

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 18 DECEMBER 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 18 DECEMBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Julien Pritchard

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)

1/181223 **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.

2/181223 **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

3/181223 Apologies were submitted on behalf of Councillor Simon Morrall and Councillor Julien Pritchard was the nominated substitute Member.

MINUTES

4/181223 That the public section of the Minutes of the meeting held on 20 November 2023 at 1000 hours were noted and the Minutes as a whole were confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – BURGER AND SAUCE, 23 OAK TREE LANE, SELLY OAK, BIRMINGHAM, B29 6JE.

On Behalf of the Applicant

Mohammed Malik – Agent

On Behalf of Those Making Representations

Peter Brown – EH (Environmental Health)

* * *

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 Mohammed Malik, on behalf of the applicant made the following points: -

- a) That the area was populated with lots of students who used these types of facilities.
- b) The EH officer objected to the application due to concerns about noise nuisance, however, the area was populated with late night premises. Some of which had licenses until 0300 hours and 0500 hours and were only 4 or 5 shops away from the premises.

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- c) They had liaised with West Midlands Police and agreed conditions.
- d) They originally applied for a takeaway but that was refused.
- e) That many shops all over the UK had residents living above shops, that was not a justified reason to refuse a licence.
- f) The residents had not objected to the application.
- g) Residential properties were not near the premises.
- h) That the application should be granted.

The Chair invited Members to ask questions and Mohammed Malik gave the following responses: -

- a) That deliveries would be made at the rear of the premises before the premises opened for trading. Usually between 0900 – 1000 hours one or twice a week.
- b) Waste disposal would also be at the rear once or twice a week. They had a designated waste storage area for bins.
- c) The residents above the shop were employees.
- d) Cooking and food preparation would be carried out until 0200 hours to serve deliveries.
- e) Independent residents were approximately 1 mile away from the premises.

The Chair then invites Peter Brown, EH officer to make his presentation. He made the following statements: -

(The EH Officer shared his screen with Members to show quotes from official sources in relation to planning permission)

- a) That EH received the consultation in late October and notified the applicant that they would not be supporting the applicant due to the hours. There is flats above and adjacent and also nearby shops with residential above.
- b) The residents above the shops could potentially be impacted by the late opening hours.
- c) They would support the application if the hours were reduced to 2300 hours Sunday – Thursday and midnight Friday and Saturday. It broadly corresponded with that EH supported in other parts of Birmingham which were not part of the central night time economy.
- d) The planning application for change of use was refused in May 2023.

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The Committee Lawyer advised the EH Officer that the Committee could not consider any planning matters and therefore he should focus his submission on the licensing application.

Peter Brown continued: -

- e) That the extraction system would be running until 0200 hours and the disturbance would not be limited to drivers collecting deliveries.
- f) The extraction system did not meet EH standards.
- g) That EH were unsure whether deliveries were classes as takeaways, planning refused the application for change of use to a takeaway. Therefore, were deliveries the same?
- h) The impact on local residents would be unacceptable and they would only support reduced hours.

Members were invited to ask questions and Peter Brown, EH made the following responses: -

- a) That the residential properties were closer than one mile away. There were also residents above the shops.
- b) That he did not have a problem with the premises trading, it was the hours that were an issue.
- c) That he did look at nearby premises and he could not find any in the immediate area that operated beyond 2300 hours.
- d) That he classed the 'immediate area' as 100 yards in each direction.
- e) That they considered the nature of the area and the shop is likely to cause an immediate impact on neighbours.
- f) That it was a decision for the Committee to make in relation to the hours in that particular area but there are broader considerations.
- g) That the premises never had any previous complaints or issues when it operated as a restaurant, however it only operated to 2230 hours.

The Chair invited all parties to make a brief closing submission and Peter Brown made the following closing statements: -

- a) That he would support the premises opening but with reduced hours in keeping with venues of a similar nature.
- b) The hours applied for were excessive and he had discussed it with colleagues.

The applicant Mohammed Malik made the following closing statements; -

- a) That there were other premises round the corner that had licenses approved with long hours and residential properties behind them.
- b) That he didn't see how the extraction system would cause any problems for residents.
- c) Deliveries were done at the rear of the premises.
- d) They had a huge car park.

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

5/181223

RESOLVED:-

That the application by BNS Selly Oak Limited for a premises licence in respect of Burger and Sauce, 23 Oak Tree Lane, Selly Oak, Birmingham B29 6JE, be granted as follows:

- The provision of Late Night Refreshment shall operate from 11:00 hours to 00:00 hours on all days, with the premises to remain open to the public to the same hours, to ensure the promotion of the licensing objective of the prevention of public nuisance

Those conditions agreed between the applicant company and West Midlands Police in advance of the meeting, as amended by the Sub-Committee, shall also be adopted, namely:

- Staff involved in the sale and supply of products are to be trained under the Licensing Act 2003 and vulnerability prior to being allowed to work at the premises. All training is to be documented and signed by the Premises License Holder and the trainee. All training records are to be made available to any of the responsible authorities on request. Staff involved in the sale/ supply of products are to receive documented refresher training every six months
- CCTV that is approved by West Midlands police and able to capture images particularly outside under conditions of low lighting will be fitted in the premises. Images will be retained for a period of at least 28 days and will be made available to any of the responsible authorities to view or copies produced on request
- 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 30 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. This information will be stored for 12 weeks and made available to any of the responsible authorities on request
- The premises will conduct a premises risk assessment and deploy SIA registered door staff as per the premises risk assessment. Door staff will sign on and off duty. The premises will keep a profile of all door staff. The profile will include a copy of their SIA licence and photographic ID. If photographic

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ID is not available then a utility bill (no older than 3 months) will be acceptable. Both the signing in & out book and profiles will be kept on the premises for a minimum of 3 months and made available immediately to any of the responsible authorities on request. Door supervisors stationed outside the premises shall wear hi-visibility jackets/coats. Door supervisors inside shall wear hi-visibility waist coats. All SIA door staff will wear their SIA badge in a clear arm sleeve

- No regulated entertainment will take place at the premises
- The premises will operate a vulnerability policy
- The premises will maintain an incident log
- The premises will maintain a refusals log
- Prominent, clear & legible notices will be displayed at all exits requesting customers to respect local residents and leave the premises quietly. Patrons will be encouraged by staff to leave quietly and respect the interests of the occupiers of any nearby noise sensitive premises, where appropriate the licensee or suitable staff member will monitor patrons leaving at the closing time. Noise or vibration shall not emanate from the premises so as to cause a nuisance to nearby properties. Contact numbers of local taxi firm(s) shall be kept at the premises and made available
- The premises will conclude licensable activity each day at 00.00 hours

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 company was represented at the meeting by its agent. The agent had agreed conditions with West Midlands Police, and had amended the scope of the application following discussions with Police, in advance of the meeting. Environmental Health had submitted written representations to the Sub-Committee, which were in the Committee Report. An Environmental Health officer also attended the meeting in person.

The agent addressed the Sub-Committee and confirmed that the application was for the grant of a premises licence to provide late refreshment seven days a week to 02:00 hours. A delivery service would operate from 00:30 until the terminal hour, rather than customers arriving at the premises in person to purchase late night refreshment. This had been agreed with West Midlands Police in advance of the meeting.

The agent addressed the Sub-Committee to explain that the area was populated with a large number of students who tended to eat out for the majority of the time; it was the students who had requested a late night refreshment service from the management. The applicant company was aware that Environmental Health had made an objection, on the grounds that the opening hours were excessively long, and that therefore it was likely that the premises would create public nuisance.

The agent said that the area had many other eateries within walking distance of the instant premises. Those other premises held premises licences permitting late night refreshment. He said that Pizza King, located within walking distance, was permitted to trade to 03:00 hours; furthermore, Bubble

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Waffle operated to 05:00 hours. Other licensed premises were located “four or five shops away”.

Before the applicant company had taken the premises on, the venue had been a restaurant. The applicant company had originally applied for what the agent called “the ancillary takeaway”, which had been refused. The application had thereafter been resubmitted. The applicant company had been pleased to enter into discussions with the Police in advance of the meeting, and had “happily agreed” to the amendments to the hours – namely for customer orders in the premises until 00:30 hours, and then a delivery-only service to 02:00 hours.

The agent noted that Environmental Health had also expressed concerns that there were residents living above all the shops. However, he observed that “nearly 90% of shops nationwide have residential accommodation above”, and therefore considered that this was not a justifiable reason for the Sub-Committee to reject the application. He observed that the nearest residential road with houses was a walking distance of approximately one mile away.

The agent observed that the company had recently submitted a similar application in Sutton Coldfield, and objections had been made to that application. However, after that application had been granted, persons who had originally objected on the grounds that nuisance could potentially be created for the residents above the shop had later praised the owners over how well they had maintained the premises and the surrounding area.

The agent assured the Sub-Committee that the operating style of the food business at the instant premises in Selly Oak would be the same as the site in Sutton Coldfield. It was part of a reputable franchise with premises nationwide, which ensured that every branch was well maintained, provided a professional and friendly service, and did not cause nuisance to local residents.

There were many other shops nearby and the neighbourhood was a busy commercial area. The residents living in the accommodation directly above the premises were the company’s own employees. The nearest other residents (not living above nearby shop premises) were “approximately one mile walking distance away”.

There was a rear access for deliveries and these would be carried out at 09:00 or 10:00, once or twice a week. Similarly, waste arrangements had been made for collections once or twice a week, and collection of these would be from the rear.

The agent urged the Sub-Committee to consider all these points carefully before making its decision, asking the Members to note that what the applicant company was proposing was nothing excessive, and indeed was “very reasonable”.

Members noted that the application proposed that service between 00:00 and 02:00 hours would be for delivery only, and the agent asked whether cooking

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would be going on up to 02:00 hours. The agent confirmed that this was the case.

The Sub-Committee then heard from an officer from Environmental Health, who said that when he first received the application requesting hours to 02:00, his view was that Environmental Health would not be supporting those hours, as the location was a residential area with flats above the premises, and other flats on the upper floor of adjacent and other nearby shops. These residential apartments above the shops in the nearby vicinity could potentially be impacted by late night opening of Burger and Sauce, and that was the basis of the Environmental Health objection.

The proposed hours, namely to 02:00, were a particular concern in terms of the potential for an adverse impact on residents. The officer considered that in the Oak Tree Lane vicinity, Environmental Health would support hours until 23:00 on weekdays, and midnight on Fridays and Saturdays, as this would broadly correspond with what was permitted in other parts of Birmingham which were not part of the Central Birmingham night-time economy, where the rules were slightly different.

The use of delivery drivers to 02:00 was likely to create nuisance as well, and for that reason Environmental Health only supported operation until 23:00 on weekdays and midnight at weekends.

The extraction system used in the kitchen was a further concern. The officer asked the Sub-Committee to note that disturbance and potential impact on residents would not only be created by customers and/or delivery drivers. The extraction system would be running in the kitchen; there would therefore be a potential for odour and noise, particularly in view of the fact that the extraction system was currently not meeting Environmental Health standards.

The officer expressed concerns that there were residents "adjacent and very close". He advised that although the residents immediately above the premises were employees, Environmental Health would not normally take that into account, as the situation could change in the future if there was no restriction on the use, and anybody could rent the accommodation in the future. In any event, he said, there were people living above shops immediately on either side of the premises, and indeed above shops further down the road.

The officer also briefly mentioned Planning issues, which the Sub-Committee was unable to take into consideration.

Members observed that the agent had already explained that there were other premises with late night refreshment permissions nearby in the area, which were serving even later than the times originally requested by the instant applicant. The Environmental Health officer replied that he had been unable to find any premises in the immediate area that were operating beyond 23:00 hours. He questioned whether the premises mentioned by the agent must perhaps be further away than the immediate vicinity.

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In response to this the agent remarked that “just literally just around the corner” there were two licensed shops, and that these were closer to residential houses. He reminded the Sub-Committee that the residents on top of the premises were employees. He did not see how the Burger and Sauce extraction system would affect residents living further away. He reiterated that deliveries to the premises would not create disturbance to anyone.

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.

When deliberating, the Sub-Committee noted that the intention was to provide a service which had been requested by the premises’ customers, many of whom were students. The operating schedule had been drafted with regard to the licensing objectives, and had been approved (with amended hours and some additional conditions) by West Midlands Police.

Environmental Health’s submissions had concentrated on Planning considerations, which the Sub-Committee was not able to take into consideration. However, the Members accepted the point that in future those living above the premises might not necessarily be the premises’ own employees.

Having heard about the effect that late-night trading was likely to have on nearby residents in terms of noise and odour, the Members considered that the level of risk to the public nuisance objective warranted a further shortening of the hours. It appeared that operation as a delivery-only service to 02:00 was in fact likely to create public nuisance for those living nearby – via the delivery drivers, and the use of the kitchen extraction system, late at night. The Sub-Committee determined that operation to 00:00 would enable the premises to trade to a late hour whilst ensuring the promotion of the prevention of public nuisance for residents.

Having reduced the hours further, the Sub-Committee resolved that the application could safely be granted together with the additional conditions proposed by the West Midlands Police, as the operating schedule properly addressed the promotion of the licensing objectives.

The Sub-Committee was satisfied that trading in this manner would be unlikely to create a likelihood of public nuisance, as the terminal hour would be 00:00 hours. The Sub-Committee noted Environmental Health’s suggestion of 23:00 as a suitable end time, but felt that this would be unduly restrictive even with residents living above the premises and above nearby shops, as the area was not solely residential. The application was therefore granted with amended hours, and with additional 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

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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 company via its 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 – LICENSED PREMISES GAMING MACHINE PERMIT – THE OLD CPURT, 70 HIGH STREET, KINGS HEATH, BIRMINGHAM, B14 7JZ.

Please note this application was non-invite.

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The Chair introduced the Members and officers present and 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.

Members had no questions.

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

6/181223

RESOLVED:-

That the application by Inspired Gaming (UK) Limited on behalf of Stonegate Pub Company Ltd, for the variation of a Licensed Premises Gaming Machine Permit in respect of The Old Court, 70 High Street, Kings Heath, Birmingham B14 7JZ, be granted.

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 premises has the benefit of a current Gaming Machine Permit issued under the Gambling Act 2005, which permits 5 Category C machines. The application was to operate a total of 6 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.

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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

7/181223

RESOLVED:-

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt Paragraph 3

CHAIR.....