

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE C 7 APRIL 2021</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 7 APRIL 2021 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Mike Leddy in the Chair;

Councillors Martin Straker-Welds and Neil Eustace.

### **ALSO PRESENT**

Shaid Yasser – 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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### **NOTICE OF RECORDING/WEBCAST**

1/070421 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.

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2/070421 **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.

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### **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/070421 No apologies were submitted.

**LICENSING ACT 2003 PREMISES LICENCE – VARIATION – WITTON LODGE  
CONVENIENCE STORE, 319 WITTON LODGE ROAD, ERDINGTON,  
BIRMINGHAM, B23 5LY**

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

(See document No. 1)

**On Behalf of the Applicant**

Sanje Sivakhmaran – Company Director  
Professor Roy Light – Barrister  
Richard Baker – Agent

**Those Making Representations**

Chris Jones – West Midlands Police (WMP)  
PC Aziz - WMP  
Councillor Robert Alden – Local Ward Councillor

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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, Shaïd Yasser to outline the report.

Afterwards, the Chairman invited the applicant or their representative to outline their application, at which stage Professor Roy Light made the following points: -

- a) That the application contained three parts; a change to the plan, late night refreshment and the alcohol extension.
- b) There had been no representations received against the plan and there were no changes to the retail area as it was much the same, apart from the introduction of a coffee machine.
- c) The store itself had been licensed for 10 years and during that time it had not produced any problems. The applicant had taken over the premises 18 months ago with no issues.
- d) The store was beginning to get run down and therefore it had been refurbished and made into a nice local community store.
- e) Customers were happy with the improvements and there were no residential objections.

- f) That the conditions on the existing licence would stay and there would be a change to the challenge 21 policy to challenge 25. A further condition had been agreed with Environmental Health.
- g) There were also new conditions being offered and they were at page 22 in the agenda pack and included; written records, refresher training, CCTV, challenge 25 policy and notices.
- h) The applicant's family set up the business 6 years ago and refurbished run-down retail sites making them into up to date community stores. They had 12 stores in total and had four 24-hour licences. They had extensive experience and no licensing problems.
- i) The representation from Councillor Alden included concerns about children, however the application was regarding late night refreshment (after 11pm) so he was not sure how that would impact children. In addition, they were happy to include the condition regarding not serving to street drinkers.
- j) The 'no alcohol only sales' condition was not accepted; it was neither feasible or viable.
- k) The condition about moving street drinkers on was already in the manual, however if Members felt it would assist then they would accept it as a condition.
- l) Many of the requested conditions from Councillor Alden were already put forward.
- m) Many of the signatures on the petition were from people living very close to the store and there were no residential objections.
- n) The petition had over 500 signatures and all of which were from the immediate or wider area.
- o) The police talk about concerns regarding the community, yet they hadn't expressed fears or concerns by making any objections and in fact many signed the petition showing support of the application.
- p) Late night refreshment was a concern for WMP, they thought it would become an attraction and people would start gathering outside.
- q) The premises was only going to sell hot drinks and maybe a pasty or a pie. It was not going to be a café.
- r) Page 75 showed other venues in the area which had late night refreshment until midnight or beyond. People weren't going to travel to this premises when there were already places like McDonalds serving food.
- s) If the Members still had concerns, they could consider drafting a condition about only serving hot drinks.

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- t) That the premises didn't cause the police an excessive cause for concern because there had been no issues at the premises.
- u) Page 201 showed the crime and anti-social behaviour statistics in the area.
- v) The pie chart supported the notion that the area was not problematic. The Council policy document and guidance stated that shops and convenience stores should be able to sell alcohol for the hours they are open unless there was reason not to.

In answer to questions from Members, Professor Roy Light, Richard Baker and Sanje Sivakhmaran gave the following responses: -

Richard Baker:-

- a) In general, for every £1.00 someone spent on alcohol they would spend another £1.00 on groceries.
- b) He estimated that about 10-15% of the turnover would be alcohol and the rest would be groceries.
- c) That he visited the premises about 4 years ago and there were a few things that needed dotting and crossing. He had checked and it was now being done.
- d) He also checked the other premises and they were all up to standard.
- e) The 8 premises with late night refreshment and alcohol licences were found on the register.

Sanje Sivakhmaran: -

- f) The clientele wouldn't change, everything would be the same.
- g) They had a lot of happy customers and had cleaned the store up.
- h) Many customers would be using the store after night shifts, or on their way home from work.
- i) They didn't have many problems.
- j) They used an audit company who carried out checks every month.
- k) They carried out checks weekly and monitored everything regularly.
- l) He thought they had about 8-9 refusals every week.

Professor Roy Light: -

- m) There were 12 conditions in the operating schedule, as well as the Environmental Health condition and the suggestions from the Councillor's which made for 18 conditions.
- n) The Committee may want to add another condition regarding bins, but the conditions covered everything.

The Chairman invited West Midlands Police to make their submission, at which stage Chris Jones made the following points: -

- a) That WMP had made a representation in relation to public nuisance and crime and disorder objectives.
- b) When the application came in Chris Jones spoke to the Neighbourhood team who were the experts in the area. They believed that the extension of hours would have a negative impact and increase calls for service to the police. All of which was detailed in PC Aziz's statement.
- c) Currently they had no concerns with the premises, or with anti-social behaviour (ASB) around the premises. However, the concerns arose from the application to extend the hours, which would increase ASB, crime and increase calls of service to the police team.
- d) The premises itself was situated in a highly residential area, 29 meters from the nearest house (page 197-199 of the agenda pack).
- e) The concern was that the extra 2 hours applied for by the applicant would cause disturbance to residents as well as ASB and crime.
- f) There was a distinct possibility that people could begin standing in the street, drinking, eating and playing music in cars. This could cause noise and disturbance to residents at a time when they were trying to sleep.
- g) The plan didn't indicate an area where people could consume late night refreshment on the premises, which was a concern for WMP due to people standing around on the street or sitting in cars eating and causing a nuisance.
- h) Between 11pm and 1am the neighbourhood team were off duty and therefore any calls would fall to the response teams. The response team prioritise the most serious jobs and therefore low-level crime wouldn't be dealt with at the time, it would most likely be handed over to the neighbourhood team to deal with the following day. This would cause residents to become stressed and angry.
- i) That he agreed with Professor Roy Light – the premises didn't cause them any issues currently however; the problem would arise if the licence was granted.
- j) However, it was not possible to control what happened outside the premises with conditions on the licence. The operating schedule and conditions were detailed and comprehensive.

- k) The other premises with similar hours was granted as WMP had no concerns. It was an entirely different area.
- l) He didn't know the area that well but had done research. However, he thought that the other premises was not as near to residential properties.
- m) Many of the other premises were petrol stations on busy roads, or McDonalds.
- n) He stated that granting the licence would have negative impact on the area.

PC Aziz added the following points: -

- a) It was a quiet residential area, however some of the surrounding areas in Kingstanding did suffer with ASB and particularly youth criminality which had caused numerous problems for WMP. Intervention work was being done and 5 of the worst offenders had injunctions against them.
- b) This particular group of youths would hang around off licences in the area.
- c) In February 2021 they smashed a police vehicle with a brick; they had no respect for the police and no respect for neighbourhood areas. They also intimidated residents.
- d) They had ASB and crime numbers for them and incidents were frequently logged.
- e) That in her professional opinion the majority of stores in that area closed at 11pm and although it was only 2 hours later it would become an attraction. Particularly to the troublesome youths located in Kingstanding (which was only 20 minutes away). They had access to vehicles, pedal bikes and would travel to the area for hot drinks and food.
- f) The neighbourhood team were not on duty at 11pm.
- g) The area was residential and an increase in traffic, loud music and loitering would cause an issue.
- h) Lots of police resources were already being used to tackle the problem.
- i) The issues would migrate to the Witton Store.
- j) She referred to her statement at page 202 of the bundle and indicated that the park was frequently used by youths to hang out. She was confident that they would be attracted to the store if the extension of hours was granted.
- k) One of her primary concerns was police resources – they were already stretched given the pandemic and this application, if it were granted would only make the situation worse.

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In answer to Members questions PC Aziz made the following points: -

- a) That they didn't receive calls from the area and the store hadn't had any issues. However, she felt very strongly that the extended hours would become an attraction for groups of youths.
- b) They were already congregating at the park which was situated 7 minutes from the premises.

In answer to Members questions Chris Jones made the following statements: -

- a) That there was a strong local backing for the store, and if he was a resident, he would like a store that opens until 1am.
- b) However, it was easy to go into a shop and sign a petition especially if asked.
- c) People signed petitions without thinking about the consequences.
- d) The two pie charts were different dates and the pie chart on page 79 was from a smaller area. That they had used the area as a whole and the applicant had focused on a 300 meter distance – WMP didn't disagree with their figures.
- e) The neighbourhood teams worked 8am-4pm, and until 5pm on Saturdays. The late shift was 2pm-11pm and they were approx. 10-12 PCSO's and the remainder were PC's.
- f) Any calls made after 11pm would go to the response team who would then grade the incident and pass it to the neighbourhood team.

At this stage in the meeting, Cllr Alden was invited to make his case and made the following points: -

- a) That he lived in Erdington and had been a Cllr for the area for 16 years.
- b) That the wider area of people who used the store went beyond Witton Road.
- c) The shop was located in a heavily residential area with alcohol supportive accommodation; the area had a growing issue of gang related violence.
- d) There were another 8 locations which served late night food and alcohol. 5 of them were situated on the main routes and not in residential streets, 3 of which were McDonalds.
- e) There was also a risk of children being drawn into crime.
- f) Violent crime was significant and WMP had submitted clear evidence on page 3 of their evidence bundle – WMP believed there would be an increase in ASB, nuisance and crime should the licence be granted.

- g) Page 9 indicated high levels of crime and if you compare it to the applicant's statistics it clearly shows a higher violent crime and criminal damage figure than the ward as a whole.
- h) The police had issues with increased vehicles, the negative impact it would cause and the risk of not meeting the licensing objectives if it was granted.
- i) The applicant confirmed that people from the wider area used the shop and this store would obviously be a destination of choice with the increased hours.
- j) There had been weekly clean ups organised for the park as it was frequently littered.
- k) The only way to meet the licensing objectives was to refuse the application, and WMP were clear about that.
- l) It was disappointing that the applicant rejected some of the conditions, and the refusal to not sell super strength alcohol would make the premises a clear target.

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

- a) There were no other premises selling alcohol late at night in the area and it would be a clear magnet.

The Chairman invited Cllr Alden to make a closing submission and as such he made the following points: -

- That WMP were clear, the only way to meet the licensing objectives was to reject the application.

The Chairman invited WMP to make their closing submission, at which point Chris Jones made the following points: -

- That extending the opening hours would increase crime and disorder, and ASB which could not be controlled within the premises licence and the extensive licensing manuals.
- There was no way to negate the concerns and the only option was to refuse the licence.

The Chairman invited the applicant and their representative to make a closing submission, at which stage Professor Roy Light on behalf of the applicant made the following points: -

- That professional operators had previously ran premises such as this one successfully. The applicant had lots of experience and they would implement rules and conditions.
- They were no concerns with the applicants or the store itself.



- It was a quiet area.
- That the statistics indicated that overall, in that area, crime and disorder was low.
- That WMP were suggesting gangs of youths would go to the area and use the store, however, they had not been to the store. Youths knew where they could get away with causing a nuisance and perhaps, they didn't come to the store because it was a quiet area and they wouldn't get away with it.
- The premises used latest CCTV technology, provided staff training and worked without any issues occurring.
- The premises opened until 11pm and had no issues. There was no evidence that the issues in other areas would migrate to the store.
- The police gave evidence and their professional opinion, however the Section 182 Guidance 9.12 stated that responsible authority representations should stand up to scrutiny at a hearing. Their respectful submission was that the concerns regarding youths was not evidence that stood up to scrutiny in terms of the premises.
- WMP stated that the other premises was granted with no issues but it was situated in a different area. However, then Chris Jones went on to later say he didn't know the area. How could he say it was an entirely different area, when he openly suggested he didn't know the area.
- There were other premises in the surrounding areas that youths could go to, why would they visit this premises when they haven't already.
- Speeding wasn't a licensing consideration.
- The store was well run and perceived in a way that gangs didn't target it. WMP suggested that hot food and alcohol would attract them, but it wasn't going to be a huge amount of food.
- However, if the Committee were concerned about food they could condition late night refreshment to hot drinks and non-alcoholic beverages only.
- He hadn't heard any real evidence, it was all based on a group of youths who were causing problems in surrounding areas and could come to the premises. A group of young people whose presence in the other areas were preventing these hard working and successful people from pursuing business.
- Surely this group of youths needed sorting out, all of them were recognisable. Premises that were serving alcohol to them should be sorted out too.

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- There were over 500 signatures on the petition and that must be relevant. Chris Jones suggested that people signed it but didn't really understand what it was for. However, it was disingenuous to say that given the large number of signatures. Additionally, no local residents objected to the application.
- That it's a shop, not a café.
- There was a substantial list of conditions.
- That the condition about no single sales of alcohol would not work, as people would just buy some chewing gum; the condition didn't really do anything at all.
- That in terms of alcohol volume, that was for the Committee to consider the view about high strength alcohol. However, it would have to be after 2300 hours.

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: -

4/070421

### **RESOLVED:-**

That the application by M & M Family 4 Limited to vary the premises licence in respect of Witton Lodge Convenience Store, 319 Witton Lodge Road, Erdington, Birmingham B23 5LY, under section 34 of the Licensing Act 2003, BE REFUSED.

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the variation application, but was not satisfied that the prevention of crime and disorder, and prevention of public nuisance, licensing objectives would be promoted if the licence were to be varied.

The Sub-Committee determined that the variation sought was substantial. Consequently, significant weight was attached to the concerns voiced by West Midlands Police. A local Neighbourhood Police Officer for Erdington, together with the Police Licensing officer, both attended to address the Sub-Committee in detail about the crime and disorder concerns in the Witton Lodge Road vicinity. The Sub-Committee also heard representations from the local Ward Councillor about the likelihood of an increase in antisocial behaviour and public nuisance.

At the start of the meeting the Sub-Committee heard from the applicant company (via its legal representative and its agent, and also via the company director). The shop had been a licensed premises for ten years; the company had taken it on in 2019. The

legal representative & agent stated that the company was a professional and businesslike operation which had been trading successfully for 18 months with no issues whatsoever. It had been refurbished and was a well-liked community store, as reflected in the 500-strong petition of support submitted in the Report. No local resident had objected. The Sub-Committee accepted all of these submissions.

The Sub-Committee then heard the submissions of West Midlands Police, who observed that whilst the premises itself was not any cause for concern, crime/antisocial behaviour and public nuisance were prevalent amongst groups of youths in the wider area. The Police described these individuals as “offending nominals”; some of them were already subject to injunctions relating directly to their miscreant behaviour.

Accordingly the Police considered that any extension of hours would have a negative impact which would place the crime and disorder objective at risk, advising the Sub-Committee that to move the terminal hour to 01:00 would inevitably attract this antisocial element out from the surrounding areas, which they presently frequented, and into the Witton Lodge Road vicinity. The Police concern related to the demand on Police resources that an increase in criminal/antisocial behaviour would create. Having examined the proposed conditions, the Police advised the Sub-Committee that these would not cover the risks and that the correct course was to reject the application.

The Police representations were supported by the local Ward Councillor, who had extensive knowledge of the problems with youths in nearby areas, via his many years as an elected representative. The Ward Councillor considered the premises to be the “obvious destination” for troublemaking youths to come between 23:00 and 01:00 - whether to buy alcohol, hot drinks or hot food. He also observed that supported housing for those with drug and alcohol problems was located nearby; he therefore considered it a risk to the licensing objectives to allow alcohol sales to an extended hour. He urged the Sub-Committee to take the professional opinion of the Police and to reject the application.

The Sub-Committee accepted the recommendation of the Police that the licensing objectives would be in jeopardy if the variation were to be granted. The risk of a large number of “offending nominals” being attracted to late-night premises nightly, in a residential area, was of great concern to the Sub-Committee. The Police were the experts in crime, disorder and antisocial behaviour; their evidence was not speculative but based on direct professional knowledge. Accordingly the application was rejected.

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 information in the application, the written and oral representations made at the hearing by the applicant company (via its legal adviser, agent and company director), by West Midlands Police, and by an Elected Member.

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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**Please note, the meeting ended at 1209.**