

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 24 MAY 2023
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 24 MAY 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Zafar Iqbal and Penny Wagg.

ALSO PRESENT

David Kennedy – 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)

1/240523

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 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.

2/240523

DECLARATION OF INTERESTS

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

Councillor Izzy Knowles declared that she was a Member of Licensing and Public Protection Committee and occasionally sat on Licensing Sub Committees as a substitute Member. She confirmed she had not discussed this matter with any other Members of the panel and is attending in the capacity of an objector.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/240523 No apologies were submitted.

MINUTES

4/240523 That the Minutes of the meeting held on 22 December 2021 at 1000 hours were confirmed and signed by the Chair.

That the public section of the Minutes of the meeting held on 22 February 2023 at 1200 hours, 17 March 2023 at 1000 hours, and 12 April 2023 at 1000 hours were noted.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – PUNJABI DHABA, 124 BILLESLEY LANE, KINGS HEATH, BIRMINGHAM, B13 9RD.

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On Behalf of the Applicant

Nira Suresh – Arka Licensing
Sukhdave Singh - Applicant

On Behalf of Those Making Representations

Councillor Izzy Knowles – Local Ward Councillor
Martin Mullaney – Resident
John and Janette Brenan - Resident

* * *

The Chair introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. David Kennedy, Licensing Section, outlined the report.

At this stage the chair invited the applicant to make their presentation and Nira Suresh on behalf of the applicant made the following points: -

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- a) The premises is situated in a residential area, but it has been operating as a commercial premises for a long time. It used to be a wine shop, off licence and a burger bar/takeaway.
- b) The premises has been taken over by the applicant who is very experienced. He has run Indian restaurants for some time. Lives in the area and knows it well.
- c) There are 16 objections mainly concerned about noise from cars, anti-social behaviour, and general noise nuisance.
- d) There is also mention of a planning concern from one objector, but that isn't for consideration at this hearing.
- e) One objector recommended a 2230 hours terminal licence hour.
- f) 11 of the objectors mentioned the wine shops terminal hour of 2230 hours.
- g) There is lots of concerns about parking and noise.
- h) The applicant does not want to cause trouble to local neighbours.
- i) There is only 30 seats outside and that would usually only be 4/5 families dining outside.
- j) The applicant would put signs up asking customers to leave quietly and respect the neighbours.
- k) Most customers would be local and therefore wouldn't need parking.
- l) There is parking on side roads.
- m) The premises doesn't have a car park.
- n) Customers wont be loud and rowdy, they know it's a residential area.
- o) They currently don't use the shutter.
- p) The electric shutters done make noise.
- q) Most of the seating is inside.
- r) They have offered to stop serving food at 8pm in the outside area to limit noise and ease concerns of residents.
- s) The restaurant wont be open beyond 2300 hours. Therefore they would consider a 2230 terminal hour.

Mr Singh told the Committee that he had been a chef for 25 years and the majority of customers were professionals, the prices for food and alcohol were high. This would not attract the normal customer base. The restaurant only

serves Vegan food and there is not many in Birmingham, especially Indian restaurants.

The Chair asked the Applicant/Agent to clarify the application made in terms of the external area.

Nira Suresh advised that the terminal hour would be 8pm for the external area.

At this stage the chair invited those making objections to make their presentation and Councillor Izzy Knowles made the following points: -

- a) That she welcomed the business and hoped it was a success.
- b) She made the representation after speaking with a number of residents in the area.
- c) Many of the residents have made representations, and they wanted to ascertain the hours the premises wished to serve alcohol and food.
- d) The area was highly residential with houses next door and flats above and opposite the premises.
- e) The local concern is that the premises will add to noise nuisance and the lateness of people leaving causing a disturbance and nuisance to residents.
- f) There are families with children sleeping late at night.
- g) The applicant has suggested to stop outside serving at 2000 hours.
- h) However, the inside area needed to be closed by 2300 hours, otherwise it would be 2330 hours before people left.

Mr Mullaney was then invited to make his objection and he made the following points: -

- a) He lived 4 doors away from the restaurant and echoed what Councillor Knowles had said.
- b) He is not against the premises but the closing times were an issue.
- c) There is also concern about the wording of the conditions.
- d) He had not been sent the final report and he didn't know what the conditions were that the Licensing Officer talked about.
- e) That he welcomed an 2000 terminal hour.
- f) He is also needed clarification of what that meant, are people still allowed outside beyond 2000 hours or will it be closed.

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- g) Also, he wanted clarification about the inside terminal hour and what that means.
- h) That he needed clarification on whether the 2300 hours is just the sale of alcohol or where the premises would be closed at 2300 hours.
- i) The wine shop closed at 2230 hours, and they were content with that and that's why he suggested 2230 hours and a 30-minute drinking up time so the premises would close at 2300 hours.

Janette Brennan then made the following points: -

- a) That she mirrored what others have said.
- b) She wanted to know how they would manage the 2000 hours terminal hour in the external area. What is stopping patrons remaining outside beyond 2000 hours?
- c) How will the noise level be managed?
- d) She also wanted clarification on when the restaurant will actually close.
- e) There have already been instances of people lingering outside the premises, talking loudly and revving motorbikes for 3-4 minutes at 2315 hours. Noise nuisance is a concern.

The Members asked questions and Janette Brennan gave the following responses: -

- a) That her family had lived in the area since 1927 and purchased the house which belonged to her grandfather.
- b) It is a quiet residential area.
- c) The premises used to be a wine shop which closed at 2230 hours at the very latest and terraced houses sit at the end of it.
- d) The butchers are now closed.
- e) The Co-op used to open until 2300 hours but due to robberies it now closes at 2230 hours.
- f) There are a few garages locally but other than that it is a fairly quiet area.
- g) There are allotments on the corner of the road which are well used.

The Chair invited all parties to make a closing submission. None of the objectors had anything further to add.

The applicant's agent Nira Suresh made the following closing statements: -

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- That it is important for any restaurant business to grow.
- It will only have a small number of patrons passing through and would not be busy 7 days a week, primarily would be busier on weekends.
- They will stop serving alcohol at 2230 hours and all patrons would be gone by 2300 hours.
- Not all customers would leave at the same time.
- They will stop serving alcohol or food outside at 2000 hours. Clearing up can take a bit of time and therefore request that the outside area is clear by 2200 hours, but they would also consider 2100 hours.
- They have address concerns, agreed conditions and amended the licence therefore they requested that the licence be granted.

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

5/240523

RESOLVED:-

That the application by Rattan Loha for a premises licence in respect of Punjabi Dhaba, 124 Billesley Lane, Kings Heath, Birmingham B13 9RD, be granted as follows:

1. For the outdoor area, service of food and alcohol shall cease at 20.00 hours, with the outdoor area to be cleared of patrons by 21.00 hours
2. For the indoor area, service of food and alcohol shall cease at 22.30 hours, followed by thirty minutes' drinking up time, with the indoor area to be cleared of patrons by 23.00 hours
3. All of the conditions which were agreed between the applicant company and Licensing Enforcement of Birmingham City Council in advance of the meeting shall be adopted, namely:

General

- All members of staff will receive training regarding the:
 - four licensing principles contained in the Licensing Act 2003
 - responsible retailing of alcohol, and law regarding sales of alcohol
 - protection of children from harm and this must include how to competently check customers' identification where necessary
 - permitted hours during which licensable activities can take place, and the conditions

attached to the premises licence

- The training provided to staff will be recorded and each member of staff will sign and date the training records to confirm they have received and understood the training provided. Refresher training will

be done at least every 12 months

- The staff training records will be kept at the premises and made available to any responsible authority upon request

Prevention of Public Nuisance

A notice must be prominently displayed in the premises requesting that customers respect the needs of local residents and other businesses in the vicinity and to leave the premises quietly

Protection of Children from Harm

- The premises licence holder will implement and operate a challenge 25 age verification policy to prevent the sale or supply of alcohol to persons under 18 years of age. A copy of the written age verification policy must be signed by all members of staff to confirm they have read and understand the policy and this signed copy must be maintained at the premises and available for inspection by any responsible authority on request
- A notice will be displayed at the premises and will be clearly visible to customers informing them that a Challenge 25 policy is in operation at the premises

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will also form part of the licence issued.

The applicant was represented at the meeting by an agent. The agent addressed the Sub-Committee on behalf of the applicant, and explained the background to the application. The premises was situated in a residential area and had been a commercial premises for some time; in recent years it had been a branch of the Victoria Wine off-licence chain, and had also been a burger bar/takeaway style restaurant.

The premises had recently been taken over by the applicant, who was very experienced in operating Indian restaurants; these had also been in residential areas. He knew the area well, and lived in Birmingham himself.

The applicant confirmed that he had been a chef for 25 years and would be operating the venue as a small restaurant. The restaurant would offer vegetarian foods. His patrons were generally professional types, as his “food prices were high, alcohol prices were high”. It would not be the normal customer base, with all of the risks associated with that; instead, the noise levels at Punjabi Dhaba would be restricted due to the type of clientele.

The applicant had also noted that in Birmingham there were not many vegan-style Indian restaurants. He remarked that as he had been a chef for some years, running licensed restaurants, he was “very prepared” and aware of his responsibilities in terms of the licensing objectives. All in all, he was confident that he could operate well, because he was accustomed to managing licensed premises.

He had submitted the application in order to be able to offer alcohol in the restaurant. Sixteen objections had been received, one from the local Ward Councillor and the rest from local residents; the applicant had taken these very seriously. He had noted that the potential for noise nuisance was the concern raised by all of them. Some were also concerned about the likelihood of intoxicated patrons, parking issues, the likelihood of noise from patrons' cars, the use of the roller shutter, and also bottles creating litter.

However, leaving these specific issues apart, the applicant had also noted that those making representations were broadly happy with the proposals – for example, the objectors had accepted that the licence could safely be granted to 22.30 hours for 'indoor' activities, and 22.00 hours for those dining outside. The applicant noted that these comments from the objectors about the use of the outdoor area were in fact more generous than the terms he had requested in the application (the application had requested operation in the outdoor area until 20.00 hours, not 22.00).

The applicant had noted that one resident had said that she would be happy as long as the premises was managed properly, and had stated that she wanted what she described as "sensible opening hours". Some residents mentioned that the Victoria Wine branch at the site had operated to 22.30 without issues. Residents had concerns generally about late-night trading – in particular, the outdoor area operating beyond 22.00 seemed to be a worry to all of the objectors. The applicant was therefore confident that he could operate safely, as he had only requested use of the outdoor space to 20.00.

The applicant was acutely aware that Billesley Lane was a residential area; the agent confirmed that "the last thing he wants would be trouble to the local neighbours". The noise concerns were understandable to him, but there was seating for thirty patrons outside. The agent felt that this would mean that in the busiest times there would be perhaps 4-5 families in the outside area. Previous operators at the site had also used the outside area for patrons, without problems.

One of the concerns raised had been the potential for noise from patrons leaving the premises. The applicant had agreed with Licensing Enforcement that he would put a sign outside requiring customers to leave quietly and to consider residents. The majority of customers would be local, and parking might not be as much of an issue as the residents feared.

Regarding the use of the shutter, the premises was not currently using the shutter, and it was only there because it had been installed previously. The agent also remarked that "nowadays, the electric shutters, they don't make any noise". Regarding concerns about noise from patrons chatting, the applicant asked the Sub-Committee to note that it was a small restaurant and would normally expect perhaps 8-9

people sitting outside (unless it was a busy time).

The applicant had no desire to disturb local residents and therefore had decided to stop serving outside at 20.00 hours. As for service inside, the terminal hour for all activities was 23.00, and in any event, alcohol was limited because the premises would be providing a wide variety of other drinks, such as Indian lassi, to accompany the vegan/vegetarian cuisine. The applicant confirmed that he was happy to consider 22:30 hours as the end time for alcohol sales, as opposed to 23.00 hours in the application, given that the majority of those making representations had requested this.

The Sub-Committee noted that there had been no objections from any of the responsible authorities; Licensing Enforcement had been satisfied that the application was suitable with the addition of some agreed conditions. The Sub-Committee therefore turned to the large number of written representations which had been received from other persons, and considered these carefully.

In addition, the local Ward Councillor and three of the local residents attended the meeting in person and addressed the Sub-Committee. The Ward Councillor spoke first; she welcomed the applicant to Moseley and wished him success with his business. She had submitted a representation after speaking to a number of residents in the area; the purpose of making the representation had been to try and ascertain the hours that the premises wished to serve alcohol and food, as it was a highly residential area with houses immediately next door and flats opposite.

She considered that there was something of a concern locally that a restaurant could add to local noise levels, especially if operating to late hours, which would create nuisance for residents. There were many families in the area, and later in the evening children would be sleeping.

However, she had seen that the applicant had made a suggestion that he would cease the use of the outside area early; she was pleased by this, she said, “because that's the real concern” (due to the potential for noise associated with the outdoor area).

She confirmed that her concerns about noise from people leaving the outdoor area had been reduced after the applicant confirmed that service in the outdoor area would be brought to a close earlier in the evening. She asked if the applicant could clarify that he would not use the outside area for food or drink at a late hour, as she felt that this would be very reassuring to the residents. She remarked that her other request was for the applicant to be able to close the restaurant such that all patrons had left the premises by 23.00 hours; this would ensure that noise did not continue late into the night.

The Sub-Committee then heard from a resident living four doors away

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from the premises, who remembered when it had been a branch of Victoria Wine. He echoed the comments of the Ward Councillor, remarking that he was not against the principle of the grant of a premises licence to Punjabi Dhaba, but had concerns about the closing time. He had noted that the proposal was to stop service at the outdoor area at 20.00 and asked for a reassurance on the wording of this, requesting that the frontage would be cleared of customers promptly.

Regarding the end time for activities inside, he noted that Victoria Wine had closed at 22.30 hours, remarking “we could live quite happily with that”. He said he would be happy if the premises stopped the sale of alcohol by 22.30, and then the restaurant to be cleared by 23.00 hours.

A third representation was then presented by a couple living nearby. They reiterated the points made by the Ward Councillor and the other resident regarding the hours, particularly for the outside area, stating that their concern was that patrons could linger there, into the late night. They had the same concerns as the first resident regarding the indoor area, and confirmed that they did not want this to operate late into the night. They assisted the Chair of the Sub-Committee by describing the nature of the area, and explained where nearby houses and business premises were in relation to the restaurant.

In summing up, the applicant via his agent urged the Sub-Committee to take into account that the restaurant was a business which intended to promote the licensing objectives carefully, and to address the concerns of the residents. The number of patrons frequenting the premises would be small, as it was not a large venue, and moreover it was very unlikely that the venue would be busy across seven days of the week. The applicant expected busy trading times to be on Thursday, Friday and Saturday; as with most other restaurant premises, the other days would be quiet.

The applicant had been keen to address the concerns of the residents, and therefore was happy to confirm that the 22.30 end time for the service of alcohol inside the building would mean a further half-hour drinking up time before the door would be shut at 23.00 hours and all patrons told to leave. He reminded the Sub-Committee that not all patrons would leave the premises as late as this – some would already have gone. The applicant was therefore confident that there would not be any undue creation of noise at 23.00. These proposals for a drinking up time and terminal hour were in line with the request from most of the objectors.

Regarding the outdoor area, service of all food and alcohol outside would cease at 20.00, but the applicant was concerned that clearing might take a little more time. In order to be reasonable and to ensure that the conditions were manageable, he asked that clearing of patrons from the outdoor area should be done by 21.00 hours. He reminded the Sub-Committee that the majority of the residents had

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recommended 22.00 hours as the end time for the outdoor area, and therefore felt that this was a generous offer.

The premises had been open and trading for one month, using temporary permissions to sell alcohol, with no problems whatsoever. The applicant added that the previous operators at the site had not caused any complaints either. The agent reassured the Sub-Committee that in the future, residents were very welcome to talk to the applicant about any concerns, remarking that the applicant had “been in the business for a long time and definitely can listen to them and do something about” any issues. He was alert to the fact that it was a business in a residential area, and that it was therefore important to work with residents.

The Sub-Committee noted that under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk to the promotion of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact have an adverse effect on the licensing objectives.

Members carefully considered the written representations and the oral submissions made by the objectors in the meeting but, given the applicant’s flexible approach to the curtailing of the hours (particularly outdoors), did not find that there was an overwhelming evidential and causal link between the issues raised and the effect on the licensing objectives. The applicant had offered hours which were effectively shorter than those suggested by the objectors – particularly for the outside space.

When deliberating, the Members agreed with the remarks of the applicant and felt that the application could safely be granted with a few conditions, including those agreed with Licensing Enforcement. The application had been straightforward, with no objection from West Midlands Police, or from any of the other responsible authorities.

The applicant had put forward an operating schedule which properly addressed the promotion of the licensing objectives. The premises, whilst in a residential area, had previously been an off-licence shop, and there were numerous other business-use premises in the area - as outlined by the couple living nearby who addressed the Sub-Committee in the meeting. It was therefore unlikely that significant public nuisance would arise in connection with operation as a vegan/vegetarian Indian restaurant licensed to sell alcohol by retail.

Members considered that the applicant had drafted a satisfactory operating schedule, and therefore concluded that by granting this application, the four licensing objectives contained in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and noted that both the applicant and the operating

schedule were suitable. All in all, the application inspired confidence. The application was therefore granted with conditions.

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., 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.

**GAMBLING ACT 2005 – LICENSING PREMISES GAMING MACHINE PERMIT –
THE ARTHUR ROBERTSON, ONE STOP SHOPPING CENTRE, PERRY BARR,
BIRMINGHAM, B42 1AA.**

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This is a non-invite application.

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The Chair introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. David Kennedy, Licensing Section, outlined the report.

The Members had no questions.

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

6/240523

RESOLVED:-

That the application by JD Wetherspoon PLC for the variation of a Licensed Premises Gaming Machine Permit in respect of The Arthur Robertson, One Stop Shopping Centre, Perry Barr, Birmingham B42 1AA, be granted.

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The Sub-Committee deliberated the application put forward by the applicant company. The Sub-Committee considered the likely impact of the application, and concluded that by granting this application, the three licensing objectives contained in the Act will be properly promoted.

The application was to operate a total of five Category C Gaming Machines within an alcohol licensed premises. Licensing Enforcement had confirmed that everything was in order after carrying out a site visit. The Sub-Committee therefore granted the variation as requested.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Principles, the Guidance issued under section 25 of the Gambling Act 2005 by the Commission, the application for a Licensed Premises Gaming Machine Permit, and the written representations received.

EXCLUSION OF THE PUBLIC

7/240523

RESOLVED:-

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

CHAIR.....