

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 16 MAY 2023
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 16 MAY 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Julien Pritchard 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)

1/160523

NOTICE OF RECORDING/WEBCAST

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/160523

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.

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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/160523 Apologies were submitted on behalf of Councillor Saddak Miah and Councillor Julien Pritchard was the nominated substitute Member.
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MINUTES

- 3/160523 That the Minutes of the meeting held on 18 January 2022 were circulated, confirmed and signed by the Chair.
The Public section of the Minutes of the meeting held on 7 March 2023 1000 hours were noted and the Minutes as a whole were confirmed and signed by the Chair.
The Public section of the Minutes of the meeting held on 4 April 2023 1000 hours were noted and the Minutes as a whole were confirmed and signed by the Chair.
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LICENSING ACT 2003 PREMISES LICENCE – GRANT – SELECT & SAVE, 393 SUMMER LANE, NEWTOWN, BIRMINGHAM, B19 3PL.

Please note

The meeting was delayed due to technical difficulties and subsequently commenced at 1030 hours.

On Behalf of the Applicant

No one on behalf of the applicant attended the meeting.

On Behalf of Those Making Representations

Mark Swallow – WMP (West Midlands Police)

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

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. David Kennedy, Licensing Section, outlined the report.

At this stage the chair invited WMP to outline their case and Mark Swallow made the following points: -

- a) On the 29th March WMP received the application for a premises licence for Select & Save.
- b) He emailed the agent requesting documents in order to carry out checks. He sent a further email requesting the same documents.

- c) The documents requested were in order to ensure the previous people involved in the premises were no longer involved. There is a condition agreed on the licence stating that those persons previously involved in running the business were to have no involvement moving forward.
- d) The documents would show that the business has changed hands.
- e) However, only a lease has been provided, but no other documentations.
- f) The lease only shows permissions to use the premises and not ownership of the business itself.
- g) The applicant could be a partner with the previous PLH.
- h) The documentations still hasn't been provided.
- i) WMP request that the application be refused.

The Chair invited WMP to make a closing submission and Mark Swallow made the following closing statements: -

- The previous licence was reviewed and revoked due to offences of dishonesty.
- WMP requested documents to show there is no link between the current applicant and the previous persons involved in the premises as they are unfit to hold a premises licence.
- The information requested has not been provided other than a lease, which does not show anything to do with the ownership of the business.
- The applicant could easily be linked to the previous people.
- WMP request that the licence application be rejected.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the short decision of the Sub-Committee was announced in public, then a full written decision was sent to all parties as follows;

4/160523

RESOLVED:-

That the application by Ajay Chumber for a premises licence in respect of Select & Save, 393 Summer Lane, Newtown, Birmingham B19 3PL, be rejected. In reaching this decision, the Sub-Committee was mindful of the promotion of the licensing objectives in the Act, in particular the prevention of crime and disorder.

The Sub-Committee's reasons for refusing this application for a

premises licence are due to the concerns which were raised by those making representations, namely West Midlands Police and Licensing Enforcement.

The application was for off-sales of alcohol from 07:00 hours until 00:00 midnight daily, with the opening hours to match these times. At the start of the meeting the Sub-Committee noted that the applicant and West Midlands Police had both submitted documents, all of which were in the Report.

In advance of the meeting, the Police had made requests to the applicant, due to the previous history of highly unsatisfactory trading at the site, which had resulted in a Review hearing before the Sub-Committee in January 2023 (when the premises had been known as 'Premier', and the licence holder had been a Mr Raj Kumar). The outcome of the hearing in January 2023 had been a revocation of the premises licence held by Mr Raj Kumar, after the Sub-Committee heard from West Midlands Police that those at Premier had been buying alcohol which had been shoplifted from nearby off-licence shops, and then placing it on display to sell to customers at Premier.

The requests made by the Police in advance of the meeting were for documentation to show that the business had changed hands, such that the previous person running the old business had no part in the running of the new business. The Police had wanted to see a proper separation between the old arrangements at 'Premier', and the operation proposed by the new applicant, who would be trading as 'Select & Save'. Provided the proper documentation could be shown, the Police would be happy with the operating schedule together with some extra conditions. The Sub-Committee noted that Licensing Enforcement had submitted a representation supporting the Police's position.

Some documents had been provided by the applicant in response to these Police requests. However, the applicant did not attend the meeting and was not represented. The Sub-Committee therefore carefully examined his application and supporting documents (all of which were in the Committee Report), but did not have an opportunity to hear from the applicant directly, and more importantly, had no opportunity to ask questions.

The Sub-Committee then heard from West Midlands Police. The Police made representations, exactly as in the Report, relating to the upholding of the prevention of crime and disorder objective.

The background of the premises was explained by the Police, as per the Committee Report. The Police explained that in the instant application it was incumbent on the Police to ensure that the new applicant was completely separate to the previous operator, in order to ensure that the promotion of the licensing objectives would not be put

at risk. This was essential as the revocation had been due to dishonest trading which had undermined the promotion of the licensing objectives.

Documents had been forwarded to the Police by the applicant before the Sub-Committee meeting. However, the Police had not been satisfied with the documents they had received, and had therefore maintained their objection. The central issue was the documentation to show the transfer of the business. The Police had found that the documentation which had been produced was not sufficient reassurance that the business arrangements were properly separated from those of the previous operator.

The Police found it unsatisfactory that only a Lease document had been supplied because this did not evidence a transfer of the business. The Police remarked that the Lease “only shows permission to use the premises, not ownership of the business. Mr Chumber could be a business partner of the previous people, or even work for them. The Lease does not clarify that”.

Numerous reminders had been sent by the Police by telephone, in addition to two emails, to no avail, and the applicant had not produced alternative documents, for example anything relating to utilities and/or business rates, which the Police might have been prepared to view as good supporting evidence.

The Police therefore urged the Sub-Committee to reject the application, advising that without any documentation to show the transfer of the business, there was nothing for the provided documentation (ie the Lease) to support. The conduct of persons previously trading from the site had necessitated the need for careful due diligence by the Police in relation to the instant application. The applicant had offered insufficient evidence; this had raised concerns, as there was no confirmation that there was no link between the applicant and the ‘Premier’ proprietor who had been found to be undermining the licensing objectives in the Review proceedings heard in January 2023. The Police also remarked that the applicant had not attended the meeting to address the Sub-Committee.

Moreover, the Police observed that in any event, before the licence could be granted, they would want to suggest additional operating conditions to ensure safe trading and the promotion of the licensing objectives. However, in the current circumstances, suitable conditions could not be imposed due to the inability of the applicant to adequately show proper ownership of the business, and proper independence from the previous licence holder.

Having heard all of the evidence, the Sub-Committee retired to determine the application. The Sub-Committee examined the operating schedule put forward by the applicant, but was not at all persuaded that matters were in order. As the Police had observed, there was

nothing to properly show a genuine separation between the previous operator and the new applicant; the Members agreed with the Police.

The Sub-Committee also agreed with the Police observation that the Lease document on its own was completely unsatisfactory in terms of safe trading. The Police had explained that the application was not a normal application; any 'normal' application involving a changeover of premises licence holder would perhaps not be subject to such a level of scrutiny. However, in the instant application, the Police observed that to grant the application where there had recently been a revocation would place the licensing objectives at risk, as there was no confirmation of a proper separation between the applicant and the previous operator.

The Sub-Committee agreed that the very poor past history of the premises required a cautious approach, and agreed with the Police that to proceed without the proper documents in place would be quite unsatisfactory given the revocation some five months ago. The Sub-Committee accepted the Police advice that it would place the prevention of crime and disorder objective at risk to grant the licence in these circumstances. The Police recommendation had been that the only correct course was that the application should be rejected, in order to ensure the promotion of the prevention of crime and disorder objective. The Sub-Committee noted that the Police's position had also been endorsed by Licensing Enforcement.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the licensing objectives were adequately promoted and that therefore the licence might be granted; however, the Police had advised that the licence could not be appropriately conditioned either, unless and until satisfactory documents were supplied. The Sub-Committee therefore resolved to reject the application.

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 West Midlands Police.

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.

EXCLUSION OF THE PUBLIC

5/160523

RESOLVED:-

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

CHAIR.....