

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 6 OCTOBER 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 6 OCTOBER AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Nicky Brennan and Adam Higgs.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
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)

NOTICE OF RECORDING/WEBCAST

1/061020 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.

2/061020 **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

3/061020 Apologies were submitted on behalf of Councillor Neil Eustace and Councillor Mary Locke was the nominated Member.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – TOTAL ECLIPSE,
433-435 DUDLEY ROAD, BIRMINGHAM, B18 4HD**

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

(See document No. 1)

On Behalf of the Applicant

Amera Campbell – Applicant
Claudine Stanbury – in Support of the Applicant
Nick Semper – Licensing Guys

Those Making Representations

No one attended.

* * *

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

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Bhapinder Nandhra to outline the report.

Afterwards, the Chairman invited the applicant to make their presentation, at which stage Nick Semper made the following points: -

- a) That he would read his prepared statement.
- b) They had taken on board the police recommendations and the suggested conditions had been adopted.
- c) There were no objections from West Midlands Police, Trading Standards or Environmental Health.
- d) That the economic argument was specifically outside the licensing application remit.
- e) The area had a remarkably low crime return for the city location.
- f) That the anti-social behaviour (ASB) could not be attributed to the premises as they had not been selling alcohol.
- g) That there was no evidence that there would be a new localised spike in alcoholism, or an increase in ASB if the licence was granted and that these suggestions therefore ought to be disregarded, per *Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin)*.

Licensing Sub-Committee B – 6 October 2020.

- h) Selling alcohol as an addition to a takeaway service was not going to conjure up ASB or criminal behaviour, there was no evidence, and everything was based on speculation.
- i) That his colleague had visited the premises and they would be returning to train the staff regarding alcohol. The training would be repeated annually.
- j) That the police conditions covered the Members questions and he invited the Committee to view the conditions that WMP recommended. He also requested that Members look at section 17 of the application.

Then the Chairman invited the applicant or their representatives to make their closing submission at which stage Nick Semper made the following points: -

- That the Committee had been fair.
- They had accepted WMP's suggested conditions.
- The Licence would promote the licensing objectives.
- He asked the Committee to grant application.

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

4/061020

RESOLVED:-

That the application by Amera Campbell for a premises licence in respect of Total Eclipse, 433 – 435 Dudley Road, Birmingham B18 4HD, **BE GRANTED.**

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued, together with those conditions as agreed with West Midlands Police, as follows:

- Licensable activity to terminate at 02.00hrs on Friday & Saturday and also on Bank Holidays, Sundays preceding Bank Holidays, Christmas Eve and New Year's Eve
- From 23.00hrs alcohol sales from the 'takeaway' area will be ancillary to the main purpose of food sales and will be limited to those customers who are making a substantial food order
- There will be no alcohol allowed on the premises in open containers and no alcohol will be consumed on the premises
- The premises will not sell any ciders, lagers or alcopops above 6.5% ABV

Licensing Sub-Committee B – 6 October 2020.

- If for any reason the hard drive of the CCTV system needs to be replaced, the old hard drive will be kept on the premises for a minimum of 31 days and made immediately available to any of the responsible authorities on request
- An age verification and delivery policy will be operated when alcohol is ordered for delivery. To maintain the efficacy of this policy, age verification at the point of delivery is required. This written policy will be made available to any of the responsible authorities on request. All deliveries will be signed at the point of receipt by the person making the order. A copy of all deliveries will be kept by the premises for no less than 3 months for inspection by any of the responsible authorities on request
- Deliveries of alcohol made by third parties and staff not employed directly by the premises licence holder will not be dispatched until a minimum of 24 hours have passed from receipt of the order
- A documented contract will be in place to ensure the third party carries out an age verification check and delivers in line with the Licensing Act 2003. This contract will be made available to any of the responsible authorities on request
- Staff making deliveries of alcohol employed directly by the premises licence holder will be trained in their responsibilities under the Licensing Act 2003 and the premises licence operating conditions. This training will be documented and signed by both the trainer and trainee. No staff are to carry out deliveries without this documented training with the exception of personal licence holders. This training is to be refreshed every 6 months signed by both the trainer & trainee and documented

The application stated that the Total Eclipse premises was a pre-existing and established takeaway business that wished to expand into off-sales of alcohol as part of a takeaway meal. The Sub-Committee deliberated the operating schedule put forward by the applicant and the likely impact of the application, and concluded that by granting this application, the four licensing objectives in the Act will be properly promoted.

Submissions were made by the applicant's representative, who confirmed that Ms Campbell had accepted the modified conditions which had been proposed by the Police, including the shortening of the terminal hour on Friday and Saturday. Potential problem areas, such as deliveries of alcohol, had also been dealt with via the Police conditions. The applicant's representative reassured the Sub-Committee that there was no intention to offer "high volumes of low-cost but high percentage ABV products". Alcohol sales

Licensing Sub-Committee B – 6 October 2020.

would be ancillary to the sale of takeaway food, and all lagers, ciders and alcopops would be under 6.5% ABV.

Members carefully considered the written representations made by other persons, but were not at all convinced that there was an evidential and causal link between the issues raised and the effect on the licensing objectives. None of the three objectors attended the meeting, which was unfortunate, as the Sub-Committee did not have any opportunity to ask them questions.

In considering the objections, the Sub-Committee was assisted by the applicant's representative, who observed that any objection on the grounds that there was "no economic need for another licensed premises" did not relate to the licensing objectives and should be rejected. The Total Eclipse premises was not in any Cumulative Impact Zone.

As for the objections relating to crime, antisocial behaviour, street drinking and litter, the applicant had submitted documents for inclusion in the Report. The documents related to localised crime patterns, and were official statistics from the "Home Office UK Crime Mapper" website, based on data produced by West Midlands Police.

The Sub-Committee agreed that the crime levels for the area were relatively low.

The applicant's representative drew the attention of the Sub-Committee to what he termed a 'highly questionable statement' made by one objector, namely: "As a Street Watch co-ordinator of the area, I will ensure that the licence is withdrawn." The Sub-Committee also looked askance at the objector's comment, and so disregarded it.

Furthermore the Sub-Committee agreed with the applicant's representative that part of the objectors' representations appeared to be merely speculative. The applicant's representative remarked that there was no evidence that there would be a new localised spike in alcoholism, or a sudden influx of antisocial or criminal street drinkers, upon the grant of a licence to Total Eclipse, and that these suggestions therefore ought to be disregarded, per *Daniel Thwaites plc v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin)*. The Sub-Committee agreed. Members considered that a careful operator, with Police-approved conditions on the premises licence, would be able to uphold the licensing objectives.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State, the application for a premises licence, the written representations received and the submissions made at

Licensing Sub-Committee B – 6 October 2020.

the hearing by the applicant via her adviser.

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 1043.