

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C

WEDNESDAY, 21 APRIL 2021 AT 10:00 HOURS
IN ON-LINE MEETING, MICROSOFT TEAMS

Please note a short break will be taken approximately 90 minutes from the start of the meeting and a 30 minute break will be taken at 1300 hours.

A G E N D A

1 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 Internet site (www.civico.net/birmingham) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant 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.

3 APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

1 - 22

4 MINUTES

To confirm and sign the Minutes of the meeting held on 22 January 2021.

To confirm and sign the Minutes of the meeting held on 3 February 2021.

5 OTHER URGENT BUSINESS

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.

6 **EXCLUSION OF THE PUBLIC**

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

PRIVATE AGENDA

1 **LICENSING ACT 2003 - PREMISES LICENCE – APPLICATION TO VARY A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS DESIGNATED PREMISES SUPERVISOR**

Report of the Interim Assistant Director of Regulation and Enforcement
N.B. Application scheduled to be heard at 1000 hours.

2 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE C
22 JANUARY 2021**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON FRIDAY 22 JANUARY 2021 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Nagina Kauser and Mike Sharpe

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Mandeep Marwaha – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/220121 **NOTICE OF RECORDING/WEBCAST**

The Chair 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.

2/220121 **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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/220121 Apologies were submitted from Councillors Straker-Welds and Neil Eustace. Councillors Nagina Kauser and Mike Sharpe were noted as nominee Members.

4/220121 **MINUTES**

The minutes of the meeting held on 23 September, 16 October and 16 December 2020 were circulated, confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – GRANT 24-7 365 LOCAL, 109 VILLA ROAD, LOZELLS, BIRMINGHAM, B19 1NH

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

(See document No. 1)

On Behalf of the Applicant

Mr Duncan Craig – Barrister, Citadel Chambers
Mr Samuel Berhane – Applicant

Those Making Representations

PC Abdool Rohomon – West Midlands Police (WMP)

* * *

The Chair introduced the Members and officers present and he asked if there were any preliminary points for the Sub-Committee to consider. There were no preliminary points to consider.

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

The Chair invited Mr Craig to outline the representation on behalf of the applicant made the following points: -

- a) The application was originally submitted for a 24-hour licence.
- b) Following various conversations with the applicant, Mr Craig was instructed to scale back the scope of the application. i.e. The sale of alcohol by retail reduced from 24 hours to 11am -2am.
- c) Mr Craig noted, WMP had concerns in relation to street drinking therefore the opening time had been adjusted to 11am. The 11am was specifically designed to tackle the street drinking issue.
- d) Mr Craig stated the operating schedule (opening hours of the premises to the public), was fairly comprehensive. He did not agree with the assertion made by the police that the premises had not taken matters into account. He felt the operating schedule dealt with matters adequately subject to the further conditions that had been proposed.

- e) Mr Craig referred to the condition on CCTV being installed on the premises, (page 48 of the document pack). He noted in WMP evidence raised concerns around youths loitering in the area and if the CCTV was to the satisfaction of WMP at the premises, this would assist in the promotion of the prevention of crime and disorder licensing objective.
- f) Mr Craig referred to the representations made by Licensing Authority; Environmental Health. He confirmed the conditions suggested by the two responsible authorities had been agreed. This would form part of conditions on the licence if granted.
- g) Reference was made to the proposed conditions;
 - Proposed condition 1 - he noticed there was no reference to an incident book which he thought this would be appropriate as WMP had concerns around the crime in the area.
 - Proposed conditions 4 & 5 - addressed illegal workers. There were no issues with employment of illegal workers at the premises albeit there had been issues within the area.
 - Proposed conditions 2 & 3 - both dealt with the issue of street drinking. He noted people who engage with street drinking tend to gravitate towards the higher strength beers; lagers and ciders. It was noted the premises would not stock or sell any beers or ciders with an ABV of greater than 6.5%. Street drinkers frequently worked on begging for money from people to get buy single cans. Proposed condition 3 prohibits the sale of single beers or ciders from the premises.
- h) Mr Craig had visited the premises on three separate occasions.
- i) One visit was on the same date as PC Alistair Wood (5th January 2021). He confirmed whilst he visited the premises, two WMP Officers entered the premises.
- j) Mr Craig referred to WMP representations, where it stated there was not enough Police resources in the area, yet two officers came into the premises.
- k) Mr Craig noted the WMP officers were in the local area delivering posters related to Covid-19 and maximum numbers allowed in the shops.
- l) Mr Craig found it encouraging to see officers on the ground especially in this area.
- m) Mr Craig described the premises being small.
- n) Mr Berhane had acquired the shop in the hope to secure the licence.
- o) Mr Berhane's view was the viability of the shop was questionable without the licence. Mr Craig noted the business would not be viable without a licence as it was not big enough to function. It was a small premise and easier to manage.

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- p) Visibility and supervision within the shop was clear as it was small shop with a central isle.
- q) 5th January 2021 visit – Mr Craig noted there was some alcoholic products in the fridge display. He stated this was a misapprehension and there was no suggestion that Mr Berhane had sold any alcohol.
- r) Mr Berhane's understanding was that he could display the alcohol but not display for sale. Reference was made to the offence on section 137 of the Licensing Act, displaying alcohol for sale.
- s) Since the 5th January 2021, Mr Craig had visited the premises and on two further separate occasions where no alcohol was on display.
- t) Mr Berhane had removed the alcohol from display and was 'sorry' as he wasn't selling the alcohol. Mr Craig requested for the Sub-Committee to attach little weight to this.
- u) Mr Craig noted that every visit he made to the premises; the members of staff had been wearing masks.
- v) On the 5th January 2021, as some people cannot communicate with their mask on, Mr Berhane was speaking to WMP Officers with his mask off.
- w) Mr Berhane had been in the UK since 2015 and had no issues with the Police.
- x) In Mr Craig's view, the WMP representations did not deal with the application itself as the witness statements from PC Alistair John Wood and the redacted statement were both dated 2019.
- y) The application from Mr Berhane was submitted in the autumn of 2020, therefore the witness statements pre-dated the application by approximately a year.
- z) Mr Craig stated each application should be dealt with on its own merits which was enshrined in the statement of Licensing Policy as well as 1.17 in section 102 guidance. He struggled to see what weight the Sub-Committee could attach to these witness statements as he felt these did not deal with this application.
- aa) Mr Craig referred to the statement from PC Alistair Wood which clearly identified issues within the area. He noted this area was not a cumulative impact area however, he added WMP had enormous influence within BCC Statement of Licensing Policy in terms of Cumulative Impact Areas.
- bb) Mr Berhane had no objections made against him and no suggestions that he would run a premises contrary to the way a normal business would operate. He was trying to survive in these difficult times by offering a service.
- cc) Mr Craig added robust structured conditions were added to the licence (operating schedule) and had been agreed with the two responsible authorities.

- dd) Mr Craig referred to the lack of WMP resources and this was not Mr Berhane's fault.
- ee) He added if the business was closed because it was not viable, this would not be good for the local community as there would be lack of supervision i.e. no additional CCTV in the area.
- ff) Mr Craig referred to the witness statement of PC Alistair Wood's and highlighted some points;
- Paragraph 25 - 'Police logs, reports from the community, CCTV from businesses' – He stated, if there was no business at this premises, there would be no CCTV to detect or prevent crime. There was no requirement for a CCTV system however, if this was enshrined in the licence as a condition then this would be a legal requirement.
 - Paragraph 29 – 'Joint visit was conducted with Trading Standards as a result of examining intelligence logs and witness breaches taking place during Targeted Area Patrol (TAP).....' – He presumed this did not relate to this premises. Mr Craig added this paragraph did not make any sense to the application and it looked like it was copied and pasted from a previous statement as it referred to a 'closure order'. If this premises had been subject to a closure order at any time, explicit reference should have been made therefore he questioned what was meant by this.
 - Paragraph 34 – Refers to reduction in crime which was welcomed and there was an improving picture in the area.
 - Paragraph 48 – 'Residents premises above the shop and directly opposite the shop' – The premises were not proposing to sell alcohol 24 hours now. No representations had been made by the residents and therefore it was clear that local residents did not feel they would be impacted by this application.
 - Paragraph 49 – Dealt with the issue of 'need.'
 - Paragraph 50 & 51 – referred to visits made by WMP Officers on the 4th and 5th January 2021 – Mr Craig had already covered this in earlier points.
 - Paragraph 53 - 'if alcohol licence was granted to this premises it will have a negative impact on the work that has gone into the area' – The Neighbourhood Officer was not in attendance to question against this point, however, there was no evidence contained within these statements that would direct to the point stated. These were nebulous references to issues in the wider area. This was not a cumulative impact area and he did not understand how this point was being supported.
- gg) Mr Craig invited the Sub-Committee to consider the points raised and a more robust and structured application had been placed forward.

hh) There were no representations from any other responsible authorities, and these had been addressed by a way of agreement. The decision cannot be based on the lack of resources within WMP which was not fair on people to operate a legitimate business.

ii) Mr Craig invited the Sub-Committee to grant the application.

In response to Members questions Mr Craig and Mr Berhane made the following points:

- 1) Mr Craig informed the Sub-Committee the premises were operating as a convenience store. It was a small premise selling groceries, household goods, milk etc and it was proposed to remain as this going forward as well as selling alcohol if the licence was granted.
- 2) Mr Craig added alcohol would be a significant proportion of the business.
- 3) Mr Berhane informed alcohol would be approximately 25% of the business.
- 4) The previous business at the premises was a hairdresser.
- 5) Mr Berhane stated he had experience in selling alcohol as he had a previous bar business in Newtown.
- 6) The opening hours of the premises would be 11am – 2am.
- 7) Mr Berhane stated if he saw people who were drunk after 11pm, he would not serve them. This would discourage them from buying more alcohol.
- 8) Mr Craig added this was a modest application, very small premises. There would be greater restrictions on this premises than other premises in the area due to the conditions that were suggested i.e. single cans and ABV.
- 9) Mr Craig indicated when he had visited the premises, there were youths loitering around as well as in neighbouring areas. This was an issue within the area, and he felt by opening another viable business, this would make it less likely for issues to occur. A closed premise would raise more concerns.
- 10) Given what was being applied for and the restrictions placed upon the business, he suggested this would not add to the concerns.
- 11) Mr Berhane confirmed he lived in Quinton (B32).
- 12) Mr Craig noted Lozell's was a challenging area and it was good to see WMP Officers on the ground which acted as a deterrent to people selling drugs on the streets. It gave local businesses, residents a degree of comfort to detect and prevent crime.
- 13) Mr Craig and Mr Berhane confirmed the opening hours would be consistent with the sale of the alcohol timeframe. Both would be from 11am – 2am. He suggested

the Sub-Committee could review the hours and grant whatever time they deemed appropriate.

- 14) Witness statement from PC Alistair Wood stated, paragraph 47 stated 'Street drinking was a persistent problem....' – Mr Craig noted comments and the specific conditions suggested by the applicant were specifically targeting this issue. Mr Berhane understood and accepted there was an issue with street drinking in the area.
- 15) Mr Berhane informed the Sub-Committee if there were any issues or problems with the street drinkers, he would inform the Police.
- 16) Mr Berhane stated he previously managed another premise on Breeley Street in Newton and he was responsible for this premises for more than 3 years.
- 17) Mr Berhane classed himself as a businessman and if the licence to sell alcohol was not granted, this would impact his business and the community.
- 18) Mr Berhane had acquired the premises, 109 Villa Road for the past 3-4 months.
- 19) It was noted, though Mr Berhane stated he was an experienced businessman, however, on 4th January when the premise was visited by WMP Officers, there was no Covid-19 restrictions implemented. Mr Berhane added the shop was closed and not ready for opening when the Officers came in. The premises was opened one, two hours only.
- 20) The Chair referred to the statement from PC Alistair Wood (4th January) where four persons were in the frontage of the shop and door of the premises was opened to allow access. It was noted the till was on. The 4 people in the shop were not wearing face coverings in breach of Covid-19 regulations. The alcohol was clearly on display. The Chair noted as an experienced shop owner, Covid-19 regulations should have been in place as this was the law.
- 21) Mr Berhane confirmed the 4 people in the premises on the 4th January did not live in the same household. Only 2 people lived in the same household.
- 22) Mr Craig added the shop was stocked up and subsequent visits made after the 5th January visit, the staff had masks on. Notices had been placed on the doors (indicating maximum of 3 people in the shop at any one-time including staff).
- 23) Mr Craig referred to his local Tesco who at times did not comply to the Covid-19 regulations. He had witnessed a discernible improvement in the past month at the premises concerned.
- 24) The Chair referred to the community of Lozell's who had been heavily affected by Covid-19 and the deaths amongst the extended households had been horrendous. He added, if Mr Berhane was starting off as a new business owner, he could accept errors. However, as a 'supposedly experienced business shop owner' it was exasperating to hear there was no adherence to the law particularly during a difficult time.

25) Mr Craig accepted the point made by the Chair; however, he had visited the premises the night before this Committee (20th January), and he stated he wouldn't have gone back if he never felt it was safe.

26) No questions were raised by the Committee lawyer.

Afterwards, the Chairman invited PC Rohomon to outline the representation on behalf of WMP and PC Rohomon made the following points: -

- a) PC Rohomon asked Mr Berhane to confirm the details of the previous premises managed by him. Mr Berhane confirmed the previous premises was at 105 Breeley Street.
- b) PC Rohomon addressed issues on Villa Road for WMP, local community and businesses.
- c) He noted Villa Road was a small area and there were several issues and referred to PC Alistair Wood's witness statement;
 - Paragraph 9 – Villa Road was approximately 600 metres long. The impact area was only 200 metres in length of 600 metres of Villa Road. This had placed a significant impact on policing.
 - Paragraph 10 – The map of the neighbourhood for comparison, the area highlighted in red was the CPW exclusion area. Out of 600 metres of Villa Road, the 200 metres caused significant issues.
 - He disagreed with Mr Craig comments around the weight of the statement as PC Alistair Wood and his team worked in this area every day. This was clearly demonstrated in his impact statement.
- d) He reminded the Sub-Committee; licence applications were for the applicants to demonstrate how their business would not lead to the impact the licensing objectives in that area and not the WMP or other responsible authority (as referenced in the 182 guidance sections 8.41 – 8.46).
- e) PC Rohomon referred to point 8.46 of the 182 guidance which referred to seeking expert advice on the application. It was noted there was no consultation on this application and a generic application was submitted by the agent.
- f) He noted Mr Berhane did not live in Lozell's but lived in Quinton. There was no effort made to identify the issues within this area. No effort had been made to explore the concerns raised by various authorities.
- g) The original application was for 24 hours, 7 days a week for the sale of alcohol. He added the applicant probably realised the opening time was too long therefore adjusted this to 11am – 2am which did not address the issues in the area.
- h) Initially, there was no consultation with the authorities, and if issues had been explored, this was not evident in the licence applied for.

- i) The issues in this area was readily available and just required communication to the relevant authorities e.g. WMP, other Neighbourhood Teams, websites etc.
- j) There was no Cumulative Impact Policy in this area as well as any part of Birmingham. This was due to the issues with the Local Government Association and Home Office (i.e. in terms of where the impact areas can be extended for Licensing Policies).
- k) A Cumulative Impact Policy was not required as there was enough issues in the area.
- l) An application for Cumulative Impact for this area was being worked upon prior the National Policy going through. As there was no Cumulative Impact Assessment for this area, WMP had to highlight these concerns to the Sub-Committee hence the detailed statement from PC Alistair Wood was submitted. PC Alistair Wood worked in the area and dealt with the day to day issues e.g. problems, crime, queries from Councillors, residents and businesses in the area.
- m) There was no need to have a Cumulative Impact Assessment to demonstrate that there were concerns.

- Paragraph 18 – Referred to PC Alistair Wood's statement which had a graph showing the offences Control Works log data for the types of offences on Villa Road over a 6-month period (March 2020 – August 2020). On 23 March 2020, the first lockdown due to Covid-19 and the Government announced only essential shops would remain open. This premises was a grocery shop, therefore 3 months ago this would be classed as an 'essential shop'.

During the lockdown periods it was noted, crime fell as people stayed indoors. However, July 4th, relaxation of the lockdown rules, it was noted over the 200 metres radius of Villa Road crime, disorder and Anti-Social Behaviour was fluctuating.

- Intelligence – A lot of information was received through intelligence as people would report information without reporting a crime. It was noted Community intelligence (ASB), drugs and totals were very high from a pre-Covid-19 period (September 2019 -August 2020).

There were a number of incidents ranging from drug offences, robberies, weapons, anti-social behaviour, alcohol related ASB in a very small location.

- n) Due to the nature of issues in this location, WMP had to go to the next stage of dedicating resources; ensuring policing plans with partners and businesses was in place to tackle issues which was significant measures taken by WMP.
- o) CCTV added on this premises would not make any difference to the issues in the area. CCTV had to be fit for purpose.

- p) Closure Order referred to at paragraph 29 was not against this premises however, it indicated how much work goes into to control the issues in this location by getting closure orders. Problems related to drug dealing, ASB, beggar's, prostitutes etc.
- q) Paragraph 50 – 5th January, Mr Craig went to the premises and there was a small amount of alcohol on display which was not intended for sale and Mr Craig stated no offences had occurred. However, PC Rohomon noted two offences had occurred; section 136 (selling alcohol without authority of a licence) and section 137 (exposing alcohol for sale without the authority of a licence) – the alcohol was on display.

WMP Officers had attended the premises on 4th January 2020 whilst undertaking Covid-19 regulation checks and advised to remove the alcohol from display. Mr Berhane said he was closing shortly and will remove the alcohol yet he hadn't removed this 24 hours later when WMP officers visited the premises again. The alcohol was still on display.

- r) The premises was open with alcohol on display without a licence which indicated this was not the action of a responsible operator.
- s) Covid-19 issues in the area were profound and the premises was open therefore compliance with Covid-19 regulations was required. He added there was a lot of weight attached to the two visits made by WMP Officers.
- t) The plan submitted with the application was very limiting and only indicated a section of the counter. It did not indicate where the alcohol was on display.
- u) Mr Craig stated the alcohol would be a significant proportion of the business, yet Mr Berhane indicted this would be only 25% sales of his business therefore conflicting information.
- v) He confirmed, 109 Villa Road was previously a hairdresser/ barbers and had never been a grocery shop or a licensed premise.
- w) PC Rohomon referred to the second witness statement from PC Alistair Wood (page 75) dated 2019. There were two statements dated 2019 as this formed part of a package that justified problem policing area. It was highlighted street drinkers congregated on Villa Road between 11am – 6pm and the premises had curtailed their hours 11am – 2am which puts them into the bracket when street drinkers were around. The premises owner had not listened or adopted concerns of the Police. He just changed the opening hours from 24 hours to 11am -2am.
- x) PC Rohomon noted that Mr Berhane stated there was a night hatch. No reference was made to this in the application or the operating schedule. Night hatches were not preferred in business as people from the inside cannot make a good assessment of customers on the outside purchasing items.

- y) PC Rohomon did not have an issue with Mr Berhane operating as a grocery store, but he did not agree with having another premise selling alcohol due to the ongoing problems in the area and resources available.
- z) The impact statements from PC Alistair Wood and redacted local residents' statements in 2019 carry a lot of weight as they were background to the work around the issues in the area. On this basis, he invited the Sub-Committee not to grant the licence.

In response to Members questions PC Rohomon made the following points:

- 1) PC Rohomon stated there was around two WMP Officers and a couple of Community Support Officers allocated to the area. It was not a large team.
- 2) Hotspots within the patch – Soho Road was the defining line between the two policing areas; Lozells and East Handsworth on one side and Nechells on the other. Both sides of the area had substantial issues and require a substantial amount of police resources. In total, this was a very demanding area for policing and not just restricted to Villa Road.
- 3) There were challenging shopping parades within these areas. Villa Road was just one stretch. The section of the Villa Road WMP Officers were concentrating on was only 200metres long out of 600 metres.
- 4) Impact of an additional licence in the area – PC Rohomon stated by placing extra supply of alcohol in the area, the availability becomes easy. This links to more drug dealers, increase people going there; increase in ASB, beggars and drug dealing.
- 5) Currently on Villa Road, there were 6 licenced premises and he shared these with the Sub-Committee. These were generating several the problems.
- 6) No questions were raised by the Committee lawyer.

In summing up PC Rohomon made the following points: -

- He referred to the evidence placed before the Sub-Committee and there was factual evidence from the police officers who deal with the day to day issues in the area.
- The application did not reflect the concerns or issues of the area.
- The amended proposed conditions had been submitted by the applicant because of the objections made by WMP.
- Considering Mr Berhane stated he was an experienced operator, the responses he gave to the visits made on 4th and 5th January 2021 were not of an experienced operator. Covid-19 measures were not in place and unlicensed alcohol was on display.
- PC Rohomon could not see Mr Berhane as a licenced owner on the previous premises; 105 Breeley Street. Mr Berhane was not listed as the Designated Premises Supervisor or the Premises Licence Holder on the public register in relation to this premises.

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- 4th January, Mr Berhane did not take the advice from WMP Officers to remove the alcohol.
- 5th January, the alcohol had not been removed from display.
- Right to work was a legal requirement therefore should not duplicated or enhance as a condition.
- Proposed adjusted times of opening hours and selling alcohol was 11am – 2am which was still within the hours when street drinking issues occurred.
- The premise would not stock, sell beers or ciders with an ABV in excess of 6.5%. This was a useful tool.
- This area had a significant problem to the detriment to the community, other businesses and required an exorbitant amount of work for all parties to maintain it.
- On behalf of WMP, PC Rohomon invited the Sub-Committee not to grant the licence.

In summing up Mr Craig made the following points: -

- Mr Berhane had instructed Mr Craig to advise him on the application and the appropriate advice had been given. Mr Craig had tried to recalibrate the application to make it more appropriate. He felt this should be welcomed by the Sub-Committee.
- Mr Craig stated the alcohol would be a significant part of the business and Mr Berhane said this would be 25%. He did not agree with PC Rohomon point around conflicting information as 25% would be a significant proportion for any business. Therefore, there were no diversions between him and his client.
- Mr Craig disagreed with PC Rohomon's legal analysis on the 136/137 offences.
- The two visits 4th and 5th January were 24 hours apart and not over the longer period. The issues had been addressed and weight should not be attached to the alcohol on display. Mr Berhane misunderstood the law.
- This premises was not in a cumulative impact area and had been acknowledged by the police. WMP may have ambitions for the area, however the application should be treated as if it was an application from another part of the city. It should not be denied of the licence due to police resources.
- There were issues across the area which extend beyond the stretch of these shops. This should not determine the outcome of this application.
- Proposed conditions 4 & 5 do enhance of legal requirements in advance of employment - Right to work checks.
- The application does discharge the requirement of local area; promoting licensing objectives in purposeful and considered way.
- This was modest application responding to the representation made by other responsible authorities and WMP.
- The premises would not add issues to the area.
- He referred to the guidance 1.17 – every application was considered on its own merits and WMP had provided generic information that does not address this premises. Some of the information provided by WMP pre-dates the application by a year.
- The application tackled the issues in the area; modestly framed; addressed the concerns raised by WMP; had already addressed concerns raise by

environmental health and licensing authority therefore the licence should be granted subject to the Sub-Committee being comfortable with the opening hours. If the hours were to be scaled back, then this was for the Sub-Committee to decide.

The Chair thanked all parties for their attendance.

At this stage the meeting was adjourned in order for the Sub-Committee to make a decision and all parties left the meeting.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and the decision of the Sub-Committee was sent out to all parties as follows;

5/220121 **RESOLVED:-**

That the application by Mr Samuel Berhane for a premises licence in respect of 24-7 365 Local, 109 Villa Road, Lozells, Birmingham B19 1NH **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 in a difficult area, namely the Villa Road vicinity of Lozells.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns expressed by West Midlands Police regarding the impact of the proposed operation on the particular locality of the premises, in an area renowned for street drinkers, begging and houses in multiple occupation.

The Police documents in the Report gave the full picture of the situation facing the neighbourhood policing team, particularly the prevalence of street drinkers. Whilst the applicant had offered to reduce the hours of operation to 11.00 – 02.00, this was still to a very late hour, and included the times of day when street drinking was known to be a problem in Villa Road. The additional conditions, offered by the applicant in advance of the meeting, were also unsatisfactory in the view of the Police, and indeed included some matters which were already covered by legislation.

All of these were issues likely to place the crime and disorder objective at risk without very careful management by the licence holder. However, the Police were particularly concerned about the applicant's personal suitability in this regard. The Sub-Committee heard from the applicant and his legal representative that Mr Berhane was a businessman who had had previous experience in operating alcohol licensed premises, namely a bar. However, the attention of the Sub-Committee was drawn to two visits to the premises, undertaken by Police on the 4th and 5th January 2021, which were described in the Report.

Upon entering the premises on the 4th January 2021, Police found bottles of alcohol on the shop shelves, despite no alcohol licence having been granted. The Sub-Committee was taken aback by this; as a personal licence holder, Mr Berhane should have been more than aware that he could not do this, and should

definitely not have required advice from the Police about it. Moreover, the alcohol bottles on the shop shelves were observed on two consecutive days, despite advice being given on the first day. Equally worrying was the complete lack of Covid-safe measures, required by law, in the ongoing pandemic which had dominated all News bulletins for the past ten months. The Sub-Committee therefore had very little confidence in the applicant as a responsible person.

The Sub Committee carefully considered the operating schedule put forward by the applicant, and the likely impact of the application, but were not persuaded that either the applicant or the proposed operation of the premises were capable of upholding the licensing objectives given the challenges of Villa Road.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the licensing objectives were adequately promoted and that therefore the licence might be granted; however Members considered that neither modifying conditions of the licence (beyond that which had already been offered by the applicant), refusing the proposed Designated Premises Supervisor, nor excluding any of the licensable activities from the scope of the licence would mitigate the concerns raised by those making representations.

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, his legal adviser, and those making representations (namely West Midlands Police).

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.

Please note, the meeting ended at 1206.

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CHAIRMAN

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE C 03 FEBRUARY 2021

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON WEDNESDAY 03 FEBRUARY 2021, AT 1000 HOURS, AS AN ONLINE MEETING

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Martin Straker Welds.

ALSO PRESENT

Shaid Yasser – Licensing Section
Joanne Swampillai – Legal Services
Mandeep Marwaha – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

NOTICE OF RECORDING

- 1/030221 The Chair advised the meeting of housekeeping for online meetings and confirmed that the meeting was public and would be live streamed via Birmingham City Council's website (www.civico.net/birmingham). Members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

- 2/030221 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the 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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/030221 An apology was submitted on behalf of Councillor Neil Eustace and it was noted that Councillor Mary Locke was the nominated substitute member.

4/030221

LICENSING ACT 2003 PREMISES LICENCE – GRANT PREMISES AT UNIT 2210, ACCESS SELF STORAGE, APPLEBERRY FOODS, 180 SHERLOCK STREET, BIRMINGHAM B5 7EH

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

(See document No. 1)

The following persons attended the meeting:

On behalf of the Applicant

Mr Bobby Nakum (agent) - representing the applicant (Mr Bhavinkumar Inamdar)

Those Making Representations

PC Abdool Rohomon – West Midlands Police (WMP)

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The Chair introduced the Members and officers present and asked if there were any withdrawals of representation.

The Chair invited preliminary points.

PC Rohomon noted the supporting evidence from WMP was not present in the published pack. The Chair confirmed that all supporting evidence (the additional 10 pages) had been received and were now published.

The Chair explained the hearing procedure prior to inviting Licensing Officer, Shaid Yasser to outline the report.

The Chair invited the applicant to make their submission. At this stage Mr Nakum requested that Members refer to documentation submitted and made the following points on behalf of the applicant:-

- a) The company had been operating online sales of food and drink for 17 years. Due to increased demand they wanted to expand their service nationwide.
- b) Licensing enforcement conditions had been agreed to include no public access to the premises which is sited within a secure storage building.
- c) Some employees will be employed directly, mainly in London and the South, with other areas using contract couriers.
- d) The Responsible Selling of Alcohol Policy had been emailed to WMP. This policy had been compared to policies in place for Amazon and some supermarkets to demonstrate its robustness.

In response to Members questions Mr Nakum made the following points:-

- 1) In house employees and third party couriers receive training regularly (every 6-12 months) to ensure safeguarding against sale to underage or unsuitable customers.
- 2) Deliveries were made only to the purchasing card holder, with additional verification ID requested on delivery (driver's license or passport). This was undertaken regardless of age.
- 3) Deliveries were made only to home addresses and there was no click and collect facility.
- 4) Specialist couriers would be used (Uber Eats, Yodel, DPD) who had robust policies in place.
- 5) Currently sales included wine and some spirits. The applicant would like to extend this to other alcoholic products but not including high strength cider or cheap alcohol.
- 6) There had been previous operational issues however, these had been resolved. Delivery systems and personnel training for age restricted products were now in place.
- 7) 24-hour live monitoring of all operations w be in place. This system is currently used successfully at the applicant's London premises.
- 8) Wholesale aspects of the business were not related to this application and only operated in London.
- 9) Legal responsibility for the sale of alcohol lies with the Designated Premises Supervisor and the Premises License Holder. The point of sale for online purchases is when the transaction is complete.
- 10) The Responsible Retail of Alcohol Policy addresses prevention of underage sale and consumption. The incidence of this was much lower for online sales and delivery policies and ID checks also assist with this.
- 11) Reference was made to the Challenge 25 Policy. Noted this removed the element of Anti-Social Behavior, street drinking etc.
- 12) Operational details are not yet available for Birmingham as trading has not yet commenced.
- 13) Mr Nakum indicated processes were in place in London (headquarters). These policies and contract examples could be provided to the Sub-Committee if required.

The Chair added examples of the policies and contracts from London should have been shared with this application to assure the Sub-Committee. However, these were not evident or demonstrated in the application submitted.

No questions were raised by the Committee lawyer.

Afterwards, the Chair invited PC Rohomon to outline the representation on behalf of WMP and PC Rohomon made the following points: -

- a) PC Rohomon highlighted he had learned more about this application through the applicant's submissions to the Sub-Committee than in the application in itself.
- b) The Section 182 of the Licensing Act provides guidance on applying for a premises license. The applicant was required to demonstrate how they will meet the licensing objectives, to include knowledge of the local area, risks identified and evidence of consultation.
- c) The application did not address risks or demonstrate how any risks can be mitigated or controlled.
- d) Examples were given about queries still outstanding with regard to the proposed operations, to include access to the site, staffing, security and safety at the premises.
- e) Risks associated with the sale of alcohol had not been acknowledged within the submitted policies and queries relating to this have not been sufficiently addressed, despite requests. Any responses to requests had not provided sufficient detail.
- f) He questioned who the authorized persons were and had access to the premises via pin codes, did this change on a regular basis.
- g) The CCTV was owned by the Self Storage unit therefore the business did not have direct access to this and would have to go through the data protection route to gain access.
- h) PC Rohomon referred to the six points the applicant indicated for the steps he intended to take to promote the four licensing objectives. These were around; premises not to be opened to the general public; sale of alcohol only via online and kept in a storage room accessible via pin code only; 24 hour CCTV; sale of alcohol via internet or mail order subject to age verification and verifying payment method; Challenge 21 age verification policy and training in licensing laws and age verification. These were all very vague and no detail or evidence provided to support these points.
- i) WMP would assist with changing conditions on applications, however they were not expected to write an application.

- j) Email trail between the applicant, agent and PC Rohomon was referred to. WMP had requested points of clarification on the application as basic conditions cannot be a part of the companies' day to day business.
- k) In the emails, Mr Nakum stated WMP were taking a prejudicial stance against his client which PC Abdool strongly disagreed with. PC Rohomon was trying to ascertain online alcohol would be delivered safely therefore required more assurances and clarity to the application.
- l) The conditions outlined in the application were generalized and needed to be specific to this application and premises.
- m) The request to commence trading prior to producing an operational plan is not acceptable as evidence of appropriate trading conditions must be demonstrated prior to the license being granted.
- n) West Midlands Police cannot support the application at the current time or until acceptable evidence of appropriate policies and safeguards are demonstrated.

In response to Members questions PC Rohomon made the following points:

- 1) Age restricted products include knives and corrosive substances, but this matter relates only to the sale of alcohol.
- 2) The applicant had the responsibility to demonstrate how they promote the licensing objectives. Licensing authorities are expected to monitor the promotion of the objectives to ensure compliance.
- 3) Some facts omitted from the application have now been clarified verbally but still do not provide enough detail to increase confidence in this application.
- 4) A robust operational regime which promotes the licensing objectives must be in place prior to a license being granted.
- 5) Policies can be generic for some areas of the business but must address any local challenges and considerations.
- 6) Responsibilities for trading alcohol are applicable regardless of the method of sale and controls must be in place to address and mitigate this.
- 7) Concerns are specific to this application in regard promotion of the licensing objectives.

On being invited to sum up, PC Rohomon clarified his objections to the application due to lack of appropriate risk management, policies and procedures.

In summary Mr Nakum made the following points:

- The applicant requests an opportunity to trade in order to demonstrate a successful business model and is happy for reviews to take place as appropriate.

- Mr Nakum felt that PC Rohomon did not like to be challenged and believed his personal views on the sale of alcohol should not reflect adversely on the application.
- Other applications have been reviewed as a comparison and do not contain the detailed policies sought by WMP.
- More guidance is required about what additional information should be provided.
- The applicant already has a good track record for this type of business.
- Knives and corrosive substances refer to trade to the hospitality industry, which will not take place under this application.
- The application demonstrates how risks will be mitigated and further clarity has been provided verbally today.
- The applicant is prepared to be responsive to challenges as they arise and will accept any conditions and advice forthcoming regarding this application.

At 1135 hours the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and the decision of the Sub-Committee was sent out to all parties as follows: -

5/030221 **RESOLVED:** -

That the application by Mr Bhavinkumar Inamdar for a premises licence in respect of Appleberry Foods, Unit 2210, Access Self Storage, 180 Sherlock Street, Birmingham B5 7EH, **BE REFUSED.**

In reaching this decision, the Sub-Committee was mindful of the promotion of the licensing objectives in the Act - the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns expressed by West Midlands Police regarding the proposed manner of operation. Whilst some conditions had been agreed in advance between the applicant and Licensing Enforcement, the Police had maintained their objection.

The Police objections were outlined in full in the Report; in addition, the Police attended the meeting to address the Sub-Committee directly. Whilst alcohol delivery services had become a widespread feature of alcohol-licensed premises during the ongoing Covid-19 pandemic, and in general had not proven to be troublesome, the Police had concerns regarding the applicant supplying alcohol very late at night; any proposal to do this required robust policies and procedures to be in place, along with stringent control measures. Having discussed this issue with the applicant's

agent by email in advance of the meeting, the Police were not at all satisfied that this was the case.

The lack of comprehensive policy documents was a concern shared by the Sub-Committee, who agreed with the Police that it was to be expected that the applicant should have comprehensive policies in place - so that the responsible authorities would be able to assess that all the risks had been identified, and all staff would be aware of the need to follow them. The omission of comprehensive policy documents did not reassure Members that the style of operation would be capable of upholding the licensing objectives.

The Sub Committee carefully considered the operating schedule, and the 'Appleberry Foods Policy on Responsible Retailing of Alcohol' document (one and a half pages) put forward by the applicant, and the likely impact of the application, but were not persuaded that that the proposed operation of the premises would uphold the licensing objectives. The applicant's agent addressed the Sub-Committee. The company was a small business which wished to expand into Birmingham as it had been operating online sales of food and drink in London and the south for some 17 years. It was therefore surprising that comprehensive policy documents from its operations elsewhere were not available to be put before the Sub-Committee.

Moreover, the Police drew the attention of the Sub-Committee to paragraphs 8.41, 8.42 and 8.47 of the Guidance issued by the Home Office under s182 of the Licensing Act 2003, and queried whether the applicant had the level of local knowledge to promote the licensing objectives in Birmingham.

The operating hours were to be 24 hours a day, which was an inherent risk. The information under 'general description of the premises' on the application form was also a worry to the Police – the secure storage area was controlled by a PIN code, but there was no confirmation of who would have access to the PIN code, or how often it would be changed; similarly the CCTV system was not Appleberry Foods' own system, but one for the 'Access Self Storage' premises generally.

Whilst the applicant's agent stated that the style of alcohol would be wine and some spirits but certainly not cheap high-strength alcohol, the Police observed that the grant of the licence would of course permit the sale of all types of alcohol. The Police observed that the proposed operation was inherently risky and there was a distinct lack of detail – for example, it was unclear whether the conditions which had been agreed with Licensing Enforcement would also cover the applicant's third-party partners. All in all, it was difficult to feel confident that the operation would be capable of upholding the licensing objectives.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the four licensing objectives would be adequately promoted and that therefore the licence might be granted; however Members considered that neither modifying conditions of the licence, refusing the proposed Designated Premises Supervisor nor excluding any of the licensable activities from the scope of the licence would mitigate the concerns raised by those making representations.

The Sub-Committee heard submissions from the applicant's agent that they could and should be trusted, and ought to be given a chance to operate in Birmingham; however, as the Police observed, the Sub-Committee could only feel confident in doing that where satisfactory policies and procedures were in place. That was emphatically not the case here; accordingly the Sub-Committee resolved to refuse the application.

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 via his agent, and by West Midlands Police.

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.

OTHER URGENT BUSINESS

6/030221 There were no matters of urgent business.

The meeting ended at 1148 hours.

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CHAIRMAN