

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB COMMITTEE C WEDNESDAY 27 SEPTEMBER 2017</b>
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**MINUTES OF A MEETING OF  
LICENSING SUB COMMITTEE C  
HELD ON WEDNESDAY 27 SEPTEMBER 2017  
AT 0930 HOURS IN COMMITTEE  
ROOM 1, COUNCIL HOUSE,  
BIRMINGHAM**

**PRESENT:** - Councillor Alex Buchanan in the Chair

Councillors Mike Leddy and Ian Cruise

**ALSO PRESENT**

Shaid Yasser, Licensing Section  
Joanne Swampillai, Committee Lawyer  
Gwin Pountney, Committee Manager

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**NOTICE OF RECORDING**

01/270917      The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there were confidential or exempt items.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

02/270917      There were no nominee members.

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**MINUTES**

03/270917      That the public section of the minutes held on 23 August were noted.

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**LICENSING ACT 2003 PREMISES LICENCE – GRANT PREMISES BREKKIE & BURGER CO, 180 HIGH STREET, DERITEND, BIRMINGHAM, B12 0LD.**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See Document No. 1)

The following persons attended the meeting.

**On behalf of the applicant:**

Martin Margol – Director  
Krzysztof Olczak – Director  
Duncan Craig - Barrister  
Tayibah Daud – Supporting Mr Craig

**Making Representations in respect of the application**

Mr & Mrs Yalluri – Residents  
Mr Lyle Bignon – Resident  
Mr Anil Jaffi - Resident

Following introductions by the Chairman, the main points of the report were outlined by Shaid Yasser, Licensing Section.

Prior to presenting the case for the applicants Mr Craig stated that he had 4 photographs to submit to the hearing if the Members and those making representations if they were happy to accept the submission. Following agreement by the residents the Chair accepted the photographs into the applicants' bundle of evidence.

In presenting the case for the applicants and in response to questions from Members, Mr Craig made the following points:

1. That this was exclusively an application for a licence for 1 licensable activity – the supply of alcohol from 7.00pm to 11pm Monday to Sunday.
2. That although the premises were in a Cumulative Impact Area in Digbeth this was a 20 seater café, currently trading as such, which would be providing a very small range of products, mainly beers and ciders for customers to have with their burgers.
3. Referred the Sub-Committee to section 14.36 of the revised Section 182 Guidance that stated:

*A special policy should never be absolute. Statements of licensing policy should always allow for the circumstances of each application to be considered properly and for applications that are unlikely to add to the cumulative impact on the licensing objectives to be granted. After receiving relevant representations in relation to a new application for or a variation of a licence or certificate, the licensing authority must consider whether it would be justified in departing from its special policy in the light of the individual circumstances of the case. The impact can*

*be expected to be different for premises with different styles and characteristics. For example, while a large nightclub or high capacity public house might add to problems of cumulative impact, a small restaurant or a theatre may not.*

4. That while understanding the reason for a cumulative impact policy this application was an entirely different proposition – a very small restaurant with a very small amount of alcohol on sale for customers – which was very different to other establishments within the Cumulative Impact Area (CIA).
5. That he had emailed all those making representations against the application and had received no response from 3 of them but he had met with Mrs Yalluri. This however proved an unproductive meeting.
6. In the meeting with Mrs Yalluri, he had stated that the applicants would be willing to amend their plans and reduce the opening hours from 7.00am to cease at 9.30pm as this was when all the problems started, (instead of 11pm) but this had not changed her mind.
7. That Mrs Yalluri had issues with the front gate which was also a shared entrance to her home being open during the hours of business allowing people to congregate around her front door. The applicants were willing to accept a condition on the licence for the gate to be locked during licensable activity.
8. This with reduced hours would show that the applicants were taking their responsibility to the wider community seriously.
9. That there would be no regulated entertainment – this would just be a small café extending the sale of a small amount of products to its customers.
10. That it would be right to say that the Licensing Act 2003 was a permissive piece of legislation. This 20 seater café was seeking the opportunity to offer alcohol drinks for a relatively small period of time. This would not create a public nuisance; there was no external area, no regulated entertainment – simply an application to sell small range of alcoholic products to customers. The application should therefore be granted.
11. That the premises were a posh café and restaurant with a breakfast and burger menu also providing takeaways for collection.
12. That in terms of security measures to prevent crime and disorder section 2.1 of the 182 Guidance stated that the Police should be always seen as the main source of guidance on crime and disorder.
13. Following a meeting with West Midlands Police (WMP) they had simply requested a modification of the CCTV conditions indicating that for the type of premises in question this would be the only form of security required.
14. SIA security staff would not be required for a posh café and WMP were content that the conditions within the licence application were sufficient.

15. That 10 – 20% of the turnover for the premises was takeaways – the business was predominantly a café.
16. That there was adequate room on the premises for a takeaway service without disturbing the eating customers as there was separate table for takeaways.
17. The café had been open since 2004 and had been owned by the applicants for the last 18 months.
18. That quite a large proportion of the customers were local professional who had indicated that they would be happier if they could have a pint with their burger after work. Therefore if the application was unsuccessful this would make an impact on the business.
19. That at peak periods there were a maximum of 14 to 16 covers – this was between 12pm and 2pm.
20. That at present the premises did not open in the evenings and was closed at 3pm in the afternoon. It had been decided to extend the opening times of 8am to 3pm, after consultation with customers.
21. That the opening hours would match the hours of licensable activity.
22. That the hours of licence had been propose as starting from 7am after a customer stating that he would like Guinness with his breakfast on a Saturday morning, the predominant consumption of alcohol would normally be after 11am with the burgers.
23. That the principal deterrent to vulnerable adults with drinking problems would be the prices of the drinks. As these were priced between £3 and £7 with a main meal costing around £12 these drinkers would be looking to buy cheap high strength alcohol elsewhere at a much lower price.
24. That if the Sub Committee felt at the end of the meeting that off sales were not appropriate these could be excluded as a condition on the licence. The only reason that these had been included in the application was to allow customers from the restaurant to take away a couple of bottles home with them if they wished.

In presenting their case and in response to questions from Members, Mr and Mrs Yullari made the following points:

1. That she had been a resident in the area since 1979, her husband had lived there since 1964. They had seen the area change hugely with more fatalities of young people in the last 10 years than in the last 50.
2. That although the applicants were applying for the licence the business was up for sale and therefore the licence could be transferred with it to a new owner.

3. That she could hear the noise from the shop during the day as she lived next door to the premises, as well as the smells from the food cooking. If the opening hours were extended she would have to put up with this all day.
4. That 20 people drinking would add to the anti-social behaviour already a problem within the area, to the extent that she was afraid to go out at weekends and was unable to sleep.
5. That she had written to her local MP and the Chief Constable regarding the problems within the area.
6. The granting of this licence would compound the ant-social behaviour problems and she would be suffering from lack of sleep all week as well as at the weekend.
7. That from 10pm on Fridays until 10am on Sundays the rules of law went out of the window within the area with gangs of inebriated youths shouting obscenities and taxis using the front of her house to turn around. The last 5 years had been particularly hard.
8. That she did not want a licensed premises next door to her home this would bring the problems right up to her front door although she had had a confrontation with customers from the premises blocking access to her own home.
9. That this was a 'terrible situation' which would be compounded further. They had been disturbed and their property had been damaged.
10. That if the applicants were granted a licence for alcohol sales this would be transferred to a new owner if they sold it who could decide to add more tables and a bar.
11. That by opening on Sundays the applicants would be contravening the conditions they had agreed with planning and they could go on to contravene licensing conditions.
12. That the premises were 'a greasy spoon – nothing posh' and she was angry that she could not sleep and needed her 3 sons to chaperone her in and out of her home already – she could not continue to live like this.
13. That she had a good relationship with the staff at The Crown and The Rainbow and could go and talk to them about any problems. The Rainbow had provided a front gate for her property to prevent criminal damage to it.
14. That they did not understand why a licence should be granted in an area which already had crime and disorder problems and why WMP had not objected to the licence.
15. That while accepting she had a good relationship with Staff at The Crown and The Rainbow these were further away from her – these premises were next door to her. She had 'flying freehold' which meant that when she went to her

back door she could hear people talking and smell the food cooking – she could not hear anything from the other premises. Additionally the Rainbow when having a 'Big Weekender' put security guards on her front gate. Furthermore customers from the Burger and Brekkie Co. often stood outside her front door and had had to be told to stop 'banging on the house'.

16. She had no faith in the applicant who 'told lies and had confronted her' and would not allow her to close the front gate.

The Chairman advised Mr and Mrs Yalluri that in considering new applications everything was weighed correctly by the Sub Committee and each case was judged on its own merits.

In presenting his case and in response to questions from Members, Mr Bignon made the following points:

1. That his main concern, living equi-distant from the premises as the Yalluris, was that there was already a lot of crime and disorder within the area – much of it fuelled by alcohol.
2. He also had clients within the area with businesses in the Custard Factory and Fazely Street who had invested £4m in the area and he wanted them to feel that they could operate in a safe environment without people sleeping on their doorsteps or causing criminal damage.
3. There were already significant levels of crime and disorder within the area even until 6-8am in the morning with people drinking in the area on and off premises.
4. That he worried about the 7am start for the sale of alcohol by the applicants.
5. The licensing authority with regard to new applications needed to be more progressive and forward thinking, understanding the markets and the local economy, in a regularly turbulent neighbourhood. The levels of alcohol related disorder in the area were quite disturbing.
6. There were a lot of homeless organisations within the area with many of their residents having alcohol related issues attending the centres at all times of the day, the sale of alcohol at the premises from 7am could put a lot of them at risk.
7. That he had only moved into the area in January 2017 and had quickly identified the hotspots of trouble within the area and at weekends was quite often away from the area.
8. That it would not be the right move to grant a licence for these premises.

In presenting his case and in response to questions from Members, Mr Jaffi made the following points:

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1. That within 100 metres from the location of the premises there were already 14 licensed premises and 11 alcohol retail premises. .
2. There were homeless shelters within the area with clients trying to get alcohol all hours of the day.
3. That he had lived within the area for 30 years and had seen increase in loud music, assault, robbery, 2 shootings within the area and a premises burned down where he had himself had to rescue someone from the fire.
4. That new residential premises were going up within the area – it therefore needed to become a vibrant and safe place for people to live. .

The Chairman advised Mr Jaffi that in considering this application the number of licences already applied for and granted within the area did not count – the law took a permissive approach to licensing.

In summing up Mrs Yalluri made the following points:

1. That their lives were already impacted by the noise and anti-social behaviour within the area and this would be something else that would add to the impact.
2. That she already did not get much sleep at nights – the 7am opening for these premises would mean that she would get no sleep at all with the noise starting again early in the morning,
3. That as well as the crime and disorder she had to put up with sirens at all hours from emergency services attending these events.

In summing up Mr Craig made the following points:

1. That while the issues raised by the residents were genuine understandable concerns regarding the area these premises would not add to that.
2. That this was an entirely different application for a posh café selling alcohol with food.
3. That there had been no representations against the licence by any of the responsible authorities.
4. That the applicants would accept additional conditions deemed necessary by the Sub Committee.
5. That while the premises were for sale there was no interest at present.

At 1058 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1200 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

04/270917

**RESOLVED:-**

That the application by Brekkie & Burger Co Ltd for a premises licence in respect of **Brekkie & Burger Co, 180 High Street, Deritend, Birmingham, B12 0LD BE REFUSED.**

In reaching this decision, the Sub-Committee was mindful of the promotion of the Licensing Objectives in the Act, particularly the prevention of crime and disorder, public safety and the prevention of public nuisance.

The Sub-Committee's reasons for refusing this application for a premises licence are due principally to the fact that the premises is located within a Cumulative Impact Zone, namely Digbeth and the proposed application did not justify a departure from policy.

The Sub Committee carefully considered the Operating Schedule put forward by the applicant, and the likely impact of the application. The Sub-Committee also gave consideration to whether any measures could be taken to ensure that the four licensing objectives were adequately promoted and that therefore, the licence could be granted.

They noted in particular that the applicant was prepared to bring forward the time for ending alcohol sales to 2130 hours (not 2300 hours as the application form had originally requested), and had also offered to lock the gate to the car park whilst alcohol was on sale. The applicant's legal representative also reminded the Members that it was open to them to decline to allow "off sales" if they felt it necessary to impose a stricter condition, to ensure that alcohol would only be consumed inside the premises.

However Members considered that modifying the conditions of the licence would still not mitigate the concerns raised by those making representations at the meeting, who were local residents.

The local residents described in detail the problems of nuisance, anti-social behaviour and crime & disorder which they had witnessed in the immediate vicinity, and also in that part of Digbeth generally. It appeared that much of this nuisance behaviour was alcohol-fuelled, due to the high concentration of licensed premises that are a known feature of the Digbeth area. The Sub-Committee accepted of course that such problems were not the fault of the applicant, as the premises was currently a café, and was therefore serving food only, not alcohol; notwithstanding that, the Sub-Committee was looking for reassurance that the proposed operation would not add to the alcohol-fuelled problems already being experienced.

However after hearing the submissions relating to the proposed operation, and examining the photographs, the Sub-Committee felt that the considerations relating to the Cumulative Impact aspect meant that the correct course was refusal. The applicant described the premises as a 'posh café'; the objectors considered it to be a 'greasy spoon'. The photographs did not particularly confirm that the premises were a 'posh café'.



Local residents said that they were already disturbed by noise and cooking smells from the premises, even though it currently closed at 1500 hours; they were worried about the proposal that the operating hours should be extended into the evenings. Local crime and disorder had included an arson attack and two shootings, as well as the more general issues of noise and shouting. Furthermore, there was a preponderance of hostels/ charitable organisations in the area, catering to vulnerable people including those with alcohol problems, and the 0700 hours start time was therefore another concern.

The objectors stressed that local residents and business users wanted to feel safe in Digbeth. The Sub-Committee felt that to add further licensed premises to the Cumulative Impact Zone would have an impact and should therefore be refused. A burger café offering alcohol was not the type of premises justifying a departure from policy.

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 contained in the application, the written representations received and the submissions made at the hearing by the applicant, their legal representative and by those 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.

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05/270917

**OTHER URGENT BUSINESS**

There were no matters of urgent business.

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06/270917

**EXCLUSION OF THE PUBLIC**

**RESOLVED:-**

That in view of the nature of the business to be transacted which includes exempt information of the category indicated that the public be now excluded from the meeting:-

Minutes – Exempt Paragraphs 3 and 4.

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