearing by the applicant company via its agent, and by those making representations.

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

6/061123

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

Chair.....