

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE C 4 OCTOBER 2023</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON TUESDAY 4 OCTOBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Sam Forsyth in the Chair;

Councillors Diane Donaldson and Penny Wagg.

### **ALSO PRESENT**

Bhapinder Nandhra – Licensing Section  
Joanne Swampillai – Legal Services  
Katy Poole – Committee Services

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

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1/041023

### **NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/041023

### **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.

**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/041023 Apologies were submitted on behalf of Councillor Bermingham and Councillor Donaldson was the nominated substitute Member.

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**MINUTES**

4/041023 That the public part of the Minutes of the meeting held on 6 September 2023 at 1000 hours were noted and the Minutes as a whole were confirmed and signed by the Chair.

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**LICENSING ACT 2003 PREMISES LICENCE – GRANT – BURGER BOI, 156 HIGH STREET, HARBORNE, BIRMINGHAM, B17 9PN.**

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**On Behalf of the Applicant**

Harinder Singh – Applicant  
Telly Sarai – Agent

**Those Making Representations**

Richard Kilroy – Local Resident  
Jayant Gunchala – Local Resident

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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. Bhapinder Nandhra, Licensing Section, outlined the report.

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

- a) The new business had been in operation for 3 months. They had a good base of customers and great reviews on platforms such as 'Just Eat' and 'Google'.
- b) That 80% of their business was take away food to be consumed off the premises.
- c) The majority of alcohol would be consumed off the premises.

### **Licensing Sub-Committee C – 4 October 2023**

- d) It was only occasionally that people walked in and consumed alcohol on the premises.
- e) That they wanted to work with local residents and resolve issues.
- f) They were the only burger shop on Harborne High Street. There was a demand for the service.
- g) The planning permission had all been granted following a few amendments.
- h) All notices and advertisements had been complied with.
- i) There were no objections to the planning application.
- j) There were three other takeaways in the locality.
- k) The pizza shop had been operating without issues since they opened.
- l) They had spoken with the pizza shop owner and they hadn't experienced any issues with noise, public disorder or anti-social behaviour.
- m) Burger Boi has been in business for over 30 years and was family run.
- n) That it was a quality establishment and was not likely to attract the kind of clientele associated with trouble.
- o) The premises would create employment for over 20 people locally.

In answer to Members questions Telly Sarai gave the following responses: -

- a) That the applicant had previous experience as a PLH (premises licence holder).
- b) That the staff arrived early, and breakfast was served from 0900 hours until 12noon. Then the evening menu started.
- c) During the breakfast hours no alcohol would be served.
- d) That they had applied for the 0800 hours licence because that was the period they were open, however they didn't anticipate anyone wanting alcohol during the breakfast period.
- e) He confirmed that they didn't anticipate a demand for alcohol between 0900 hours and 12noon.
- f) That they were fully aware of their obligation under the licensing laws and would carry out all age verification checks prior to serving alcohol.
- g) The applicant already had experience running a similar premises for 16 years.
- h) There were no issues of underage sales and they wouldn't allow it.

- i) The premises was a slightly up market burger shop. They didn't tend to attract people of a very young age due to the costs of the burgers/meals.
- j) The delivery drivers entered and exited at the front of the premises as there was no access at the back.
- k) The delivery drivers parked within the parking zones in front of Lloyds bank and Bull Street. The majority of them arrived on scooters.
- l) That they had bins on site for rubbish, which were emptied regularly. They also had commercial waste collections.

The Chair then invited those making representations to make their presentations.

Due to technical difficulties Richard Kilroy typed his submission into the chat function, see below the submissions copied from the chat facility (these were read out by the Chair in order to ensure that all parties, officers and the public could hear what Mr Kilroy had to say): -

'I have a query, I was advised by email from Bhapinder Nandhra on 15th Sept that alcohol not form part of any delivery, and only sold in conjunction with food? Is this an off license?

The restaurant has our and neighbour's properties to the rear. Can we get assurance that the music will not be audible outside of the property, especially late night and early morning?

no further issues, just to stress that alcohol may be available here to take out after other pubs will be closed, what impact will this have on a narrow part of the pavement

Nothing further – thank you.'

The Chair then invited Jayant Gunchala to make his submission, he made the following points: -

- a) That he had several concerns.
- b) They had spoken with the Council regarding the music and someone must have spoken with the applicant.
- c) Cardboard was left in the way and he tripped over it.
- d) Oil drinks and boxes all stacked up to 9 feet high which was hazardous.
- e) The pub two doors down had recently closed and he was concerned that the patrons would move to the Burger Boi to buy alcohol.

That Chair asked how far away the premises was from Mr Gunchala's home, he stated that he lived next door, he added that there were a series of flat occupied in the vicinity. The demographic in the area was close to mid 20s.

## Licensing Sub-Committee C – 4 October 2023

The Chair invited all parties to make a brief closing submission and Mr Kilroy and Mr Gunchala advised that they had nothing further to add.

The applicant/representative were invited to make their closing submission and Telly Sarai made the following closing statements: -

- That Mr Kilroy was correct that alcohol could only be purchased as part of a food order. No alcohol would be sold on its own.
- They were aware of the music issues and moving forward would not play music outside of their operating hours.
- They did open the doors sometimes; to let fresh air into the premises.
- That Harborne stores was right in front of Mr Gunchala's residence which played music until after midnight.
- The premises would be closed before the Slug and Lettuce.
- The other issues raised by the objectors were not a concern for the Licensing Committee. However, they had increased the frequency of the bin collections and provided extra bins.
- There were no issues with people congregating and causing a nuisance.
- They wanted to work the residents.

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

05/041023 **RESOLVED:-**

That the application by Harinder Singh Mandair for a premises licence in respect of Burger Boi, 156 High Street, Harborne, Birmingham B17 9PN, be granted subject to the conditions agreed between the applicant and West Midlands Police in advance of the meeting, as follows:

- If for any reason the CCTV hard drive needs to be replaced the previous / old hard drive will be kept on site for a minimum of 28 days and made immediately available to any of the responsible authorities on request. The CCTV will be checked to ensure that it is working each week. The time of the check, the identity of the person carrying this out and the result of it will be recorded in the incident log
- Alcohol will not form part of any order for delivery
- Recorded music will only be background music
- Alcohol will only be sold in conjunction with an order for food

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 attended the meeting, together with the premises' operations manager, who addressed the Sub-Committee. The premises was a new business, which was in its third month of operation since opening. The premises had a good base of local customers based around Harborne, and had received favourable customer reviews on social media platforms and the Google Business review site.

The premises had decided to make the application as more than 80% of the business was conducted via UberEats, namely takeaway food to be consumed off the premises. A condition suggested by West Midlands Police prevented the sale of alcohol for home delivery; the operations manager therefore considered that "very little" alcohol would be consumed on the premises.

The premises had read the written representations submitted (which were in the Committee Report). Regarding the music played, it would be at background volume only, and would be purely for ambience; music had been played at that volume since the start of operation three months ago.

The operations manager said that all those at the premises were more than willing to work with all the local residents in the event of any issues, and stressed that the premises had no desire whatsoever to create nuisance for residents. The premises was keen to work with the local community to provide a service which was in demand. The operations manager remarked that it was the only high-quality burger shop on Harborne High Street. He also observed that judging by the turnover, and the interest that the premises had had in the first two months of operation, the application was "more than justified".

In terms of some of the objections that had been raised, the operations manager stressed that the premises "had followed all the rules and regulations". Notices had been displayed properly. The premises had sought full planning permission prior to opening, and was dealing with the minor amendments required by the Planning department of the City Council, including a noise survey and also a site survey. The applicant was a personal licence holder.

The premises therefore felt that it had done everything it could to make sure that it was working in conjunction with all the authorities, as well as local residents. Staff had been going round to visit a few of the local residents, and had not heard of any objections until the instant application was submitted.

The operations manager confirmed that there were similar premises nearby - other takeaway businesses, which had been operating without any issues relating to crime and disorder, public nuisance or noise. The Burger Boi premises intended to make sure that it did not create any such issues either. The Burger Boi company had been operating as a family business for over 30 years. It had been a very successful company and was a growing business. The operations manager remarked that it was a high-end premises, and accordingly very unlikely to attract the kind of nuisance clientele associated with more downmarket or cheaper takeaway food establishments.

He reiterated that having read all the objections, the premises was willing to work with all parties to make sure that issues were rectified satisfactorily. Anyone could approach staff in the shop, and all the management were more than willing to give their personal numbers and emails out for people to contact them directly. He observed that the premises was “a bonus to the High Street”, particularly as it had created employment for over 20 people. He considered that the rate at which the business was growing perhaps suggested a likelihood of further job creation in future.

The premises opened at 09:00 hours, to serve breakfast until 12 noon, when the usual menu service began. The operations manager did not consider it likely that many would want alcohol between the breakfast period from 09.00 to 12.00, which was a quiet period for the premises in any event. Regarding the protection of children from harm objective, the premises was aware of the numerous local schools in the vicinity, but paid close attention to age verification checks, and also considered that due to the “upmarket burger” offer, it did not attract those of a very young age.

The UberEats aspect of the operation was not creating any problems, as the drivers collected from the front of the premises, and had been parking within the parking zones in front of the premises; the majority of the delivery drivers used scooters, not cars. Similarly, there were no issues arising from litter due to the bins on site, which were emptied on a regular basis. The premises had daily collections from commercial waste refuse companies. The applicant was confident that there would be no adverse effect whatsoever on the licensing objectives.

The Sub-Committee then heard from two of the persons who had made written representations. They expressed their worries over parking, waste (including noise from collections), and music noise emanating from the kitchen. They were also concerned about teenagers potentially being exposed to alcohol, particularly given that a nearby public house, known to serve burgers, had recently closed down.

In response to these comments, the operations manager confirmed that alcohol would be served with food orders only; nobody would be able to come in and buy alcohol on its own. The premises was aware

of the issues with the music and had taken all measures to make sure that audible music would not be heard outside opening hours; however, the nature of kitchen work and requirement for fresh air meant that the door had to be open when trading. The Sub-Committee accepted this. The operations manager observed that the Harborne Stores public house played loud music until after midnight. Burger Boi would be closing before the terminal hour of the Harborne Stores and Slug and Lettuce public houses.

He went on to add that Burger Boi “definitely won't be allowing people to congregate [outside] because we put our shutters down just after our published closing times, which will be 23.00 hours Sunday to Thursday, and midnight on the Friday and the Saturday”. The Sub-Committee noted this.

Regarding waste, he added that the bin collections had been increased in frequency, so there would be no chance of any rubbish lying around. Furthermore, the premises had put extra bins out to ensure that issues would not arise, as it was a new business and therefore unsure of how much waste it would generate. Oil collections were done on a regular basis. The operations manager repeated his offer to be available for local people to express any further concerns by contacting him directly.

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.

The application had resulted in no representations from the Police, as the applicant had accepted the proposed conditions in advance of the meeting. (The Sub-Committee was of course aware that the Guidance recommended that the Police should be the Sub-Committee's main source of advice on matters of crime and disorder). Similarly, Trading Standards, Environmental Health, Licensing Enforcement, and indeed the rest of the responsible authorities had raised no issue with the proposed style of operation. The responsible authorities were the experts in their respective fields, and therefore the evidence was that the experts found the application satisfactory.

Whilst the Members had listened carefully to the concerns raised by those making representations, it seemed that the majority of the worries had not taken into account the careful operating style of a high-end takeaway shop which was already trading. In particular, the issues raised, which the Sub-Committee considered to be the initial teething troubles seen at many new businesses, did not seem to be insurmountable, largely thanks to the management style described by the operations manager. The Sub-Committee considered that the



premises had displayed a cooperative and friendly attitude to its neighbours, and a desire to offer a high-end takeaway premises which would be a benefit to the local community.

The Sub-Committee took on board the concerns of those living nearby, but after careful consideration, found that these were not closely linked to the promotion of the licensing objectives. Adequate measures had been introduced by the premises to deal with those aspects which did relate to the licensing objectives – namely litter, waste collections, and also noise emanating from the kitchen outside trading hours. Overall, the Sub-Committee considered that the points made had been adequately covered by the applicant. The Sub-Committee therefore did not find that there was an overwhelming evidential and causal link between the issues raised in the written representations and the effect on the licensing objectives.

Suggestions in the representations of a potential for antisocial behaviour in the area, such as patrons congregating outside the premises, had not been supported by the responsible authorities. The Sub-Committee noted that UberEats deliveries were mainly carried out by scooters, not cars. There was therefore no aspect of the operation which the Sub-Committee considered likely to create significant public nuisance.

The 09.00 hour start time for the sale of alcohol was unlikely to put the upholding of the licensing objectives at risk, because a condition of the licence required that the sale of alcohol had to accompany a food order. Moreover, the operations manager had already confirmed that he anticipated very low demand for alcohol in the morning.

Regarding the potential for risks to children, the Sub-Committee's view was that alcohol would be sold responsibly, with careful age verification checks to be undertaken, and it was therefore highly unlikely that the grant of a licence would cause any dangers to local youngsters. The trading hours were not unusual for the area. The Sub-Committee also accepted the point that the high pricing seen in "upmarket" burger premises such as Burger Boi was also likely to resolve such issues.

All in all, the Sub-Committee determined that the premises was aware of its responsibilities in terms of the licensing objectives. The operations manager was confident that the premises could operate well, and that any risks to the licensing objectives would be managed well. The Sub-Committee agreed with this.

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. All in all, the application inspired confidence.

**Licensing Sub-Committee C – 4 October 2023**

Members therefore concluded that by granting this application, the four licensing objectives contained in the Act would be properly promoted. The premises had shown a cooperative attitude towards its neighbours. The Sub-Committee was satisfied that trading would be safe, and noted that both the applicant and the operating schedule were suitable. The application was therefore granted.

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 and operations manager, and by other persons.

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.

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**The meeting ended at 1105 hours.**

CHAIR.....