

# BIRMINGHAM CITY COUNCIL

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| <b>LICENSING<br/>SUB-COMMITTEE B<br/>7 MARCH 2023</b> |
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 7 MARCH 2023 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Diane Donaldson in the Chair;

Councillors Saddak Miah and Adam Higgs.

### **ALSO PRESENT**

David Kennedy – 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)

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1/070323

### **NOTICE OF RECORDING/WEBCAST**

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](http://www.civico.net/birmingham)) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/070323

### **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**

3/070323 No apologies were submitted.

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**MINUTES**

4/070323 The public part of the minutes of the meetings held on 16<sup>th</sup> January 2023 at 1000 hours and 24 January 2023 at 1000 hours and 1200 hours, 31 January 2023 at 1000 hours were noted and the Minutes as a whole were confirmed and signed by the Chair.

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**LICENSING ACT 2003 PREMISES LICENCE – GRANT – MORRISONS STORE AND PETROL FILLING STATION, 280 COVENTRY ROAD, BORDESLEY GREEN, BIRMINGHAM, B10 0XA.**

**On Behalf of the Applicant**

Richard Taylor – Representative  
Lee Farguhar – Store Manager

**On Behalf of the Premises Licence Holder**

No one making representations attended the meeting.

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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 David Kennedy to present his report. David Kennedy, Licensing Section, outlined the report.

Then the Chair invited the applicant to make their submission and Richard Taylor, on behalf of the applicant made the following statements: -

- a) That the application for the new licence is identical to the existing licence, the only difference is the plan which will allow alcohol to be sold from the petrol station as well as the store.
- b) The store operates without issues this is just an extension of the licensable area.
- c) There is full digital CCTV with 28 days retention, the counter is screened with panic buttons with a link to the main store.

- d) Only personal licence holders are only allowed to sell alcohol in the petrol station.
- e) All staff are trained and the operate a challenge 25 policy with till prompts on restricted products.
- f) All high value products are behind the counter.
- g) They have a limited display of alcohol.
- h) The store trades without issues.
- i) There are no responsible authority objections.
- j) The only objection is from residents who are concerned about a 24 hour licence and the negative impact, but there is no evidence that the licence already causes issues. There is no change in the hours, just the plan.

Lee Farquhar added that the store operates without issues and WMP had no concerns.

Richard Taylor, on behalf of the applicant was invited to make his closing submissions: -

1. That the Home Office guidance is clear that decision should be evidenced based, but the evidence is that the operator is good, the store has no issues or complaints
2. There are no responsible authority objections.
3. He invited the grant of the licence.

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;

5/060323

**RESOLVED:-**

That the application by Wm Morrison Supermarkets Ltd for a premises licence in respect of Morrisons Store & Petrol Filling Station, 280 Coventry Road, Bordesley Green, Birmingham, B10 0XA be granted as requested. Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

The applicant company was represented at the meeting by its solicitor. The operations manager of the store also attended. The solicitor addressed the Sub-Committee and explained that the applicant company was a highly experienced national supermarket retailer; he remarked that the instant matter was the 137th such application made by the company.

He confirmed that the application was for a new licence for the petrol filling station, in identical terms to the existing licence (covering trading at the main Morrisons store in Coventry Road), such that both the hours and the conditions would be the same. The only difference would be the Plan of the premises, and the effect of the application, if granted, would be to allow alcohol to be sold from the petrol filling station as well as from the main store.

The store itself had been trading with no problems at all. The solicitor reiterated that the conditions that the applicant company had offered were the same conditions, and the hours were the same hours, as at the main store; the request was therefore simply to extend the licensed area to include the petrol filling station.

Regarding the petrol filling station itself, it already had full digital CCTV; a condition on the existing licence already required that the premises be covered by CCTV. Images were retained for 28 days, and the system was of a standard acceptable to West Midlands Police. The counter was already screened, and there was a panic button with a direct link to the main store. All staff whose jobs involved alcohol sales within the petrol filling station would be personal licence holders.

The applicant company did not permit single manning of those of its petrol filling stations which offered alcohol, and all staff had been fully trained. The store operated a 'Challenge 25' policy. There were two till prompts on sales of all age-restricted products, and also an electronic refusals log.

The applicant company used a system of independent test purchasing, sending an independent company out to ensure that challenges were made where they should be made. All spirits and high value alcohol products in the petrol filling station would be displayed behind the counter. No single cans of alcohol would be sold, and Wm Morrison Supermarkets Ltd did not sell the typical strong white cider which was known to appeal to street drinkers. The solicitor assured the Sub-Committee that in terms of alcohol, there would be "a very limited display", and patrons would only be purchasing "a bottle of wine, a four pack of beers" in addition to their groceries. The intention was not to offer large quantities of alcohol in the petrol filling station, but simply to extend the area for alcohol sales to include the shop on the forecourt, which operated as a convenience store.

The solicitor reminded the Sub-Committee that the main store had been trading without any problem at all. The company was regularly in contact with West Midlands Police as and when the need arose, and the solicitor observed that the police had not objected to the application - nor indeed had any of the responsible authorities. The sole objection received had been from a single local resident, who had correctly said that the company had applied for 24 hour licence, but as the solicitor pointed out, the company already had a 24 hour licence to

cover alcohol sales at the main store, and had been trading under that licence without any issues.

The local resident was concerned about the negative impact that the grant of a licence for the petrol filling station might have. However, the solicitor reminded the Sub-Committee that there was no evidence that the existing 24 hour licence at the main store had caused any difficulty whatsoever. Whilst the objector had concerns, those concerns were not shared by the police, or indeed any of the responsible authorities, who were the experts in terms of the promotion of the licensing objectives.

The solicitor assured the Sub-Committee that “nothing was going to change in real terms”. The application was for a 24 hour licence. The store currently traded until 22.00 hours (16.00 hours on Sundays); the petrol filling station traded an hour longer in the week, namely until 23.00, and until 22.00 on Sundays. The company did not intend to change the trading hours immediately, but wished to retain flexibility in order to use it for busy trading times, such as the run up to Christmas.

The operations manager of the main store, who had been based at the site for several years, also addressed the Sub-Committee to confirm what the solicitor had said, namely that the store operated very well and that local police had raised no concerns. He added that the main store saw very low levels of activity in regards to potential problems such as street drinking. The Sub-Committee agreed that it was unlikely that there would be any adverse effect on the licensing objectives given that the main store had been trading safely.

In concluding the company's submissions, the solicitor directed the Members' attention to the Guidance issued under s182, which required 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 restriction should only be attached to premises licence if necessary to promote the licensing objectives, and be made on evidence, not based on speculation.

The solicitor remarked that the evidence in front of the Sub-Committee was of a good operator which had policies and procedures in place to ensure that there would be no problems; there was no evidence whatsoever that Wm Morrison Supermarkets Ltd did anything other than sell alcohol wholly responsibly. The request was that Morrisons should be allowed to sell the odd bottle of wine alongside other groceries at a petrol filling station; the solicitor asked the Members to reflect on whether that would cause any undermining whatsoever of 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.

Members carefully considered the written representations made by a local resident, which were included in the Committee Report, but did not find that there was an overwhelming evidential and causal link between the issues raised and the effect on the licensing objectives. The Members found the representations to be rather speculative, as they had not taken into account the applicant company's history of safe trading at the main store. The company had a proven track record of upholding the licensing objectives in Bordesley Green. The Members noted that the local resident did not attend the meeting, and therefore the Members did not have the opportunity to ask questions of that person.

When deliberating, the Members agreed with the remarks of the company's solicitor, namely that the application could safely be granted as requested. The application had been uncontroversial, with no objection from West Midlands Police, or from any of the other responsible authorities. The applicant company had put forward an operating schedule which properly addressed the promotion of the licensing objectives. Moreover, the company was an experienced national supermarket retailer with branches across the country. All in all, the application inspired confidence.

Members considered that the applicant company had drafted a satisfactory operating schedule, and 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 as requested.

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.

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**

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**RESOLVED:-**

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

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CHAIR.....