

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A,
MONDAY 22 JULY, 2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 22 JULY, 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Ziaul Islam and Maureen Cornish.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Poole - Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/220723

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 meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/220723

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.

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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

3/220723 No apologies were submitted.

MINUTES

4/220723 That the Minutes of the meeting held on 13 June 2024 and 24 June 2024 at 1000 hours were circulated and confirmed and signed by the Chair.

The public section of the Minutes of the meeting held on 1 July 2024 were noted and the Minutes as a whole were confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – DM CORNER LIMITED T/A DYLAN’S, UNIT B, GALBRAITH HOUSE, 141 GREAT CHARLES STREET, BIRMINGHAM, B3 3LG.

5/220723 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On behalf of the Applicant

Rob Edge – Agent

Those Making Representations

No one attended on behalf of those making representations.

* * *

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 Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present the report. Bhopinder Nandhra, Licensing Section, outlined the report.

The Chair then invited the applicant to make their submission, Rob Edge on behalf of the applicant made the following points: -

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- a) That when making the application they had taken into consideration the Statement of Licensing Policy, the Home Office Section 182 Guidance, Licensing Act 2003, the objectives and the representations received.
- b) That none of the responsible authorities had made any objections and they were considered the experts in advising the Committee on licensing applications.
- c) The applicant had liaised with West Midlands Police and agreed a set of additional conditions.
- d) They had attempted to mediate with two of the objectors and as a result the applicant had reduced the hours to 2300.
- e) That the agreed conditions between the applicant and West Midlands Police were aimed at the street drinkers (no single can sales and no alcohol to be sold above 6.5% ABV).
- f) The premises had been empty for some time and the applicant had invested a large amount into refurbishment of the premises.
- g) It would add a high quality convenience store to the High Street.

The Chair then invited Rob Edge on behalf of the applicant to make a closing submission, he made the following closing statements: -

- That they had worked with West Midlands Police to agree conditions and reduce the operating hours.
- The operating schedule was robust.
- No responsible authorities had raised any concerns with the application.
- They had worked with the residents in order to meet them half way and work in harmony.
- The applicant had made a large investment into improving the premises and there would also be new jobs for local people.

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

6/220723

RESOLVED:-

That the application by DM Corner Ltd, for a premises licence in respect of DM Corner Limited t/a Dylans, Unit B, Galbraith House, 141 Great Charles Street, Birmingham B3 3LG, be granted as follows:

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- The hours for licensable activities shall cease at 23.00 hours Monday to Sunday
- The premises is to remain open to the public from 06.00 hours until 23.00 hours Monday to Sunday

All those conditions agreed between the applicant company and West Midlands Police in advance of the meeting shall also be adopted, namely:

1. The premises will not sell any beers, lagers and ciders of 6.5% ABV or above except for craft beers
2. No alcohol will be sold or allowed to leave the shop in open containers
3. The Licence Holder shall ensure that CCTV images will be held for a minimum of 31 days and these images will be made available upon request to any responsible authority
4. If for any reason the CCTV hard drive needs to be replaced the previous/old hard drive will be kept on site for a minimum of 28 days and made immediately available to any of the responsible authorities on request. The CCTV will be checked to ensure that it is working each week. This information will be stored for 12 weeks and made available to any of the responsible authorities on request
5. The premises licence holder or their nominated person will check the premises CCTV daily, prior to carrying out licensable activity, to ensure it is working and recording. This check will be documented, signed and dated by the person checking. The check documentation will be made immediately available to any of the responsible authorities on request
6. Single plastic cups will not be sold to accompany the sale of any alcoholic product
7. No single cans/bottles of beers or ciders will be sold from the premises except for craft beers
8. Details of every delivery of alcohol is to be recorded including the identity of who it was delivered to and the identity of the deliverer. This data is to be made available to any of the responsible authorities within twenty-four hours of it being requested
9. The premises licence holder is to have a documented policy in relation to how age restricted products are sold online or ordered, and the checks that are to be made. This policy is to be made available to any of the responsible authorities on request
10. Deliveries are only to be made to residential or commercial addresses. No deliveries will be made to open spaces
11. Delivery drivers will wait for their order inside the premises and not sit outside in/on their vehicles
12. Delivery drivers will not keep their engines running while outside the premises
13. Delivery drivers will not play music audible from outside their vehicle while outside the premises
14. Premises refusals register to include any refusals arising from deliveries

The following three conditions, which were offered by the applicant company and amended by the Sub-Committee, are also adopted:

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15. The applicant shall contact the companies for delivery drivers to emphasise the importance of adhering to traffic laws and the potential dangers of mounting pavements

16. The applicant shall provide written guidelines and periodic reminders to reinforce these practices with any drivers used

17. Staff at the shop will give reminders to all drivers where necessary about the importance of adhering to traffic laws and the potential dangers of mounting pavements

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will also form part of the licence issued.

The applicant company was represented at the meeting by its licensing consultant. At the start of the meeting, the Sub-Committee heard from the Senior Licensing Officer that when the application had been submitted, it had initially sought to permit the sale of alcohol for consumption off the premises to operate until 02.00 hours Monday to Sunday.

However, after discussions with the Police and other persons, the applicant had agreed to amend the scope of the application, with licensable activities to cease at 23.00 hours Monday to Sunday, and the premises to remain open to the public from 06.00 hours until 23.00 hours. The Sub-Committee noted this.

Representations had been received from two other persons; these were in the Committee Report at the first two appendices. However, the Licensing department had since received notification that the person at Appendix 2 wished to withdraw their representation. The Sub-Committee therefore noted that the only remaining objection was that at Appendix 1.

The licensing consultant confirmed that in making the application on behalf of the company he had taken into consideration the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under section 182 of the Act, the licensing objectives and the objections received from the other persons.

He added that he had mediated between the company and West Midlands Police over additional conditions to be added to the operating schedule. The conditions which had been agreed with the Police included an agreement not to sell alcohol products which were above 6.5% alcohol by volume (apart from craft beers). Furthermore, no sales of single cans or bottles would be permitted, in order that the premises did not start to attract street drinkers.

He observed that after holding discussions with the two persons who had made written representations, the applicant company had reduced the requested operating hours such that the end time would be 23.00 hours. He stated that the application had been drafted with a very robust operating schedule; it was noteworthy that no responsible authority had objected. He reminded the Sub-Committee that the responsible authorities were the experts in advising on the promotion of the licensing objectives; the Sub-Committee accepted this.

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He remarked that the site had been “an empty retail premises on the High Street” before the company taken over the building; now the company was putting a large investment into the refurbishment, with the aim of creating a benefit for the area – a high quality convenience store selling food items, and alcoholic and soft drinks.

The Sub-Committee was aware that, under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk to the promotion of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact have an adverse effect on the licensing objectives.

When deliberating, the Sub-Committee noted that the operating schedule had been drafted with consideration of the licensing objectives, and had been approved by the Police, who were the experts in the prevention of crime and disorder. Moreover, the hours of operation had been reduced. This was reassuring. One of the two persons who had originally made an objection had withdrawn it before the meeting.

The Sub-Committee carefully considered the remaining written representation, which was in the Committee Report at Appendix 1, but the Members found that it was rather speculative, and had not fully taken into account the proposed reduced hours and new conditions. The shortened hours requested, namely until 23.00 hours, were reasonable for the area and took into consideration the residential properties in the vicinity. The Members were satisfied that the potential for the creation of public nuisance issues described by the objector had been sufficiently addressed by the carefully-drafted application.

Whilst the objector had mentioned fears about noise and disturbance, the Sub-Committee considered that the person could feel confident that any worries had been properly addressed by the robust operating schedule, which was focused on the promotion of the licensing objectives, and also by the responsible style of trading proposed. It was noted by the Members that Environmental Health had not seen any likelihood of a risk to the prevention of public nuisance objective; indeed, none of the responsible authorities had made representations.

The Members were aware that relevant caselaw, namely *R (on the application of Daniel Thwaites plc) v Wirral Borough Magistrates’ Court [2008] EWHC 838 (Admin)*, emphasised the principles laid down by the Licensing Act 2003 and its accompanying Guidance – namely that there should be light touch bureaucracy applied to applications for licences, and that restrictions should only be attached to premises licences where they were necessary to promote the licensing objectives. The Sub-Committee did not see that any extra measures were required, as all potential risks to the upholding of the licensing objectives had been addressed via the shortened hours and the conditions which had been agreed between the company and the Police, before the meeting.

The Sub-Committee was also impressed that the company had worked with the residents, in the form of mediation via the licensing consultant, to ensure that the premises could work in harmony with those living nearby. The Members

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considered that the conditions had been drafted to give local residents peace of mind – especially those relating to not selling single cans/bottles, and not selling any item above 6.5% alcohol by volume apart from craft beers.

The Sub-Committee noted that there had been a large investment into the premises, and a creation of new jobs at the shop. This was very encouraging in terms of the benefit to the area and people living nearby.

All in all, the Members felt that much of the comment in the remaining written representation was speculative in content, and the Sub-Committee was aware that if the authority gave weight to speculative opinions, it would fail to follow the Guidance issued under section 182 of the Act, and its own Statement of Licensing Policy. After careful consideration, the Sub-Committee determined that the application could safely be granted with the reduced hours and the agreed conditions.

Members considered that by granting the application with the reduced hours and agreed conditions, the four licensing objectives in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and noted that all areas of concern had been satisfactorily addressed via discussions between the applicant company and the Police. The application was therefore granted with the amended hours and agreed conditions.

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 the hearing by the licensing consultant for the applicant company.

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.

GAMBLING ACT 2005 – LICENSED PREMISES GAMING MACHINE PERMIT – THE LONDON AND NORTH WESTERN, NEW STREET STATION, BIRMINGHAM, B2 4QE.

This was a non-invite application.

7/220723

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

(See document 'Gaming Machine Permit app 5 machines – The London and North Western')

The Licensing Officer presented the report. There were no questions from Members.

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

8/220723 **RESOLVED:-**

That the application by JD Wetherspoon Plc submitted, for the variation of a Licensed Premises Gaming Machine Permit in respect of The London and North Western, New Street Station, Birmingham B2 4QE, be granted.

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Gambling Act 2005 will form part of the licence issued.

The premises already had the benefit of a current Gaming Machine Permit issued under the Gambling Act 2005, which permitted a total of four Category C machines. Licensing Enforcement had visited the premises in April 2024 and had confirmed that they had no objection to the application.

The Sub-Committee considered the likely impact of the application, and concluded that by granting this application, the three objectives contained in the Act will be properly promoted. The documents in the Report reassured the Sub-Committee that the applicant was an experienced national operator which was mindful of its responsibilities.

In reaching this decision, the Sub-Committee has given due consideration to the City Council’s Statement of Principles under the Gambling Act 2005, the various Guidance issued to Local Authorities by the Gambling Commission, the application for the variation of a Licensed Premises Gaming Machine Permit, and the written representations received.

EXCLUSION OF THE PUBLIC

82280724 **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:

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Exempt Paragraph 3

Chair.....