

BIRMINGHAM CITY COUNCIL

**LICENSING SUB-
COMMITTEE B
TUESDAY, 19 MARCH, 2019**

**MINUTES OF A MEETING OF THE LICENSING
SUB-COMMITTEE A HELD ON 19 MARCH,
2019 AT 0930 HOURS, IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM, B1 1BB**

PRESENT: - Councillor Nagina Kauser in the Chair.

Councillors Adam Higgs and Mike Sharpe

ALSO PRESENT

Shaid Yasser, Licensing Section
Parminder Bhomra, Committee Lawyer
Louisa Nisbett, Committee Manager

NOTICE OF RECORDING

1/190319 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATION OF INTERESTS

2/190319 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 to be recorded in the minutes of the meeting.

APOLOGIES

3/190319 There were no apologies received.

MINUTES

4/190319 The public section of the Minutes of the meeting on 12 February, 2019, having been previously circulated were confirmed and signed by the Chairman.

**LICENSING ACT 2003 PREMISES LICENCE GRANT EDEN MANNA
SUPERMARKET, 122 FRANCES ROAD, COTTERIDGE,
BIRMINGHAM B30 3DX**

5/190319 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On behalf of the Applicant

Boniface Lumumba, Applicant
Anthony Gregson – Agent
Stacey Lukika - Partner

Those Making Representations

Jonathan Leonard – Headteacher Cotteridge Primary School
Councillor Mary Locke

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

Anthony Gregson made the following points with regards to the application and in response to questions from Members:-

1. With regard to the representations from the school and the protection of children from harm by exposing them to a unhealthy lifestyle, there would be no advertisements for alcohol on display. All alcohol would be kept behind the counter and supervised.
2. Any alcohol sold would be consumed off the premises, therefore people could not drink alcohol at the premises.
3. There would be an over 25 policy in place and notices displayed stating no ID no sale. Children had been taken into consideration when addressing the licensing conditions.
4. With regard to crime, CCTV would be in place and made available to the police as requested. This added to the security in the area.
5. No alcohol could be consumed on the premises and any groups of people outside the premises will be asked to move on and the police called if necessary. Records of any incidents will be kept in the incident book. They did not see there was any relation to crime and selling alcohol that was consumed off the premises.
6. The shop currently sold a variety of products from sweets to African foods, bread and milk etc that was sold in a normal corner shop and convenient

store. The business was new to the area and they looked to sell alcohol as a bonus. The business partner had a few year's experience of selling alcohol in a shop

7. The applicant was a personal licence holder and understood the 4 licensing objectives. They did not think he should be put under pressure to name them however the applicant named the protection of children as one of the objectives.
8. In response to a question the staff would consist of the applicant and business partner. Any appropriate training will be undertaken by staff. The applicant will be the DPS. Training records will be kept and logs of refusals to sell alcohol. The business partner will keep records of alcohol sold in his absence.
9. The stock room was at the back of the premises. CCTV covered behind the counter and entrance. There was also cameras near the stock room and covering the back of the premises. The plans were attached showing the locations in the premises.
10. The business had been running since November. They lived 20 minutes away from the area. They had experience of dealing with anti-social behaviour.
11. The entrance of the school was not opposite the shop. There was another school near the shop. The pupils from Cotteridge School did not necessarily pass the shop.
12. They had emailed the school and asked them to contact them to discuss the application, however they did not respond.

In making representations against the application Jonathan Leonard, Headteacher, Cotteridge School made the following points with regards to the application and in response to questions from Members:-

1. With regard to the protection of children from harm, if the licence was permitted it would place children at significant risk of harm. There were 420 children up to 11 years old, 70 of which were vulnerable. The safeguarding of the vulnerable children was paramount.
2. Last Autumn 2 children from the school had been taken into care by BCC as a direct result of alcoholic parents. Another parent had been banned from being on the school site due to presenting on the site under the influence of alcohol
3. Parents will not be able to make their way to school without the distraction of alcohol. Parents would be at risk of drinking outside the school owing to easy access to alcohol.
4. With regard to safeguarding children in the playground and the messages given. They followed programmes linked to healthy living and lifestyles, substance and alcohol abuse. Placing an off licence within metres of the classrooms undermined the messages given to the children.

5. He disagreed that the entrance was not opposite the shop. There were signs on the windows saying “off-licence” metres away from the year one window.
6. Jonathan Leonard sought to introduce new evidence in the form of pictures of the “off licence” sign however following legal advice, the introduction of new evidence was objected to by the applicant.
7. He continued that the sign could be visibly seen from outside the school. He felt it was inappropriate for the Committee to approve a licence for alcohol to sold in close proximity to a BCC school especially with parents presenting on the school site whilst intoxicated.
8. The nature of the retail sector businesses opposite the school were considered to be unhealthy for young children. These included a vaping shop and a massage parlour. He will be objecting to the renewal of their licence when the licences were due.
9. The Committee was requested to at least not agree to a licence for alcohol until after 1730 hours when the children were no longer on site. It was noted by the Sub-Committee that there was no evidence that parents had made any objections.
10. Jonathan Leonard was disappointed that neither West Midlands Police or Licensing Enforcement had made an objection to the licence.

In making representations against the application Councillor Mary Locke made the following points with regards to the application and in response to questions from Members:-

1. Councillor Mary Locke was advised that a comment that WMP had provided feedback to her about the licence when it was too late would not be taken into account.
2. She was a resident in Stirchley and the shop was in a residential area.
3. The children from the school were vulnerable. She was worried about the opening hours of the shop from 1100 hours. Children leaving the school could see people who were intoxicated.
4. Councillor Mary Locke made reference to the CCTV and added that there was significant number of crimes in the area listing burglary, assault, vehicle crimes and public disorder as crimes that could be as a consequence of alcohol being available.
5. Councillor Mary Locke feared for the safety and wellbeing of children, teacher and staff from the school.
6. She had serious concerns about the amount of children under safeguarding. It was a nice area and she understood that the business needed to make money but the well-being and protection of children was a priority.

7. Councillor Mary Locke asked that a variation of hours at least be included as a condition and added that there needed to be closer working with the authorities in the future.

During his summing up in making representations against the application Jonathan Leonard stressed that on behalf of the school children of a Local Authority School and for the safety and protection of children, he requested that the Sub-Committee did not permit the sale of alcohol while there were children in the area.

During his summing up on behalf of the applicant, Anthony Gregson stated that no objections to the application had been submitted by the police. Parents also had the option to make representations but had chose not to. The application had been advertised in the local papers and outside the premises. The protection of children had been considered in the application. The applicant had considered the 4 licensing objectives and would remove all advertising of alcohol.

Following a short adjournment at 1020 hours the meeting reconvened at 1023 hours. The Applicant confirmed that they were happy to agree to a variation of hours for the sale of alcohol from 1730 hours to 1200 midnight, Monday to Friday and 1100 hours to 1200 midnight, Saturday and Sunday.

At 1025 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

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

6/190319

RESOLVED:-

That the application by Eden Manna Supermarkets Ltd for a premises licence in respect of Eden Manna Supermarket, 122 Frances Road, Cotteridge, Birmingham, B30 3DX be **granted** subject to the modified licensable hours and condition, in addition to those conditions as agreed with the licensing enforcement authority to promote the prevention of crime and disorder, and the protection of children from harm objectives in the Act.

A.	Modification of hours – Alcohol	The hours for the sale of alcohol (for consumption off the premises) shall apply as follows: 17.30 hours until 12:00 midnight (Monday to Friday) 11:00 hours until 12:00 midnight (Saturday to Sunday)
B.	Opening hours	The premises to remain open to the public as follows: 06:00 hours until 12:00 midnight (Monday to Sunday)

The reason for granting the modified application (a reduction in the licensable hours from 11:00 hours to 17:30 hours on Monday to Friday) as submitted during the hearing by the applicant's agent in response to a comment from the local Councillor for Stirchley, was in light of the totality of issues presented by other persons.

Members noted the head teacher of Cotteridge Primary School had concerns about the sale of alcohol before 17:30 hours, a time when primary aged children stayed on site. The head teacher described some parents present on site to collect their children were intoxicated, and feared the situation would increase in the summer months as a result of the off-licence in such close proximity to the school. Further the school was surrounded by a few local businesses whose retail nature was considered to be un-healthy for young children.

The Sub Committee weighed up the local Councillor's concerns and fears based on the supporting crime maps and crime figures for the neighbourhood in her written representation, but found none of these could be substantiated. There were no recordings of alcohol related crime in connection with licensed premises or as an influencing factor in the recorded offences for Members to consider and assess. The local Councillor did however indicate a variation of hours could be acceptable.

Members therefore determined in light of the applicant's agreed conditions with a responsible authority, Licensing Enforcement, together with the offer of reduced licensable hours would overcome the concerns of the head teacher, and enhance the protection of children from harm licensing objective.

However, one unforeseen consequence of the reduced licensable hours on offer required the attention of Members. The Sub Committee were mindful of the alcohol being on display from when the premises are open i.e. 06:00 hours when not authorised for sale, until later in the day from 17:30pm to 12:00 midnight, Monday to Friday. Members determined it would be inappropriate for all alcohol within the trading area to be on view, and as such felt the following condition is added to the grant of the licence to prevent access to the alcohol by customers.

C. Display of Alcohol

The licence holder shall ensure that at times when the premises are open but alcohol is not for sale that alcohol is not on view and is covered by lockable blinds or shutters

The Sub-Committee considers the conditions imposed to be appropriate, reasonable and proportionate to address concerns raised.

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 representations received and the submissions made at the hearing by the applicant and agent and 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

**LICENSING ACT 2003 (TEMPORARY EVENT NOTICE) – QUANTUM, 77A
UPPER TRINITY STREET, BIRMINGHAM, B9 4EG**

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

(See document No. 2)

The following persons attended the meeting.

On behalf of the applicant

Thomas Jenkins – Applicant
Heath Thomas – Solicitor

Those making representations

PC Deano Walker – West Midlands Police
Martin Key – Environmental Health

Following introductions by the Chairman, Shaid Yasser, Licensing Section, made introductory comments relating to the report.

Heath Thomas made the following points on behalf of the applicant and in response to questions from Members:-

1. Following a discussion with WMP and Environmental Services this morning regarding the 3 TENS in respect of Quantum Exhibition Centre, on 7 April, 21 April and 9 May, 2019 WMP is only objecting to the 9 May TEN. Environmental Health is objecting to all three dates.
2. He was aware from Environmental Health that a previous TEN on 27 October and 1 December had an end time of 0200 hours and the TEN on 1 March had run until 0300 hours.

Martin Key, Environmental Health suggested that Environmental Health be given the opportunity to attend the premises and assess the noise and measures that were in place by allowing the TENS on 7 April to go ahead. He also asked that the hours for the TENS be amended to 0200 hours. He further suggested that the TENS on 21 April and 9 May be adjourned until after the first TENS had been monitored.

Martin Key was concerned that the premises were not designed as a nightclub but were in fact a warehouse. He would object to any TEN at the premises unless a noise monitoring device was installed

WMP had objected to the TEN on 9 May as it was a Thursday. They would be happy if the end time was amended to 0200 hours

There was a mutual agreement between the parties that it would be appropriate to allow the first TEN for 7 April, 2019 to take place with reduced hours to 0200 hours and Martin Keys withdrew his objection to 7 April to enable Environmental Health to monitor and assess the device. The TENS on 21 April and 9 May should be adjourned until the first available date following such monitoring had taken place.

At 1149 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

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

7/190319 **RESOLVED**

That, having considered as a preliminary point prior to the hearing, representations from West Midlands Police and Environmental Health in respect of the temporary event notice, as submitted by Thomas Jenkins the premises user, for events to be held on 7 April, 2019, 21 April, 2019 and 9 May, 2019 at Quantum, this Sub-Committee determines that:

A Counter Notice is not issued under Section 105 of the Licensing Act 2003 in respect of the modified TEN for 7 April and the remaining TENs are adjourned until 0930 hours on Thursday, 11 April, 2019, Room C, Council House Extension, Margaret Street, Birmingham, B3 3BU, when this Sub-Committee sits to consider the objections from the Responsible Authorities.

The Sub-Committee recognised a mutual agreement between the parties was in place following a constructive dialogue over the hours sought for a temporary event on 7 April, 2019 with conditions attached from the venue's premises licence. Members noted the parties considered it would be appropriate to have the first TEN for 7 April, 2019 take place with reduced hours from 00:30 to 02:00 hours to enable Environmental Health to monitor and assess the installation of a noise monitoring device.

Although some caution was expressed by both Responsible Authorities in connection with the design of the venue and its proposed operation beyond 02:00 hours in the TEN's submitted for events of 21 April and 9 May, 2019, the consensus was that these matters be adjourned to allow the responsible authorities to determine whether the licensing objectives were being promoted by the TEN's user as indicated by the Solicitor for the premises user.

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. No appeal may be

brought later than five working days before the day on which the event period specified in the Temporary Event Notice begins.

OTHER URGENT BUSINESS

There was no other urgent business.

The meeting ended at 1157 hours.

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CHAIRMAN