

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE C 3 APRIL 2019

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 3 APRIL 2019, AT 0930 HOURS, IN ELLEN PINSENT, COUNCIL HOUSE, VICTORIA SQUARE, BIRMINGHAM, B1 1BB

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Eustace and Brennan.

ALSO PRESENT

Shaid Yasser – Licensing Section
Parminder Bhomra – Legal Services
Katy Townshend – Committee Services

NOTICE OF RECORDING

1/030419 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

2/030419 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 to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/030419 No apologies were submitted.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – JAMARK, 5-9 STATION ROAD, ERDINGTON, BIRMINGHAM, B23 6UB.

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

(See document No. 1)

The following persons attended the meeting.

On behalf of the Applicant

Monica Duda – Applicant/Company Director
Daniel Szkwarek – Company Director
Piotr Mrchalik – Manager
Adrian Curtis – Solicitor
Trainee Solicitor – Observing.

Those Making Representations

PC Ben Reader – West Midlands Police (WMP)
Martin Williams – Trading Standards
Councillor Gareth Moore – Local Councillor

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Following introductions by the Chairman, Bhupinder Nandhra, Licensing Section, made introductory comments relating to the report.

Mr Adrian Curtis, on behalf of the applicant made the following points:-

- a) That the type of premises and business model was involving two directors, and senior managers for the business. It was a Polish shop, aimed at the Polish community.
- b) That there were currently 4 local premises, and 3 had alcohol licences.
- c) That they wanted to differentiate themselves from the other premises.
- d) That they were an Eastern European supermarket that would promote the licensing objectives.

Mr Szkwarek added that although he didn't speak good English he wanted to say that the business had been established some 12 years ago and was going along slowly. The premises would be operated under the same company with the same VAT number. They were paying all their taxes. That they had 6 other shops and a cash and carry, so they were trading and selling.

Mr Curtis interjected and explained about the new rules regarding cash and carries.

Mr Szkwarek continued by explaining how years ago people did not pay the duty on alcohol and were smuggling it into the country. Cheap alcohol was not duty paid; it's usually expensive when its duty paid. That on the High Street some Polish named premises weren't even Polish and were selling dodgy alcohol and cigarettes. They were not paying properly to the English Government. Moreover, there were issues with alcohol in Erdington and he had been victim to that a few times. However, they would not be selling alcohol to drunks or trouble makers, he would ask them to go away. They were not there to sell cheap alcohol.

At a previous Committee meeting, regarding one of the other shops, they were having similar conversations. There were too many Polish shops in Erdington yet one of them had a licence before them and yet there were no objections. There were three different names above that shop and the business owners were changing every quarter year, not paying VAT, taxes, yet they've had a licence twice already – Extra Supermarket. The owner came from West Bromwich and was banned from operating there, he's not on the documents but was the owner.

Mr Curtis continued to outline the case for the applicant:-

- a) That the company had been set up a long time and was good.
- b) That in 2016 there was an objection and it was the same directors on the application. During that hearing they went through and had a heated debate and they won that licence. There was a Cumulative Impact Policy in place back then.
- c) That the evidence was from three other shops selling alcohol and there were no issues of anti-social behaviour (ASB) from those shops.
- d) The Committee was minded last time to grant the licence with conditions.
- e) That alcohol could not be seen from the windows. There would be no outdoor advertisements of any kind regarding alcohol.
- f) They would comply with the conditions.
- g) They would not be allowing "those types of people" into the shop.
- h) That no more than 10% of sales were alcohol.
- i) That the crime statistics of the area only stated that alcohol had been linked to crime in the UK.
- j) That there was no evidence that the premises would add to cumulative impact.
- k) That the Trading Standard objection was historic, warning letters existed in the last objection but there had been no issues since then.
- l) That the allegation was in relation to cigarettes.

Mr Szkwarek advised that since the break in they had not stocked cigarettes.

Mr Curtis continued:-

- a) That the allegation was therefore false as they didn't sell cigarettes.
- b) That they couldn't have any issues with fake cigarettes because they didn't have them in the shop.

Mr Szkwarek explained that they had the shop as the owners wanted to get out. They wanted to make the shop good in the area like their other ones. They got the shop so they didn't have competition from doggy cigarettes and alcohol. When they took the shop over they found alcohol in the back that did not comply with UK regulations.

Mr Curtis added that everyone made mistakes and the unsupported allegation had been dealt with. That to deal with the representations they had offered some addition conditions:-

1. That a maximum area of 10% only for alcohol sales.
2. No single can sales – minimum sets of 4.
3. No alcohol promotions to be seen externally from the shop and alcohol not to be seen externally from the shop.
4. Not to sell alcohol in morning hours, start trading at Noon.

Mr Curtis advised that the product range they stocked was different; they didn't sell cider, mainly polish alcohol.

Mr Szkwarek added that they stocked Vodka as Polish people liked vodka. They did not stock Glen's or cheap Vodka. Street drinkers would not be buying their products as they were premium.

Mr Curtis added that they would also offer a condition:

5. No beer over 7%

Mr Szkwarek told Councillors how the shops were roughly 10-20 minutes apart.

Cllr Leddy advised the applicant that he was still not convinced that they would not add to the Cumulative Impact.

Mr Curtis advised the Cllr that they had put specific measures in place, along with offered conditions and changes to the hours of operating. The shop had already been trading without alcohol for 7 months with no issues. They were doing everything they could and no reason to suggest it was any different to the 3 other shops. That Monica would be DPS, and she wanted that role so she could be responsible, she was also a personal licence holder. If the Committee had concerns they could appoint another DPS.

Mr Szkwarek advised that he was always having meetings with staff to remind them about alcohol and expectations to make sure everyone was doing what they should be. They employ over 100 people.

PC Ben Reader, on behalf of WMP, made the following points:-

- a) That twice last week there was applications in Erdington, one had Mr Colvin QC representing them and still the Committee wasn't convinced.
- b) That there was a history of operator run ins with Trading Standards.

- c) That they had offered conditions but he was not sure how well they had been thought through.
- d) That he did not have confidence that the special policy had been taken seriously.
- e) That he did not have background on Station Road.
- f) That readily available Polish alcohol gave him concerns for street drinkers.
- g) That the offer of a different DPS was a last minute addition and concerned him.
- h) He had concerns over the stretched DPS anyway.
- i) That the place sounded successful, so did they really need alcohol?
- j) That it was a gentle way of granting, they reduced their hours, but if the application was granted they could come back in 6 months to extend the hours.
- k) That he couldn't say there were no logs on the premises, it just had not been serious enough to review the licence.

Mr Martin Williams, Trading Standards, made the following points:-

- a) That the DPS's supervise the sale of alcohol, yet she managed a number of premises, how could there be hands on control if she's not there.
- b) That there were issues with the shop before and illicit alcohol and cigarettes were seized. There were allegations of back door sales going on when the licence was reviewed. The licence was revoked and then a new application, supposedly a new business, but usually the same people. However, he asked for proof that this was a different company and he was satisfied that it was.
- c) That his biggest objection was that the DPS could not control that many premises.
- d) That the "bluey" was issued due to a complaint regarding illicit tobacco, they wouldn't issue a "bluey" unless they felt it was a legitimate complaint. Additionally, in some circumstances staff were selling things from the shop when managers weren't around.
- e) That it was an English complaint.

Cllr Gareth Moore, local Councillor, made the following comments:-

- a) That he was aware the Committee were probably already familiar with the issues, but he was going to do a quick crash course on them.

- b) That Erdington Ward had the second highest licensing applications.
- c) That there were lots of street drinking issues people congregating by the train station, St Georges Avenue, and by Ladbroke's in order to drink cans.
- d) That the premises was licensed previously and already had a bad history.
- e) That they had to be satisfied that the premises wouldn't engage in illegal activities again.
- f) That he was concerned when he saw the application.
- g) That there was not enough separation with the new company and did not resolve the issues of previous serious illegal activity.
- h) That there was a pattern of underage sales, yet there were no conditions regarding any of the above illegal issues.
- i) That further objections had been brought forward, however they did not want their details lodged.
- j) That prevention of crime and disorder and public safety were his biggest concerns.
- k) That conditions had been offered but why were they offered now and not published with the application.
- l) That the conditions were different on all of their licenses, no consistency with the premises.
- m) That they didn't contact them to disclose the conditions.
- n) That cigarettes were important, but it was not licensable.
- o) That they said they wouldn't sell cigarettes, but there was nothing the council could do if they did.
- p) That illegal and illicit cigarette sales were a concern.
- q) That he was concerned regarding the DPS and yet she had said nothing at the hearing.
- r) That there was no information regarding the staff; were they new or the old staff that were selling stuff illicitly through the back door.
- s) That he was not satisfied that the application was robust enough to address the licensing objectives for the anti-social behaviour that had taken place.

In answer to Members questions, Cllr Moore made the following points:-

- a) That he had received complaints about other off licences and had told them to report them, he did not know whether they did report them or not.
- b) That there was no evidence to say the shop was not well run.
- c) That next door to the premises was a Hungarian market, with a Cost Cutter also close by. There was a huge concentration of licensed premises and lots in close proximity.

In summing up Cllr Moore made the following points:-

- That he was not satisfied that the conditions put forward were robust enough.
- That the DPS had enough on her plate and the premises needed her full attention.
- That there was a Cumulative Impact Zone in operation in the area and yet nothing had been addressed. Therefore the application should be refused.

In summing up Mr Martin Williams, on behalf of Trading Standards made the following points:-

- That the DPS could not have control over 5/6 premises.
- That originally there was 1 DPS for every premises - that's what the role was created for
- That she had not spoken to argue the point regarding the control of the premises.

In summing up, PC Reader, on behalf of WMP, made the following points:-

- That he had not heard enough to be confident that they would not contribute to crime and disorder.
- That it was a Cumulative Impact Zone and should not be granted.
- That another application a week ago offered much more stringent conditions and was still refused.
- That the lack of consistency around conditions on each of their licenses was concerning.
- That there were DPS issues.

In summing up, Mr Curtis made the following points:-

- That Mr Colvin, QC submitted 27 conditions with an application recently and every application was on its own merits.

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- That there was a demonstrated history of the same people operating in the local area with no issues.
- That there was consistency in their licensing conditions, they didn't write hundreds of conditions as they knew they would be sitting discussing the application in front of a Committee, so it was not a surprise to them.
- That it did not matter when conditions were added to the licence, the key factor was whether the licence promoted the licensing objectives.
- That in addressing Cllr Moore's concerns the applicant's themselves had not been involved with the premises previous criminal activity.
- That they didn't have to prove that the premises had been taken over, they had taken a new lease and the previous business was closed. It was a completely different situation. It had closed and re-opened.
- That Cllr Moore wanted to see robust management, but they had already gone over that and discussed how they were awarded to be wholesalers.
- That they were a very tight rein senior management team and they were not the sort of team that let staff go ahead and buy stuff from people in the shop. There was no evidence of that.
- That there had to be room to grant the application.
- That his client had stated that the shops were between 10-20 minutes walk.
- That any changes to the operation of the business would be subject to the same policy.
- That they had already addressed the DPS issue.
- That if there was an issue, the licence could be granted and they would not sell alcohol until a new DPS was appointed.
- That the reason the Committee had not heard from Monica was due to her not liking speaking.

Mrs Monica Duda made the following points:-

- That she was the proposed DPS as she was going to be dealing with the shop, it was their business.
- That employees received alcohol training and were familiar with the policies.
- That Piotr would be the manager.
- That supervisors had to do a course in order to sell alcohol.

- That not everyone would be behind the till.
- That staff behind the till would be trained to sell alcohol.
- That she would not be in the shop all of the time, as that was impossible.
- That Piotr was good and was a manager.
- That in summary it was three businesses trading with the same structure.
- That they had added conditions due to concerns put forward.
- That the application should be granted based on the amended times.
- That they had offered a list of conditions.

Mr Daniel Szkwarek added the following comments:-

- That there were other shops on Station Road.
- That the Hungarian Shop didn't have a licence.

Mr Curtis interjected explaining to Mr Daniel Szkwarek that it was not relevant to the application.

At 1130 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1214 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

4/030419 **RESOLVED:-**

That the application submitted by Jarmark Erdington Limited for the grant of a premises licence in respect of Jarmark, 5 – 9 Station Road, Erdington, Birmingham, B23 6UB be refused.

The Sub-Committee's reasons for the refusal are due to concerns by other persons and Responsible Authorities regarding the impact of the proposed operation in the particular locality of the premises which is associated with street drinkers.

The other reason is due to the questionable ability of the Designated Premises Supervisor (DPS) to manage a portfolio of premises managed by the company, having heard her comments in response to the previous incidents highlighted by Trading Standards authority.

Members were therefore concerned irrespective of the volunteered conditions, including the reduction of trading hours that the overall management style of the DPS did not give them conclusive confidence that the licensing objectives would be promoted and not add to the identified problems in the Cumulative Impact Zone area.

The Sub Committee gave weight to the general view held in respect of a DPS at alcohol licensed premises as someone who is normally in charge of the day to day running of the business, and control of the licensed premises. Thus the expectation being, a DPS is onsite at the licensed premises for the majority of time when alcohol is being sold to ensure good management of the premises and the licensable activities.

Members gave consideration to the DPS and her legal representative's explanation for the need for the DPS to keep a tight rein on all the businesses but noted with some concern, the DPS showed some indifference towards managing the conduct of staff members in relation to the sales of alcohol. In view of previous warnings issued by Trading Standards to the DPS, and the number of businesses supervised by the designated person, Members could not be satisfied as to whether the DPS could ensure adequate supervision of the sale of alcohol.

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 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 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, *their (legal) adviser/and those making representations.

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

LICENSING ACT 2003 PREMISES LICENCE – GRANT – SACRED HEART, 28 GRANGE ROAD, ASTON, BIRMINGHAM, B6 6LA

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

(See document No. 1)

The following persons attended the meeting.

On behalf of the Applicant

Terance Kelly – Applicant

Patrick Burke – Agent

Those Making Representations

No one attended

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Following introductions by the Chairman, Bhapinder Nandhra, Licensing Section, made introductory comments relating to the report.

Mr Patrick Burke, on behalf of the applicant made the following points:-

- a) That the reason for the application was that the previous licence was surrendered in 2018 by the previous tenant.
- b) That the Sacred Heart was owned by the church for many years; it had been licensed a long time.
- c) That Terrance had ran businesses for years without issues.
- d) That the premises had been refurbished to a very high standard.
- e) That the premises would serve the local community.
- f) That the premises was licensed for 12 years until 3am – however, they have not applied for those hours and had received no objections from Responsible Authorities.
- g) That they had contacted the objector by email but had received no response.
- h) That Mr Khan stated he had lived there for many years and had issues with people urinating in his garden, racial abuse, bottles found in his garden. However, Terrance could not be held accountable on how the premises was previously managed.
- i) That there were no issues with the TENs.
- j) That they had put measures in place with local Taxi's to reduce noise.
- k) That they accepted the concerns of local residents.

- l) Mr Burke drew particular attention to Thwaites v Wirral – case in high court 6th May 2008 – guidance that there should be a “light touch bureaucracy”. That decisions on applications should only be made on evidence and not based on speculation.
- m) That the objection was based on speculation and therefore, the Committee should not add any weight to it.
- n) That there were no objections from WMP.

Mr Burke used a story from his own experience of being a pub manager in order to demonstrate how it was better for premises to be occupied and operated responsibly, than closed up and used as “drug dens” by homeless or “squatters”. He concluded by explaining that the DPS was a responsible operator and had never had issues previously therefore, the licence should be granted.

In response to Members question Mr Burke made the following points:-

- a) That in terms of adult entertainment, it was all on the application. It was standard and would not be including strippers.

Mr Terrance Kelly made the following points:-

- a) That he would personally search the perimeters.
- b) That they had an agreement with the local taxi company.
- c) That they had a big car park.
- d) That the outside bar was plastic glasses only and had been open previously on TENs with no issues.
- e) That they had notices up about being mindful to neighbours.
- f) That he had been running pubs for 18 years.
- g) That all of the outside area would be plastic glasses only.

In summing up Mr Burke made the following points:-

- That he did not have much else to say other than there were no objections from responsible authorities.
- That the premises would be run professionally.

At 1314 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1331 hours all parties were recalled to the meeting in order for the Chair to gain clarification on a concern that the Members had raised.

The Chairman asked the applicant if they would consider a curfew time on the outside bar area.

Mr Burke advised that the area would only be used for football matches and private parties and therefore a restriction of 2200 hours would be satisfactory.

The Chairman then asked the applicant if they would consider a restriction on the number of people allowed in the smoking area at any one time.

Mr Burke responded that 6 after 2300 hours would be satisfactory.

At 1337 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1355 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/030419 **RESOLVED:-**

That the application submitted by Terence Kelly for a premises licence in respect of Sacred Heart, 28 Grange Road, Aston, Birmingham, B6 6LA be granted subject to the agreed conditions with West Midlands Police, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003, together with the following conditions:-

- No drinking in the outside bar area after 2200 hours
- The smoking area is limited to 6 people at any one time after 2300 hours.

The Sub Committee heard oral representations from the agent for the premises licence holder in respect of the venue's location, history and proposed operation. In the absence of the local resident who objected to the application, Members carefully considered the one written representation submitted, made by other person and were concerned to note that there was a strong possibility of an evidential and causal link between the issues raised, that could arise again.

Members gave regard to the character of the area in light of the proposed operation, and were acutely aware of the very real prospect of late night noise emanating from patrons smoking and or drinking outside in the premises car park, causing disturbance to nearby residents, particularly during the football season, and summer months.

The Sub Committee took on board the agent's contention that the premises had operated well during the last 3 weekends under TENS without complaint, and there were no representations from other responsible authorities, but nonetheless remained concerned with the capacity of the outside bar and smoking shelter.

Members considered the agent's submission regarding the Daniel Thwaites PLC case which seems to say that decisions must be based on actual evidence not

speculation and that a 'light touch bureaucracy' is required, however the statute suggests that speculative evidence can be taken into account; if the effect is more likely than not.

The Sub Committee determined the effect of granting a premises licence with outside smoking and drinking is more likely than not to disturb residents and, this could be overcome by way of additional conditions as discussed during the hearing.

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 with the agreed and additional conditions, the four Licensing Objectives contained in the Act will be properly promoted.

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

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the information in the application, the written representations received and the submissions made at the hearing by the applicant and their agent.

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.

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OTHER URGENT BUSINESS

There were no matters of urgent business.

The meeting ended at 1400 hours.

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CHAIRMAN