

BIRMINGHAM CITY COUNCIL

**LICENSING AND
PUBLIC PROTECTION
COMMITTEE
15 JANUARY 2020**

**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON WEDNESDAY, 15 JANUARY 2020 AT 1030
HOURS IN COMMITTEE ROOMS 3 AND 4,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Nicky Brennan, Neil Eustace, Nagina Kauser, Mike Leddy, Mary Locke, Majid Mahmood and Simon Morrall.

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NOTICE OF RECORDING/WEBCAST

- 1256 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.civico.net/birmingham) and that members' of the press/public may record and take photographs except where there were confidential or exempt items.

DECLARATIONS OF INTEREST

- 1239 Members were reminded that they must declare all relevant pecuniary and non pecuniary interests relating to any items of business to be discussed at the meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting.

APOLOGIES

- 1257 Apologies were received from Councillors Olly Armstrong, Adam Higgs, Bruce Lines, Chauhdry Rashid, Mike Sharpe and Martin Straker Welds for non-attendance.

The Chairman advised that he was looking at the clash that exist between Sustainability and Transport Overview and Scrutiny Committee and Licensing and Public Protection, to ensure that the next cycle of meetings did not result in problems for Members who were on that committee as well.

MINUTES

- 1258 The Chairman advised that due to technical issues the Minutes of the meeting held on 18 December 2019, will be made available at the next Committee meeting in February.
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The business of the meeting and all discussions in relation to individual reports are available for public inspection via the web-stream.

FOOD SAFETY RECOVERY PLAN 2020

The following report of the Interim Assistant Director of Regulation and Enforcement was submitted: -

(See Document No. 1)

Paul Lankester, Interim Assistant Director of Regulation and Enforcement advised that Mark Croxford, Head of Environmental Health read out a statement at the last meeting indicating that there had been some issues around the food law enforcement plan where the Council had struggled to meet its requirement.

The document being circulated at the meeting was an update on the Food Safety Recovery Plan (pages 8 – 11 on the agenda).

(See Document No. 2)

There were other updates:

- a. Firstly, the targeted work being done has led to all outstanding Category A premises being completed as of Friday 10 January 2020, and they were now targeting Category B premises which was on the first page of the Recovery Plan.
- b. Secondly, the Acting Chief Executive of the City Council, Clive Heap, along with him will be meeting with the Chief Executive of the Food Standard Agency on the 23 January 2020.
- c. The Committee considered the Food Law Enforcement Plan in July and at that time it was made clear that the resources available to the service was insufficient to undertake that plan. It was felt that this did not go down too well with the Food Standard Agency as this was shortly after the Food Standard Agency had introduced an intervention programme as part of their work.
- d. The third stage was to write to the Chief Executive of the relevant food authority and this came about in March. They had written to the Council's Chief Executive in August 2018 and February 2019, expressing concerns that Birmingham City Council was failing to meet its inspection requirement.
- e. One of the requirements was principally wholly qualitative in its approach. It did not criticise the Council for its activities on a qualitative basis in relation to the enforcement work that the Council did which they recognised was of a high standard which was a credit to the officers that were there.

- f. The plan of activities were further compromised by the work that came around on allergens which had taken longer to do. The allergen work was later described in the main agenda.

Mr Lankester then drew the attention of the Committee to the information in the document that was circulated and advised that the Food Safety Plan had been revised as a result of the interactions they had with senior management within the Council and the Leader of the City Council and the Food Standard Agency. Whilst the Food Standard Agency had not approved this plan as of yet, they had expressed that they were pleased that the Council was prioritising the work – Category A premises and Category B premises etc. The issues for the Council were:

1. Ensuring that they met the programme - an increase in resource requirements that had occurred as a result of the inspection in relation to the unrated premises had increased more than they could have anticipated.
2. This was in tandem with the Food Hygiene Rating Scheme, in that premises that were rated low in a rating that was 0 – 5, they tended to want to come back particularly if they were takeaways as part of the market that was currently available – Uber Eats, Deliveroo – require a certain level of food hygiene rating of their premises.
3. If a premises was rated low, they request a further inspection, if they did this they had to pay for some secondary inspection after they had done some work to get re-rated.
4. In some cases, the practice in the market was that the premises were opening again as another business which requires the local authority to inspect that premises within 28 days. This meant that work had been quadrupled in terms of unrated premises within the last five years and at the same time the Council has had resource issues and had to balance its books and there had been reductions which had led to them not being able to meet those inspections requirements.
5. The Food Safety Recovery Plan sets out a programme that would see everything being met or backlogs and also doing the actual plan by April 2022.
6. If they focus on food more there was an inevitable consequence that they were not able to do other work as quickly as they would like or perhaps not even do that work. In relation to the seven bullet points on pages 4 and 5 of the document, they had to do a risk assessment of what that meant and where this would leave the Council.
7. Before the plan could be properly approved and endorsed, if the Committee was minded to endorsing the Food Safety Recovery Plan subject to the risk assessment being done of the work that was likely to be prioritised, the Committee could change this as it was in their gifting.

In response to questions and comments, officers made the following statements: -

As the Committee was aware, the City Council was the subject of intervention and it was financially not able to balance the books. They had certain corporate requirements which led to them holding vacancies.

1. For the current financial year, they did that again and this led to 6 staff that they were short of in terms of resources in balancing the pressures that were in other services, not this service. The recruitment process for those 6 staff were underway and interviews were due to take place at the end of January.
2. They had requested as part of the budget making process a further level of resourcing on the budget bid which if approved on February 24, 2020, this would provide them with another 7 staff – they will either employ environmental health officers or technical officer who could do other work and free up the time of the environmental health officers who could do the higher specialised enforcement work. The plan was based on them having a full complement of staff at that level including the budget bid.
3. The request for a risk assessment came from the Acting Chief Executive and the Leader when looking at the plan to ensure that anything that they did, if there was a requirement for additional resources, that would be the subject of a further paper.
4. The risk assessment was about how this would impact on the Council, what the impact would be for the citizens of Birmingham and whether this was acceptable to the Council. The Councillors would be making that decision and not the officers. It was anticipated that this would be done in the next few weeks.
5. They were looking at reprioritising 20 full time employed officers to deal with food, they believe they needed 24 – 26 based on the demands currently. The remainder of the officers, 7, full time employed officers were going to cover all the RFAs for the city. They were looking for 13 officers from this round of recruitment as they had over 100 applications from which they were shortlisting from. The shortlisting process closes on Friday.
6. They hope to be making offers by the second week in February 2020. They had vacancies that they had to hold as they knew that people would be put at risk, this was the status quo, otherwise they would have advertised those posts. These were in the 27 officers they currently have.
7. The 6 post being recruited now were additional and the 7 were the additional money they were hoping to be approved in February's budget should take them there. In tandem with this, they were doing a programme where they were trying to improve productivity performance focus on everything they needed to do as a service, which would be delivering impetus and better result for their own inspections and other activities.
8. In terms of the informal Cabinet they had met with them this week and that was where the risk assessment was requested. The Food Safety Plan was endorsed and there was a will amongst the Leader and

Cabinet members that they should be dealing with this as a matter of urgency and getting it done within two years.

9. There was a desire to have the security that the Food Standard Agency was endorsing what they were doing and were pleased to note that they were undertaking the Category A premises.
10. In terms of ad hoc events, there maybe a number of caterers that visit a number of local authorities as they go around to these events. They were probably the most inspected vehicles one would see around as they were inspected by every local authority.
11. Experience showed that those events had caused no issues and there was good management experience for ensuring that there was good food hygiene ratings. They did not believe that this was a good use of their time, but they were there to react to anything that arise.
12. If there was a history where it was felt that there were questionable matters of management, they would be including those in their inspection. If it was not an event that goes around to the different local authorities, they would still look at that, particularly where it was not as well managed as it was ad hoc.
13. Regarding weddings and funerals, this depends on whether it was a commercial caterer or whether it was families getting together and doing all that work, they would not get involved as it was a private matter and they were not in the food business. If it was a catering company, they would be in their programme particularly if they were located in the city. The problem they faced with the re-registering of the food business was that it changes the food business.
14. Under the regulations, they are required to inspect those within 28 days and there was no fees for this as it was part of the inspection requirement. If they inspect the poorest premises to make an 'A' it was due to be inspected in another six months. If another person then register the premises in their name, they had to undertake the inspection in 28 days and this was where the problem had occurred. The rating was done on the first visit and not after their work was completed.
15. The monthly report to the Chair and Deputy Chair would not be a problem, but it should be noted that in the Recovery Plan they were talking about a quarterly report that will be submitted to the Committee

1259

RESOLVED: -

That the report be noted, and the Food Safety Recovery Plan be endorsed including the risk assessment.

THE MANAGEMENT AND ENFORCEMENT OF ALLERGEN CONTROLS DURING INSPECTIONS AND THE ACTIONS TAKEN TO DATE

The following report of the Interim Assistant Director of Regulation and Enforcement was submitted: -

(See Document No. 3)

Nick Lowe, Operations Manager Food, made introductory comments relating to the report and gave a PowerPoint presentation on the Allergen Project 2019/20. In response to questions and comments, the officers made the following statements:-

- I. The requirement was that all food handlers had to be supervised, instructed or trained commensurate with their work activity they interpret that as being there needed to be at least someone there with a level of formal training.
- II. In terms of allergy, this was included in that someone who was adequately trained. What they were recommending to businesses was where someone presents with an allergy that there was a nominated trained member of staff who handles that person throughout their time in that food business.
- III. Rather than expect everybody to know everything about allergens if someone presents who has a food allergy, they are then passed to the person who has that training. However, some business may need two persons that were trained in food allergens.
- IV. When they were discussing with businesses how they identify people with food allergy, this was something they would discuss with them and how they take this forward. Some businesses will put information on menus and will have signs. There was a movement that states that people with an allergy had to take responsibility themselves and there was a greater awareness.
- V. At any one time there should be someone who was trained so that if someone was off duty, then it could not be argued that that person was supervising, there had to be someone working who was trained so that they were able to supervise and instruct those other people.
- VI. In terms of delivery drivers, they would be expected to be appropriately trained depending on what their work activity was. If they were merely picking something up in a container and delivering it, it would be best that if there were any questions this was delivered back to the takeaway itself.
- VII. When they visit events, they were using the 'Immediate Stop' requirements at the events and they were also taking a supply of the posters/signs for people to use at the events. The purpose of this was two-fold – to empower people to say no I cannot provide you with that meal. They were trying to encourage restaurants if they were not sure to be empowered to say no.
- VIII. They were working with people who represented people with allergies and were talking to them about this project. They were also going to put this out to other local authorities and the wider Food Standard Agency.
- IX. There were other authorities that were using the 'Immediate Stop' requirements and this was all that they did, but in Birmingham they were not just limited to the 'Immediate Stop' requirement. If the risk was because there were unaware of the ingredients or incorrect ingredients had been used, serving a notice under the food information regulations, if it was a cross contamination issue, or training or their procedures were incorrect and that was the reason they were serving a hygiene improvement notice to get them to correct that.

- X. The 'Immediate Stop' requirement was in conjunction with enforcement action to get them to improve. What they did not want was for this to be a *carte blanche* to serve people with allergies, but the reason they were doing it this way was to stop business from doing it until they had put in place the measures that were required.

1260

RESOLVED:-

That the Committee endorsed and support the allergen control approach used during inspections, in order to ensure that Birmingham is a safe place for allergen consumers to visit.

DRAFT STREET TRADING POLICY CONSULTATION REPORT

The following report of the Interim Assistant Director of Regulation and Enforcement was submitted: -

(See Document No. 4)

Sajeela Naseer, Head of Licensing, Markets and Registration, made introductory comments relating to the report and drew the attention of the Committee to the information contained in the report.

Councillor Mike Leddy commented that the report was welcomed and that previous to this report it was only done in piecemeal and they would adopt this policy. There were a number of roads throughout the city that was named and designated, but the question was whether officers from Transportation agreed and were they supportive, and whether they would police the red routes across the city.

Councillor Majid Mahmood stated that it was time that the City Council had a street trading policy in place, but they needed to be mindful that they ensured that every person that had a consent was reached in a way that they fully understand so that they could not come back to say they were not aware of the policy. He stated that there were no trading associations on the list in the document, but that he was aware of Saltley Traders Association which should be included as well as other trading associations across the city as they should be included.

Councillor Majid Mahmood enquired where this stood in relation to charities and whether this would have an impact on people still being able to collect money and donations for charities, particularly on the routes they were designating as no one would be allowed to trade there. He referred to the proposed Metro extension which was discussed in the Transport Plan this week and around the Bordesley Action Area Plan. He further questioned whether the proposed Metro extension from the City Centre through Birmingham East straight to the Airport was included in the consultation as they would not be able to carryout any trading. There was also Warwickshire County Cricket Club, Birmingham City Football Club and Aston Villa Football Club where there were lots of street trading. With the mobile consent, he was pleased that ice cream vans were included as there were issues with ice

cream vans that were parked outside of schools which was an accident waiting to happen. They needed to look at the timeline – there was a report to Full City Council on the 7 April 2020, there was the Metro Mayor and Police and Crime Commissioner Election.

In response to the questions and comments from Members, the officers stated that:

- a) They had been in extensive consultation with Transportation through the process of designating the red routes and Transport for West Midlands in terms of the Metro routes and they were working in partnership with them.
- b) In terms of street trading on any of the prohibited streets, this would fall to their street trading and enforcement officers to deal with. Ms Naseer highlighted that they have had other conversations with Transportation regarding things that did not fall within illegal street trading that were happening on the streets concerning what the response would be in those situations.
- c) They will continue with these conversations with Transportation as a two-prong approach both with Transportation and themselves would be more effective in getting the results they desired.
- d) In terms of charities street collections were not affected as this was a separate piece of licensing legislation and they were all looked on in their own merit.
- e) In relation to purdah, the consultation was delayed by the General Election, but Purdah was not designed to stop what was effectively routine business. If they were doing a consultation, it would affect the Metro Mayor in terms of the transportation link, however the decision-making process and anything else would not be impacted by that.
- f) In terms of the current consent holders they had gone through significant length to ensure they were aware of the policy and the consultation process.
- g) In relation to the trading associations they would get some information out as soon as possible as the consultation ends on the 23 February 2020.
- h) Regarding the Metro extension some element of the proposed East Route were included, but they were only including it at the moment what had gone through the approval process. The proposals that were yet to be approved will not be included.
- i) Regarding the football clubs they tried to pick up some of the concerns the Committee had. For matchdays they did not need to be 30 metres apart that would apply elsewhere in the city, but there was also the issue that they had some traders who were either trading on the red routes or the metro routes and there would be some impact.

1261

RESOLVED:-

- (i) That officers record any comments/responses made by members of the Licensing and Public Protection Committee as responses to the formal consultation; and

- (ii) That these comments/responses are considered along with all other responses as part of the formal consultation process.
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CONSULTATION ON STRENGTHENING POLICE POWERS TO TACKLE UNAUTHORISED ENCAMPMENTS

- 1262 The Chairman advised that this item had been withdrawn, but that the Committee had until the 4 March 2020 to submit views on the consultation. He added that there were some parliamentary developments, but it was still active in terms of the consultation and that if members had any views, they could submit them to the officers concerned. These responses would be collated in time for the next Committee meeting in February.
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EMERGENCY RESPONSE TO SODIUM – OXHILL ROAD

The following report of the Interim Assistant Director, Regulation and Enforcement was submitted: -

(See Document No. 5)

Mark Wolstencroft, Operational, Operational Manager, gave a PowerPoint presentation on the item.

Mark Croxford, Head of environmental Health responded to a question from Councillor Majid Mahmood in relation to the cleaning company and the clean-up cost and advised that the cleaning company was a national company based in Droitwich. There were four companies that potentially could have carried the sodium from site. On the night the only company that was prepared to take the sodium from the site was based in east London. If that company had refused, they would be talking of Northumberland or Kent.

In terms of due diligence, there was no due diligence, but he was asked to do a business case. It was about safety and the gas cloud was bleach which was breathe in by anyone who was outside. It was hoped that the final bill will be made available in February 2020 and then they will then make an application to the contingency fund. If there was capacity within the property price, they will put a charge on the property. The service of notice then gives the Council powers to make it safe as it was a private property.

The Chair expressed thanks on behalf of the Committee to all the officers and the public services for the work that they did in preventing this becoming a major incident. Mr Lankester commented that Mark Croxford did a marvellous job that night.

The Chair stated that the Committee would record this as a vote of thanks to Mark Croxford

1263

RESOLVED:-

That the actions taken in respect of this matter and charges on the premises be endorsed.

SENTENCING GUIDELINES FOR FOOD SAFETY, FOOD, HYGIENE AND HEALTH AND SAFETY OFFENCES

The following report of the Interim Assistant Director, Regulation and Enforcement was submitted: -

(See Document No. 6)

Nick Lowe, Operations Manager Food, made introductory comments relating to the report and drew the Committee's attention to the information in the report. Mr Lowe advised that the report was for information.

1264

RESOLVED:-

That the report be noted.

PROSECUTIONS AND CAUTIONS - NOVEMBER 2019

The following report of the Interim Assistant Director, Regulation and Enforcement was submitted: -

(See Document No. 7)

Paul Lankester, Interim Assistant Director of Regulation and Enforcement made introductory comments relating to the report and advised that the report was for information.

Councillor Majid Mahmood commented that it was mentioned at City Council that the City Council was not doing enough around enforcement. He added that they were doing a substantial amount of work, but he did not think that they were promoting the work they were doing. He suggested that individuals should be named and shamed and that the public needed to know that these premises had been fined for these offences. He further suggested that an email could be sent to the Elected Members to inform them that these were the offences that were committee, something similar to the Birmingham Mail Criminal Gallery.

Mr Lankester noted Councillor Majid Mahmood's point and undertook to take this away and consider how they could include the information into the report and how they publicised these offences. They would speak with their public relations lead Jonathan Horsefall and the team to ascertain the best way to do this in a way that satisfies the City Council.

1265 **RESOLVED:-**

That the report be noted.

**OUTCOME OF APPEALS AGAINST SUB-COMMITTEE DECISIONS -
NOVEMBER 2019**

The following report of the Interim Assistant Director, Regulation and Enforcement was submitted: -

(See Document No. 8)

Paul Lankester, Interim Assistant Director of Regulation and Enforcement advised that the report detailed the outcome of four appeals, three of which were dismissed by the Magistrate's Court and one of which was allowed. He stated that in relation to the last one there was a bit of learning for them to do as it indicated that the Sub-Committee did not make the right decision given the degree of time since the previous conviction. This was something that would be picked up in licensing training for the future.

In response to a comment by Councillor Majid Mahmood concerning the Magistrate's decision and the current policy, Mr Lankester advised that the desire across the West Midlands was to get common standards and that common standards were being dealt with nationally, but that there had been a delay in those standards. The issue will always become when they go towards those national standards if they consider them to be too low or another authority considers them to be too low, you could get different standards and to some degree the Wolverhampton situation they were working with them and would be taking that back.

1266 **RESOLVED:-**

That the report be noted.

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of Outstanding Minutes was submitted:-

(See Document No. 9)

Officers indicated that Outstanding Minute No. 1231 concerning unauthorised encampments was due to be reported on in February 2020.

1267 **RESOLVED:-**

That, subject to the above, the Outstanding Minute be continued.

OTHER URGENT BUSINESS

1268 No other urgent business was submitted.

AUTHORITY TO CHAIR AND OFFICERS

1269

RESOLVED:-

That, in an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The meeting concluded at 1215 hours.

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CHAIRMAN