

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 15 JUNE 2022

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 15 JUNE 2022 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Julien Pritchard and Penny Wagg.

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)

1/150622 **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) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/150622 **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.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/150622 Apologies were submitted on behalf of Councillor Kooner and Councillor Pritchard was the nominated substitute Member.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – TASTY IDEA, 77
HIGH STREET, KINGS HEATH, BIRMINGHAM, B14 7BH.**

On Behalf of the Applicant

Mal Singh - Applicant

On behalf of those making representations

Katy Moriarty – Planning Officer, BCC (Birmingham City Council)

* * *

The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were raised.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy, to outline the report.

The Chair invited the applicant to make their submission and Mal Singh made the following statements: -

- a) The premises was operating as a franchise of Papa Johns, and he was the owner of Tasty Idea.
- b) He wanted to open the premises late at night for delivery after midnight.
- c) The fire department had visited the premises and had no complaints or issues.
- d) He wanted to serve the community for longer times.

The Chair then invited those making representations to present their case and Kate Moriarty made the following points: -

- a) That the site currently only had planning for hot food until 11pm at night. So they would need to make a planning application.
- b) Previously a planning application was made in 2006 to extend the hours until 1am but this was refused due to noise and disturbance.
- c) There is a flat above the site and a number of residential properties adjacent and at the rear of the site.
- d) The other premises in the area operating late at night are situated further away from residential properties.

- e) That whilst the flat above was vacant they had concerns that the flat may not remain vacant for the life time of use.
- f) How can we enforce that only deliveries are made after midnight.
- g) There is still noise associated with deliveries late at night, and that's a concern.
- h) The stress to residential and the harm outweighs the benefits of the longer opening hours.

Councillor Pritchard asked for the planning officer to confirm whether the applicant would need to make a separate planning application to go beyond 11pm.

Kate Moriarty confirmed they would have to make a separate planning application.

The Chair invited Mal Singh to make a closing submission and he made the following statements: -

- That he had no intentions to have tenants upstairs.
- He operated a system on the website which would only allow deliveries.
- 90% of orders were made using the website.
- They were hoping to deliver using bikes, at least 60% by the end of the year as they reduced carbon emissions and noise.

The Chair then invited Councillor Kate Moriarty to make her closing statements: -

- That they did not have the required planning permission for late night refreshment.
- They would have to make a separate planning application.
- There were concerns about noise and nuisance to residents.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was announced and a copy of that decision was sent to all parties as follows;

4/150622

RESOLVED:-

That the application by Tasty Idea Ltd for a premises licence in respect of Tasty Idea, 77 High Street, Kings Heath, Birmingham B14 7BH, be granted. The licence will include those conditions which were agreed between the applicant and West Midlands Police in advance of the meeting, namely:

1. The premises will cease takeaway services by midnight. After midnight the premises will only permit orders that are to be delivered by delivery drivers. The general public will not be permitted on the premises after midnight, this will be clearly signposted in a public viewable area
2. All staff employed at the premises will receive documented training on their responsibilities in accordance with the Licensing Act 2003. Staff are to receive documented refresher training a minimum of once every 12 months, signed off by the trainer or premises license holder; these documents are to be readily available for inspection by the responsible authorities
3. An incident log will be maintained at the premises. Each incident entry will detail the time, date, staff member logging the entry and details of the incident, and where possible details of those involved. This log will be made readily available for inspection by the responsible authorities
4. The premises will not allow consumption of alcohol on the premises
5. CCTV will be switched on and recording at all times that the premises carries out licensable activities. Images will be retained for a period of at least 31 days and will be made available to any of the responsible authorities to view or copies produced on request. If for any reason the CCTV hard drive needs to be replaced the previous/old hard drive will be kept on site for a minimum of 31 days and made immediately available to any of the responsible authorities on request. The CCTV will be checked to ensure that it is working each day prior to licensable activity taking place. The time of the check, the identity of the person carrying this out and the result of it will be recorded in the incident log

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, a small business and franchisee of the Papa John's pizza chain, was represented by its director. He had been the company director for a year. West Midlands Police had approved the application with the addition of some conditions. The director confirmed that after midnight the premises would only offer deliveries; customers would only be allowed inside the shop before midnight. He had submitted a useful document showing the trading hours of similar premises nearby. He also confirmed that the premises planned to replace delivery by car with delivery by e-bikes in the future.

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 of an undermining of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact undermine the licensing objectives. Written representations had been received from the Planning department of the City Council. A Planning officer also attended the meeting in person to make representations.

The Planning Officer made submissions relating to the likelihood of an increase in public nuisance, particularly noise, which she felt could be created if the application were granted. She was concerned about the impact on residential amenity, and noted that a number of residential properties were located within

close proximity. Those residents might be affected by levels of night time noise connected to a later opening.

Members carefully considered the representations made by the Planning department but were not convinced that there was an overwhelming evidential and causal link between the issues raised and the effect on the licensing objectives. The Environmental Health department of the City Council had not objected; whilst representations from Planning were of interest to the Members, Environmental Health was the authority on the prevention of public nuisance. Regarding the submissions made about Planning consent, the Sub-Committee noted that Licensing and Planning are two separate regimes.

The Sub-Committee considered that the applicant company had drafted a satisfactory operating schedule, and concluded that by granting this application with the conditions agreed by the Police, 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 the applicant company was a franchisee of a chain. Certainly the condition that, after midnight, orders would only be for delivery (and not collection), gave reassurance that problems were unlikely to arise. The Planning officer had confirmed that the High Street in Kings Heath was “a fairly urban and retail-established location”, and there was little to suggest that public nuisance was likely to arise. All in all, the application inspired confidence.

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 director, and the person (Planning officer) making representations.

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.

The meeting ended 1030 hours.

Chairman.....