

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 30 JANUARY 2024
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 30 JANUARY 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Saddak Miah and Julien Pritchard.

ALSO PRESENT

Bhupinder 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)

1/300124 **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.

2/300124 **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

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interests flowchart which provides a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/300124 Apologies were submitted on behalf of Councillor Adam Higgs and Councillor Julien Pritchard was the nominated substitute Member.

MINUTES

4/300124 That the Public section of the Minutes of the meeting held on 19 December 2023 at 1000 hours were noted and the Minutes as a whole were circulated and confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – KINGS EXPRESS, 204 WITTON ROAD, ASTON, BIRMINGHAM, B6 6LB.

On Behalf of the Applicant

Patrick Burke – Agent
Kishore Kumar Rajah – Applicant

On Behalf of The Premises Licence Holder

No one making representations attended the meeting.

* * *

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 Patrick Burke on behalf of the applicant made the following points: -

- a) That the premises was currently closed but had traded before but not with an alcohol licence.
- b) That the applicant had many years' experience running shops and selling alcohol.
- c) The applicant planned to refurb the premises and extend the range and quality of goods available.

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- d) The applicant has also been running premises for over 10 years in London and different areas of Birmingham.
- e) The application had been submitted in accordance with the requirements.
- f) They had agreed a closing time with WMP (West Midlands Police).
- g) The objector had stated many residents were concerned about the application, particularly ASB (anti-social behaviour) and crime. However, there was no evidence of this and no objection from WMP.
- h) The agent reminded the Sub-Committee that any decision should be based on evidence as 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 and the accompanying Guidance issued by the Secretary of State under s182 of the Act - namely that there should be "light touch bureaucracy" when dealing with 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.
- i) That if the authority gave weight to the representation they would fail to comply with their own statement of licensing policy and the Licensing Act 2003.

The Chair then invited the applicant/representative to make a brief closing submission, Patrick Burke made the following closing statements: -

- That the objector made reference to HMOs (House in multiple occupation) in the area but the agent stated that it did not mean it was a bad thing.
- There was a premises licence opposite but they recently closed and was now operating as a clothes shop. People in the area had lost one shop.
- It was a brave thing for the applicant to open a shop with the rising costs of gas and electric.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the short decision was announced at the meeting. A full written decision of the Sub-Committee was sent to all parties as follows;

5/300124

RESOLVED:-

That the application by Kishore Kumar Rajah for a premises licence in respect of Kings Express, 204 Witton Road, Aston, Birmingham B6 6LB, be granted with an amendment of the hours as agreed between the applicant and West Midlands Police in advance of the meeting, namely:

- sale of alcohol by retail to operate from 07:00 hours until 22:00 hours (Monday to Sunday)

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- premises to remain open to the public from 07:00 hours until 22:00 hours (Monday to Sunday)

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 attended the meeting and was represented by a licensing consultant. The consultant addressed the Sub-Committee on behalf of the applicant to explain that the premises was currently a closed shop. It had traded for many years as a convenience store under a variety of different operators, but had never been a licensed premises.

The applicant had many years' experience of running such shops, and of selling alcohol. He planned to refurbish the shop and extend the range and quality of the goods on offer. He had worked in licensed premises for over ten years, running petrol stations and off licence shops in various locations such as London, Small Heath, Dudley, and also in Vauxhall Road, Nechells, which was very near the instant premises.

Regarding the view which had been taken of the application by the responsible authorities, the consultant remarked that the police had initially asked for a closing time of 22.00 hours, and a restriction on the alcohol by volume percentage of beers and ciders. However, after discussions, and in view of the applicant's experience, the police had decided there was no need for an ABV condition.

The consultant confirmed that there had been no other comments from any of the other responsible authorities. The Sub-Committee noted this.

There had been one written objection to the application, from the local Ward Councillor, who had stated that many residents were complaining about the application. The concern was the potential risks to the licensing objectives given the number of HMO properties in the area. The Ward Councillor's representation also referred to an "enormous problem" with crime and antisocial behaviour, and he was worried that the sale of alcohol would further exacerbate these issues.

However, the consultant observed that there was no evidence of risks to the licensing objectives; after all, there had been no objection from the responsible authorities. Regarding the crime prevention objective, the police had been satisfied once the hours were amended. Local residents had not personally objected, despite the notice displayed on the building giving clear instructions on how to object to an application.

The consultant reminded the Sub-Committee 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 and the accompanying Guidance issued by the Secretary of State under s182 of the Act - namely that there should be "light touch bureaucracy" when dealing with applications for premises licenses, and that restrictions should only be attached to premises licences if necessary to

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promote the licensing objectives, and be made on evidence, not based on speculation.

The applicant considered that the representations submitted had been speculative in content, and therefore felt that if the Sub-Committee were to give weight to these speculative opinions, it would in fact be failing to follow the Guidance issued by the Secretary of State under s182 of the Act, and the City Council's own Statement of Licensing Policy. The Sub-Committee noted this.

The consultant reminded the Sub-Committee that the premises was currently a closed business. The applicant intended to invest in the business; in doing so, he would improve the area. The Ward Councillor's objection had made reference to the number of HMOs in the area; the consultant remarked that this was not always a bad thing. The consultant was aware that HMO buildings were not exclusively for people who might be viewed as 'problem' residents; he knew of HMO buildings elsewhere which housed "working people with good jobs who prefer to live in that type of accommodation".

He also remarked that there had been a licensed premises situated on the opposite side of the road, at no 169, which was no longer operating. The local community had therefore lost one shop that was selling alcohol very close by to the Kings Express premises.

The consultant observed that it was something of a brave thing to open a new business given the current economy and in particular the spiralling costs of gas and electricity. He commended the applicant to the Sub-Committee as someone who intended to "open up a closed business and make it successful". The Sub-Committee was sympathetic to this view.

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 carefully considered the written representations submitted by the Ward Councillor, but as he had not attended the meeting in person, the Members did not have an opportunity to ask him any questions.

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 in the representations were about issues that were speculative. The Members agreed with this.

The principal concern of the Members was the risk level around the proposed hours for the sale of alcohol; these had been reduced such that they were satisfactory to the police. The police considered that the licensing objectives could be upheld provided the hours were amended. Despite the comments made by the Ward Councillor about a risk of an increase in crime and antisocial

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behaviour, there had not been any objection regarding crime and disorder from the police, who were the experts on crime prevention.

After careful consideration, and in the light of the shortened hours, the Sub-Committee determined that the application could safely be granted. Members considered that by granting the application with the amended hours, the four licensing objectives in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and noted that the applicant was an experienced person who had been considered satisfactory by the Police. The application was therefore granted with the amended hours.

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 via his 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.

EXCLUSION OF THE PUBLIC

6/300124

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.....