

BIRMINGHAM CITY COUNCIL

LICENSING
SUB-COMMITTEE C
6 SEPTEMBER 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 6 SEPTEMBER 2023 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Saddak Miah 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)

7/060923

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.

8/060923

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

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interests flowchart which provides a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

9/060923

Apologies were submitted on behalf of Councillors Forsyth and Bermingham and Councillors Donaldson and Miah were the nominated substitute Members.

LICENSING ACT 2003 PREMISES LICENCE – REVIEW – JOEL'S CONVENIENCE, 12 BODINGTON ROAD, MERE GREEN, SUTTON COLDFIELD, B75 5ET.

* * *

On Behalf of the Applicant

Paul Ellson – Trading Standards (TS)

On Behalf of The Premises Licence Holder

Jaspreet Joall – Premises Licence Holder (PLH)

* * *

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 Paul Ellson, on behalf of TS made the following points: -

- a) That on 19 January 2023 TS received information from West Midlands Police (WMP) that the premises was selling counterfeit tobacco to children that went to a local school.
- b) The also received a public complaint that vapes were also being sold to children.
- c) On 13 February 2023 TS visited the premises and spoke to the PLH's brother 'Jay Joall' about the allegations and provided advice and the updated legislation. The TS officer also gave the brother information about selling vapes and cigarettes specifically.
- d) The officer did check the refusals log and it was all in order.
- e) ON 16 February 2023 TS and WMP carried out an operation involving search dogs. As part of the operation Joel's Convenience was visited and searching

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using the dogs. No illicit tobacco was found; however, a large quantity of illegal vapes were found on the shop floor and in the stock room. They also found a single cigarette tin underneath the counter with individual cigarettes inside and it was marked with “75p” on the tin. They also discovered an open bottle of Vodka and Rum under the counter, along with a baseball bat and machete.

- f) The stock room also contained open bottles of Malibu, Gin and other products.
- g) All illegal vapes were removed and Jay Joall was asked to remove all the open bottles of alcohol and the single cigarette tin.
- h) The premises served the local community, a small but busy shop.
- i) TS had been to the premises and given advice and information about the sale of tobacco and vapes. Yet when they carried out the operational visit, they still found illegal vapes, and other issues.
- j) The PLH has a responsibility to the community to ensure the safety of the public.
- k) That the premises served the local community and provided an essential service especially during the Covid-19 pandemic.
- l) If the licence was removed the premises could close completely.
- m) The PLH was not in attendance at any time when TS visited the premises, therefore perhaps they were not in day-to-day control of the premises.
- n) There was no lawful reason to have the weapons at the premises.
- o) TS outlined the conditions as detailed in the report.
- p) They recommended that the conditions be attached to the licence in order to allow the PLH to continue trading.
- q) There was a breach of trust but the premises could continue to serve the local community with the requested conditions attached to the licence.

Members asked what period of suspension would TS deem as appropriate. Paul Ellson stated that that in order for them to get everything in order it shouldn't take longer than 3-4 days. The suspension should be minimal in nature.

The Chair then invited the PLH to make his case and Jaspreet Joall made the following points: -

- a) He had not been visiting the shop as much as usual.
- b) He had operated the store since 2012 and had never had any trouble before.

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- c) He had never made any underage sales.
- d) They had received malicious complaints before.
- e) Some of the customers wanted to make representation in support of the application but they were not accepted.
- f) He took some time out with family so hadn't been spending much time in the shop, which had obviously impacted the operation more than he thought.
- g) His brother was helping in the shop.
- h) He had no idea the vapes were illegal, they were not hidden and were on display on the counter and on the shelves.
- i) During both visits by TS he was out of the country.
- j) That he had spoken with TS about the open bottles – they were returned by customers. He didn't want confrontation in the premises so would take the return.
- k) He had told the family that kept returning products that they would not take any returns from them moving forward.
- l) That he had twins who were about to start school so he would have much more time to operate the premises.
- m) That he had a challenge 25 policy with notices around the premises.
- n) They had a refusals log which was used regularly.
- o) They never close the store; it opened 7 days a week.
- p) The premises was a popular convenience store.

He was asked by the Members if he was content with the conditions put forward by TS. He advised that he had already put most of them in place and was content with the conditions offered by TS.

Both parties were invited to make a brief closing submission, Paul Ellson, TS made the following closing statements: -

- That the PLH was correct, they did receive many complaints about underage sales in 2018 and they did seem to be malicious.
- The review wasn't concerning underage sales.
- It is about the illegal vapes which was symptomatic of the lack of control in the premises.

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- That if the PLH was going to be at the premises more, they were content that there wouldn't be any problems moving forward.
- The premises was small and served the local community, but the PLH needed to have more control.

Jaspreet Joall made the following closing statements: -

- That he would be at the premises more as his twins were going to start school.
- The premises was his only source of income and was his day-to-day job.
- That he would not accept return of open bottles.
- That he wanted to keep the licence and had done everything to rectify issues.

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;

10/060923 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Jaspreet Joall, in respect of Joel's Convenience, 12 Bodington Road, Mere Green, Sutton Coldfield B75 5ET, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that the conditions of the licence be modified, namely by adding all those conditions proposed by the Chief Officer of Weights and Measures, as per the document in the Committee Report:

GENERAL

1. Alcoholic drinks in open containers or bottles of any kind may not be stored/sold/supplied/kept or removed from the premises.

INCIDENT BOOK

2. An incident book must be kept at the premises and maintained up to date (no later than 24 hours after the incident) at all times and will record the following:
 - i. Time date and details of all incidents/complaints of crime and disorder or anti-social behaviour
 - ii. All crimes reported to the venue
 - iii. Any faults in the CCTV system equipment, searching equipment or scanning
 - iv. Any visit by a responsible authority or emergency service

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The incident book must be kept at the premises and made available to West Midlands Police or and Officer of a Responsible Authority on request, or during an inspection.

TRAINING

3. Training in relation to the Licensing Objectives and the conditions on the premises licence, Challenge 25, under age sales, sales to adults on behalf of minor (proxy sales), sales to intoxicated persons, refusals register and incident records must be provided and undertaken by all members of staff (whether paid or un paid) before he/she makes a sale or supply of alcohol/tobacco products/electronic cigarettes and at least every six months thereafter.
4. Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained, date, time and content of training. The record must be signed by the member of staff who has received the training, the Designated Premises Supervisor, the Premises Licence Holder or external training providers.
5. Documented training records must be kept at the premises and made available to all Responsible Authorities.

THE PROTECTION OF CHILDREN FROM HARM

6. The premises licence holder shall adopt the Challenge 25 scheme and appropriate signage and age restricted identity poster will be placed at the entrance to the premises and throughout the store. The premises will operate a policy whereby any persons attempting to buy alcohol/tobacco products/electronic cigarettes or any person attempting to gain entry for premises who appears to be under 25 will be asked for photographic ID to prove their age. The ID that will be accepted is a passport or driving licence with a photograph.
7. The premises licence holder shall display Challenge 25 posters in prominent position within the premises, including the point of sale and the entrance to the premises.

The Sub-Committee came to this resolution in order to promote the licensing objectives in the Act of the prevention of crime and disorder, and the protection of children from harm. The Sub-Committee's reasons for modifying the conditions were due to concerns expressed on behalf of the Chief Inspector of Weights and Measures (Trading Standards department of the City Council), as outlined fully in the Report.

An officer of the Trading Standards department of the City Council attended the meeting to address the Sub-Committee. The licence holder Mr Jaspreet Joall also attended the meeting, representing himself.

The Report summarised recent events in full. The Trading Standards officer led the Sub-Committee through the evidence, exactly as in the

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Committee Report. The areas of concern were the discovery by enforcement officers of illicit and non-compliant products, namely e-cigs/vapes (despite an explicit instruction to check them). In addition, opened bottles of alcohol were found, yet no adequate explanation could be given other than certain local residents had asked for the shop to keep the open bottles for them so they could collect them later; this explanation was unsatisfactory and an obvious risk to the upholding of the licensing objectives.

The officer further noted that a baseball bat and a machete were found in the premises. He observed that there could be no lawful reason for this. There was also some evidence of single cigarettes in the premises, and therefore a concern that cigarettes could be offered for sale as single items.

None of these matters were acceptable inside any off-licence premises; accordingly, Trading Standards had brought the matter before the Sub-Committee for a Review of the licence.

Notwithstanding what had been found, Trading Standards considered that the premises was a valued community resource which was noted for being very busy despite its small size; on that basis, Trading Standards did not seek revocation, observing to the Sub-Committee that if the licence were to be removed, the shop could well close down altogether, as it was already operating in “a very harsh retail environment”.

The officer remarked that the premises served a residential area and that large numbers of people often used it. Over the years it had provided an essential service, particularly during the Covid-19 pandemic period. Moreover, the officer observed that it was the only shop left in the immediate vicinity after many other retailers had closed down, which was why it was valuable to residents.

A further point made by the officer was that a short distance away, perhaps five minutes' walk away, the shop faced competition from other retailers; for this reason, said the officer, “I would not want the shop to close”. The Sub-Committee noted that the shop was useful to local residents and should therefore be supported to operate safely as an asset to the community.

The officer noted that the licence holder had not been in attendance when enforcement visits were paid. The officer was of the view that the reason for the failings was because the licence holder's day-to-day control of the premises had lapsed. The Sub-Committee agreed with this.

The officer remarked that an alcohol licence conferred on a licence holder a responsibility towards customers and the community; local people should be able to have confidence in the management of a local shop, and especially should be able to trust that they would not

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trade carelessly or illegally. There was an obligation on licence holders to ensure good practice for the safety of the public, and for the greater welfare and protection of the local community.

The officer therefore suggested a modification of the licence conditions in the terms set out in the Committee Report. These new conditions had been designed to help the licence holder to promote the licensing objectives in the light of what had been discovered during the enforcement visits, and dealt with the alcoholic drinks in open containers, incident book, training, Challenge 25, underage sales (and other matters relating to improper sales), and refusals.

The Sub-Committee examined these proposed conditions and considered that they satisfactorily covered the matters of concern. The conditions would be beneficial both to the trader and to local residents, and would ensure that the premises could continue to serve its local community, as it had done previously.

The officer observed that the Sub-Committee might also wish to impose a period of suspension of the licence, in order to give time for all those matters to be taken into hand. However, he went on to request that any suspension “be proportionate to what we actually found on the day; the allegation relating to underage sales was not substantiated, and the underage sales refusals book was filled in extremely well”.

He recommended that if the Sub-Committee were to determine that a suspension were necessary, that this should be limited to the time required to do the staff training, and said that he “would not foresee that taking any longer than a week to ten days”.

The Sub-Committee then heard detailed submissions from the licence holder Mr Joall. He had bought the shop in 2011 or 2012, and had never had any trouble in terms of operating safely. He and his staff understood the importance of upholding the licensing objectives, and in particular they were careful about the risk of underage sales. He considered that in recent times he had not been at the premises full time; this was about to change, and in future he would be at the premises to take charge of trading properly.

He had listened carefully to the advice given by Trading Standards officers during the visits, and had already proactively addressed all the matters required by the new conditions. He had downloaded the training guide recommended by Trading Standards to train the staff. He held up examples of the notices which he had already displayed in the shop; the Sub-Committee was reassured by this. In response to Member questions, he confirmed the steps he had taken to adopt the new conditions; the Sub-Committee found all to be in order.

The licence holder considered that his premises “made a huge difference to the whole area”. He was careful to keep the protection of

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children from harm objective in mind at all times; he had also observed that a lot of elderly people used the shop. He had been trading at the site for twelve years, and asked the Sub-Committee to note that the shop “helped everyone”, opening 365 days a year including Christmas Day and New Year’s Day. The Sub-Committee accepted all of this.

In summing up, Trading Standards agreed that the licence holder did good work in the community which had been a benefit to people in Mere Green, but simply felt that the licence holder ought to exercise more control. After hearing from the licence holder, Trading Standards agreed that the licence holder was compliant with all that had been requested.

When deliberating, the Sub-Committee bore in mind that its decision had to be appropriate, reasonable and proportionate, and be made in accordance with the law and the statutory Guidance issued under s182 of the Act.

The Members noted that the recommendation had been to modify the conditions; the Members agreed with Trading Standards that a modification of the conditions in the terms suggested was proportionate - and moreover, it would benefit the licence holder himself, as well as the wider community, as it would enable the premises to trade in a manner which ensured that careful management was prioritised. The Sub-Committee was pleased that the licence holder had confirmed his intention to be at the premises full time in order to take proper day-to-day control.

The suggested conditions would give the licence holder a comprehensive framework for operation, which would ensure that he could promote the licensing objectives properly, for the benefit of all those in Mere Green. A determination to modify the conditions in the terms suggested by Trading Standards, which were reasonable and proportionate to address concerns raised, would follow the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003.

The remaining issue was whether to impose a period of suspension to give time for implementation. However, on this point, the Members were very much reassured upon hearing directly from the licence holder, as he confirmed that he had already implemented all that was required. The Sub-Committee therefore determined that no period of suspension should be imposed. The shop was a valued community resource and a suspension would be neither necessary nor proportionate.

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 Review, the written representations received and the submissions made at the hearing by the Chief Inspector of Weights and Measures (Trading Standards), and

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by the licence holder.

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 determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the appeal is determined.

The meeting ended at 1252 hours.

CHAIR.....