

eeBIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 9 SEPTEMBER, 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 9 SEPTEMBER, 2020 AT 1000 HOURS AS AN ON-LINE 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
Louisa Nisbett – Committee Services

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

NOTICE OF RECORDING/WEBCAST

1/090920 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.

2/090920 **DECLARATION OF INTERESTS**

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 will be recorded in the minutes of the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/090920 Apologies were submitted on behalf of Neil Eustace, Councillor Mary Locke was the nominated Member.

LICENSING ACT 2003 PREMISES LICENCE – GRANT –, BIRMINGHAM, B

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Robert Botkai, Representing the Applicant
Andrew Fox, Area Manager, Motor Fuel Group (MFG)
Andrew Sanders, MFG
John Mahon, MFG
Andy Murphy, Regional Manager

Those Making Representations

Councillor Gareth Moore

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Following introductions by the Chairman, the Chairman enquired if there were any preliminary points for the Sub-Committee to consider. The Chairman then explained the hearing procedure following which the main points of the report were outlined by Shaid Yasser, Licensing Officer. In response to Councillor Gareth Moore, Shaid Yasser confirmed that the supplementary evidence submitted had been circulated to all parties.

Robert Botkai, representing the Applicant made the following points with regards to the application and in response to questions from Members:-

- a) The site was previously a MRH site and they had merged with MRG the previous year. A current licence was held.
- b) The company were experienced in running 616 - 24 hours licensed petrol stations in other locations across England and Wales. They sought to match the Gravelly Hill premises with the hours offered at all the other sites.
- c) Robert Botkai made reference to the Licensing policy and informed that they had consulted with West Midlands Police and Licensing Enforcement Officers to offer agreed conditions.
- d) No representations had been made by WMP in terms of the conditions.
- e) With regard to the objections received and suggested conditions to include on the licence, any agreed conditions should be capable of being complied with. It was not possible to have a condition on a licence requiring the holder not to serve people believed to be street drinkers or with a drink problem. He had also not seen a condition on a licence to have no alcohol only sales.

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- f) They already worked with the police. With regard to people congregating at the petrol station they would encourage people to move on however they would expect staff to call the police when necessary rather than put themselves at risk.
- g) They already had conditions to cover most of the suggested ones and had agreed to 4 out of the 7 suggested. They did not expect the number of alcohol sales to be high during the night.
- h) WMP had not raised any objections. The police could take immediate action against them if there were problems and residents were welcome to contact them. Generally speaking there would not be any problems if they worked responsibly.
- j) The concerns raised were reflected within the conditions. They understood the implications for the Cumulative Impact Zone which began on the other side of the roundabout.
- k) In reply to a question there was a night pay window and they could refuse a sale if there were any concerns. Cashiers were trained to diffuse a situation or to call the police if necessary.
- l) The type of people using their service was dependent on the time of day. The 7 suggested conditions on the list had either been already included or added as a condition. Conditions 1 and 3 could not be complied with as any condition must be enforceable.
- m) Staff received training in the store and online. Training was refreshed every 6 months. Most of their premises were already single manned at night. Risk assessments were carried to ensure staff were safe.

In making representations Councillor Gareth Moore made the following points with regards to the application and in response to questions from Members:-

- a) He was grateful for the opportunity to speak but was not opposing the application outright. The premises was close to his Ward. Erdington had a significant problem with street drinking and people congregating in the early hours causing a significant problem for local businesses.
- b) He had campaigned extensively against this and the existence of the Cumulative Inclusion Zone policy which was renewed by Birmingham City Council showed that there were significant problems in the area mostly at Six Ways, Erdington. .
- c) Street drinkers sat on the benches all day. He was largely concerned about the number off licences, takeaways and late night drinking issues. There was already a late night off licence and people simply drank in the street.

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- d) He had real concerns about a 24 hours licence for alcohol virtually on the edge of the Ward.
- e) He appreciated the police had not objected to the application however when people realised there was a 24 hours licenced premises at the location it would result in anti-social behaviour when they used the premises.
- f) He hoped to agree some conditions with the applicant today.
- g) There were a number of well known individuals who were street drinkers however they were still sold alcohol. His suggested condition would force business owners to stop selling them alcohol.
- h) The problem was not reflected in the crime statistics. He would support the police to get resources to deal with the problem however he did not think the police wanted every ASB incident to be reported.
- i) It is worth noting that other premises had already agreed the majority of the conditions he had suggested and he hoped that if the Sub-Committee was minded to grant the variation they did so with the conditions included.
- j) The crime statistics reported to the police during the last 6 months were in close proximity to six ways. The statistics had been impacted by Covid-19 however there was a clear theme of anti-social behaviour. Violent offences were relevant and accounted for 39% of the offences in close proximity to the application site. There were serious concerns about this location.
- k) Not all petrol stations were close to CIZ areas. It was not clear who was running the premises as there was no DPS named on the licence. It was not known if the DPS had any experience of working in Erdington where there were significant problems. The person needed to be aware of the challenges faced.
- l) He had not received any information before today or during the hearing other than that staff will be trained. In order to ensure compliance the conditions and licence hours he had suggested should be agreed.
- m) In reply to questions Councillor Moore felt that if the suggested conditions were agreed the Council would have powers to force the applicant to comply with the conditions. The businesses that had already agreed to these conditions were mostly off licences. He was concerned that the public would use the premises as a 24 hours off licence. The premises were primarily an off licence.

In summing up, having made representations Councillor Gareth Moore made the following points:-

- It was noted that the applicant had agreed to two of the conditions and this would give additional safeguarding. The premises should not operate 24

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hours as the Cumulative Inclusion Zone was nearby. The crime statistics showed that there were issues in close proximity of the premises.

- If the Sub-Committee was minded to grant the licence it should be with a reduction in the operating hours.

In summing up, in support of the application Robert Botkai made the following points: -

- An off licence was a small part of what the premises were offering as the store was already there. There was no suggestion that there were issues or that the premises being open 24 hours would cause an issue.
- Caution was urged in using the crime data as evidence. If crime was an issue it would have been raised by West Midlands Police. He agreed with 2 of the suggested conditions with a small amendment because the 2 suggested conditions were legal and enforceable :-
 - No alcohol to be served to customers who are believed to be street drinkers or are believed to consume alcohol within the vicinity of the premises and High Street
 - Any street drinkers who congregate within the vicinity of the store to be asked to move on by staff, or if needed reported to West Midlands Police
- He believed that smaller operators had agreed with the suggested conditions as they were told they would not get the licence. Cumulative Inclusion Zone's changed regularly.
- If the licence was agreed they would bring in an experienced DPS however the premises licence holder was responsible for the sale of alcohol and not the DPS. They did not believe the store would be a magnet for problems. The company was an experienced one and had not been reviewed at any time. They were happy to stay in touch with the Councillors. The premises could not be compared with Heron Food.
- It was requested that the application be granted.

At this stage 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 decision of the Sub-Committee was sent out to all parties as follows: -

4/090920

RESOLVED:-

That the application by Motor Fuel Limited to vary the Premises Licence in respect of MRH Six Ways, Six Ways Filling Station, Gravelly Hill North, Erdington, Birmingham, B23 6BJ under section 34 of the Licensing Act 2003 BE GRANTED, with the addition of those conditions agreed with West Midlands Police and with Licensing Enforcement in advance of the meeting, namely:

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1. A digital CCTV system will be installed, or the existing system maintained, such system to be fit for the purpose
2. The CCTV system shall be capable of producing immediate copies on site. Copies of recordings will either be recorded digitally on to CD/DVD or other equivalent medium
3. Any recording will be retained and stored in a suitable and secure manner for a minimum of 31 days and shall be made available, subject to compliance with Data Protection legislation, to the police or other authorised officer for inspection on request.
4. The precise positions of the camera may be agreed, subject to compliance with Data Protection legislation, with the police from time to time
5. The system will display, on any recording, the correct time and date of the recording
6. The CCTV system will be maintained and fully operational throughout the hours that the premises are open for any licensable activity
7. There will be no sales/supplies of beer, lager or cider with an ABV over 6%
8. There will at all times be adequate levels of staff maintained at the premises. Such staff levels will be disclosed, on request, to the licensing authority and police
9. Adequate waste receptacles for use by customers shall be provided in and immediately outside the premises
10. The premises licence holder will ensure that an age verification policy will apply to the premises whereby all cashiers will be trained to ask any customer attempting to purchase alcohol, who appears to be under the age of 25 years (or older if the licence holder so elects) to produce, before being sold alcohol, identification being a passport or photocard driving licence bearing a holographic mark or other form of identification that complies with any mandatory condition that may apply to this licence
11. Signage informing customers of the age verification policy adopted at the premises will be prominently displayed
12. All staff engaged or to be engaged in the sale of alcohol on the premises shall receive training in age restricted sales. Training records will be available for inspection by a police officer or other authorised officer on request. Further:
 - Induction training must be completed and documented prior to the sale of alcohol by the staff member
 - Refresher/reinforcement training must be completed and documented at intervals of no more than 6 months
13. There shall be no sale of single cans of beer, lager or cider from the premises.

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14. No more than 20% of the shop display area will be used for the display of alcohol.

15. All cashiers shall be trained to record refusals of sales of alcohol in a refusals log/register. This log/register will be available for inspection by a police officer or other authorised officer on request. The log/register will contain:

- details of the time and date the refusal was made;
- the identity of the staff member refusing the sale;
- details of the alcohol the person attempted to purchase.

16. The entrance door to the shop will be closed to customers between the hours of 2300 and 0600. Any sales between these hours will be made through the night pay window.

And with the following two conditions agreed with a person making representations:

17. No alcohol to be served to customers who are believed to be street drinkers or are believed to consume alcohol within the vicinity of the premises and High Street

18. Any street drinkers who congregate within the vicinity of the store to be asked to move on by staff, or if needed reported to West Midlands Police

The Sub-Committee deliberated the operating schedule put forward by the applicant and the likely impact of the application, including the agreed conditions, and concluded that by granting this application, the four licensing objectives contained in the Act will be properly promoted.

The Sub-Committee carefully considered the written representations made by the Ward Councillor, who also attended the meeting and addressed the Sub-Committee directly. However, the Members were not convinced that there was an evidential and causal link between the issues raised and the effect on the licensing objectives.

Once the applicant company had volunteered to accept the two conditions relating to street drinkers, the only remaining issue was the hours. The objection regarding 24-hour operation seemed to focus on the potential for antisocial behaviour caused by patrons, and the potential for an increase in crime, but the style of operation and the agreed conditions covered this. The applicant company was highly experienced in managing petrol stations with 24-hour licences. Moreover the Sub-Committee was impressed by the cooperative attitude displayed by the applicant company during the meeting, in accepting the two conditions relating to street drinkers.

There was no reason to believe that the premises would not be properly managed given that the applicant was so experienced, and so the Sub-Committee resolved to grant the application with the agreed conditions.

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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 applicant's legal representative and by those making representations (the Ward Councillor).

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

There was no other urgent business.

Please note, the meeting ended at 1133 hours.