

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE
TUESDAY 18 JANUARY 2022**

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE
A HELD ON TUESDAY 18 JANUARY 2022 AT 1000 HOURS AS AN
ON-LINE MEETING.**

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Adam Higgs and Mary Locke.

ALSO PRESENT

Bhapindra Nandhra – 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)

1/180122 **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 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.

2/180122 **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.

Licensing Sub-Committee B – 18 January 2022

- 3/180122 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.
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4/180122 **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

Apologies were submitted on behalf of Councillor Mike Sharpe.
Councillor Mary Locke was the nominated substitute.

5/180122 **LICENSING ACT 2003 PREMISES LICENCE – GRANT MELT, 126 BILLESLEY LANE, MOSELEY, BIRMINGHAM, B13 9RD**

On Behalf of the Applicant

Mike Nixon – In Confidence Ltd. Agent on behalf of the applicant.
Lisa Dingley – Director
Philip Morgan – Partner of the Director

Those Making Representations

Fiona Adams – Moseley society
Amy Bradbury
Martin Mullaney
Anita Moore
Vernon King
Jas Gahir
Brian Lynch

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

The Chair then explained the hearing procedure prior to inviting the Licensing Officer, Bhapindra Nandhra, to outline the report.

The Chair invited the applicant to make their submission and Mike Nixon, on behalf of the applicant, made the following statements:-

- a) There was a legal presumption in favour of granting this licence. The Sub-Committee had been engaged due to the outstanding letters of representation from local residents. There were no objections from any of the responsible authorities.
- b) With reference to an email sent to the objectors on 30th December 2021, he stood by its content and was happy for it to be scrutinised for its accuracy and legality. The original purpose of the email was to invite residents to

Licensing Sub-Committee B – 18 January 2022

meet with them as was encouraged by the licensing process to address any concerns and manage expectations of objectors.

- c) There were limits to what could be achieved by a licensing hearing to satisfy any concerns of residents and it must not be confused with a planning application.
- d) Those who had responded to the email and had met with Ms Dingley had largely responded positively.
- e) He was grateful to one supporter who had written in who had contradicted many of the objections (page 34, appendix 24, of the agenda).
- f) The original application had been amended twice in response to concerns. Many residents were concerned only about the proposal to operate the restaurant after 8pm which would be in breach of planning. This operation was never intended as the property was subject to a planning application under consideration.
- g) As a goodwill gesture, Ms Dingley had instructed Mr Nixon to amend the application for the restaurant to cease trading at 8pm Monday-Saturday and 7pm Sundays and Bank Holidays which was consistent with the current planning approval for this site.
- h) The premises could operate perfectly legally as a restaurant with or without a license due to the planning permission. The question was over whether the restaurant would sell alcohol under the terms of a premises licence or whether customers be invited to bring their own alcohol. It was desirable for this premises to operate with the strict controls of a premises licence.
- i) The premises depended on the goodwill of local people and his client had asked him to create an application that would provide reassurance for anyone within the vicinity.
- j) If the conditions of the licence were broken the licence could be reviewed and revoked.
- k) Nothing other than the sale of alcohol was relevant at this hearing.
- l) The premises was not within a Cumulative Impact Area so it was not necessary to prove that the licence was necessary.
- m) The behaviour of people in the area or at other premises was not relevant.
- n) Car parking was not a relevant consideration as it was not a planning hearing, however, Ms Dingley anticipated that most customers would arrive by foot.
- o) The submitted application was fully consistent with the statement of licensing policy and the Section 182 guidance and reflected industry best practice.

Licensing Sub-Committee B – 18 January 2022

- p) The multiple conditions in the application along with the mandatory conditions met all the needs of the licencing objectives and were robust, measurable and enforceable.
- q) Each of the responsible authorities had scrutinised the application and concluded that any risks to the objectives had been fully met, this was when later hours had been proposed.

Lisa Dingley made the following statements:-

- a) The new venture aimed to bring relaxed family dining to the neighbourhood.
- b) Ms Dingley had lived in the area her whole life and lived two streets away from the premises.
- c) She had previously run a successful food business in the area. As such she could understand some of the concerns with bringing a licenced premises to the area. This was why the self-imposed licence conditions went beyond what was legally required.
- d) The property had stood vacant for many years, and whilst renovating the premises they had been met with a positive response from the local residents.
- e) They were happy to be able to offer jobs to local people.
- f) One of there neighbours how had concerns was an author, who, having met with Ms Dingley, asked if the restaurant may be able to host a book-signing event and this was exactly the kind of local event that the restaurant would like to host.
- g) They were community-minded local people who wanted to bring a neighbourhood café and restaurant to life.
- h) Birmingham has a long tradition of mixed-use commercial and residential properties existing together in harmony. The restaurant hoped to do this as it was hoped that the neighbours would become customers too.
- i) She was aware that one of the concerns was parking in the vicinity of the premises, however it was anticipate that the majority of their customers would live within walking distance. This was one of the reasons why the location was chosen.
- j) She would ensure that all staff had ample and adequate training to ensure that all licencing objectives were met and adhered to.
- k) She understood the responsibility of having an alcohol licence and took the matter seriously.

Licensing Sub-Committee B – 18 January 2022

Philip Morgan made the following statements:-

- a) It had become apparent that residents had concerns based on past experience regarding the planning and development of the property.
- b) It was recognised that there was a need to build relationships and trust. They were happy to do this which was why the premises hours applied for had been reduced. It was hoped that this would help ease concerns and build confidence in them.
- c) Having the licencing objectives was good for the business as well as the local area.
- d) The drinks menu would be small but curated to pair cheese with wine and craft beer.

Members were invited to ask questions and no questions were asked.

Fiona Adams, Moseley society, made the following statements:-

- a) Notice had been received that the applicant had agreed to reduce the requested licencing hours to fit in with those for which she had planning approval, however, it had been decided to maintain the objection as it was thought that this was an unsuitable location for a licenced restaurant.
- b) If the licence as requested was granted, they strongly advised Ms Dingley to await the consultation on low-traffic neighbourhoods, which could see Billesley lane blocked to through traffic, before investing more money in the premises
- c) They had always regarded 124 and 126 Billesley Lane as unsuitable for anything other than residential use.
- d) The owner of the property tried hard but unsuccessfully to get planning permission to open a fish and chip shop.
- e) Permission was eventually given for two retail shops, but it was questionable as to who would open a retail shop in this location. One Stop had taken over from all the previous retail businesses amidst the needs of the locality as a multi-purpose shop.
- f) It was only the relaxation of planning regulations by the current government to allow Flaming Burgers, and now Melt, to think of opening here.
- g) The most recent change of planning use classes and relaxation of rules about take-away food was in response to the crisis on the high-street brought about by the Covid-19 Pandemic. However, Billesley Lane was not a high street and the government should have restricted the relaxation of rules to high streets and not allowed it to be employed in residential areas.

Licensing Sub-Committee B – 18 January 2022

- h) The letters submitted by residents stressed the residential nature of the area. It was only the through traffic and speeding on Billesley lane that detracted from this and this problem was in the process of being addressed.
- i) It could be seen in the letter from the Planning Officer that the applicant would not automatically receive permission to extend their hours. The planning system had throughout regarded this as an address where residential amenity was paramount.
- j) It was hoped that the Sub-Committee would agree that this was not a suitable place for a licenced premises. If the applicant wished to go ahead and open an unlicenced food business trading until 8pm then they could do this, but one of the empty premises in Moseley and Kings Heath may be better for her to start her business.

Martin Mullaney made the following statements:-

- a) He welcomed that the premises had amended its hours as this was his major concern.
- b) He still had concerns that this would become a licenced premises and he knew from experience that in Moseley there had been restaurants that had become more like pubs and bars where food had become a minor part.
- c) He asked that if the licence was granted that there were conditions that drink had to be served with food to prevent it becoming a bar and restrictions on the use of the outside area for drinking alcohol as due to the food mainly being served in a windowless basement, many customers would end up in the frontage or rear garden.

Anita Moore made the following statements:-

- a) She had no objections to a café but she had concerns that having a licenced restaurant in the area could lead to it becoming a bar.
- b) It seemed small for a restaurant so she understood that there was a lot of profit to be made on alcohol when sitting and eating food.
- c) She would also not like people to be sat outside on Billesley Lane.

Brian Lynch made the following statement:-

- a) In January 2019 the owner of the property was shown to have extended the frontage by approximately 300mm forward of the other properties. They were asked to address this, but this was not done.

Licensing Sub-Committee B – 18 January 2022

Vernon King made the following statements:-

- a) It was a residential area and there had been ongoing issues in Moseley Village regarding drink and it was very probable that there would be similar issues in this area.
- b) He echoed the request for a condition that alcohol only be served with food.
- c) He asked as to whether there would be any comeback if there were issues following the granting of a licence.
- d) There was the potential for people to be drinking when children were coming out of school and would be in the area.

Amy Bradbury made the following statements:-

- a) She and her family were concerned about noise, disturbance and people drinking alcohol outside the premises in full view of children.
- b) If the licence was granted this would be an ongoing issue for the whole time the premises was open.
- c) People lived in the area because it was quiet.
- d) The only time the local community had been involved was when they had received a letter. The people who owned the property had not been involved in asking residents their opinions until they were invited to meet with Ms Dingley.

Jas Gahir made the following statements:-

- a) His main concern was noise from cars and people entering and exiting.
- b) There were concerns about the consequences of alcohol consumption such as louder conversations and smoking.
- c) There were concerns about the heightened number of people in the area as it was a quiet residential area.
- d) There were a lot of young families in the area and families on walks may be confronted with conversation that may be inappropriate or a heightened number of people making the environment more uncomfortable.
- e) There were concerns about waste, particularly bottles and glass which would have to be transported in and out of the building.
- f) There were also concerns about disruptive deliveries.

Licensing Sub-Committee B – 18 January 2022

Members were invited to ask questions and no questions were asked.

The Chair then invited the parties to make a closing submission.

Jas Gahir made the following closing statements:-

- This was a quiet residential area.
- There were pubs and drinking establishments in the area and another one was not needed.

Amy Bradbury made the following closing statement:-

- She would be grateful if the application would be rejected.

Vernon King made the following closing statement:-

- There were ample restaurants and pubs within easy walk of people in the area.

Brian Lynch made the following closing statement:-

- The extension to the forecourt had an impact on the houses opposite.

Anita Moore made the following closing statement:-

- The noise associated with alcohol and the delivery thereof was a concern.

Martin Mullaney made the following closing statement:-

- If the Sub-Committee were minded to approve it was requested that there be conditions controlling the use of the forecourt which was immediately next to residential houses and conditions that could prevent the premises being turned into a bar which had happened with restaurants in Moseley such as conditions that say alcohol could only be served with food.

Mike Nixon made the following closing statements:-

- Residents should welcome a restaurant that had conditions over the sale of alcohol rather than one with a 'bring your own' policy.
- Every concern raised had been addressed by the 57 conditions including one that would stop the premises becoming a bar that said the sale of alcohol should primarily be to compliment the provision of food. This was a standard condition for any restaurant. It was measurable and enforceable.
- The application had attracted no opposition from the Council's own responsible authorities, including the Environmental Protection Team, that dealt with all matters to do with public nuisance, Trading Standards, Public Health, the Fire Officer, Children's Services and the Licensing Authority.
- Extra conditions had been agreed with the police and the planning objection was withdrawn when the hours were reduced to align with planning approval.
- They respected the right of interested parties to raise concerns, but they had to be relevant concerns under licensing law. The Section 182 Guidance stated that a valid representation must be about the likely impact of the application on the licensing objectives and it was for an objector to provide this evidence of risks to the objectives that had been missed by the responsible authorities.

Licensing Sub-Committee B – 18 January 2022

- The Sub-Committee could grant the application but add or amend condition. The response had to be proportionate and necessary to promote the licensing objectives. It also needed to be evidence based and he did not believe that evidence had been heard to affect the grant of the application.
- The team could not be judged until they had begun operating at the premises.

Lisa Dingley made the following closing statements:-

- They had not yet been given the opportunity to prove what they wanted to be as they were not yet trading.
- She took the business seriously and it was important to her.

6/180122

RESOLVED

That the application by Moseley Food and Drink Ltd for a premises licence in respect of Melt, 126 Billesley Lane, Moseley, Birmingham B13 9RD be granted with conditions.

The hours shall be as follows:

- Opening hours
0900 – 2000hrs Monday to Saturday
0900 – 1900hrs Sunday and Bank Holidays
- Hours for the sale by retail of alcohol
0900 – 2000hrs Monday to Saturday (off sales)
0900 – 1930hrs Monday to Saturday (on sales)
0900 – 1830hrs Sunday and Bank Holidays

The Sub-Committee noted that the applicant company wished to reduce the hours for licensable activities to follow the 2014 planning condition attached to planning permission 2014/03677/PA. This condition reads as follows:

- “Limits the hours of use: 0800-2000 hours Mondays to Saturdays, and 0800-1900 hours Sundays and Bank Holidays”

The Sub-Committee also adopted all the conditions agreed in advance of the meeting between the applicant company and West Midlands Police, namely:

1. Staff involved in the sale of alcohol are to be trained under the Licensing Act 2003 prior to being allowed to sell/ supply alcohol. All training is to be documented and signed by the Premises License Holder and the trainee. All training records are to be made available to any of the responsible authorities on request.
2. If the CCTV hard drive is replaced the old system will be kept on the premises for 31 days and made available to any of the responsible authorities on request. The CCTV system will be checked daily prior to licensable activity taking place. The identity of the person making the check and the result will be recorded in a log which will be kept for 12 months and made available to any of the responsible authorities on request.
3. Staff involved in the sale/supply of alcohol are to receive documented refresher training every six months.
4. Contracts with third party delivery companies are to be on-site and are to be made available to any of the responsible authorities on request.

Licensing Sub-Committee B – 18 January 2022

5. The Premises License Holder is to have a documented alcohol policy to indicate that all third party delivery companies have trained their staff under the Licensing Act 2003.
6. Prior to working, any third party delivery company must sign and date the Alcohol Policy to indicate their agreement to be bound by it.
7. The Alcohol Policy is to be made available to any of the responsible authorities on request.
8. Details of every delivery of alcohol is to be recorded including the identity of who it was delivered to and the identity of the deliverer. This data is to be made available to any of the responsible authorities within twenty-four hours of it being requested.
9. The training document used by any third party involved in delivery detailing Licensing Act 2003 training is to be signed off by the Premises License Holder to show that it satisfies their training requirements for the promotion of the Licensing Objectives.
10. The company will operate Challenge 25 whereby all orders of restricted items (alcohol), where the address and name will be verified prior to the acceptance of such order.
11. The premises License Holder is to have a documented policy in relation to how age restricted products are sold on-line and the checks that are to be made. This policy is to be made available to any of the responsible authorities on request.
12. Any refusal of supply at the point of delivery is to be documented in the Premises License Holder's refusals log.
13. Age restricted orders (alcohol), will only be sent to the address given when the order was placed and will not be left on the doorstep.
14. The premises will maintain a refusals and incident register. This will be made available to any of the responsible authorities on request.
15. If deliveries are made by in-house staff age verification checks will be carried out on and the products only delivered to the person ordering the products. Deliveries will be signed for. The company will keep copies of the deliveries and these will be made available to any of the responsible authorities on request.
16. All delivery drivers waiting for deliveries will wait inside the premises. Delivery drivers will not be permitted to smoke in the immediate vicinity of the premises. Delivery drivers will not be permitted to congregate in the immediate vicinity of the premises. Delivery drivers will be instructed not to loiter in the vicinity of residential premises.
17. The premises will not use the outside area for licensable activity after 2200 hours on any day the premises is open for licensable activity other than for persons to smoke provided they do not take either drink or food outside with them.

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 in the meeting by an agent, and the company director and her partner also attended. West Midlands Police had approved the application with the addition of some conditions. The premises would offer relaxed family dining with a menu based around melted cheese dishes, wine and craft beers. The applicant company wanted to bring the area to life and to live in harmony with neighbours. The director and her partner said that they were keen to build relations and trust. They saw the licensing objectives as good for their business as well as the local area.

The Sub-Committee noted that the applicant company had dramatically reduced the hours requested, bringing them into line with the hours imposed under the Planning condition. Despite this, many of those making representations (local residents) had

Licensing Sub-Committee B – 18 January 2022

maintained their objections, and several of them attended the meeting to address the Sub-Committee in person.

Members carefully considered the representations made by local residents but were not convinced that there was an evidential and causal link between the issues raised and the effect on the licensing objectives. One resident stated that she was maintaining her objection despite the reduced hours because she felt that it was an unsuitable location; this person felt that the premises should be a residential property as the area was predominantly residential. She was also not happy that the application had been made before the outcome of a consultation on a low traffic neighbourhood for the area had been published.

Other residents feared that the premises could become a bar rather than a food-led restaurant establishment, and some made submissions about the potential for public nuisance, and disturbance to residents, arising from the operation. However, the Sub-Committee considered that this was rather speculative, and noted that in any event the amended hours made the premises more of a 'daytime' venue. The application had been acceptable to West Midlands Police; no representations had been received from any of the other responsible authorities. The Sub-Committee noted in particular that despite suggestions from residents of a potential for public nuisance arising from the proposed operation, no representations had been made by the Environmental Health department of the City Council.

The Sub-Committee considered that the applicant company had submitted a suitable application with a number of robust conditions to ensure that the operation would be capable of upholding the licensing objectives. The Members agreed with the agent for the applicant company that it was important to keep matters in perspective; the amended application was for the offer of alcohol with food, in the daytime.

It appeared to the Sub-Committee that some of those objecting seemed to be unhappy at the prospect of the premises operating at all, but as the agent put it, the meeting was to consider the grant of a licence, and not "to debate the premises' existence". As the applicant company's agent observed, it was far more desirable for any premises to trade under the strict controls of a licence, than for patrons to bring their own alcohol. The Sub-Committee noted the comments of the Director and her partner regarding their plan to make the business fit in well with the local community.

Having deliberated the amended operating schedule put forward by the applicant, and the likely impact of the application, the Sub-Committee concluded that by granting this application, the licensing objectives contained in the Act will be properly promoted.

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 agent for the applicant company, 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.

