

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 25 AUGUST 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 25 AUGUST 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Mike Leddy and Mike Sharpe

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

- 1/250820 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.

2/250820 **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

- 3/250820 Apologies were submitted on behalf of Councillor Nicky Brennan and Adam Higgs and Councillor Mike Leddy and Mike Sharpe were the nominated Members.
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**LICESNING ACT 2003 PREMISES LICENCE – GRANT – PEPE’S PIRI PIRI, 439
BIRMINGHAM ROAD, SUTTON COLDFIELD, B72 1AX**

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

(See document No. 1)

On Behalf of the Applicant

Nasir Munir – Applicant

Those Making Representations

Councillor Alex Yip – Local Ward Councillor
Nicola Walters – Lead Petitioner
Councillor Alden – Local Ward Councillor
Pat Brown - Secretary of WG Neighbourhood Forum

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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.

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

Councillor Yip asked if he could seek clarification regarding the opening hours.

The applicant advised him that the opening hours were until 11pm, there had been a misunderstanding when they sent the application and he apologised.

Afterwards, the Chairman invited the applicant to make their submission. At which stage Nasir Munir, made the following points: -

- a) That they wanted a late licence to provide more working hours for staff, but also the customers had demonstrated a demand for the premises to be open until at least midnight – people often worked late.
- b) That midnight was the maximum they would open as there wouldn't be much business after that time.
- c) There were other licensed premises locally and the litter complaints were always regarding those premises.
- d) One of the local Councillors did email him, however the photos attached to the email were the other premises.
- e) That he had CCTV evidence that would demonstrate the litter issues.

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- f) They did have a small issue with litter during lockdown, which had since been rectified with additional staff clean ups before and after their shifts. They had also put a bin outside for customers.
- g) There were no issues with anti-social behaviour (ASB) or violence and he didn't understand why they couldn't open until midnight.
- h) They did use Uber drivers, but they had known them a long time and had a good relationship with them.
- i) What happened across the road from the premises wasn't anything to do with them.

In answer to Members questions Nasir Munir made the following points: -

- a) That they would not be selling alcoholic beverages at night.
- b) It was against their policy to serve alcohol.
- c) That they started trading in 2018.
- d) WMP had visited once or twice. There was an incident outside and then the group came inside. They provided WMP with the CCTV footage.
- e) The drivers would not be directly employed by the premises. They would be using Uber drivers.
- f) During lockdown people were outside in cars and they were littering. He was clearing up before and after his shifts, he had CCTV footage to show them clearing up the litter if the Committee wanted to see it.
- g) That there were signs up inside the premises, and they were clearing up the litter outside. They had also provided branded bins.
- h) There would usually be about 3-4 drivers on a normal night. However, when they were very busy it would be 6-7 drivers.
- i) That he had never seen drug dealing around the premises since he had been there.
- j) He had nothing to hide.
- k) That he attended the premises frequently.
- l) There were residential properties behind the shop, but not above it.
- m) That he had been very honest.
- n) The application, if granted, would create more hours for staff.

At this stage Cllr Yip made the following points on: -

- a) Cllr Yip asked for clarification regarding the planning application.

At which stage the Chair advised that Planning and Licensing were separate regimes and therefore should be treated as such.

Cllr Yip continued: -

- a) He visited the premises to get a takeaway at 12:45am.
- b) He had concerns over the application in respect of planning and would be taking that forward with the planning department.
- c) He had doubts over the compliance of the hours of opening.
- d) His concerns were around crime and disorder and community safety.
- e) He appreciated the compromises but was not satisfied and asked the Committee to reject the application.
- f) The premises was situated within his ward and he had overwhelming concern for the residents.
- g) He referred the Committee to page 46 within the report, the residents had concerns over crime, fear, safety and litter issues – words which had come up again and again within their submissions.
- h) To grant the application would cause problems.
- i) The residents knew the area better than anyone and highlighted significant negative changes since 2018 when the premises first opened.
- j) The area had changed considerably, and crime had increased.
- k) Pepe's branded litter could be found across the length of the shopping district.
- l) The premises had not dealt with the litter issues as there had not been a decline in the amount found.
- m) There was a recent twitter post which found their litter in the area.
- n) The Committee should also consider the concerns around drug dealing – nitrous oxide cannisters and syringes had been found near the premises 3 times in the past month.
- o) Graffiti had also been an issue.
- p) There had been a marked increase in issues since 2018.
- q) There had also been an increase in gang related activity and an extension to the operating hours would only facilitate the problems.

- r) The premises was situated within 30 meters of residential properties.
- s) He had provided a photo.
- t) It was clearly a residential high street, not a base for deliveries. There were at least 3 primary schools, 2 secondary schools, a nursery and a care home within the ward.
- u) That CCTV was no longer an effective deterrent, most shops had CCTV and it did nothing to control crime in the area.
- v) He had submitted another photo of the premises which was taken after midnight. There were several drivers outside the front of the shop waiting for deliveries.
- w) There were at least 4-5 drivers outside at 1am.
- x) People would get the food delivered to the next road and then chuck the litter out of the window.
- y) He was surprised the drivers were not employed by the premises, that made it even more of an issue.
- z) He was concerned it would become like a taxi bay.
- aa) The layby across the road was already being used for people to congregate in vehicles; revving engines, eating food, chucking litter out of the windows and sitting there until the early hours of the morning. Residents had complained about drug dealing from vehicles and vehicles congregating in front of businesses.
- bb) The drug related issues only arrived in 2018 and the area began to change.
- cc) His fear was that the application to extend the hours would further increase the issues.
- dd) The conditions proposed were impractical and harder to enforce as the drivers were not employed directly by the premises, and instead through Uber.
- ee) Drivers would have their cars switched on when it got colder so they could have the heating on, they would also be getting in and out of vehicles to go to the toilet – all of which would be detrimental to the residents.
- ff) The applicant stated that they would likely be open until 1am, yet the application was for 3am.
- gg) The midnight watershed should not be breached. The local McDonald's closed by 2330 hours.

hh) The increase in crime, the current level of crime and the risk of a further increase in crime in a heavily residential area made a substantial case for the rejection of the application.

In answer to Members questions Cllr Yip made the following points: -

- a) That it was a large shopping area with about 80 shops.
- b) That it was usually quiet by 2330 hours, however occasionally cars congregated on either side of the road to purchase takeaway food and sit in vehicles. There was a proven track record of this with ASB dispersal orders and there had been a marked increase in issues since 2018.
- c) If the licence was granted until 3am, other businesses would be applying to extend their hours also.
- d) That he had no issues with the business themselves, they offered good food and service. But the residents had concerns and he had a duty to represent them as best as he could.

At this stage the Chair invited Nicola Walters to make her submissions: -

- a) That she had lived in the area since 1993 and knew the area well.
- b) She agreed with Cllr Yip's submissions, they were experiencing an increase in young people gathering and causing a disturbance.
- c) It wasn't happening directly outside the premises, but it was happening elsewhere particularly in Florence Road.
- d) She had seen evidence of drugs and it was increasing significantly.
- e) She was concerned for the residential care home in Florence Road, but also for the many families who lived there.
- f) That everything shut at 2330 hours in Boldmere, and she wanted it to remain that way.

In answer to Members questions Nicola Walters made the following statements: -

- a) Since the chicken places had opened there had been a large number of young people gathering, social distancing had not been adhered to and they had been gathering late at night outside the chicken shop.
- b) They would gather in cars, playing loud music.

Cllr Alden was then invited to make his submissions: -

- a) There were 5 shops either side and residential properties very close by.

- b) People would often park on the road side, go into the shops to get food and then leave the litter down the residential streets.
- c) The evidence submitted would risk an increase in issues related to crime and disorder, public safety, public nuisance and protection of children from harm.
- d) That the petition submitted was very large.
- e) He had attached several emails within the bundle which highlighted the issues of public nuisance and ASB.
- f) He asked the Members to pay attention to the letter at page 32 from the residents which stated that people were gathering in large numbers, creating noise and littering – including vomit; most had little regard for social distancing and residents were being disturbed by them.
- g) There had been an increase in traffic and noise in the area, particularly in the evenings.
- h) Many customers from the premises were ordering food, then leaving the litter outside.
- i) WMP had offered conditions regarding alcohol but there was a need for further conditions to stop an increase in street drinking.
- j) Residents felt that the High Street had become less safe over recent years.
- k) There were further issues of illegal parking on yellow lines, litter and public nuisance.
- l) Appendix 5 also referred to a decline in the area since the premises began operating – noise nuisance, criminal activity, erratic driving.
- m) It was a family area and children should not be exposed to that sort of behaviour.
- n) There were also emails between Environmental Health and the premises reminding them that they only having planning permission to open until 2230 hours. The applicant had admitted to operating beyond that and Cllr Yip had been served food after midnight, therefore, it gave him no faith that the premises would follow conditions if they were to be put on the licence.
- o) The police forces were working close to manage the problems in the area and they needed to be supported.

At this stage Pat Brown was invited by the Chair to make her submission, as such she made the following points: -

- a) The High Street was a quiet residential area with residents living above shops. She had lived in the area for 40 years and during the last 5-6 years

there had been an enormous change particularly in terms of noise, litter and ASB.

- b) It was crazy to allow a premises to exasperate the problem.
- c) Once one premises was allowed an extension of hours, other premises would want the same. It would open the floodgates.
- d) It would change the nature of the area significantly.
- e) She requested that the Committee reject the application.

In summing up, Pat Brown made the following points: -

- That she agreed with what Cllr Yip and the other Cllr had said and strongly urged the Committee to reject and oppose the application.

In summing up, Cllr Alden made the following points: -

- That it was a suburban High Street which was highly residential.
- There had been evidence of an increase in crime and disorder in the area and that posed a risk to public safety and a risk of public nuisance.
- Granting the application would exasperate the problems.
- The applicant also stated he did not need to open for the hours he had applied for, therefore even from the applicant's perspective the hours were not needed.
- It was clear that granting the application would worsen the situation for residents.
- It didn't matter what conditions were imposed he had no confidence that the applicant would follow them.

In summing up, Nicola Walters made the following points: -

- That she urged the Committee to reject the application in order that the area could remain a safe place for people to live, work, shop and enjoy.
- The increase in disturbance since the first and second chicken shop opened were notable and residents did not feel safe – safety was paramount.
- Therefore, she asked the Committee to reject the application.

In summing up, Cllr Yip made the following points: -

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- That there was a huge opposition to the application, highlighting the real concerns residents had. The Committee should take a minute and read the submission from the residents.
- The premises had already breached their trading hours and Cllr Yip had provided proof with advertisements stating they were open until 0100 hours. He had also been able to purchase food past midnight. That provided no reassurance that the premises could fulfil any requirements asked of them.
- The fact the drivers were employed by Uber eats and not directly by the premises was another issue.
- He urged the Committee to reject the application.

In summing up, Nasir Munir, on behalf of the premises made the following points: -

- That the ASB was being blamed on his premises, yet Pat Brown stated it had worsened over 5-6 years, which was before they opened.
- There was no evidence of any ASB being associated with the premises.
- They had tried to address the litter issue.
- It was all allegations; the police had not been to the premises regarding drug issues.
- Other premises were open at midnight such as Dominoes.
- He couldn't understand where the issues had come from – no one had been to the premises to complain.
- If he didn't get the application granted people would just go elsewhere to buy food and just park up there. The only thing that would happen is that people would lose their jobs.
- There were no gatherings outside his shop.
- He invited the Committee to go and have a look at the premises at 11pm.
- What happened a mile down the road was nothing to do with him or his shop.
- He didn't understand why an extra hour would be unsafe for the community. It would provide food for people.
- No one would be attending the shop, it was just deliveries.
- He didn't have much to say because it was all based on allegations and no concrete evidence.

- They had been litter picking and had a 5-star hygiene rating.
- They may have gone over the hours by 30 minutes, but they didn't realise.
- The extra hour would make a big difference to the staff.
- The responsible authorities had no issues.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the Teams meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/250820 **RESOLVED:-**

That the application by My Shop 7 Limited for a premises licence in respect of Pepe's Piri Piri, 439 Birmingham Road, Sutton Coldfield, B72 1AX be granted as follows:

- The door to close to customers at 00.30 hours daily, with no public access granted to the restaurant after 00.30
- From 00.30 hours daily the premises to offer a home delivery service only (not restaurant service)
- The operating end time to be 01.00 hours daily

The licence will also be subject to the following conditions, as agreed with the responsible authorities in advance of the meeting:

- CCTV will retain images/recordings for a minimum of 28 days. CCTV will display the correct time and date stamp. CCTV will be downloadable and made immediately available to any of the responsible authorities on request
- There will be no open containers of alcohol allowed within the premises, and there will be no consumption of alcohol allowed on the premises
- The premises will not allow delivery drivers to sit in or on their vehicles with the engine running while waiting for a delivery. The premises will not allow delivery drivers to play music while in/on their vehicles that is audible to members of the public that would be at a level to constitute a noise nuisance. The premises will not allow drivers to over-rev their engines. The premises will have written documented training for all delivery drivers that will be signed as understood by the drivers. All drivers will receive this documented training prior to the commencement of their first delivery
- Noise from the kitchen extraction system shall be inaudible at the façade of any noise sensitive 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 Sub Committee deliberated the operating schedule put forward by the applicant and the likely impact of the application, including the agreed conditions, and concluded that by granting this application, the four licensing objectives contained in the Act will be properly promoted. The responsible authorities,

namely West Midlands Police and Environmental Health, had considered the application suitable with the addition of some sensible conditions.

Members carefully considered the representations made by other persons but were not convinced that there was evidence of a risk to the upholding of the licensing objectives. The risks had been covered by the agreed 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 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 1140.