

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 16 MARCH 2022
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 16 MARCH 2022 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nicky Brennan in the Chair;

Councillors Phil Davis and Mike Ward.

ALSO PRESENT

Bhapinder 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)

1/160322 **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 meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/160322 **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.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/160322 Apologies were submitted on behalf of Councillor Mary Locke and Councillor Phil David was the nominated substitute Member.

MINUTES

- 4/160322 The Minutes of the meeting held on 12 January 2022 were circulated, and confirmed and signed by the Chairman.
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**LICENSING ACT 2003 PREMISES LICENCE – GRANT – FAMILY VYBZ, 1456
PERSHORE ROAD, STIRCHLEY, BIRMINGHAM, B30 2PH.**

On Behalf of the Applicant

Nick Semper – Agent, The Licensing Guys

On behalf of those making representations

No one attended.

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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, Bhapinder Nandhra, to outline the report.

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

- a) The applicant was absent as he had a meeting with a Head Teacher at a local college about the possibility of teaching young people to cook in a commercial setting.
- b) His family was at the heart of the business, which is a small, food led, family orientated operation.
- c) The applicant was professional and successful.
- d) Nick Semper's colleague had visited the premises and said, "it was the cleanest kitchen he had ever seen in 30 years in the trade".
- e) The alcohol licence was a way of surviving in the current economic climate.
- f) The premises only had 6 tables.

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- g) Customers could only buy alcohol with a substantial meal – ample and sustaining meals only.
- h) Further, this application was only until 10pm at night.
- i) The usual safeguards were in place.
- j) None of the responsible authorities had made any representations.
- k) The representation received is a tiny concern regarding the proximity of the premises to the school. The objector is concerned about people drinking alcohol in front of school children.
- l) They had tried to engage with the objector and asked him to visit the site.
- m) They had also told the objector that the application would be determined through an evidence-based decision process.
- n) However, the objector could not attend the hearing.
- o) It was pure speculation, there was no evidence to suggest that children would be put in harms way.
- p) The only way to refuse the application was if the operating schedule was not capable of promoting the licensing objectives. The representation makes no criticism of the operating schedule.
- q) The objector also wanted a blanket ban on alcohol whether the school was open or not.
- r) All staff were extremely competent. The premises had all measures in place such as: refusals book, incident book and a challenge 25 policy.
- s) The applicant would consider whatever further conditions the Committee felt were appropriate to promote the licensing objectives.
- t) West Midlands Police should be the main source of advice for crime and disorder and had not made representations.
- u) He could not see how this application would pose any threat to children.
- v) The applicant was doing a local project involving young people, helping them learn to cook in a commercial setting. He was clearly committed to helping young people.

Members asked questions and Nick Semper gave the following responses: -

- a) That he thought the College the applicant was partnering with was Kings Norton College, but he would double check.

- b) He confirmed it was Kings Norton School.
- c) The premises would not be 'wet led'.
- d) Many premises had children present when adults were consuming alcohol such as: Pizza Express, Prezzo, Pizza Hut.
- e) It was a family led establishment.
- f) There was only seating for 6 people, so it was not going to be a hot spot for alcohol consumption.
- g) It would be closed by 10pm.
- h) They had tried to engage with the objector numerous times without success. The objector wanted the premises to open at 5pm, but that didn't accommodate the lunch time trade and didn't take account of school holidays etc.
- i) The representations were purely based on speculation.
- j) The takeaways are only home deliveries. People would not be attending the premises.
- k) The model was mainly takeaways due to limited seating at the premises.
- l) The whole team would have extensive training.

The Chair then invited closing submissions and Nick Semper made the following closing statements: -

- The decision was like any other, no reference to the operating schedule or concerns from responsible authorities. The Committee should feel satisfied that granting the application would not cause issues.
- The business was successful with an excellent track record.
- The applicant wanted to work with the community and that was evident in his work with the local school.
- The application should be granted.

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

That the application by Dion Jackson for a premises licence in respect of Family Vybz, 1456 Pershore Road, Stirchley, Birmingham B30 2PH, be granted. Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

The Sub-Committee heard detailed submissions from the applicant's agent, who explained that the premises was a food-led and family-orientated small restaurant in Stirchley, offering "authentic and delicious heart-warming meals". The business was professionally run and successful. The application for a premises licence was intended to broaden the offer to the public; the additional sales would also help the business in the difficult economic climate caused by the Covid-19 pandemic.

The restaurant only seated six persons, and wanted to sell small quantities of alcohol to accompany substantial meals to eat in or take away. The terminal hour was to be 22.00. The agent observed that it was a straightforward application, with ample conditions to ensure that the licensing objectives would be properly promoted.

The Sub-Committee noted that none of the responsible authorities, and no Ward Councillor, had objected. However, a representation had been received relating to the protection of children from harm objective. The representation had been made on behalf of Stirchley School, and expressed the fear that the premises could undermine the licensing objectives during the daytime, due to its location in close proximity to the school and on the route home for many children. The concern was that there was the potential for "arguments" or "violence" in front of children leaving school at home time.

The agent confirmed that he had corresponded with the person making representations and had invited him to a site visit to inspect the operation and meet the applicants. He had also explained to the person that the Sub-Committee hearing would be an evidence-based decision making process, and had requested sight or knowledge of any evidence that the person might hold to support his position. No details had been forthcoming, and the person did not attend the meeting to address the Sub-Committee. The Members therefore relied on his written representation alone.

The agent observed that it was speculative to suggest that a grant would cause local schoolchildren to be put in harm's way, and asked the Sub-Committee to look for an evidential foundation for the belief that this would happen. The issue was whether the operating schedule was capable of promoting the licensing objectives. There was no evidence to suggest that it would not be capable, and nothing had been said in the representation that challenged or criticised in any way the operating schedule, the Family Vybz premises, the applicant or the proposed designated premises supervisor. As the agent observed, the person making representations simply wanted a blanket ban on any alcohol sales before 17.00 hours, Monday to Friday, seemingly irrespective of whether the school was open or not.

Members carefully considered the representations made by the other person, but were not convinced that there was an evidential and causal link between the issues raised and the effect on the licensing objectives. The premises was very

small (seating for six persons), and would be operating under a raft of proposed conditions covering all possible areas of concern – CCTV, trained and competent staff, and exemplary ‘due diligence’ control measures, such as bespoke Incident & Refusals Books and a Challenge 25 policy.

The Sub-Committee also noted that no representations from any of the responsible authorities had been received. West Midlands Police had seen no cause for concern; they were the Sub-Committee’s primary source of information and evidence on all issues relating to crime, disorder and antisocial behaviour. The Members accepted that the decision could not be made based on fear and speculation about what might happen – particularly not in the face of a comprehensive suite of conditions. To refuse the application would require evidence of actual problems, not ‘speculation’ over what might or might not happen at some unknown point in the future, per the caselaw (*R (on application of Daniel Thwaites plc) v Wirral Magistrates’ Court and Others (2008) EWHC 838 (Admin)*).

The Sub-Committee agreed with the agent that it did not necessarily follow that the grant of a licence to offer alcohol only alongside substantial meals would lead to an increased threat to children on the street. All in all, the offered conditions and the applicant were more than sufficiently robust to ensure the promotion of the licensing objectives. The premises was an established business, and the Sub-Committee was reassured that the agent stated that the applicant wanted to work with the local community, not against them. The Sub-Committee therefore resolved to grant the application.

In reaching this decision, the Sub-Committee has given due consideration to the City Council’s Statement of Licensing Policy, the Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State, the application for a premises licence, the written representations received and the submissions made at the hearing by the applicant via his agent.

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.

The meeting ended at 1034 hours.