

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 22 JUNE 2022

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 22 JUNE 2022 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Phil Davis and Penny Wagg.

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)

1/220622 **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.

2/220622 **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.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/220622 Apologies were submitted on behalf of Councillor Kooner and Councillor Davis was the nominated substitute Member.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – SWEET STUFF, 9 ORPHANAGE ROAD, ERDINGTON, BIRMINGHAM, B24 9HP.

On Behalf of the Applicant

Mr Jordan – Agent
Ammad Arshad – Applicant

On behalf of those making representations

Cllr Gareth Moore – Local Ward Councillor
Cllr Robert Alden – Local Ward Councillor

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The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were raised.

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

The Chair invited the applicant to make their submission Mr Jordan made the following statements: -

- a) They had applied for late night refreshment which was for delivery and collection of hot desserts.
- b) It was a low-key late-night refreshment application.
- c) They would carry out litter patrols and put-up signage asking customers to respect the local residents and leave quietly.
- d) It was unlikely that it would cause any disturbance in the area.
- e) That he wasn't sure if any residents in the immediate vicinity had made objections.
- f) The experts in crime and disorder were the police and they had agreed conditions.
- g) They had also agreed conditions with other responsible authorities.
- h) The delivery drivers would be trained, and all staff would be trained.
- i) Any patrons causing a nuisance would not be served.
- j) There was no evidence that harm would occur if the licence was granted.

- k) It was not uncommon for premises in that area to be open until 4am.
- l) The facility for low level deliveries was needed.
- m) The objections were based on speculation and were not supported by evidence.
- n) On balance the application should be granted, he understood the concerns but there was no evidence it would add to concerns and conditions had been agreed with responsible authorities.

The Chair invited questions from Members and Mr Jordan gave the following responses: -

- a) The flat above the premises was owned by the applicant and the other flats above the units were occupied.
- b) They will keep an eye on litter and at the end of the night they will be doing litter picking, as well as in the morning. They would pick up there own litter but were not going to clear up the whole street.
- c) They didn't anticipate there being much litter as people didn't eat desserts in the street.

The Chair then invited those making representations to present their case and Councillor Moore made the following points: -

- a) That there were issues on the High Street already.
- b) Premises usually closed around 11pm, a few were open until midnight but 4am was exceptionally late.
- c) Pizza Hut and KFC have longer hours but only until midnight.
- d) Pizza Gogo had a licence until 4am, but were very rarely open that late. There were already ASB issues at Pizza Gogo.
- e) Usually premises open until 4am attracted large groups of people blasting music in cars and sitting eating there desserts.
- f) The agent's representation did not give him any confidence that the premises would operate safely, and he didn't give any details about how they would deal with issues. Further, they were only interested in picking up their own litter and had no interest in the wider Erdington community.
- g) There were flats above the shops and also a number of terraced roads in close proximity to the premises.
- h) Some residents had emailed in and lots of residents were concerned about making objections due to their details being disclosed.

- i) The premises would cause substantial public nuisance.
- j) He was concerned it would cause substantive disruption and he didn't have faith the premises would be managed properly.
- k) He wanted to agree conditions with the applicant but had no correspondence from them.
- l) The main concern was the hours and therefore he wanted them reduced in keeping with the area. He suggested midnight.
- m) He was concerned the premises would be a magnet for ASB.

In answer to Members questions Councillor Moore gave the following responses:
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- a) According to the public register on the City Councils website only three premises had hot food beyond 11pm – Pizza Gogo, Pizza Hut and KFC.
- b) There were at least 4 flats above the shops, the one directly above the premises was vacant but could be occupied in the future.
- c) One of the residents in one of the flats made a complaint about Pizza Gogo.
- d) Based on the complaints from residents, several lived above the shops.

The Chair invited Councillor Moore to make a closing submission and he made the following statements: -

- That they had no confidence in the applicant to run the premises in a way that would mitigate noise and ASB which he strongly believed would take place if the licence was granted until 4am.
- He would be happy with a earlier closing time.
- However, if the applicant would not agree with that then they wanted the application refused or for the Committee to impose an earlier terminal hour.

The Chair then invited Councillor Mr Jordan, on behalf of the applicant to make her closing statements: -

- That there were other methods of controlling ASB but Environmental Health hadn't made an objection and neither had WMP; they were happy with the application.
- Each application should be judged on its own merits.
- There were no restrictions under the Licensing Act for cold drinks and cold desserts.

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- He was not aware of any local residents objecting to the application.
- The application had to be judged on its own merits and on the balance of probabilities.
- The experts had all agreed with the application and agreed conditions.
- It wasn't safe to pick up litter for the whole street as how would they dispose of it legitimately.
- That the Committee could decide on the terminal hours.

Mr Arshad added that after 11pm it was mainly deliveries, and they didn't have many customers coming into the premises. Deliveries were unlikely to cause noise.

As such Mr Jordan offered a condition that the application be limited to just deliveries and no members of the public inside the premises after 12 midnight.

Cllr Moore agreed that a condition limiting the premises to only deliveries after midnight would be welcomed.

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

4220622

RESOLVED:-

That the application by Ammad Arshad for a premises licence in respect of Sweet Stuff, 9 Orphanage Road, Erdington, Birmingham B24 9HP, be granted as follows.

During the meeting the applicant confirmed that he wished to change the arrangement for late night refreshment. Whilst he had originally wanted operation until 04.00 hours with the shop to remain open to customers until the terminal hour, he confirmed to the Sub-Committee during the meeting that he agreed that there should be no admission for customers beyond 00.00 hours as the operation from 00.00 to 04.00 hours would be for delivery only.

The Sub-Committee therefore noted that the operation from 00.00 to 04.00 hours would be for delivery only, with customers not permitted to enter the shop after 00.00.

The Sub-Committee further determined that the licence will include those conditions which were agreed between the applicant and two of the responsible authorities in advance of the meeting.

- The conditions agreed with West Midlands Police, namely:

1. All staff employed at the premises will receive documented training of their responsibilities in accordance with the Licensing Act 2003. Staff are to receive documented refresher training a minimum of once every 12 months, signed off by the trainer or premises license holder, these documents are to be readily available for inspection by the responsible authorities
2. An incident log will be maintained at the premises. Each incident entry will detail the time, date, staff member logging the entry and details of the incident and where possible details of those involved. This log will be made readily available for inspection by the responsible authorities
3. The premises will not allow consumption of alcohol on the premises
4. CCTV will be switched on and recording at all times that the premises carries out licensable activities. Images will be retained for a period of at least 31 days and will be made available to any of the responsible authorities to view or copies produced on request. 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 31 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 day prior to licensable activity taking place. The time of the check, the identity of the person carrying this out and the result of it will be recorded in the incident log
5. At all times when conducting licensable activities there will be at least one member of staff on the premises who has received documented training in the use of the CCTV at the premises. As a minimum they will be able to access and download images upon request. CCTV Training is to be kept at the premises ready for inspection

- The conditions agreed with the Licensing Enforcement team within the Licensing department of the City Council, namely:

1. Staff training records to be kept on site and will be produced to an authorised person upon request

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.

When the meeting began there was discussion of the potential for public nuisance and/or antisocial behaviour from the late night refreshment operation. The applicant's representative described the proposed activities as 'low key' – namely sale of hot food desserts and hot drinks.

There would be regular litter patrols and signs asking customers to be considerate of neighbours. He considered that the application was unlikely to create disturbance and observed that neither Environmental Health, who were the experts on public nuisance, nor West Midlands Police, who were the experts on antisocial behaviour, had objected (the Police had approved the application with the addition of some conditions).

The Sub-Committee noted 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 of an undermining of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact undermine the licensing

objectives. Various written representations had been received, principally from the local Ward Councillors. One of the Ward Councillors also attended the meeting in person to make representations.

The Ward Councillor noted that other food outlets in the neighbourhood were licensed only to 00.00 or 00.30; he therefore had concerns that public nuisance would be inevitable, as the instant application had requested operation to 04.00. He noted that there were residential properties very close by, including some directly above. The Ward Councillor urged the Sub-Committee to reduce the terminal hour to 00.00 or 00.30, in line with other premises in the Orphanage Road area.

The applicant then offered to amend the application, such that customers would not be permitted to enter after 00.00, and instead the operation from 00.00 onwards would be delivery only. This was satisfactory to the Ward Councillor.

The Sub-Committee considered that the applicant company had drafted a satisfactory operating schedule in all other regards, and concluded that by granting this application with the conditions agreed by the Police and Licensing Enforcement, the four licensing objectives contained in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and certainly the applicant's willingness to amend the application gave reassurance that problems were unlikely to arise.

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 via his representative, and the persons making representations.

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.

The meeting ended 1046 hours.

Chairman.....