

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A,
MONDAY 13 MAY, 2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY, 13 MAY, 2024 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Julien Pritchard.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Poole - Committee Services

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

6/130523 **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 meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

7/130523 **DECLARATION OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

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Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

8/130523 An apology was submitted on behalf of Councillor Simon Morrall. Councillor Julien Pritchard was the nominee Member.

LICENSING ACT 2003 PREMISES LICENCE – VARIATION – TOBY CARVERY (TO BE KNOWN AS BROWNS BAR AND BRASSERIE), SUTTON PARK, SUTTON COLDFIELD, B74 2YT.

9/130523 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On Behalf of the Applicant

Andy Grimsey – Solicitor
Emma Thomas – Mitchells & Butlers
Jane McKenna – Area Manager, Mitchells & Butlers
Lauren Parkes – Mitchells & Butlers
Dave Lewis – Operations Manager, Mitchells & Butlers

Those Making Representations

Caroline Hicks – Local Resident
Councillor Pears – Local Ward Councillor

The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

Caroline Hicks advised that she intended to withdraw her representations, but still wanted to speak at the hearing. The Committee had no objection.

The Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present the report. Bhapinder Nandhra, Licensing Section, outlined the report.

The Chair then invited the applicant/representative to make their submission, Andy Grimsey on behalf of the applicant made the following points: -

a) That the application had been amended to reduce the hours of operation.

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- b) The original application sought later hours to give the premises a degree of flexibility. However, having considered the representations and spoke to them directly an amendment was made to reduce the hours.
- c) The operator is a premium restaurant brand.
- d) The early opening hours allowed flexibility but did not mean they would always trade to those hours.
- e) The hours were indicated in the agenda pack.
- f) The paperwork also included a statement from Emma Thomas detailing the nature of the premises and the operator Mitchells & Butlers.
- g) They had tried to address the concerns of residents.
- h) The issues raised about the special scientific interest and park were not within the operators control and were also not relevant to the licensing objectives.
- i) They had considered the wildlife and parks as part of the application such as amendments to lighting.
- j) They did not want to premises to be like a nightclub with loud music.
- k) They employed a security guard who patrolled 0800 – 0200 hours.
- l) People would not be visiting the premises for cheap alcohol as it was a premium venue.
- m) The operator was committed to looking out for anti-social behaviour.
- n) The application would be an asset to the area.
- o) The conditions offered were in relation to recorded music.

Dave Lewis, Operations Manager (Mitchells & Butlers) added the following points: -

- a) That he was solely responsible for the Browns Bar & Brasserie brand who operated 25 brasseries nationwide with the first one opening in 1972.
- b) The concept was an all day brasserie catering for all occasions: breakfast, lunch, dinner, afternoon tea.
- c) They prided themselves on using fresh seasonal based produce.
- d) The offering was premium based and included ingredients such as Lobster and Steak. They also offered hand crafted cocktails.
- e) All staff were fully trained.

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- f) Customers would be 'greeted and seated'.
- g) The premises had grand pianos which were played twice a week.
- h) Music was set at background level.
- i) They had submitted a planning application for the work they wanted to carry out on the building, and they were working with the Council as there were some issues with lighting.
- j) They were conscious and sympathetic to the building location.
- k) They had reduced the lighting scheme and had found some bats that are living at the premises, therefore they needed to treat the property with the due care it deserved.

Members asked questions and the applicants representatives gave the following responses: -

Emma Thomas:

- a) That she had worked for Mitchells & Butlers for 22 years.

Andy Grimsey:

- b) The music was background level only.
- c) Music would not be played outside the premises.

Jane McKenna:

- d) All of the music was controlled by amps which were set at conversational level.
- e) First and foremost, the premises was a brasserie.
- f) The bar was seated, served and hosted.
- g) The function room was much the same in terms of music levels.

The Chair then invited Councillor Pears to make s submission, and he made the following points: -

- a) That the premises sat within the 'deer park' which was a unique environment and was of special scientific interest.
- b) The area was rare and protected and had owls, bats, badgers in the park.
- c) There was also a donkey sanctuary.
- d) The open space contained protected species.

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Members asked questions and Councillor Pears advised that the thrust of the concerns were regarding the comings and goings and the times, not necessarily the management inside the venue. The concerns were mainly related to the park.

The Chair invited Caroline Hicks to make a submission, she made the following points: -

- a) That she was a resident which overlooked the premises.
- b) She had been liaising with people regarding the application.
- c) She would be more content with the hours being reduced to 2300 hours.
- d) She withdrew her representation.

Andy Grimsey agreed to reduce the hours to 2300 hours in agreement with Caroline Hicks.

The Chair invited all parties to make a brief closing submission. Councillor Pears made the following closing statements: -

- The concerns were mainly to do with the outside area of the premises and how it is managed by security.
- That he looked forward to attending the premises.
- He was concerned about how people leaving the premises would be managed, not taking empty wine glasses outside the venue.
- He hoped the premises would accept 2300 hours to work with the residents.

Andy Grimsey was then invited to make a closing submission on behalf of the applicant and as such, he made the following closing statements: -

- That they were not aware of any complaints nor had any responsible authorities raised any concerns in relation to the application.
- The operator wanted to be involved with the community and where they could help or address issues they would and do.
- They wanted flexibility to enable to premises to cater for people who wanted a drink beyond 2300 hours.
- The company was committed to promoting the licensing objectives and had a good track record.
- Some matters were outside of the licensing remit.

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- They looked forward to working with the local community and opening the brasserie in the near future.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and a full written decision was sent to all parties as follows;

10/130523 **RESOLVED:-**

That the application by Mitchells & Butlers Leisure Retail Limited to vary the premises licence in respect of Toby Carvery (to be known as Browns Bar and Brasserie), Sutton Park, Sutton Coldfield B74 2YT, under section 34 of the Licensing Act 2003, be granted together with:

- All those amendments to the hours for opening and for licensable activities offered in advance of the meeting (as shown at pages 115 and 116 of the Committee Report)
- The conditions offered at page 71 of the Committee Report (as amended), namely:
 1. Recorded music shall be set at a level which ensures that it does not cause a nuisance at the boundary to the nearest residential property
 2. With the exception of access and egress, all doors and windows shall be kept shut when regulated entertainment is taking place
 3. The external drinking areas shall be available only for the use of smokers after 23.00 hours. No consumption of alcohol or other drinks shall take place within the external areas after 23.00 hours

Those other matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will continue to form part of the licence issued.

The company which held the premises licence wished to vary the licence. The solicitor to the company attended the meeting, together with various officers of the company, and explained that the application was for later hours by a very responsible multiple operator of many different brands around the country. The instant application was for its premium restaurant brand, 'Browns'.

The application had originally been made for later hours, to give the flexibility that the company thought might sometimes be necessary. However, as a result of the representations that were received, the company had reconsidered its position, had spoken to the residents and the Ward Councillor involved, and had amended the application. The revised hours were now shown at pp115-116 of the Committee Report.

The solicitor explained the changes to the hours, and directed the attention of the Sub-Committee to the Browns menu included in the Report. He asked Members to note in particular the price point of the food offer. He was also keen to allay any potential fears about the style of music proposed, in case those objecting thought that there would be live music every night; he remarked that this would not be the case.

The first Browns premises had been opened in Brighton in 1972. The style of operation was an all-day brasserie catering for breakfast, brunch, lunch, afternoon tea and dinner. All the food was fresh and a premium-style offering. Handcrafted cocktails were served. The company employed highly skilled and trained personnel. Full service was offered throughout the business, in both the restaurant and the bar. Guests arriving would be greeted at the host point and then seated at a table, as in most premium establishments.

Regarding music, in each Browns brasserie, the company had grand pianos installed and live pianists came to play one or two sessions per week at background music level. At other times, music was played through speakers at conversational level. The function room would be used for events for significant birthdays, and perhaps for weddings. The responsible authorities had found the application satisfactory.

The applicant company appreciated that the premises was in a site of Special Scientific Interest and accordingly had made amendments to the external lighting plans, in the interests of protecting local wildlife. The company recognised the heritage behind the building, and its location in a beautiful park. There was no intention to offer loud music, and the company felt that it was self-evident from the documents in the Committee Report that it was a responsible operator which would be a good neighbour and do its best to contribute to the community.

Regarding the issue with the town gate, the company paid for a security guard to patrol the area from 20.00 to 02.00 hours, when the gate was shut. The guard watched for any antisocial behaviour, but the proposed style of the Browns operation, and in particular the pricing, was such that the premises was not at all likely to attract a problem clientele. The premises would be a well-run venue with good security and well trained staff and would be an asset to the area.

The solicitor remarked that the proposal was “a notch or two up” from the Toby Carvery which had been operating without problems. Indeed, the Toby Carvery had been trading at the location since the 1990s. The solicitor directed the attention of the Members to the conditions in the application relating to recorded music being set so as not to cause noise nuisance, doors and windows to be closed when regulated entertainment was taking place apart from access and egress, and the external dining area not to be used after a certain time.

Noise nuisance in general was unlikely to be a problem, said the solicitor, as the whole ambience of Browns was a ‘conversation’ level of noise, at maximum. There would be no increase in that level from the function room, other than on an ad hoc basis. The Sub-Committee noted this.

The Sub-Committee observed that written representations were in the Committee Report at appendices 1- 6. Two of the persons who had submitted representations attended the meeting to address the Sub-Committee – the local ward Councillor, and a resident.

The Ward Councillor said that he was grateful to the company for consulting with the residents and for the work that it had already done. The medieval deer park

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was a unique environment given to Sutton Coldfield in 1528 by Henry VIII, and was a site of Special Scientific Interest covering 2,400 acres. The area included some rare and protected species. Not far from the premises, owls and badgers could be found, and just behind the premises was a donkey sanctuary. Opposite the entrance to the premises was a large green meadow, including a brook.

He was aware that quite a number of the nearby houses would pick up residual noise from the restaurant over the years. He also remarked that the park had experienced antisocial behaviour from those taking drinks from the Toby Inn and then leaving wine bottles and glasses on the meadow. Encampments of travellers had caused further issues on the meadow, and the Ward Councillor was concerned that the later hours could increase the risk of them coming in.

He observed that during the Covid-19 pandemic, revellers would often enter the park, leading to antisocial behaviour including noise, drug taking and litter. He was aware that Browns would have security to lock the gate, but felt that it was vital that between the park closing hours and Brown's closing hours traffic coming into and out of the park should be strictly controlled to stop others entering the park (other than to use the licensed premises).

He was concerned about increased disturbance to wildlife caused by car headlights and noise from vehicles coming and going. Another worry to him was that the increased hours could result in increased disturbance to residents living nearby from vehicles entering and leaving, along with any other potential problems for those individuals who "might want to party after the meal" on the meadow.

However, he recognised that Browns was a premium brand and remarked, "I look forward to going there myself". However, he asked the Sub-Committee to give consideration to a closing time of 23.00 hours.

In response to Member questions, the Ward Councillor confirmed that his main concern was not the management inside the actual venue, but the comings and goings outside, and the impact on residents. However, he also remarked that he had been pleased with the actions that the company had already taken with the lighting arrangements.

A resident of Donovan Drive then addressed the Sub-Committee, representing herself and her husband. Their house overlooked the Toby Carvery. She announced that upon receiving details of the application from the Senior Licensing Officer she did not seek to challenge, amend or change the provisions of the existing Toby Carvery licence. Moreover, she stated that she wished to make it clear that personally she and her husband "very much welcome the change of brand at the Toby Carvery". They hoped it would be a success, and indeed anticipated "becoming fairly regular users".

She mentioned the three additional conditions that the company had offered to add to the premises licence should the application be granted, and asked about point 3 and whether the time would be amended to 23.00 hours; the company confirmed that this was the case. Upon hearing this, she said that they recognised

the effort that the company had made to take residents' concerns into account, and accordingly she and her husband withdrew their objections.

When deliberating, the Sub-Committee carefully considered the proposal put forward by the licence holder, and the likely impact of the application. The Members bore in mind paragraph 9.12 of the Guidance issued under s182 of the Act, namely the need for robust evidence in decision making.

The representations which had been received (including those from persons who had not attended the meeting) had been concerned with the potential for nuisance behaviour outside in the park and/or meadow. The solicitor had reminded the Sub-Committee that there was no formal evidence that any of these types of issues were directly attributable to the Toby Carvery, but in any event, the company would want to engage with local residents to try to keep the area beautiful. The Sub-Committee accepted this.

Regarding the antisocial behaviour previously seen on the meadow, the solicitor commented that he had never heard Browns customers described as "revellers". The Sub-Committee agreed with this, finding it highly unlikely that this description would apply to patrons of a premium restaurant with a high price point for its menu.

The solicitor assured the Sub-Committee that the company simply wanted the flexibility to be able to accommodate those patrons who might want to have a drink after 23.00 hours. The Sub-Committee felt that this was reasonable given that the company had no history of complaints or concerns that it might be unable to promote the licensing objectives.

The Sub-Committee was reminded by the solicitor that a Review of the licence could be sought if something were to happen which placed the licensing objectives at risk. However, he commented that this would be "almost impossible" because it is "not that type of premises and not that type of operator". The Sub-Committee accepted this.

The Sub-Committee considered that the variation proposal put forward by the premises was precise and enforceable, and would cover any risk adequately. The company had responded to objections appropriately, such that both persons attending the meeting had declared their intention to become patrons of the premises in due course.

The Sub-Committee therefore resolved to vary the licence with the conditions offered by the licence holder. The Sub-Committee noted in particular the premium pricing and full service style of offer; the Members were confident that the company would operate responsibly under the varied licence.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Home Office, the application for the variation of the premises licence, the written representations received and the submissions made at the hearing by the applicant company via its solicitor and its officers, and by the persons making representations.

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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 at 1254 hours.

Chair