

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 23 APRIL 2021
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON FRIDAY 23 APRIL 2021 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Mike Leddy.

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)

NOTICE OF RECORDING/WEBCAST

- 1/230421 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.

2/230421 **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

- 3/230421 No apologies were submitted.
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LICENSING ACT 2003 PREMISES LICENCE – GRANT – CAFÉ @ THE OLD MILL, WEST HEATH ROAD, NORTHFIELD, BIRMINGHAM, B31 3TG.

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

(See document No. 1)

On Behalf of the Applicant

Duncan Craig – Barrister, Citadel Chambers.
Melvina Farrar – Applicant.

Those Making Representations

Jacqueline Killingsworth - Resident
Lesley Killingsworth - Resident
Rob Willetts – Resident

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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.

Duncan Craig, on behalf of the applicant highlighted that the opening hours in the report were not in accordance with the application form.

The Chairman confirmed that there was a typing error in the report and it should be the same as the application.

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

The Chairman invited the applicant or their representative to make their submission, at which point Duncan Craig made the following points: -

- a) That there was no requirement for the Licensing Authority to notify certain addresses about the application. The Blue Notice was put up by Duncan Craig himself and he liaised with Garry Callaghan in relation to the notice.
- b) The application was for the grant of a premises licence – for one licensable activity, the sale of alcohol by retail at the café. The hours were from 0800-2300 hours.
- c) An operating schedule had been submitted with the agenda pack and there were a number of conditions which related to training, CCTV, refusal register, signs, operation and dispersal policy. That was the original scope of the application.
- d) Following on from that West Midlands Police made an observation that the outside area should close at 2300 hours.

- e) Objections were received – one from Councillor Clancy. Mr Craig emailed the Cllr on 14th April and arranged to speak with her, however there were some crossed wires over who was calling who. When he eventually spoke to her, she was very helpful.
- f) When contacting residents he was always mindful that being contacted by a legal professional, such as himself, had the potential to make them feel uncomfortable so he usually used the local Cllr to act as a go between.
- g) He did ask to meet the objectors; however, it wasn't felt to be something that wanted to be taken up.
- h) That he always tried to resolve things to avoid a hearing, however the residents wanted to voice their concerns and it was right that they did.
- i) That further to the application the outside area would be cleared of all patrons by 2230 hours and licensable activity would end by 2300 hours. The premises would be cleared by midnight.
- j) It was not in dispute that the premises was situated in a residential area.
- k) There was a noise management plan submitted which focused on getting people away from the premises quietly and timely.
- l) There were also requirements for notices and taxi facilities which was a useful tool in getting people away from the premises.
- m) The premises had been open for a number of years and his client was the Sole Director.
- n) The application was to add an extra layer to the business, it was not there to turn the establishment into a vertical drinking bar.
- o) It was an extension of the business model that's been in situ for a number of years.
- p) That outside licensable activity had been encouraged by the Minister due to it being less geared towards the spread of infection and for the hospitality industry to try and claw back something from the last 12 months, which had been truly terrible.
- q) The premises had been operating under some TENs (Temporary Event Notices) with no issues.
- r) In terms on the objection from Cllr Clancy, firstly parking wasn't relevant as it was not a large premises and he didn't anticipate that parking would be impacted.
- s) The reference to necessity was not a consideration under the Licensing regime.

- t) The concern about business hours being late at night was simply incorrect, principle hours would be in the daytime.
- u) The garden centre, parking access and car wash were all not relevant.
- v) The issue with planning was a separate regime, but the applicant had instructed Mr Craig to look into it.
- w) There was speculation about crime and disorder, but there was no real evidence to support it.
- x) The final representations at page 8 was not a consideration for the Licensing Committee. It was simply asking the Committee to refuse the application, and yet he had tried to reach out and enter into dialog with the objector. The applicant was willing to meet with the objectors to try and find some middle ground. Every effort had been made to try and avoid a hearing.
- y) There had been no representations from any responsible authorities, who were used as the main source of advice.

In answer to Members questions Mr Craig made the following points: -

- a) That whatever conditions were on the licence, Covid regulations would sit over that.
- b) The applicant didn't have any previous experience; however she had attended the personal licence course. The premises was not going to be a busy bar, it was a café with alcohol sales.
- c) That he had no doubt his client would do a grand job managing the premises.
- d) His client had worked at the premises for 6 years before taking it over.
- e) That if the Committee felt a condition about vertical drinking would be appropriate then they did not have an issue with that.
- f) The dispersal policy was in the application. However, if off sales were likely to increase nuisance the Committee could limit it to on sales only.
- g) That like many premises, it was not build for Covid, but all measures are in place along with Covid risk assessments.

Following the applicant and her representatives submissions, the Chairman invited Jacqueline Killingsworth to make a representation, as such she made the following statements: -

- a) That since the café reopened there had been an increase in traffic, and she had noticed that alcohol had been on sale this week.

- b) That traffic may not be a major impact on the licence, however they were getting people parking down residential streets.
- c) That she had walked past the premises and seen people drinking, alcohol being served and advertised.

Mr Craig confirmed that the applicant applied for TENs and the last one ended on 28th March, therefore the premises was authorised to sell alcohol during that time. He explained that he had explained this to Cllr Clancy and asked her to convey it to the residents.

The Chairman invited Lesley Killingsworth to make her submissions, at which point she made the following points: -

- a) That it was very difficult to separate issues of parking and noise as they were all connected.
- b) That the Barrister stated the applicant wanted to add another layer to the business which would draw people to the site, impacting on the numbers of people attending the area.
- c) The residents had not had any indication that the Barrister or the applicant wished to meet with them. She was happy to move things forward and recognised that people needed to make a living.
- d) They had done their best with the information they had been given.

The Chairman invited Rob Willetts to make his case, at which point he made the following points: -

- a) There had been some shortcomings and lack of information presented to them.
- b) The single notice was inadequate to convey the information to the public at large.
- c) It was only a few days before the period for representations ended that he had sight of the notice and having spoken to people locally many had not seen it.
- d) The residents weren't made aware of the TENs, and the general public weren't able to make objections to the TENs.
- e) That they had concerns that crossed between Licensing and Planning, some of the issues were one of the same.
- f) That the hours were granted only until 1800 hours to comply with the provisional development plan, therefore it must apply to licensing too.
- g) That he couldn't see Covid measures being used and the photos submitted showed the tables less than two meters apart.

- h) That the notification via the blue notice was inadequate especially with Covid and people staying at home more.
- i) Many of the people in the area were elderly and did not have access to computers or smart phones – this was excluding people from making representations.
- j) That the challenge 25 policy didn't protect young children who were eating food and could witness drunks.
- k) The premises used to be a Coop and they did have nuisance and broken glass.
- l) The stabbing was still firmly set in people's memories.
- m) That Environmental Heath (EH) hadn't made objections, yet food waste was often dropped in the street and he had to clear it up as it attracted vermin. Maybe he needed to inform EH of the issues.
- n) That he couldn't show the photos as the other side hadn't seen them. But he had photos of people parking on the zebra crossing and in front of his driveway.

The Members didn't have any questions and therefore the Chairman invited all parties to make their closing submissions.

In summing up Jacqueline Killingsworth made the following points: -

- That the café didn't need to serve alcohol to extend hours and take advantage of business.

Lesley Killingsworth didn't wish to make a closing submission.

In summing up, Rob Willetts made the following points: -

- That the premises was not community based, it was a private business.
- He was concerned about nuisance parking.

In summing up on behalf of the applicant Duncan Craig made the following points: -

- That any conditions on the licence that were breached would be a criminal offence and therefore the applicant could be prosecuted.
- That he would go to the premises and ensure that the shelter met the requirements, any improvements that can be made, would be made.
- That he was happy to meet the local residents at the premises following the hearing, or they could contact him by phone or email. The applicant

was also happy to give the residents her personal contact details and he would ensure that Cllr Clancy had their contact details should residents have any concerns.

- The applicant was happy to have a condition restricted to on sales only and a condition that patrons could only consume alcohol whilst seated.
- Hopefully that would address any concerns.

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

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

4/230421

RESOLVED:-

That the application by The Little Old Café Limited for a premises licence in respect of The Little Old Café Limited, Café @ The Old Mill, 18 West Heath Road, Northfield, Birmingham B31 3TG, **BE GRANTED WITH CONDITIONS.**

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued together with the condition agreed with West Midlands Police, namely:

- All outside areas of the premises shall close each day at 22.30 hours

The Sub-Committee also determined that the following additional conditions, as volunteered by the applicant company, should be added:

- The premises shall be licensed for 'on' sales of alcohol only, and not for 'off' sales
- Patrons shall only consume alcohol whilst seated

The Sub-Committee deliberated the operating schedule put forward by the applicant, and the likely impact of the application - particularly in the light of the agreed condition which was approved by West Midlands Police in advance of the meeting - and concluded that by granting this application, the four licensing objectives contained in the Act will be properly promoted. The premises was a café which wished to offer alcohol, and had recently been successfully operating alcohol sales under Temporary Event Notices. The Sub-Committee was further reassured after the applicant company volunteered additional conditions during the meeting.

Members carefully considered the written representations made by other persons. Three local residents also attended the meeting and addressed the Sub-Committee directly. However, Members 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 not large, and as a café-style venue it would not be predominantly a drinking establishment. Issues such as parking were

not connected with the licensable activities. The applicant company's representative observed that remarks about the Planning regime were irrelevant. The fears about the premises operating 'late at night' were unfounded, as the outside area would be cleared of patrons from 22.30 nightly.

Those making representations stated that to grant the application would have a negative impact on the licensing objectives due to a possibility of noise and antisocial behaviour, but the applicant's representative cited the case of *Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin)* in urging the Sub-Committee not to be unduly influenced by speculative representations.

The applicant company's representative also submitted letters which had recently been sent to all local authorities by the Secretary of State for Housing, Communities and Local Government. The letters were supportive of the reopening of the hospitality industry in the ongoing Covid-19 pandemic.

The Sub-Committee recognised that it was important to balance the legitimate business interests of the applicant company with those of local residents, and the submissions made by the applicant company's representative had made clear that there was no reason to think that either the operation, or the licence holder, would not be capable of upholding the licensing objectives. Moreover, the Sub-Committee noted that West Midlands Police had found the application to be satisfactory, and no representations had been made by any of the other responsible authorities.

The concerns of those making representations were taken into account by imposing conditions that would allay their apprehensions about the potential for trouble arising in connection with the proposed operation of the premises. The Sub-Committee considers the conditions imposed to be reasonable and proportionate to address the concerns raised.

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 company, its legal adviser 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.