

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 17 NOVEMBER 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 17 NOVEMBER 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Nicky Brennan and Adam Higgs.

ALSO PRESENT

Shaid Yasser – 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

- 1/171020 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.

2/171020 **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

- 3/171020 Apologies were submitted on behalf of Councillor Nagina Kauser and Councillor Mike Leddy was the nominated Member.
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MINUTES

4/171020 The Minutes of meeting held on 27th October 2020 were circulated, confirmed and signed by the Chairman.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – MCDONALDS,
PARSONS HILL, KINGS NORTON, BIRMINGHAM, B30 3PN.**

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

(See document No. 1)

On Behalf of the Applicant

Sarah McLean - Applicant
Katrina Kimberly – Cocks Lloyd Solicitors
James Hubble – Manager

Those Making Representations

Chris Jones and PC Reynolds – West Midlands Police (WMP)
Councillor Julien Pritchard – Local Ward Councillor
Alison and Stephen Cloonan – Local Residents

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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, Bhupinder Nandhra to outline the report.

Afterwards, the Chairman invited the applicant or their representative to outline their representation, Katrina Kimberly made the following points: -

- a) That Sarah McLean was the Managing Director of 20 restaurants in the Franchise. She had worked hard to build the business up and at least ten of the premises traded 24 hours, with the majority trading beyond 2200 hours.
- b) Many of which were close to residents.
- c) That her client and McDonalds prided themselves on working and integrating with local communities. Including embarking on community projects, litter picking and tree planting.

Licensing Sub-Committee B – 17 November 2020.

- d) Her client also had good working relationships with staff and neighbours in the community.
- e) It had been a difficult year for the business.
- f) Many of the restaurants were only open on reduced hours and were forced to operate as drive thru only. 1655 employees had been furloughed and it had really impacted the business. They were down 21% on sales this month alone.
- g) The primary reason for the application was to ensure sustainability of the business.
- h) The Kings Norton premises had 110 staff, and if the application was successful it would allow them to employ a minimum of a further four full time staff.
- i) The hospitality sector had been significantly impacted by the Covid 19 outbreak.
- j) Her client had carried out extensive refurbishment, particularly to the outside of the premises. Photos were in the agenda pack.
- k) That her client took the concerns of residents seriously and she wanted to reassure them that she would uphold and promote the licensing objectives and was happy to meet them to discuss their concerns. Further, she did write to the residents and gave them the option to speak to the general manager, however due to Covid-19 and social distancing she was unable to hold the meeting. Nevertheless, she was happy to hold regular meetings to give the residents some reassurance.
- l) That planning had authorised for 24 hours opening.
- m) Anyone who purchased a property in the area would have full knowledge of the restaurant and expected additional noise from traffic when living so close to a business.
- n) The resident's main concerns included traffic. However, it was not accepted by her client that the hours would attract people from a wider area. It would be people who were already driving down the road who would simply stop on their route.
- o) The restaurant was situated on a busy road and as such, any traffic pulling into the premises would be unlikely to impact noise levels.
- p) The queues which the residents had referred to were directly after the national lockdown when the restaurant reopened. People were anxious to get a McDonalds. However, in normal circumstances a queue of that length rarely happened.

Licensing Sub-Committee B – 17 November 2020.

- q) Most of the trade after 2300 hours would be drive thru and therefore there wouldn't be much noise in terms of people speaking etc.
- r) That her client was happy to have a condition that between the hours of 0200 and 0500 the car park would be cordoned off.
- s) That the Licensing Policy recognised that they were unable to address issues once the patrons had left the premises.
- t) They accepted that there had been some low level ASB (anti-social behaviour).
- u) However, of the 17 incidents that WMP referred to there had been no arrests or charges and much of the time it was McDonald's employees who rang the police. WMP only attended on 4 occasions and on each occasion the incident was over by the time they arrived. Therefore, the police's assertion that the staff would not be able to manage ASB was not accepted.
- v) The previous application was rejected and there were more than double the number of incidents reported indicating that there had been an improvement.
- w) The staff carried out regular litter picking 2-3 times a day, including trash walks up to 300 meters from the restaurant.
- x) There had been a problem with fly tipping, but it was nothing to do with McDonalds. However, as a gesture of good will her client would be happy to arrange for these to be cleared up on a quarterly basis. She already arranged for the hedges to be trimmed and yellow lines maintained. She would also provide a contact number and email address of the manager for residents to report any incidents.

In answer to Members questions Katrina Kimberly made the following points: -

- a) That initially there would only be a trickle of customers using the drive thru during the overnight period – no more than 10-15 an hour.
- b) That Uber Eats delivery made up about 15% of the total business and 70% was drive thru.

Sarah McLean was invited to answer some questions from the Members, she gave the following responses: -

- a) It had taken her some time to get the right Manager for the premises and James Hubble had now been managing the premises for about 15 months.
- b) The Area Manager only lived a mile from the premises.
- c) They had a zero tolerance on ASB. That meant they had a reputation for not accepting any nonsense.

- d) They always managed the premises by observing the car park, carrying out litter patrols, ensuring there was more than one manager on shift and making sure all staff have adequate training – in fact, the training they provided went above and beyond the normal McDonalds training expectations.
- e) That the incidents WMP referred to were small in comparison to the business. Last year they served over 600,000 customers.
- f) That she would be willing to offer a condition whereby if there were any issues, she would be given 24 hours' notice to employ SIA door staff to support and reinforce managers dealing with ASB. That would help reassure residents. If it became problematic, she would cease trading straight away.
- g) He had changed the management team dramatically over 15 months with a stronger team and more shift managers.
- h) That she visited the premises regularly.
- i) They had notices up telling customers to be sensitive and consider the local residents.
- j) There had been at least a 50% reduction in incident numbers and the change in management team meant that they operated a zero-tolerance approach to dealing with ASB.

The chairman then invited the representative of WMP to make his submissions, at which stage Chris Jones made the following points: -

- a) That the incidents were valid, and more than 20 residents had made representations.
- b) There had been 17 incident logs within the last 12 months, most of which were low level crime and ASB. The 17 logs were a 50% reduction on the incidents put before the Committee in 2010, however the Covid-19 pandemic and national lockdown suggested that the number of incidents would be much the same as 2010.
- c) That trading beyond 2300 hours would add to noise levels and ASB.
- d) Beyond 2300 hours was when the neighbourhood police teams were off duty and therefore any incidents would be dealt with by the response teams, who would not be responding to these types of incidents first, they would be some way down the list.
- e) These types of incidents upset residents but were not the priority of the response teams.
- f) The entrance used for the car park was only 18.4 meters from residents and the drive thru exit was only 22 meters from residents. All the details were included in the documentation submitted by WMP from pages 84-86.

- g) There was also a statement from PC Reynolds at page 82 which again referenced the noise from the drive thru for some 18 hours a day.
- h) There were issues with people parking on double yellow lines and in residential streets, causing residents trouble getting into their own homes.
- i) There was nothing in the applicant's submissions that indicated how they would manage the issues.
- j) That the whole point of a drive thru during the night was in order to get more traffic passing through, so of course that would impact the residents.
- k) There was no plan in place on how to manage the car park and people getting in and out of cars, banging doors and chatting.

PC Reynolds added the following points: -

- a) That he was the second in command for the local area and it was a priority location for WMP as it needed a lot of help and support due to the whole host of issues.
- b) When the application was submitted, they gave it careful consideration, but the entire team shared the same concerns as the local residents and all objected on the basis that it will increase crime and disorder, and ASB in the area.
- c) That WMP had a lot of issues in that area and were currently tackling a gang problem. The gang members were known to use the premises regularly.
- d) The reliance on the police was high from McDonalds and whilst the management was good, they still needed WMP.
- e) The applicant had put nothing forward that would ease their concerns.
- f) WMP were already overstretched and would struggle to support them after 2300 hours.

A local ward Councillor was invited to make his submission, at which stage Cllr Pritchard made some the following points: -

- a) That for him this hinged on whether the application was needed and was it worth all the issues that WMP had highlighted.
- b) That residents had voiced concerns to him, he had not had anyone contact him who was in favour of the application.
- c) That many concerns had been raised; disturbance, ASB and litter.
- d) The premises was very close to residents and it was his view that it should really be located in the City Centre.

Licensing Sub-Committee B – 17 November 2020.

- e) That the premises opening beyond 2300 hours would attract problematic behaviour.
- f) The night time was a quieter time and therefore the noise from the drive thru would be more of a problem.
- g) That the reason the incidents were lower this year was due to Covid.
- h) They already had signs and notices up in the car park and there were still problems.
- i) The argument that McDonalds was here before the houses was not entirely fair. Some of the houses were built prior to McDonalds and the ones that weren't would not have anticipated it being open 24 hours.
- j) The key points were what had changed since 2010 when the application was refused? Nothing he stated.
- k) There was at least 10-20 residents who had contacted him.

Mr and Mrs Cloonan were invited to make their submissions and Mrs Cloonan made the following points: -

- a) That she was a leader for the residents and had therefore submitted more than one representation. Therefore, the letter was on behalf of themselves and the residents that came to them to voice their concerns.
- b) They had lived in the area since 2008, in the same property. They moved in knowing there would be some noise from McDonalds, however, the popularity in McDonalds had increased and therefore so had the noise.
- c) Since 2010 the issues had increased.
- d) It was a very busy premises, lots of shouting, horns beeping and aggressive driving.
- e) The premises had outgrown the car park.
- f) People had parked recklessly, and they had struggled to get into their homes, or had people pulling out on them.
- g) The concern was that if the licence was granted where would these people go once they had been to the drive thru.
- h) There was an incident last week whereby she had to call the police because people were outside congregating and making a lot of noise. They were having to put up with the disturbance daily.
- i) They didn't feel safe in their own home anymore.
- j) They didn't want to be forced out of their homes.

- k) They hadn't heard from Sarah and didn't receive the letter until after the application was submitted.
- l) They strongly opposed the application due to ASB, noise and disturbance.
- m) There were also issues with the bright lighting at McDonalds.
- n) There was at least 20 apartments and 8-10 houses in the street where she lived.
- o) That the only resident she knew who was in favour of the application had a son who worked at the restaurant.
- p) The premises was closed during the first lockdown which was brilliant, however when it reopened there was a huge backlog and traffic all spilling into the road.
- q) The lights were on all hours.
- r) The busiest times were Friday, Saturday, Sunday and school holidays. It was horrendous.

Then the Chairman invited Mr and Mrs Cloonan to make a closing submission at which stage Mrs Cloonan made the following points: -

- That they strongly rejected the 24 hour opening.
- That they were very frightened and worried about their safety due to the ASB.
- The premises was a magnet for gangs at night.
- They were very worried and were already experiencing problems.
- That they didn't want it granted as it would ruin their lives.

In summing up Cllr Pritchard stated that the hours were already enough, and the Committee needed to think carefully about granting the application.

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

- That granting this application would only add to the ASB and crime and disorder in the area.
- The local residents had the same concerns as WMP.
- It would have a huge negative impact for residents and therefore, WMP suggested the application be refused.

Licensing Sub-Committee B – 17 November 2020.

In summing up Katrina Kimberly, on behalf of the applicant made the following points: -

- The WMP had provided no evidence and if gangs were an issue in the local area why had it not been raised before.
- If there were serious problems, why hadn't WMP provided evidence of such. It was simply a prediction not supported by any substantial evidence.
- It was accepted by WMP that the ASB was low level.
- The issues were often occurring in the day time at peak times, none of which would be impacted by the granting of the licence.
- Her client would do whatever needed to make it better.
- People wouldn't be beeping horns if the premises was open 24 hours, as that was due to premises being closed and people getting frustrated.
- Her client had little control over what happened when the premises was closed, however if it was open 24 hours it would have round the clock monitoring. Residents would have a contact number so they could speak to the premises directly with any concerns as soon as they arose.
- That some conditions would ensure the objectives would be upheld.
- She suggested the following conditions: - firstly a minimum of 2 experienced managers to oversee all shifts between 2300 and 0500 hours, all managers to be trained on how to operate CCTV, Extra cameras, specify number of litter picks, extend litter pick areas, cordon off parking, direct contact for residents, direct contact for residents so matters can be dealt with immediately.

Sarah McLean added that the restaurant was ran by the best manager that she employed, and he had received an award for his work. That the Committee should consider the 110 employees and her business.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the Teams 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: -

5/171020

RESOLVED:-

That the application by **McLean Restaurants Ltd** for a premises licence in respect of McDonalds, Parsons Hill, Kings Norton, Birmingham B30 3PN, **BE REFUSED**.

In reaching this decision, the Sub-Committee was mindful of the promotion of the licensing objectives in the Act, particularly the

prevention of crime and disorder and also the prevention of public nuisance.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns expressed by West Midlands Police, the local Ward Councillor, and also by local residents, regarding the impact of the proposed operation on the particular locality of the premises, namely the residential area of Parsons Hill. Those who attended the meeting to make representations explained their doubts about whether the premises could uphold the licensing objectives if permitted to operate through the night. The detail of the current situation in and around Parsons Hill was as per the Report. The Sub-Committee found these representations persuasive.

The Sub-Committee carefully considered the operating schedule put forward by the applicant company, and the likely impact of the application, but were not persuaded that the proposed operation of the premises was satisfactory, particularly given the representations made by West Midlands Police. The Sub-Committee noted that the additional conditions proposed by the applicant company had not been approved by the Police as being sufficient to uphold the licensing objectives.

One local resident had submitted a letter in support of the application, and the Sub-Committee took that into account, but noted that this was rather outweighed by the numerous representations made against the application. All of these documents were in the Report.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the four licensing objectives were adequately promoted and that therefore the licence might be granted; however Members considered that an attempt to modify the conditions of the licence beyond those already suggested by the applicant company would still not mitigate the concerns raised by those making representations.

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 contained in the application, the written representations received and the submissions made at the hearing by the applicant company, its legal adviser and company director, 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.

Please note, the meeting ended at 1147.