

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 25 SEPTEMBER 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 25 SEPTEMBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke 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)

1/250923

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.

2/250923

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

- 3/250923 Apologies were submitted on behalf of Councillor Morrall and Councillor Wagg was the nominated substitute Member.
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MINUTES

- 4/250923 That the public section of the Minutes of the meeting held on 28 April 2023 at 1000 hours, 24 July 2023 at 1000 hours, 7 August 2023 at 1000 hours & 14 August 2023 at 1000 hours were noted and the Minutes as a whole were circulated and confirmed and signed by the Chair.
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**LICENSING ACT 2003 PREMISES LICENCE – GRANT – ASDA EXPRESS, 573
PERSHORE ROAD, HARBORNE, BIRMINGHAM, B29 7DF**

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On Behalf of the Applicant

Richard Taylor – Solicitor
Neil Eccles – Asda Licensing Manager

Those Making Representations

Louise Darby – Local Resident
Philip Barlow – 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) That Asda Stores Limited were a well known operator whom traded around 550 stores in England and Wales.
- b) That he had been acting for Asda for some time and was yet to represent them in issues of review or criminal proceedings relating to alcohol sales. Which demonstrated the quality of Asda's policies and procedures.

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- c) The application is for a small supermarket/convenience store. Planning permission had already been granted from 0600-2300 hours. They were applying for exactly the same hours under the licensing regime.
- d) Planners had determined that it was a suitable location to operate as a shop for those hours.
- e) There was nothing to stop the premises opening as soon as it was built, the only question was whether they would be able to sell alcohol and whether it would make any difference whatsoever.
- f) Asda would be running the premises exactly the same as the bigger stores, the only difference was that alcohol such as spirits and high value products would be behind the counter.
- g) CCTV would be retained for 31 days, there would be a challenge 25 policy with till prompts, all staff would be trained and refreshed every 12 months.
- h) They would liaise with West Midlands Police in relation to security and that would also be risk assessed.
- i) None of the responsible authorities had made objections.
- j) Much of the representations received contained information not relevant to the Licensing Act.
- k) The issues relation to anti-social behaviour were not supported by the police as they had made no objection.
- l) Any use of the premises would increase traffic with or without a licence but the premises had a car park with 50 spaces.
- m) The issues regarding litter would not be an issue as the premises was only small.

The Members asked questions and Richard Taylor gave the following responses:

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- a) That deliveries would be made when the premises was open.
- b) Asda would ensure that the car park and the premises are kept clean. Part of the staff's roles are to ensure the areas as kept clean and free of litter.
- c) The trading hours were yet to be determined but the hours applied were the hours the Members should take as the stores trading hours.
- d) They may well close earlier on a Sunday for that would be determined based on demand.

The Members asked a specific question regarding the sale of single cans and Neil Eccles advised that Asda didn't split packs and would only sell miniatures in gift packs around Christmas time.

The Chair invited those that had made representations to make their case and Louise Darby made the following points: -

- a) That when she saw the notices up there was reference to the store being open 24/7 during the month of December. What had changed?

At this stage the Chair allowed Richard Taylor, on behalf of the applicant to address the question put forward by the objector. Richard Taylor advised that the position changed in terms of the hours when the planning permission was granted. Therefore the hours requested in the application were 0600-2300 daily.

The Chair also reminded Ms Darby that cross examination was not permitted and that she should simply make her points.

Louise Darby continued: -

- a) That the Costa premises has caused a huge increase in litter and it was a concern.
- b) Selly Park residents had been doing extra litter picks to deal with the issues.
- c) That Asda selling alcohol was a concern, there was already lots of litter from people drinking in the area such as cans, bottles, and drug paraphernalia. If granted a licence Asda would only increase that.
- d) There was a huge corridor of HMOs and supported housing in the area. They were already experiencing problem behaviours from some of the vulnerable people and lots of them had addiction issues. The premises would provide another avenue for them to get alcohol.

The Chair then invited Philip Barlow to make his submission and he made the following points: -

- a) The area was often known as the Pershore Corridor; supported housing with people with serious issues.
- b) The local Marks and Spencers had to put security guards on due to nuisance behaviour from alcohol fuelled people.
- c) Drug paraphernalia was often found in the street.
- d) That the premises would just provide another opportunity for people who already had alcohol problems.
- e) The nuisance was obvious.

- f) The police hadn't made representations, but they often didn't. They were under immense pressure and therefore the fact they made no representation had little meaning.
- g) That it was the foregone conclusion that Asda would get the licence whether it was a benefit or detriment to the local community. It wouldn't be taken into consideration.

The Chair advised that no decision was taken until all the evidence had been heard and that the Committee did not disregard the submissions made before them.

The Chair then invited those making representations to make a closing submissions and Louise Darby made a closing statement on behalf of both herself and Philip Barlow: -

- That the area was already crowded with places that sold alcohol.
- There were issues in terms of increased drunken behaviour and litter which impacted them in their day-to-day lives.
- That they were the people on the end of the nuisance.

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

- He drew the Committees attention to the Home Office Guidance Paragraph 9.43 & 10.15 which stressed the importance of evidence based decision making and also that premises such as shops and supermarkets should be free to provide sales of alcohol during the times of which they are open unless there is good reason to restrict it.
- He also made reference to the City Council's Statement of Licensing Policy 6.9 which also stipulated much the same as the guidance from the Home Office 10.15 .
- That the Committee should be looking for evidence and the only evidence was that the applicant was a good operator which had demonstrated they adopted brilliant policies and procedures and had never been reviewed.
- There was also no objection from any responsible authority particularly West Midlands Police who were the experts in crime and disorder.
- There was not a shred of evidence demonstrated by the objectors and whilst they understood the community had concerns it should not stop a licence be granted.

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;

5/250923 **RESOLVED:-**

That the application by Asda Stores Limited for a premises licence in respect of Asda Express, 573 Pershore Road, Harborne, Birmingham B29 7DF, be granted. 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 attended the meeting represented by its solicitor together with the company's national licensing manager. The solicitor addressed the Sub-Committee. The company was a leading national supermarket chain, trading around 550 stores in England and Wales. The company served millions of customers per week and was proud of the fact that it had never been the subject of a Review of a licence, or any criminal proceedings relating to alcohol sales. It attributed this to the quality of its operation and its policies, procedures and the training given to staff. This had ensured that all of the company's premises operated without any difficulty whatsoever.

The solicitor made submissions regarding the operating schedule (as set out in the Committee Report). The branch at 573 Pershore Road would be a small supermarket/convenience store. It was part of the development of the Pebble Mill site. Planning permission for the shop had already been granted, permitting operation from 06:00 hours until 23:00 hours. These were the hours requested on the application for a premises licence.

The solicitor observed that Planning had already determined that the site was a suitable location to operate as a shop, and to operate for the hours requested; he remarked that there was nothing to stop the premises from opening as a shop once it was built and fitted out. He reminded the Sub-Committee that the only question was whether or not the shop should be able to offer alcohol, and whether or not the sale of alcohol would affect the upholding of the licensing objectives.

The company was confident that there would be no adverse effect whatsoever on the licensing objectives. The company would be doing everything that it did in its other stores up and down the country. This would include everything that one would expect from a responsible national operator – CCTV arrangements, full training for staff which would be regularly refreshed, and a Challenge 25 policy. The Challenge 25 policy would be supported by till prompts, and also via the services of an independent test purchasing organisation, which would send young-looking adults into the company's stores to buy age

restricted products. These safeguards were in place across the entire Asda estate.

For smaller stores such as the 573 Pershore Road site, all spirits and high value alcohol products would be displayed behind the counter rather than on the shelves. Miniature alcohol products would not be offered, other than as part of gift packs in the run up to Christmas. The company did not sell single cans of beer; whilst it did offer some single bottles, these were premium ales and lagers.

As far as security measures were concerned, the company liaised with local police and risk-assessed the need before providing security guarding and implementing the security measures required by the risk assessment.

The company had carefully considered the issues raised in the representations, but the solicitor urged the Sub-Committee to put the representations into context – namely the lack of representations from any of the responsible authorities. The police, who were the experts on crime, disorder and antisocial behaviour, had found the application to be entirely satisfactory. 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 solicitor reminded the Sub-Committee that the premises could open as a shop in any event, and asked the Members to focus on whether or not there would be any impact on the licensing objectives if the premises were to be permitted to sell alcohol in the responsible manner seen in all of its retail premises. The Sub-Committee agreed that this was the correct approach.

Bearing this in mind, the solicitor remarked that the representations mentioned some matters which were not relevant to the instant application. The number of existing alcohol-licensed premises in the area was not something that should be taken into account, and nor should problems associated with other premises; on the latter point, the solicitor reminded the Sub-Committee that the police had not considered that the application would cause any problems, and in any event, problems created at other unlinked premises were a matter to be dealt with at source. He reminded the Sub-Committee that a satisfactory application should not be rejected simply because other premises were experiencing problems. The Members accepted this.

Suggestions in the representations of antisocial behaviour in the area had not been supported by the police. Concerns had been raised about an increase in traffic; it was inevitable that any use of the site would increase traffic, but car parking was available for customers. There were fears that the new shop could create litter, but it was a small supermarket with a car park, and it was therefore not particularly likely that litter would be created. Asda was very proud of its premises and would do everything it could to make sure that the shop and car

park were smart and well kept; this would be part of the staff members' jobs. Deliveries would be carried out when the shop was open and would therefore not create public nuisance.

Further concerns had been raised by the objectors, relating to nearby houses in multiple occupation. However, the company's view was that alcohol would be sold responsibly and it was therefore highly unlikely that the grant of a licence would cause any problems to the neighbourhood. The exact trading hours had not quite been determined, but the request was for 06:00 to 23:00 hours, which was not unusual for the area. The Sub-Committee was aware from the representations that at least one nearby premises was licensed to sell alcohol across 24 hours.

All in all, the company was aware of its responsibilities in terms of the licensing objectives. It was confident that it could operate well, and that any risks to the licensing objectives would be managed well.

The Sub-Committee then turned to the written representations which had been received from other persons, and considered these carefully. In addition, two local residents attended the meeting in person and addressed the Sub-Committee.

They had noted that litter in the area had markedly increased; they suspected that this was created by a local coffee shop. They were concerned that to grant a licence for off-sales of alcohol would exacerbate litter already being created by people consuming alcohol in the area, who were known to leave bottles and cans lying around. They felt that this would require increased litter picking operations.

They raised the issue of the local multi-occupational houses; they had observed problem behaviours from the residents of these houses, and were concerned that the addition of another alcohol-licensed premises trading to 23:00 hours could cause the problem behaviours to worsen. The Sub-Committee was aware that many local licensed premises were already trading to 23:00, and at least one operated across 24 hours.

The objectors had noted that the convenience store at the petrol station had had to recruit security guards due to issues with shoplifting. They observed that the area suffered nuisance behaviour on a regular basis from people who were inebriated and seeking alcohol. They felt that due to lack of resources the police rarely attended the Pershore Road area; they were not happy that the police had approved the application. They were worried that it was a foregone conclusion that the licence would be granted.

The Chair of the Sub-Committee assured those making representations that the decision-making was most certainly not a foregone conclusion, and instead would be based on the probable effect of the operation on the licensing objectives.

The objectors felt that the neighbourhood was already a crowded area, as there were four premises already selling alcohol within 300 yards of the site, one of which operated under a 24-hour licence. Their worry was that drunken behaviour, litter and alcohol-related problems, which they saw on the streets regularly, would increase.

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. Paragraph 10.15, relating to shops, stores and supermarkets, recommended that such premises should normally be free to provide sales of alcohol for consumption off the premises at any times when the retail outlet was open for shopping, unless there were good reasons based on the licensing objectives for restricting those hours.

This was repeated almost exactly in paragraph 6.9 of the City Council's Statement of Licensing Policy; in the case of shops known to be focus of crime, disorder and/or disturbance, the Sub-Committee could consider any matter that it deemed relevant 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 issue was whether the application to sell alcohol by retail should be rejected, when the shop was permitted to be open in any event.

The evidence was that the company was a highly experienced supermarket retailer, operating over 500 stores nationwide and serving millions of customers per week, and which had never been reviewed under the Licensing Act 2003, or prosecuted. The company had produced a comprehensive package of measures to promote the licensing objectives – as it had in all its premises. The application had resulted in no representations from the police (who the Home Office said were to be the Sub-Committee's main source of advice on matters of crime and disorder), or any other responsible authority. The responsible authorities were the experts in their respective fields, and therefore the evidence was that the experts did not oppose the application.

Whilst the Members had listened carefully to the concerns raised by those making representations, it seemed that the majority of the worries were speculative, and had not taken into account the careful operating style of a national supermarket retailer. In particular, it was not inevitable that problems would be created in terms of the local houses in multiple occupation; alcohol sales would be conducted responsibly by an experienced company such as the instant applicant. Moreover, it was not particularly likely that litter would be created by a small supermarket which did not sell single cans of alcohol. The single

bottles on offer would be premium ales which were not favoured by problem drinkers, due to pricing.

Whilst the Sub-Committee noted that those living nearby seemed to be experiencing problems with antisocial behaviour, that was clearly not related in any way to the applicant company, which had not yet begun trading. The proper course therefore was for those issues to be dealt with, not to reject applications from a responsible retail company which would be more than capable of upholding the licensing objectives.

The Sub-Committee carefully considered the written representations (which were in the Committee Report), but considered that the points made had been adequately covered by the applicant company. 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.

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.

Members therefore concluded that by granting this application, the four licensing objectives contained 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 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 company (via its solicitor and national licensing 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.

EXCLUSION OF THE PUBLIC

6/250923

RESOLVED:-

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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.....