

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE WEDNESDAY 22 DECEMBER 2021

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE
A HELD ON WEDNESDAY 22 DECEMBER 2021 AT 1200 HOURS
AS AN ON-LINE MEETING.**

PRESENT: - Councillor Nicky Brennan in the Chair;

Councillors Mike Ward and Martin Straker Welds.

ALSO PRESENT

Shaid Yasser – 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)

1/221221 **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.

2/221221 **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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- 3/221221 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.
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4/221221 **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

Apologies were submitted on behalf of Councillor Mary Locke.
Councillor Martin Straker Welds was the nominated substitute.

5/221221 **LICENSING ACT 2003 PREMISES LICENCE – TRANSFER DC MINIMARKET, 138 CHURCH ROAD, YARDLEY, BIRMINGHAM, B25 8UT**

LICENSING ACT 2003 PREMISES LICENCE – APPLICATION TO VARY A PREMISES LICENCE TO SPECIFY AN INDIVIDUAL AS DESIGNATED PREMISES SUPERVISOR DC MINIMARKET, 138 CHURCH ROAD, YARDLEY, BIRMINGHAM, B25 8UT

Those Making Representations

Mark Swallows – West Midlands Police

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 Senior Licensing Officer, Shaïd Yasser, to outline the report.

The Chair invited those making representations to make their submission and Mark Swallows, on behalf of West Midlands Police, made the following statements:-

- a) The premises licence for the shop was revoked by Licensing Committee C on 4th August 2021 after an application made by Birmingham Trading Standards due to counterfeit and illicit tobacco products being found on the premises. 107 packets of tobaccos, mixed between counterfeit and non-duty paid tobacco.
- b) At that hearing the Designated Premises Supervisor (DPS) was removed by the committee/
- c) West Midlands Police supported Trading Standards' call for the licence to be revoked and made representations at the hearing.
- d) The decision by the Licencing Sub-Committee was being appealed. This was due to be heard at Birmingham Magistrates Court on 6th January 2022.

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- e) Due to the fact that the premises licence had been revoked and the DPS removed, West Midlands Police were concerned that this application for the two transfers submitted on 22nd November 2021 may be a subterfuge and the current applicant may be a figurehead meaning that the previous DPS would effectively still have control of the business.
- f) In order to allay those fears West Midlands Police had to work with the applicant via his agent. West Midlands Police made a request that either a signed lease or ownership of the premises, signed solicitors letters or documents for the transfer of the business or copies of money transfers between the parties and a copy of the business rates and who has responsibility for payment of them be made available. This would show that this was a genuine transfer.
- g) The aforementioned documents were requested on 23rd November 2021 and were not forthcoming. A reminder email was sent on 1st December 2021.
- h) Christopher Jones, Licensing Officer, then had a conversation with the agent for the applicant on 2nd December 2021 who informed Mr Jones that he was still awaiting an update from his client. These updates had not been forthcoming.
- i) The Agent no longer represented the applicant.
- j) The aforementioned documentation had not come to West Midlands Police or been submitted to the Sub-Committee for examination.
- k) The applicant had not submitted themselves for cross-examination from the Sub-Committee.

Members were invited to ask questions and Mark Swallows, on behalf of West Midlands Police, gave the following responses: -

- a) The failure to provide documents that would be relatively easy to come by to demonstrate that the transfer was genuine and above board raised questions. The documentation would have to exist for the transfer of the business to take place. If any of the documentation did not take place then the transfer had not taken place and the business was still with the original owner.
- b) In his experience, such documents are forthcoming in other cases unless there has been a reason for them not to, i.e. it is not a genuine transaction. Any decision to grant this transfer would be an act of faith by the Sub-Committee and not based on any documentation that proves the good faith of the applicant.

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

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Mark Swallows, on behalf of West Midlands Police, made the following closing statements:-

- This was an application for the transfer of a premises licence and DPS to a new applicant.
- West Midlands Police had asked for documentary evidence to prove that this was a genuine transaction and that the applicant was the person who would have genuine control of the business.
- The documentation had not been forthcoming and no reason has been shown as to why it was not forthcoming.
- The Sub-Committee were asked not to grant the licence as he believed it was not a genuine transaction and that the previous owner would still have significant interest in the business which would be against the licensing objectives.

6/221221

RESOLVED

That the application under section 39 of the Licensing Act 2003 by Sharifnejad Abubakr, to vary the premises licence to specify Sharifnejad Abubakr as the designated premises supervisor in respect of DC Minimarket, 138 Church Road, Yardley, Birmingham B25 8UT, be refused on the grounds that the application to vary would undermine the crime prevention objective in the Act, as the Sub-Committee had no confidence whatsoever that the applicant was capable of upholding it.

The Sub-Committee noted that the applicant did not attend the meeting; nor was he represented. The applicant had been informed by the Licensing Department of the City Council that the matter could be heard in his absence if he did not attend. The Sub-Committee proceeded with the meeting in the public interest.

The Sub-Committee heard from West Midlands Police, and considered the Police's grounds for objection to be compelling and exceptional. The Police made detailed submissions about how the instant application had followed a Sub-Committee meeting held on the 4th August 2021, when the licence had been held by a Mr Sheikhehpour.

At the Sub-Committee meeting of the 4th August 2021, the Sub-Committee had been informed that illicit tobacco had been found at the shop. The Sub-Committee had therefore revoked the licence forthwith. Mr Sheikhehpour had been the person named as the designated premises supervisor for the shop; accordingly the Sub-Committee had also removed him from that role.

However, the Police observed to the Sub-Committee that there was a suspicion that the instant application might not be all it seemed. Requests for the documents (to show that Mr Abubakr had formally taken over the premises) had been requested, but had not been forthcoming. These documents should have been readily to hand; as the Police remarked, after licence revocations, transfers were entirely usual, and where

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there had been genuine transactions, the documents were always produced without problems. Without seeing the documents, the Police were concerned that there could be some subterfuge - perhaps using Mr Abubakr as the named person whilst Mr Sheikhehpour remained the person in control.

The Police noted that Mr Sheikhehpour had presided over an unsatisfactory operation which had undermined the licensing objectives in Yardley. The Police were therefore not prepared to countenance any risk at all of a continuing involvement by him in the management of the shop. Mr Abubakr had been asked to supply the documents, yet he had not, and he had also failed to attend the Sub-Committee meeting.

Regarding Mr Abubakr acting as designated premises supervisor, there would be no confidence from the Police in his ability to promote and uphold the licensing objectives unless and until he was able to show that Mr Sheikhehpour was no longer anything to do with the shop. Accordingly the Police objected to Mr Abubakr's application, on the grounds that the crime prevention objective was not at all likely to be upheld by him. The Sub-Committee accepted this. It was the Police advice that the application should be refused. Accordingly the Sub-Committee determined that the correct course was to reject the variation application, in order to ensure that the crime prevention objective was not undermined.

In reaching this decision, the Sub-Committee gave due consideration to the information contained in the application, the objection notice submitted under section 37(5) of the Act, and the submissions made at the hearing by West Midlands Police. Regard was also given to paragraphs 4.31 to 4.41 of the Guidance issued under section 182 of the Act by the Secretary of State, and it was determined that refusal in this instance is an appropriate and proportionate response in all the circumstances of the case.

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.

7/221221

RESOLVED

That the application by Sharifnejad Abubakr for the transfer of the premises licence under section 42 of the Licensing Act 2003 (the "Act") in respect of DC Minimarket, 138 Church Road, Yardley, Birmingham B25 8UT, be refused on the grounds that the application to transfer would undermine the crime prevention objective in the Act, as the Sub-Committee had no confidence whatsoever that the applicant was capable of upholding it.

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The Sub-Committee noted that the applicant did not attend the meeting; nor was he represented. The applicant had been informed by the Licensing Department of the City Council that the matter could be heard in his absence if he did not attend. The Sub-Committee proceeded with the meeting in the public interest, and especially in view of s43 of the Act (relating to transfer applications having interim effect).

The Sub-Committee heard from West Midlands Police, and considered the Police's grounds for objection to be compelling and exceptional. The Police made detailed submissions about how the instant application had followed a Sub-Committee meeting held on the 4th August 2021, when the licence had been held by a Mr Sheikhehpour.

At the Sub-Committee meeting of the 4th August 2021, the Sub-Committee had been informed that illicit tobacco had been found at the shop. The Sub-Committee had therefore revoked the licence forthwith. Mr Sheikhehpour had been the person named as the designated premises supervisor for the shop; accordingly the Sub-Committee had also removed him from that role.

However, the Police observed to the Sub-Committee that there was a suspicion that the instant application might not be all it seemed. Requests for the documents (to show that Mr Abubakr had formally taken over the premises) had been requested, but had not been forthcoming. These documents should have been readily to hand; as the Police remarked, after licence revocations, transfers were entirely usual, and where there had been genuine transactions, the documents were always produced without problems. Without seeing the documents, the Police were concerned that there could be some subterfuge - perhaps using Mr Abubakr as the named person whilst Mr Sheikhehpour remained the person in control.

The Police noted that Mr Sheikhehpour had presided over an unsatisfactory operation which had undermined the licensing objectives in Yardley. The Police were therefore not prepared to countenance any risk at all of a continuing involvement by him in the management of the shop. Mr Abubakr had been asked to supply the documents, yet he had not, and he had also failed to attend the Sub-Committee meeting.

Accordingly the Police objected to Mr Abubakr's application, on the grounds that the crime prevention objective was not at all likely to be upheld by him. The Sub-Committee accepted this. It was the Police advice that the application should be refused. Accordingly the Sub-Committee determined that the correct course was to reject the transfer application, in order to ensure that the crime prevention objective was not undermined.

In reaching this decision, the Sub-Committee gave due consideration to the information contained in the application, the objection notice submitted under Section

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42(6) of the Act, and the submissions made at the hearing by West Midlands Police. Regard was also given to paragraphs 8.99 - 8.102 of the Guidance issued under section 182 of the Act by the Secretary of State, and it was determined that refusal in this instance is an appropriate and proportionate response in all the circumstances of the case.

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.