

BIRMINGHAM CITY COUNCIL

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| LICENSING SUB-COMMITTEE C 13 MAY 2020 |
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 13 MAY 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Nicky Brennan.

ALSO PRESENT

Shaid Yasser – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services
Phil Wright – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

NOTICE OF RECORDING/WEBCAST

1/130520 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.

2/130520 **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

3/130520 Apologies were submitted on behalf of Councillors Neil Eustace and Martin Straker-Welds and Councillors Nicky Brennan and Mary Locke were the nominee Members respectively.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – MARS PIZZA, 130
ALCESTER ROAD, MOSELEY, BIRMINGHAM, B13 8EE**

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

(See document No. 1)

On Behalf of the Applicant

Masoumeh Aghaei – Art Fast Food
Chris Hopkins – No5 Chambers
Reza Sherafty – Agent
Azam Shafa – Solicitor – Lawrence Kurt Solicitors

Those Making Representations

Fiona Adams – Moseley Society
Stephen Sandys – Resident Association
Jane Harvey – Resident

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, Shaid Yasser to outline the report.

Afterwards, the Chairman invited Mr Hopkins, on behalf of the applicant to outline the application. At which stage Mr Hopkins made the following points: -

- a) That he didn't intend to repeat what was in the report.
- b) Mars Pizza was currently unlicensed, and the application presented an opportunity for the Committee to condition the premises. The position with Licensing Enforcement was agreed.
- c) The new opening hours would put Mars Pizza on a level playing field with other premises in the area.
- d) That paragraph 6 of the documents addressed the concerns of residents. All bins were checked at the end of every day, the manager was carrying out periodic checks via the CCTV monitor especially of the larger external bins.
- e) The premises had ordered a larger bin from the Council, but it was yet to arrive.
- f) There was no history of noise complaints and they had agreed conditions and included notices to manage noise.

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In response to questions from Members Mr Hopkins made the following statements: -

- a) The bins were collected every week, on Tuesday.
- b) The larger bin would also only be collected once a week.
- c) The photographs were taken shortly before the bin was collected.
- d) The bigger bin was ordered to address the concerns of residents.
- e) The applicant took over the premises in 2019.
- f) The first request made to BCC for a larger in was rejected as they determined it was not required for the business. Then a further request was made in April and that was the one that was being actioned.
- g) That initially the Council said that they didn't offer larger bins to food takeaway businesses.
- h) That clearly the photographs showed that the state of affairs was unacceptable and there was clearly a need for a larger bin, which was ordered and would be further assisted by daily checks by management.
- i) When the applicant took over the premises it already had a licence in place. There's a requirement for a formal transfer to take place, the applicant accepted that they weren't fully aware of the licence requirements at the time. She had now made the proper application and moving forward the intention of the business would be to comply with the licensing objectives.
- j) His client did not accept that trade waste had been burnt at the premises.
- k) That he had not witnessed any warning notice, but he had seen an email from the Licensing Enforcement Officer in relation to waste.

Ms Aghaei confirmed that she had received a letter regarding burning rubbish however, no one had complained directly to her. She checked the rubbish daily.

The Chairman invited Mr Sandys to make his representation, at which stage he made the following points: -

- a) That he was going to be making two representations as he would be speaking on behalf of Ms Adams, who was representing the Moseley Society.
- b) During the last 12-18 months a new block of apartments had been constructed behind the premises, Mars Pizza. Some of the residents at the back had made representations.
- c) A takeaway had been operating from the premises for a number of years.

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- d) The concerns centred around nuisance and public safety. Residents in the apartment were concerned about noise; the door at the premises was often left open and noise would emanate from the premises. Some of the apartments had balconies so the noise was impacting them directly.
- e) The rubbish was a perennial problem and he couldn't say any more about it.
- f) That he had witnessed the burning incident and made the complaint to the Council. He was walking past and noticed an individual piling rubbish up and pouring liquid over it. He went to Moseley central and when he returned, he noticed roaring flames. He went to Mars Pizza and told them there was an out of control fire outside near the apartments. They acted swiftly and doused the flames. He couldn't remember what the man looked like, he hadn't taken a photo. Due to the incident he had witnessed he wrote to Environmental Health who acknowledged his complaint and said they would remind the premises of the importance of using a business waste disposal programme.
- g) He mentioned what he had seen to some neighbours, who responded by saying "oh yes, the one that burns rubbish". He had not heard anymore about that or witnessed any further problems since December 2019.
- h) Whilst he appreciated the hours would bring the premises in line with others in the area, this premises was located close to a residential block and the door being open at the back of the premises needed addressing.
- i) He was pleased to hear about the waste disposal contract being in order.

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

- a) He had no evidence of the fire. It was just a passing social encounter.
- b) The fire was contained by the employee, no fire brigade attended.
- c) He believed the premises was operating beyond their hours as he had witnessed different hours online but the hours on the Just Eat website were correct.

Ms Adams indicated that she wanted to make a point.

At this stage (1058) the Chairman advised that the meeting would be adjourned to seek legal advice. Due to the meeting being held virtually all parties muted their microphones for 5 minutes and the meeting was resumed at 1103, where all parties were invited to 'unmute' their microphones.

The Chairman advised that Ms Adams had indicated she did not wish to speak and that Mr Sandys would speak on her behalf. Therefore, she would not be able to address the Committee directly at this stage, however if she wanted to make any points, she could contact Mr Sandys who could then put them to the Committee.

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The Chairman invited Ms Harvey to make her representation and subsequently she made the following points: -

- a) There was long time before the issues were addressed by the premises.
- b) There was no evidence to suggest that a bigger bin would be sufficient.

In summing up Ms Harvey made the following points: -

- That the whole issue of extending the licence past 2300 hours was inappropriate and unnecessary for the area.
- The premises was located close to residential properties.

In summing up Mr Sandys made the following points: -

- That the key fact was that a brand-new residential building had been built next to Mars Pizza. The residents have the expectation that they should be able to open windows without noise nuisance or seeing piles of rubbish outside.
- That he had been unable to provide sufficient evidence of the burning however, reports had been made to the Moseley Society along with more formal complaints.
- The later opening hours were just inappropriate given how close the apartments were.

In summing up, Mr Hopkins, on behalf of the applicant made the following points:

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- Burning rubbish must not happen. Ms Aghaei had made enquiries in relation to it, but the members of staff did not accept any responsibility for it.
- Management were aware of it and would ensure it would not happen again in the future.
- The larger bin would bring significant improvements along with frequent management checks.
- In relation to the noise emanating from the back door, he offered a further condition that the back door would be closed after 2300 hours which would ensure that residents would not experience noise nuisance going forward.
- The agreed conditions and additional conditions would ensure the licensing objectives would be promoted and the licence should be granted.

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

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Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/130520 **RESOLVED:-**

That the application by Art Fast Food Ltd for a premises licence in respect of Mars Pizza, 130 Alcester Road, Moseley, Birmingham B13 8EE, 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 public nuisance.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns about the suitability of the applicant company, Art Fast Food Ltd, to competently manage a late night refreshment premises - particularly in view of the likely impact of the proposed operation on the particular locality, given that it is situated very close to residential property (a neighbouring apartment block).

The Sub-Committee carefully considered the operating schedule put forward by the applicant company to assess the likely impact of the application. The Sub-Committee was aware that additional conditions had been agreed in advance between the applicant and the Licensing Enforcement department of the City Council. The documents in the Report also included five objections, made by two community groups and three local residents.

The applicant company had taken over the pizza shop premises more than a year ago, in January 2019, and the Sub-Committee would ordinarily have assumed that such an operation would have settled into the neighbourhood over the past year, and be operating in a manner which showed an ability to uphold the licensing objectives such that extended hours could be granted.

However, upon questioning the applicant company on its style of operation hitherto, and hearing from those who spoke to object to the application, the Sub-Committee was not impressed with the management style shown by Mars Pizza.

It appeared that the premises had been creating some public nuisance in the surrounding vicinity. This was primarily in relation to waste/ litter, but also noise.

The Sub-Committee examined the photographs included in the Report, which showed the bin arrangements for the shop. These photographs showed an overflowing trade bin and a great deal of further refuse on the ground (such as drums, cans, tubs and packaging), plus general litter all around, in the vicinity of the neighbouring apartment block.

The applicant confirmed that a new, larger trade bin had been ordered from the City Council in April 2020, and the use of a checklist system had been proposed. CCTV would also be used regularly by the applicant company, to monitor the rear of the premises. However the Sub-Committee considered the waste arrangements shown in the photographs to be an indication of a very poor management style; as such they inspired no confidence whatsoever that the

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applicant company would satisfactorily handle the responsibilities which came with offering late night refreshment.

Representations made by those who had submitted written objections, some of whom also addressed the Sub-Committee during the meeting, made it clear that accumulation of waste was a nuisance to local residents. One objector had brought the issue to the attention of the local Ward Councillor.

Therefore the current style of operation in relation to waste and litter was not satisfactory; in the context of an application for permission to offer late night refreshment, this suggested that the licensing objectives would be undermined if the application were to be granted. Whilst the Sub-Committee noted that a larger bin was expected to arrive shortly, from viewing the photographs it was doubtful whether a premises which was prepared to create this type of eyesore, very close to residential property, could be trusted to put the proposed waste arrangements into effect properly.

Regarding the noise issue, the applicant company stated that it was not aware of any history of complaints, and that signs were already displayed in the shop asking customers to leave quietly. One of the objectors who addressed the Sub-Committee explained that the issue from the point of view of local residents was the shop's practice of leaving their back door open, presumably for ventilation, which already created disturbance into the evening; local residents were therefore unhappy about an extension of hours, which would mean that the noise emanating from the back door would continue into the night.

The applicant company stated that the noise issue could be dealt with via a further condition, namely to close the back door after 23.00 hours, and that if ventilation were then to become a problem, it could be dealt with by some other means. However the Sub-Committee was again doubtful that the premises could be trusted to comply properly with such a condition. It perhaps should have been obvious to any well-run pizza shop, situated in close proximity to an apartment block, that keeping the back door open was likely to create nuisance to neighbouring residents.

The applicant company's representative had stated that to grant the application would put Mars Pizza "on a level playing field" with similar takeaway shops in the area; however the Sub-Committee considered that the onus was on the applicant to demonstrate that it would be capable of upholding the licensing objectives.

An examination of the applicant's current management style did not inspire confidence that it was a suitable operator. Given the problems with waste and noise observed by local residents in the shop's first year or so of trading, the Sub-Committee was not minded to permit late night refreshment, even with additional conditions, due to the risk of undermining the licensing objective relating to the prevention of public nuisance. Accordingly, the Sub-Committee resolved to refuse the application.

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

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written representations received, and the submissions made at the hearing by the applicant company via 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.

Please note, the meeting ended at 1119.