

# BIRMINGHAM CITY COUNCIL

**LICENSING  
SUB-COMMITTEE A  
11 SEPTEMBER 2023**

## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 11 SEPTEMBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Izzy Knowles.

### **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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1/110923

### **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.

2/110923

### **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**

3/110923 Apologies were submitted on behalf of Councillor Morrall and Councillor Knowles was the nominated substitute Member.

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**LICENSING ACT 2003 PREMISES LICENCE – GRANT – TAJ FOODSTORE, 43  
ALCESTER ROAD SOUTH, KINGS HEATH, BIRMINGHAM, B14 7JQ.**

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**On Behalf of the Applicant**

Tony Clarke – agent

**Those Making Representations**

No one attended on behalf of those making representations.

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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 Tony Clarke made the following points: -

- a) That the applicant had taken over the lease and was going to be DPS.
- b) The premises was a high end supermarket selling fresh meats, groceries, baked, alcohol and the focus was on European foods.
- c) The alcohol was kept separate.
- d) The CCTV system was installed with 10 cameras covering the interior and exterior of the shop.
- e) The shop was situated on a busy High Street, with lots of different premises on one street.
- f) Risk assessments had been done and the operating schedule was mapped out in line with BCC's Statement of Licensing Policy and supporting the Licensing Objectives.
- g) The operating schedule and conditions were robust.

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The Members asked questions and Tony Clarke gave the following responses: -

- a) That they had carried out research in terms of the hours and needed to try and get as much income as possible to make the business work. They felt they could open late and do so safely.
- b) Traffic and parking issues were a planning issue. But his client would happily work with local Councillors to discuss measures that could be taken to address those issues.
- c) There would be 4 permanent full-time staff and 6 part time. There would be 10 members of staff all together. All of which would be locally employed.
- d) Training was in the operating schedule and would be refreshed.
- e) The applicant had worked in shops before and would not be opening the premises and investing so much money unless he was taking it very seriously.

Tony Clarke was invited to make a brief closing submission, he made the following closing statements: -

- The application was served on all responsible authorities and none of them made an objection.
- The absence of an objection from WMP indicates that in their expert opinion the application does not undermine the Licensing Objectives.
- The application and operating schedule were strong and he asked the Committee to grant the application.

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;

4/110923     **RESOLVED:-**

That the application by Taj Foodstores Limited for a premises licence in respect of Taj Foodstore, 43 Alcester Road South, Kings Heath, Birmingham B14 7JQ, be granted as follows:

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1. The hours for the Sale of Alcohol (for consumption off the premises) to operate from 06.00 hours until 23.30 hours daily
  2. The premises shall not permit the sale of single cans of alcohol
  3. All those conditions which were agreed between the applicant company and West Midlands Police in advance of the meeting shall apply, namely:
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- The premises licence holder or their nominated person to check the CCTV system daily, prior to carrying out licensable activity, to ensure it is operational and recording. This check is to be documented, dated,

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timed and signed by the person checking. This documentation to be made available to any of the responsible authorities on request

- If for any reason if the CCTV hard drive needs to be replaced the previous/old hard drive will be held at the premises for a minimum of 28 days. This old/previous hard drive will be made available to any of the responsible authorities on request
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4. The condition which the applicant company agreed to remove on the advice of West Midlands Police in advance of the meeting (originally numbered “1.5”) shall be removed, namely:
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- In the case of a breakdown or malfunction the premises licence holder/designated premises supervisor shall make sure that the CCTV is in working order as soon as practicable
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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 licensing consultant. The consultant addressed the Sub-Committee and explained that the applicant company and its director had recently taken over the lease. The director would be the nominated designated premises supervisor, and would be working full-time in the shop. The shop would be a “high-end supermarket” selling a variety of groceries, fresh meats and a small bakery. It would be focused on European foods.

The requested hours for the sale of alcohol by retail were from 07.00 to 00.00 hours on weekdays; the application requested that on Fridays and Saturdays the end time be extended to 02.00 hours. The consultant said that the intention was for the shop to offer a service to the local community from early morning into the evening. One of the fridges in the shop had been designated to house alcohol, and another section would be for a selection of wines (as identified in the Plan in the Committee Report).

The consultant led the Sub-Committee through the proposed operating schedule and all the measures which would be taken to promote the licensing objectives, including CCTV, a security door at the rear and roller shutters at the front. Alcester Road South was a busy mixed-use High Street with numerous small independent and national retailers; these included other supermarkets and off-licences. The Sub-Committee noted that residential properties appeared to be in the vicinity of the Taj Foodstore.

The applicant company had found that these neighbouring shops were thriving in a small area, and had conducted a risk assessment, taking into consideration Birmingham City Council's Statement of Licensing Policy of 2020, the revised Guidance issued under section 182 of the Act, the 2003 Act itself, the four licensing objectives, and also codes of practice on alcoholic drinks and the Equality Act 2010.

The consultant reminded the Sub-Committee that applications should be considered on their individual merits, and noted the need to ensure that the conditions attached to the licence would be focused on matters within the control of the licence holder. He remarked that the conditions should only address those matters which were within the control of the licence holder, observing that the conditions were “not a mechanism for the general control of antisocial behaviour of individuals”, and especially not once they were away from licensed premises. The Sub-Committee accepted this.

The consultant explained that the risk assessment had paid appropriate regard to the location, character and condition of the premises, the nature and the extent of the proposed use and the persons likely to be attracted to the premises. The operating schedule had then been mapped out in line with the Statement of Licensing Policy 2020, and consideration had been given to how the operating schedule would promote the four licensing objectives.

The applicant company had ensured that the conditions were precise and enforceable, and tailored to the individual type, location and characteristics of the premises, but did not seek to manage the behaviour of customers once they were beyond the direct management of the licence holder company and its staff. However, the applicant company intended to make sure that its own customers would not create problems within the direct control of the shop.

The consultant had noted that the written representations contained numerous references to crime and antisocial behaviour in the Alcester Road South vicinity. He asked the Sub-Committee to note that these problems could not be related to the Taj Foodstore premises, which had only recently begun trading. The Sub-Committee accepted this.

He further noted that there had not been any representation regarding crime and disorder from West Midlands Police, who were the experts on those issues; instead, the Police had approved the application with the addition of two conditions, and the removal of a condition originally numbered “1.5” in the proposed operating schedule. The Sub-Committee noted that the applicant company had agreed this with the Police in advance of the meeting.

The consultant confirmed that the company director was over 18 years of age and was entitled to work in the UK. All the relevant paperwork had been completed, properly served to all parties, the fees had been paid, and it had been advertised in the correct manner. Regarding the licensing objectives, a comprehensive risk assessment had been completed, and robust conditions had been approved by the Police.

The consultant observed that seven of the proposed conditions related to the operation of CCTV on the premises. All spirits would be displayed and sold from behind the counter. Furthermore, the other

conditions covered all aspects of safe operation. All in all, the applicant company believed that it had adequately fulfilled the requirements of the Statement of Licensing Policy.

The consultant noted that the local Ward Councillor had stated that he was concerned that there would be more issues with antisocial behaviour if there were to be another off-licence premises on Alcester Road South; the consultant felt that this was a question to put to the Planning department, not the Licensing Sub-Committee.

The second objection, from a local resident, was also concerned with the risks of an increase in antisocial behaviour, and again questioned the “need” for another licensed premises, which was not relevant. The third representation, from another resident living nearby, was similar – relating to the area having perhaps reached saturation point, and also traffic issues, which were not relevant. The consultant considered that none of the concerns raised could be attributed to the Taj Foodstore, which had only just opened, and especially not given that there were so many other shops in the area, many of them licensed premises.

In response to Member questions, the consultant confirmed that the shop had begun trading in the last two weeks, but was not yet offering alcohol, and there had been no issues in the last two weeks. One Member had noted that the hours that the premises was advertising online were 06.00 hours to 23.30 hours daily, and therefore asked why the terminal hour for alcohol sales was to be midnight, and 02.00 hours at weekends.

The consultant stated that the applicant company had researched the area and had found that there was “a position to open up a new premises with that facility”. Late night trade would be something that could be managed appropriately, and the company director had felt that there was an opportunity to open late and do it safely, meeting all the requirements in terms of promoting the licensing objectives.

There would be four permanent full-time staff, and another six part-time staff – ten members of staff in total. They would all receive comprehensive training, with a focus on underage sales of alcohol, refusals and street drinkers. All of them were living locally, and therefore jobs were being created in Kings Heath as a result of the Taj Foodstore opening.

The consultant observed that the company director had worked in shops in recent years, and would have the benefit of a full team of staff. The premises was a large shop, akin to a mini supermarket. Money had been invested to bring it up to a high standard, a robust operating schedule capable of promoting the licensing objectives had been proposed, and therefore the applicant asked the Sub-Committee to grant the licence. However, the consultant stated that should the Members consider that there were any areas of weakness in the application, the applicant company was happy to discuss and accept

any other further conditions that the Sub-Committee believed were necessary.

The consultant concluded by observing that the representations had involved a lot of possibilities, or “potential” problems, which could happen in the future; in the consultant’s opinion, these had been based on fear. The shop needed the licence in order to keep the business going, especially when so much money had been invested. The consultant felt that if the shop had already been open for six months, those making representations probably would not have had those concerns; leaving that aside, he remarked that there was no evidence that the grant of the licence would have an adverse effect on the licensing objectives.

He also noted that none of those making representations had attended the meeting to address the Sub-Committee. He reminded the Members that the premises was not responsible for the actions of other people, unless it or its customers were directly involved and within the vicinity of the shop. The comprehensive CCTV arrangements would reduce the chances of risks to the licensing objectives.

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 Sub-Committee was aware that decisions should be evidence based, per *R (on the application of Daniel Thwaites plc) v Wirral Borough Magistrates’ Court [2008] EWHC 838 (Admin)*, which emphasised the principles laid down by the Licensing Act 2003 - namely that there should be “light touch bureaucracy” applied to applications for premises licenses, and that restrictions should only be attached to premises licences if necessary to promote the licensing objectives, and be made on evidence, not based on speculation.

When deliberating, the Sub-Committee noted that the operating schedule had been drafted with consideration of the licensing objectives, and had been approved by the Police. This was reassuring. The consultant had also stated that many of the concerns raised by those making representations were about issues that were not altogether relevant to the applicant company or the premises.

However, from their own personal knowledge of the Alcester Road South area, the Members were of the view that street drinking was a significant issue in that location, and that it was therefore necessary to impose some further controls in the interests of ensuring the promotion

of the licensing objectives. This decision was based on their knowledge of the location, and was therefore not speculative.

The principal concern of the Members was the risk level around the proposed hours for the sale of alcohol; these were very long (until 02.00 hours at weekends), and a clear risk to the upholding of the licensing objectives when the area was known for street drinkers. The 02.00 terminal hour at weekends was a particular concern, as the Members considered that the premises was likely to become a magnet for problem drinkers at that hour, and an increase in antisocial behaviour would be the result.

The Members had heard in the meeting that the current operating times were from 06.00 to 23.30 daily; they considered that by adopting these hours for the sale of alcohol (namely an extra hour in the morning and a reduction of thirty minutes on weekday evenings), the licensing objectives could be upheld, regardless of the local problem with street drinkers.

A further sensible measure was to prohibit the sale of single cans of alcohol; the Members were aware that this was known to be something that attracted street drinkers to small shops. The Members felt the licence holder would benefit from a provision guarding against this known risk.

The Sub-Committee considered that the measure to prevent sales of single cans was reasonable and proportionate. It reflected the consultant's reminder that the conditions should only address those matters which were within the control of the licence holder, and should not be used as a mechanism for the general control of antisocial behaviour of individuals once they were away from licensed premises. The prohibition of single can sales was commonly seen on the licence conditions of premises operating in areas known for street drinkers, and accordingly the Members considered it sensible to include it in this instance, to support the licence holder and staff in upholding the licensing objectives.

After making a determination to include these provisions, the Sub-Committee resolved that the application could safely be granted together with the amendments required by West Midlands Police, as the operating schedule (as amended) properly addressed the promotion of the licensing objectives. Members considered that by granting the application with the amendments, the four licensing objectives in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and noted that both the applicant company and the staffing arrangements were satisfactory. 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



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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 consultant.

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 1055 hours.**

CHAIR.....