

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A
MONDAY 25 OCTOBER 2021**

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE
A HELD ON MONDAY 25 OCTOBER 2021 AT 1200 HOURS AS AN
ON-LINE MEETING.**

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Rob Beauchamp and Martin Straker Welds.

ALSO PRESENT

David Kennedy – Licensing Section
Sarah Lavender – Licensing Enforcement
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

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

1/251021 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/251021 **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.

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

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.

3/251021 APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

Apologies were submitted by Councillor Davis. Councillor Donaldson attended as a substitute.

4/251021 MINUTES

That the public section of the Minutes of the meeting held on 28 June 2021 at 1200 hours were noted and the minutes as a whole were confirmed and signed by the Chair.

5/251021 LICENSING ACT 2003 PREMISES LICENCE – GRANT RUBINOS PIZZA, 1187 BRISTOL ROAD SOUTH, NORTHFIELD, BIRMINGHAM, B31 2SL

On Behalf of the Applicant

Gulzar Khan Ahmedzai – Applicant
Saifur Rehman – Allerton and Gladstone Solicitors

Those Making Representations

Jason Bejai on behalf of the residents of School Close and Bristol Road South,

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

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

The Chair invited the applicant to make their submission and Saifur Rehman, on behalf of the applicant, made the following statements:-

- a) His client was willing to reduce the hours as the Sub-Committee felt appropriate in the circumstances.
- b) His client had taken over the premises and did not know the ongoing of the previous owner or any conditions of their licence that may have been breached. However, as a new applicant his client was committed to complying with any conditions in order with operating his business.
- c) There may be some confusion between the current owner and previous owner who shared a tribal name but were not related.

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- d) His client could not comment on allegations made against the previous owner.
- e) Representations from residents may be significant in the decision-making process of the Sub-Committee but it would not be the propensity of his client to cause any unnecessary discomfort to the residents.
- f) His client would take into account what had happened before with the previous owner and the concerns of the residents.
- g) His client wished to run his business in a way that was compliant with the licensing regime and compliant with the consensus of the residents.

Gulzar Khan Ahmedzai, the applicant, made the following statements:-

- a) He had been living in the Birmingham City Council area for 21 years and had not had any issue with the Council on any issue.
- b) He would order extra bins to help to keep the area clear.
- c) He had added extra CCTV cameras inside and outside to monitor his workers and he would attend the premises himself.
- d) He wished to avoid a repeat of what had happened under the previous owner.

Members were invited to ask questions and Saifur Rehman and Gulzar Khan Ahmedzai gave the following responses: -

- a) Gulzar Khan Ahmedzai had taken over the premises as a new business owner and as such had letters of discharge from the previous owner and proof of ownership. He owned the business and had a lease from the owner of the property.
- b) The papers could be produced as a condition for the licence if the Sub-Committee wished.
- c) Gulzar Khan Ahmedzai would be responsible for ensuring that the licensing objectives were upheld.
- d) Gulzar Khan Ahmedzai was certain that the business could comply with the licensing timing and conditions and the exercise of food hygiene standards.
- e) The premises had recently been inspected by health inspectors and they had seen that the premises was clean and clear and given it a four-star rating.
- f) Gulzar Khan Ahmedzai would work to avoid Anti-Social Behaviour (ASB) on and around the premises. This was important to him as he had invested a lot in acquiring the business.

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- g) Gulzar Khan Ahmedzai would aim to spend 12 hours a day on the premises.
- h) All of the staff were new.

Sarah Lavender, Licensing Enforcement, made the following statements:-

- a) The previous license for the premises had been revoked following a review in June 2020.
- b) The review found the licence holder not to be at or in control of the premises and the new owner, identified as Khalil Ahmedzai, was found to be trading after authorised hours and causing a nuisance and disturbance to local residents with ASB and noise and other disturbances into the early hours of the morning.
- c) The premises had failed to uphold the licensing objectives and was very poorly managed.
- d) Following the application for the licence by the current applicant, Gulzar Khan Ahmedzai, Licensing Enforcement had concerns that if a licence was granted for trading after 11pm, the licensing objectives would not be upheld. In particular with regard to the prevention of public nuisance.
- e) Checks had been made at the premises and had ensured that they were not trading after 11pm. However, the current times advertised on the Just Eat online delivery service stated that the premises was open for collection between 12pm and 11pm but delivery was from 12pm until 2pm. Previously delivery drivers had caused a nuisance late at night.
- f) During the time that the premises had not been permitted to open after 11pm, no complaints had been received.
- g) There were not enough assurances that there would not be problems in the future if the licence was granted.
- h) A licence would not be required for trading up until 11pm. Only for trading after 11pm.

Jason Bejai on behalf of the residents of School Close and Bristol Road South, made the following statements:-

- a) Jason Bejai had spoken to the residents in the immediate vicinity, and they were not convinced.
- b) He had phoned the premises and asked when they closed and had been informed that they closed at midnight.

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- c) When a notice that the premises intended to apply for extended opening hours was placed on the front of the premises it was relocated to a higher position which impeded the view for passers-by.
- d) There were concerns that the extended opening hours would attract patrons leaving The Black Horse pub at around 11pm and the applicant would have no controls over those patrons and their behaviour, particularly drunk behaviour.
- e) There were a number of shops of various use in the parade of shops that included the premises, including those selling food. The latest closing of which closed at 11pm. It was requested that should the licence be granted to Rubinos, it be required to close all operations by 11pm.
- f) It was further requested that should the Sub-Committee grant the license that an accountable person be on site.
- g) It would be desirable for staff to undertake a litter-pick when the premises opened and that wheelie-bins were not stored at the front of the premises.
- h) The front of the premises had been graffitied and whilst other premises in the area removed graffiti, Rubinos had not.

Members were invited to ask questions and Jason Bejai gave the following responses:-

- a) Councillor Armstrong had visited the premises on behalf of the residents as had Jason Bejai and one of his neighbours. Councillor Olly Armstrong had been assured that measures would be taken against noise late at night, however when Mr Bejai and his neighbour had visited they had not received a clear response to concerns.
- b) Jason Bejai and Councillor Armstrong had attempted to discuss the opening times of the premises with the staff. Mr Bejai referred back to when he had been informed by the premises that they were open until midnight.

Saifur Rehman raised the following points:

- a) With regard to the advertised opening times of the premises, these were operational matters and his client would change these times to whatever times the licence permitted.
- b) Gulzar Khan Ahmedzai would be the accountable person requested to be present, and he had already stated that he would be present.
- c) With regard to litter-picking, this was not the only business on the parade of shops. His client would contribute, along with the other shops on the parade, to maintain the aesthetic.

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The Chair then invited the parties to make a closing submission.

Jason Bejai on behalf of the residents of School Close and Bristol Road South made the following closing statements:-

- It was requested that the premises close at 11pm in line with the latest-closing premises in that parade of shops.
- It was requested that there be an accountable person on site so that issues could be brought to them in person or by phone.
- It was requested that aesthetics and upkeep in the area were maintained.

Sarah Lavender, Licensing Enforcement, made the following closing statements:-

- There was not enough assurance that the additional hour sought by the application could uphold the licensing objectives.
- Should a licence be granted it would be desirable to see evidence that the applicant had purchased this new business.

Saifur Rehman, on behalf of the applicant, made the following closing statements:-

- The business itself was four-star rated by Birmingham City Council Food Hygiene, this showed the investment his client had made and his intention to comply with the licensing regime and meet the expectations of the residents, but he had to be given an opportunity.
- Regarding aesthetics, whilst it was expected to keep up the standards of aesthetics, there were other businesses there. With specific regard to graffiti, graffiti was a criminal offence and whilst there was a duty of care, unless the graffiti was specifically connected to his client's premises it would be unfair to say that the graffiti was there simply because of the premises.
- His client was a completely new owner and should not be associated with any failings of the previous owner.
- The Sub-Committee were within their rights to impose conditions should a licence be granted.
- There was a school and factories in the area that his client would provide a service to.
- His client had already taken steps by increasing the presence of CCTV.
- His client was requesting the closing time of 23:59.

Gulzar Khan Ahmedzai, the applicant, made the following closing statements:-

- With regard to the current advertised operations, specifically the times advertised on Just Eat, he had contacted the service to request access to adjust the times and could adjust to times that would be allowed by the City Council.
- He would undertake to remove graffiti from the shop front.

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- He noted that other premises in the area had licences until 23:59. He was willing to align his hours with other businesses of a similar nature to his.

David Kennedy, Principal Licensing officer, clarified that should the Sub-Committee restrict opening hours to 11pm, they would essentially be refusing the application as a licence was not required after 11pm.

6/251021

RESOLVED:-

That the application by Gulzar Khan Ahmedzai for a premises licence in respect of Rubinos Pizza, 1187 Bristol Road South, Northfield, Birmingham B31 2SL, 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 public nuisance.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns raised by Licensing Enforcement, and by a local resident, regarding the impact of the proposed operation on the particular locality of the premises in Northfield - especially given the recent history of the premises, when it was trading under a different licence holder. That person had had his licence revoked in June 2021.

At the start of the meeting the Sub-Committee noted that the applicant had reduced the proposed hours by bringing the terminal hour forward. The premises intended to close at 23.59, rather than 02.00. However, both of the persons making representations maintained their objections.

The applicant stated that he had invested a large sum of money into the premises and that he would be the responsible person. He had observed that the busiest time was during the daytime, but intended to work 12 hour shifts, seven days a week. He had replaced all the staff and delivery drivers; none of his staff were connected to the previous operator.

The Members asked whether the applicant was related to the previous operator Khalil Ahmedzai (who was operating the premises at the time the licence was revoked), given that they had the same surname; the applicant stated that he was not related or connected to that person. The Members also asked about how he had taken over the premises, and whether this had been a formal arrangement. The applicant stated that this was the case, and that the transfer of the lease had been handled by solicitors. However, he did not produce any documents to confirm this.

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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 would be capable of upholding the licensing objectives beyond 23.00 hours. Licensing Enforcement addressed the Sub-Committee. It was their view that to permit trading after 23.00 would lead to an unacceptable level of public nuisance in a residential area.

The local resident agreed that this would be the case; he was particularly concerned that upon telephoning the premises on 20th October 2021 to ask what time they would be closing, he was told that they were open until midnight. This did not inspire confidence that the premises would observe the permitted hours if the licence were to be granted. He observed that nearby residents were not just those living directly above the premises, but also those in and around School Close.

He further noted that on the “Just Eat” website, the premises currently offered delivery services until 02.00. The local resident asked that the operation should close at 23.00, in line with many other local businesses. A particular worry to him was that a nearby public house closed at 23.00; he was concerned about the likelihood of public nuisance arising late at night if the Rubinos Pizza premises were to trade to 23.59 hours.

In summing up, the applicant’s legal representative stated that although residents had had a bad experience with the previous operator, the new applicant understood his responsibilities. However, the Sub-Committee noted that the applicant had simply said that he would do his best, and that he would do as much as he could; this was not sufficient, given the premises’ previous history.

Regarding the documents relating to the transfer of the lease, the legal representative suggested that production of these could be made a condition of granting the licence. Regarding the listing on the “Just Eat” website, the applicant stated that this was due to be changed shortly; it was still showing the listing which had been set up by the previous operator as he had yet to supply documents showing that he was the new operator. However, the Sub-Committee considered that the application might have been better made after these issues had been addressed.

All in all, the Sub-Committee considered that the applicant had not shown that he fully understood the upholding of the licensing objectives beyond 23.00 hours in a residential area. There was something of a lack of sensitivity towards local residents, who understandably were keen that the terminal hour should be 23.00. The Sub-Committee was also unsure that the applicant understood what needed to be done to separate his operation from the previous bad

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management shown by somebody else, or the need to show that he wanted to be part of the community by being considerate towards the needs of local residents in preventing public nuisance.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the four licensing objectives were adequately promoted and that therefore the licence might be granted; however, Members did not consider that modifying conditions 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 representative, and by those making representations.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.