

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B 12 FEBRUARY 2019

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 12 FEBRUARY 2019
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Nagina Kauser in the Chair

Councillors Adam Higgs and Mike Sharpe

ALSO PRESENT

Bhapinder Nandhra, Licensing Section
Parminder Bhomra, Committee Lawyer
Katy Townshend, Committee Manager

NOTICE OF RECORDING

1/120219 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

2/120219 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 to be recorded in the minutes of meeting.

No declarations of interest were declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/120219 There were no Nominee members.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 4/120219 The public section of the Minutes of meeting held on 17 July 2018 were noted.
The public section of the Minutes of meeting held on 30 October 2018 were noted.
The public section of the Minutes of meeting held on 27 November 2018 were noted.
The public section of the Minutes of meeting held on 8 January 2019 were noted.
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**LICENSING ACT 2003 PREMISES LICENCE – VARIATION – MACE
CONVENIENCE STORE, HARBOURNE SERVICE STATION, 231 COURT OAK
ROAD, HARBOURNE, BIRMINGHAM, B17 9AD**

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 premises

Professor Roy Light – Barrister
Richard Baker – Agent – RB Retail and Licensing Services Limited.
Peter Dyde – Applicant
Kris Navaratnam – Applicant

Those making representations

No one making representations attended.

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Following introductions by the Chairman, Bhupinder Nandhra, Licensing Section, made introductory comments relating to the report. In addition, he also advised Members that no one making representations had attended.

In response to questions from Members of the Sub-Committee, Professor Roy Light, on behalf of the premises, made the following points:-

- a) That Peter had sold the business to Kris, whom was very experienced and had already run two sites, one of which opened 24 hours daily.
- b) That his client had increased the stock in the shop and improved it.
- c) That his client did not wish to upset anyone, but needed late night refreshment in order to “trade successfully”.
- d) That the residents were concerned about late night refreshment, they were making assumptions that it would be operated as a “takeaway”. However, it was purely to allow them to sell hot coffee and pastries.

- e) That as far as alcohol was concerned there were no representations received from responsible authorities and the guidance suggested that “each responsible authority were experts in their own field”. (Professor Roy Light also pointed Members to the Section 182 guidance, section 9.12)
- f) That there were no complaints and therefore, they didn’t see the 24 hour licence as a potential problem.
- g) That they had a Police consultation which resulted in additional conditions which could be seen at page 64 of the agenda pack. (These conditions were read out to Members).
- h) That Mr Baker had copies of the training manuals and would happily give Members a brief overview.

At this stage Mr Baker handed out the training manuals and went through the document briefly with Members, he drew particular attention to the following:-

- That it was a manual used by the applicant on all sites.
- Section 3 – the training of staff. He outlined that a booklet would be given to staff for them to read, and they would also have to sign to say they had understood it and had a copy of it. It also included relevant information on employing staff to ensure they were legal to work in the UK; a right to work checklist was also incorporated.
- That a full set of training records would be stored in Section 7 so authorities could inspect as they wished. The manual would be on site 24 hours a day.
- That Section 4 included a number of tests with the answers on a separate sheet. Once staff had passed they then had to sign to say they had passed and understood their responsibilities.
- That there was an “authorisation to sell alcohol” sheet. Only persons holding a personal licence would be authorised unless the licence holder themselves authorised an employee to sell alcohol. Therefore, every member of staff signed to indicate the level and date and the DPS would also sign it.
- That refresher training was included.

Professor Roy Light made further comments:-

- a) He outlined the licence conditions on page 51 of the agenda pack.
- b) That there were a number of representations from people, but he was not aware of where they lived so he could not ask them how directly they would be affected, in accordance with policy which stated that it was important to know where people were in relation to the premises in order

to see how directly affected they would be.

- c) The premises were asking to be open for 24 hours and therefore they should be able to serve alcohol for those hours.
- d) That in relation to the light pollution and public nuisance, Mr Dyde had made every effort to ensure it was kept at a minimum.
- e) That the premises already had lighting 24 hours due to the cashpoint so this would have no further impact.
- f) Addressing the litter concerns; there were 7 litter bins on the premises and there was a litter sweep twice a day.
- g) That the shop had only had incidents of shop lifting and they kept spirits behind the counter. They previously put a notice up on the shop windows regarding a repeat offender and he never came back.
- h) That there was no evidence that the premises being open later would attract people who wanted to drink and make noise.
- i) That if issues did arise they could complain or the Committee could hold a review.
- j) That there were no conditions on the licence currently so therefore granting the variation would actually make the premises far more secure with all the additional conditions.

In answer the Members questions Professor Roy Light made the following points:-

- a) That Mr Dyde took over the premises when it was 24 hours, however, he was living over 50 miles away and didn't have the support in place to control the premises for those opening hours, so he reduced them.
- b) That the premises was currently able to sell alcohol from 0600 – 2300.
- c) That they did not currently have late night refreshment.

Mr Dyde added:-

- a) That none of the complainants had included their addresses and therefore it was difficult to contact them. Additionally none of them had contacted the premises.

Mr Baker confirmed that he had emailed over their evidence, manuals and the Thwaites case to those that made representations.

Mr Dyde confirmed he would not want to accept any other hours, he had applied for 24 hours and he wanted to stick to that.

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Mr Baker explained that they wanted to open later to provide for those that worked unsociable work patterns. They would employ staff relevant to business needs; so if it was busy they would have more staff.

Mr Dyde confirmed the area was good, although it had had some issues of anti-social behaviour, but never big issues.

In summing up Professor Roy Light made the following points:-

- ❖ That his client was an experienced operator.
- ❖ That there had been no responsible authority representations.
- ❖ They had provided a big manual to Members.
- ❖ That there were no reasons not to grant the application.
- ❖ That the licence would have the conditions from the operating schedule and those from West Midlands Police.

At 1148 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1204 the meeting was reconvened and all parties were invited to rejoin the meeting. The decision on the Licensing Sub Committee was announced as follows:-

5/120219

RESOLVED:-

That the application by PK Retail Limited to vary the premises licence in respect of Mace Convenience Store, Harborne Service Station, 231 Court Oak Road, Harborne, Birmingham, B17 9AD under section 34 of the Licensing Act 2003

BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS with immediate effect		
A.	Modification of hours – Alcohol	The extension of hours for the sale of alcohol (for consumption off the premises) shall apply as follows: 24 hours – Monday to Sunday
B.	Late night refreshment	The provision of late night refreshment shall apply as follows: 11:00pm to 05:00am, Monday to Sunday
C.	Opening hours	The premises to remain open to the public as follows:

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		24 hours (Monday to Sunday)
D.	Other conditions agreed by the applicant with West Midlands Police	<ul style="list-style-type: none">i. Between the hours of 23:00 and 06:00 the default for the electronic shunt door will be set to the 'locked' position. Only to be opened by staff to customers who they wish to allow entry the main shop area.ii. No alcohol to be allowed on the premises in open containersiii. CCTV will be downloadable and made available to any of the responsible authorities immediately on request.iv. CCTV will display the correct time and date stamp and record throughout the whole of the licensable activity.

The Sub-Committee's reasons for imposing the agreed conditions are due to the submissions made by the applicant's legal representative about the history and location of the premises, and the experience of the current licence holder who has acquired the business.

Members also took into account the applicant's dialogue with Responsible Authorities prior to the hearing and noted, in light of the proposed measures, no objection had been made, particularly by Environmental Health as there were no records of complaints against the licensed premises. Further, the applicant had also made contact with those persons that submitted written representations but received no response.

The applicant's reply to the other person's written representations was that the premises had operated for many years without any problems save for one incident when a shoplifter was caught twice on the premises CCTV and banned from the shop. The purpose of the first two conditions as agreed with West Midlands Police was therefore to control access to the shop, and prevent consumption of alcohol on the premises. In the opinion of West Midlands Police if those conditions were implemented including the last two conditions, the licensing objectives would be met.

The Sub Committee was requested to consider the operating schedule forming part of the variation application which the applicant opined contained sufficient conditions to satisfactorily address the issues raised by other persons, and these together with those agreed conditions with West Midlands Police would promote the licensing objectives.

The applicant's legal representative directed Members to the City Council's Statement of Licensing Policy on licensing hours, particularly paragraph 6.9, and on case law, Daniel Thwaites Plc v Wirral Borough Magistrates' Court (6 May 2008), on having good reasons for restricting those hours requested in the absence of any responsible authority's representation or evidence.

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application but did not accept that there was evidence of a significance increase in public nuisance and, or risk to crime and disorder, arising from the proposed operation of the premises. The applicant came across as very responsible and this was further demonstrated by the applicant's agent when the bespoke training manual was presented during the hearing for inspection by the Sub-Committee.

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

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

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 and oral representations made at the hearing by the applicant, their legal adviser, agent, and written representations from other persons.

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

6/120219 There was no urgent business.

EXCLUSION OF THE PUBLIC

7/120219 **RESOLVED:**

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:-
(Paragraphs 3 & 4)

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Meeting ended 1205 hours.

CHAIRMAN.....