

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB – COMMITTEE C 03 FEBRUARY 2021</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON WEDNESDAY 03 FEBRUARY 2021, AT 1000 HOURS, AS AN ONLINE MEETING**

**PRESENT:** - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Martin Straker Welds.

### **ALSO PRESENT**

Shaid Yasser – Licensing Section  
Joanne Swampillai – Legal Services  
Mandeep Marwaha – Committee Services

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

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### **NOTICE OF RECORDING**

- 1/030221 The Chair advised the meeting of housekeeping for online meetings and confirmed that the meeting was public and would be live streamed via Birmingham City Council's website ([www.civico.net/birmingham](http://www.civico.net/birmingham)). Members of the press/public may record and take photographs except where there are confidential or exempt items.
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### **DECLARATIONS OF INTERESTS**

- 2/030221 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 will be recorded in the minutes of the meeting.
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### **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

- 3/030221 An apology was submitted on behalf of Councillor Neil Eustace and it was noted that Councillor Mary Locke was the nominated substitute member.
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4/030221

**LICENSING ACT 2003 PREMISES LICENCE – GRANT PREMISES AT UNIT 2210, ACCESS SELF STORAGE, APPLEBERRY FOODS, 180 SHERLOCK STREET, BIRMINGHAM B5 7EH**

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

(See document No. 1)

The following persons attended the meeting:

**On behalf of the Applicant**

Mr Bobby Nakum (agent) - representing the applicant (Mr Bhavinkumar Inamdar)

**Those Making Representations**

PC Abdool Rohomon – West Midlands Police (WMP)

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The Chair introduced the Members and officers present and asked if there were any withdrawals of representation.

The Chair invited preliminary points.

PC Rohomon noted the supporting evidence from WMP was not present in the published pack. The Chair confirmed that all supporting evidence (the additional 10 pages) had been received and were now published.

The Chair explained the hearing procedure prior to inviting Licensing Officer, Shaid Yasser to outline the report.

The Chair invited the applicant to make their submission. At this stage Mr Nakum requested that Members refer to documentation submitted and made the following points on behalf of the applicant:-

- a) The company had been operating online sales of food and drink for 17 years. Due to increased demand they wanted to expand their service nationwide.
- b) Licensing enforcement conditions had been agreed to include no public access to the premises which is sited within a secure storage building.
- c) Some employees will be employed directly, mainly in London and the South, with other areas using contract couriers.
- d) The Responsible Selling of Alcohol Policy had been emailed to WMP. This policy had been compared to policies in place for Amazon and some supermarkets to demonstrate its robustness.

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In response to Members questions Mr Nakum made the following points:-

- 1) In house employees and third party couriers receive training regularly (every 6-12 months) to ensure safeguarding against sale to underage or unsuitable customers.
- 2) Deliveries were made only to the purchasing card holder, with additional verification ID requested on delivery (driver's license or passport). This was undertaken regardless of age.
- 3) Deliveries were made only to home addresses and there was no click and collect facility.
- 4) Specialist couriers would be used (Uber Eats, Yodel, DPD) who had robust policies in place.
- 5) Currently sales included wine and some spirits. The applicant would like to extend this to other alcoholic products but not including high strength cider or cheap alcohol.
- 6) There had been previous operational issues however, these had been resolved. Delivery systems and personnel training for age restricted products were now in place.
- 7) 24-hour live monitoring of all operations w be in place. This system is currently used successfully at the applicant's London premises.
- 8) Wholesale aspects of the business were not related to this application and only operated in London.
- 9) Legal responsibility for the sale of alcohol lies with the Designated Premises Supervisor and the Premises License Holder. The point of sale for online purchases is when the transaction is complete.
- 10) The Responsible Retail of Alcohol Policy addresses prevention of underage sale and consumption. The incidence of this was much lower for online sales and delivery policies and ID checks also assist with this.
- 11) Reference was made to the Challenge 25 Policy. Noted this removed the element of Anti-Social Behavior, street drinking etc.
- 12) Operational details are not yet available for Birmingham as trading has not yet commenced.
- 13) Mr Nakum indicated processes were in place in London (headquarters). These policies and contract examples could be provided to the Sub-Committee if required.

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The Chair added examples of the policies and contracts from London should have been shared with this application to assure the Sub-Committee. However, these were not evident or demonstrated in the application submitted.

No questions were raised by the Committee lawyer.

Afterwards, the Chair invited PC Rohomon to outline the representation on behalf of WMP and PC Rohomon made the following points: -

- a) PC Rohomon highlighted he had learned more about this application through the applicant's submissions to the Sub-Committee than in the application in itself.
- b) The Section 182 of the Licensing Act provides guidance on applying for a premises license. The applicant was required to demonstrate how they will meet the licensing objectives, to include knowledge of the local area, risks identified and evidence of consultation.
- c) The application did not address risks or demonstrate how any risks can be mitigated or controlled.
- d) Examples were given about queries still outstanding with regard to the proposed operations, to include access to the site, staffing, security and safety at the premises.
- e) Risks associated with the sale of alcohol had not been acknowledged within the submitted policies and queries relating to this have not been sufficiently addressed, despite requests. Any responses to requests had not provided sufficient detail.
- f) He questioned who the authorized persons were and had access to the premises via pin codes, did this change on a regular basis.
- g) The CCTV was owned by the Self Storage unit therefore the business did not have direct access to this and would have to go through the data protection route to gain access.
- h) PC Rohomon referred to the six points the applicant indicated for the steps he intended to take to promote the four licensing objectives. These were around; premises not to be opened to the general public; sale of alcohol only via online and kept in a storage room accessible via pin code only; 24 hour CCTV; sale of alcohol via internet or mail order subject to age verification and verifying payment method; Challenge 21 age verification policy and training in licensing laws and age verification. These were all very vague and no detail or evidence provided to support these points.
- i) WMP would assist with changing conditions on applications, however they were not expected to write an application.

- j) Email trail between the applicant, agent and PC Rohomon was referred to. WMP had requested points of clarification on the application as basic conditions cannot be a part of the companies' day to day business.
- k) In the emails, Mr Nakum stated WMP were taking a prejudicial stance against his client which PC Abdool strongly disagreed with. PC Rohomon was trying to ascertain online alcohol would be delivered safely therefore required more assurances and clarity to the application.
- l) The conditions outlined in the application were generalized and needed to be specific to this application and premises.
- m) The request to commence trading prior to producing an operational plan is not acceptable as evidence of appropriate trading conditions must be demonstrated prior to the license being granted.
- n) West Midlands Police cannot support the application at the current time or until acceptable evidence of appropriate policies and safeguards are demonstrated.

In response to Members questions PC Rohomon made the following points:

- 1) Age restricted products include knives and corrosive substances, but this matter relates only to the sale of alcohol.
- 2) The applicant had the responsibility to demonstrate how they promote the licensing objectives. Licensing authorities are expected to monitor the promotion of the objectives to ensure compliance.
- 3) Some facts omitted from the application have now been clarified verbally but still do not provide enough detail to increase confidence in this application.
- 4) A robust operational regime which promotes the licensing objectives must be in place prior to a license being granted.
- 5) Policies can be generic for some areas of the business but must address any local challenges and considerations.
- 6) Responsibilities for trading alcohol are applicable regardless of the method of sale and controls must be in place to address and mitigate this.
- 7) Concerns are specific to this application in regard promotion of the licensing objectives.

On being invited to sum up, PC Rohomon clarified his objections to the application due to lack of appropriate risk management, policies and procedures.

In summary Mr Nakum made the following points:

- The applicant requests an opportunity to trade in order to demonstrate a successful business model and is happy for reviews to take place as appropriate.

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- Mr Nakum felt that PC Rohomon did not like to be challenged and believed his personal views on the sale of alcohol should not reflect adversely on the application.
- Other applications have been reviewed as a comparison and do not contain the detailed policies sought by WMP.
- More guidance is required about what additional information should be provided.
- The applicant already has a good track record for this type of business.
- Knives and corrosive substances refer to trade to the hospitality industry, which will not take place under this application.
- The application demonstrates how risks will be mitigated and further clarity has been provided verbally today.
- The applicant is prepared to be responsive to challenges as they arise and will accept any conditions and advice forthcoming regarding this application.

At 1135 hours the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and the decision of the Sub-Committee was sent out to all parties as follows: -

5/030221     **RESOLVED:** -

That the application by Mr Bhavinkumar Inamdar for a premises licence in respect of Appleberry Foods, Unit 2210, Access Self Storage, 180 Sherlock Street, Birmingham B5 7EH, **BE REFUSED.**

In reaching this decision, the Sub-Committee was mindful of the promotion of the licensing objectives in the Act - the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns expressed by West Midlands Police regarding the proposed manner of operation. Whilst some conditions had been agreed in advance between the applicant and Licensing Enforcement, the Police had maintained their objection.

The Police objections were outlined in full in the Report; in addition, the Police attended the meeting to address the Sub-Committee directly. Whilst alcohol delivery services had become a widespread feature of alcohol-licensed premises during the ongoing Covid-19 pandemic, and in general had not proven to be troublesome, the Police had concerns regarding the applicant supplying alcohol very late at night; any proposal to do this required robust policies and procedures to be in place, along with stringent control measures. Having discussed this issue with the applicant's

agent by email in advance of the meeting, the Police were not at all satisfied that this was the case.

The lack of comprehensive policy documents was a concern shared by the Sub-Committee, who agreed with the Police that it was to be expected that the applicant should have comprehensive policies in place - so that the responsible authorities would be able to assess that all the risks had been identified, and all staff would be aware of the need to follow them. The omission of comprehensive policy documents did not reassure Members that the style of operation would be capable of upholding the licensing objectives.

The Sub Committee carefully considered the operating schedule, and the 'Appleberry Foods Policy on Responsible Retailing of Alcohol' document (one and a half pages) put forward by the applicant, and the likely impact of the application, but were not persuaded that that the proposed operation of the premises would uphold the licensing objectives. The applicant's agent addressed the Sub-Committee. The company was a small business which wished to expand into Birmingham as it had been operating online sales of food and drink in London and the south for some 17 years. It was therefore surprising that comprehensive policy documents from its operations elsewhere were not available to be put before the Sub-Committee.

Moreover, the Police drew the attention of the Sub-Committee to paragraphs 8.41, 8.42 and 8.47 of the Guidance issued by the Home Office under s182 of the Licensing Act 2003, and queried whether the applicant had the level of local knowledge to promote the licensing objectives in Birmingham.

The operating hours were to be 24 hours a day, which was an inherent risk. The information under 'general description of the premises' on the application form was also a worry to the Police – the secure storage area was controlled by a PIN code, but there was no confirmation of who would have access to the PIN code, or how often it would be changed; similarly the CCTV system was not Appleberry Foods' own system, but one for the 'Access Self Storage' premises generally.

Whilst the applicant's agent stated that the style of alcohol would be wine and some spirits but certainly not cheap high-strength alcohol, the Police observed that the grant of the licence would of course permit the sale of all types of alcohol. The Police observed that the proposed operation was inherently risky and there was a distinct lack of detail – for example, it was unclear whether the conditions which had been agreed with Licensing Enforcement would also cover the applicant's third-party partners. All in all, it was difficult to feel confident that the operation would be capable of upholding the licensing objectives.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the four licensing objectives would be adequately promoted and that therefore the licence might 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.

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The Sub-Committee heard submissions from the applicant's agent that they could and should be trusted, and ought to be given a chance to operate in Birmingham; however, as the Police observed, the Sub-Committee could only feel confident in doing that where satisfactory policies and procedures were in place. That was emphatically not the case here; accordingly the Sub-Committee resolved to refuse 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 the applicant via his agent, and 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.

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**OTHER URGENT BUSINESS**

6/030221      There were no matters of urgent business.

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The meeting ended at 1148 hours.

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CHAIRMAN