

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 2 APRIL 2024

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 2 APRIL 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Saddak Miah and Julien Pritchard.

ALSO PRESENT

David Kennedy – 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)

1/020424 **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.

2/020424 **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

3/020424 Apologies were submitted on behalf of Councillor Adam Higgs and Councillor Julien Pritchard was the nominated substitute Member.

LICENSING ACT 2003 – PREMISES LICENCE – GRANT – WALMLEY LOCAL, 243 – 245 EACHELHURST ROAD, WALMLEY, SUTTON COLDFIELD, B76 1DT.

On Behalf of the Applicant

Nira Suresh - Arca Licensing

On Behalf of Those Making Representations

Chris Jones – West Midlands Police (WMP)

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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.

Nira Suresh, on behalf of the applicant requested an adjournment due to an emergency travel situation. He anticipated that he would be back at the end of the week and therefore asked for the case to be adjourned until he was back.

Chris Jones, WMP did not understand why the applicant needed an adjournment. WMP had requested documentation and it had not been forthcoming for 7 weeks. If there was a legitimate transfer of the business, then the requested documentation should easily have been submitted to WMP.

At 1012 hours the Committee adjourned to deliberate the preliminary request. The Members, Committee Lawyer and Committee Officer withdrew to a private session in order for Members to consider the request.

At 1020 hours the Committee re-joined the meeting and advised that they had decided to refuse the request as all parties were in attendance.

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.

The chair then invited the applicant to make their presentation and Nira Suresh made the following points : -

- a) That it was unfortunate that the Committee had decided to continue with the hearing despite the adjournment request.

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- b) That they objected to the police submissions.
- c) The application was for a landlord of the business who had been given the premises to operate, on a franchise basis.
- d) That the previous licence holder had had the contract terminated and would have nothing to do with the premises moving forward. They were happy to have a condition on the licence which stated that person would have no involvement with the premises.
- e) It was a new application and had nothing to do with the previous person.
- f) There was no business purchase, the contract was terminated, and the new application was put forward.
- g) The police had not put any evidence forward about the applicant – indicating that there were no obvious problems with the applicant.
- h) The landlord was taking back the premises and wanted to continue with an alcohol licence and running the premises.
- i) They would provide the documents but due to emergency travel they had not had chance to do that. They could provide a termination letter.
- j) The land registry also indicated that the applicant was the landowner.
- k) The matter could be dealt with outside of the courts and by way of conditions.

The Committee invited WMP to make their presentation, Chris Jones made the following points: -

- a) That WMP requested the documents on 12 February 2024.
- b) The documents would provide proof of separation from the previous premises licence holder.
- c) The documents should have easily been available and WMP should not have been waiting 7 weeks.
- d) The previous PLH had their licence revoked and therefore it was important that there were documents to prove that the new applicant was the new business owner.
- e) WMP received the application on 9 February 2024, the previous licence was revoked in February 2021 after Trading Standards submitted a review of the licence after discovering counterfeit bottles of alcohol at the premises. The review application was supported by WMP. The previous PLH tried to deceive Trading Standards by saying he had purchased the alcohol legitimately and provided a receipt of sale from a legitimate company. However, the receipt was not real, and the premise was operating illegally. The decision to revoke the licence was appealed and the final hearing was scheduled to be heard in

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February 2024. Just prior to that date the PLH withdrew the appeal, she was still invited to court to ensure she understood the consequences of withdrawing. Some 8 days later a new application for a premises licence was submitted.

- f) WMP were concerned over the short period of time that the appeal was withdrawn, and the new application being submitted. Therefore, they requested documentation to evidence that the new applicant had nothing to do with the old PLH/operation.
- g) WMP emailed the agent requesting the documentation and did not receive a reply.
- h) The documents should have been easily available.
- i) Several documents were requested; a contract between the parties showing the sale of the business, or legal documents for control and ownership of the business, payment of the business, utility bills with the applicant's name on, business rates with applicant's name, waste collection with applicant's name, rent agreements with the applicant's name on. None of these had been supplied and WMP emailed again on 5 March 2024 requesting an update, again there was no reply.
- j) Without proof of separation from the previous business WMP could not support the application and they had no confidence in the applicant without proof of separation from the previous licence holder.
- k) Therefore WMP requested that the application be refused.

The Chair invited all parties to make a brief closing submission and Chris Jones, WMP made the following closing statements: -

- a) The documents requested should have been easily supplied, they still had not been forthcoming.
- b) WMP were concerned over the promotion of the licensing objectives without the proof of separation from the previous licence holder.
- c) WMP requested that the application be refused.

The applicant/representative was invited to make a brief closing submission and Nira Suresh, on behalf of the applicant made the following closing statements: -

- a) That WMP had a concern with the previous licence holder but that was nothing to do with the new applicant and WMP had not submitted any evidence to show there was a link between the previous PLH and the new applicant.
- b) They had invited WMP to check the land registry which was readily available.

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- c) They had offered a condition that the previous PLH would have no involvement with the running of the premises and that would address the concerns.
- d) The landlord (applicant) had the right to take over the premises and the right to apply for a licence. He had previous experience of operating licensed premises.
- e) The contract between the landlord and previous licence holder had been terminated.
- f) It was a completely new application and he requested that it be granted.

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

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RESOLVED:-

That the application by Kularatnam Pararasalingnam for a premises licence in respect of Walmley Local, 243 – 245 Eichelhurst Road, Walmley, Sutton Coldfield B76 1DT, 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, and public safety.

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. The application was for off-sales of alcohol from 06:00 hours until 23:00 hours 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. These requests were due to the previous history of highly unsatisfactory trading at the site, which had resulted in a Review hearing before the Licensing Sub-Committee in 2021. At that time, the premises had been known as 'KVK Supermarket', and the licence holder had been a company called KVK Supermarket Ltd (sole director: Mrs Kuladevi Thavarasa).

The outcome of the hearing in 2021 had been a revocation of the premises licence, after the Sub-Committee heard from West Midlands Police that bottles of counterfeit alcohol had been found at the premises.

The licence holder had appealed against the decision, and the appeal hearing had been set down for February 2024, but the licence holder withdrew the appeal. Some eight days later, the instant application for the grant of a licence was submitted, in the name of Kularatnam Pararasalingnam. The Police were concerned about the very short period of time between the withdrawal of the appeal and the submission of the new application.

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Requests were therefore made by the Police to the applicant, in advance of the meeting. These were for documentation to satisfactorily evidence that the business had changed hands, such that the previous company (and its sole director) running the old business had no part in the running of the proposed new business. The Police had wanted to see a proper separation between the old arrangements at 'KVK Supermarket', and the operation proposed by the new applicant, who would be trading as 'Walmley Local'. However, nothing had been provided by the applicant in response to these Police requests.

The applicant was represented at the meeting by his agent. As a preliminary point, the agent made an application to adjourn the meeting to a date outside the statutory hearing window, per regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005. The agent explained that he had been overseas and would be travelling back at the end of the week, and therefore requested an adjournment.

The Police opposed this application, remarking that they did not understand why the applicant had not supplied the paperwork that had been requested. An email had been sent to the applicant on the 12th February 2024, asking for documentation showing evidence of the ownership of the business. The email was in the Committee Report. The Police observed that the applicant had had seven weeks to supply documents which should have been easily and readily available if the business had legitimately changed ownership.

The Police further noted that the documents had not been made available even at the start of the meeting, and remarked that it was not clear how an adjournment would change the availability of the documents.

The Sub-Committee agreed with the Police that sufficient time had been given to the applicant for the production of all or any of the documents listed in the Police email – yet no documents at all had been forwarded in the weeks since the email had been sent. The Sub-Committee agreed with the Police that suitable documents should have been readily available, and further agreed that it was not clear how an adjournment would assist. The Sub-Committee therefore resolved to proceed with the meeting.

The agent for the applicant addressed the Members, and explained that the applicant was the landlord of the premises. He had let it on a franchise basis. The contract between the landlord and tenant had been terminated, and the applicant "had all the documents". There had not been any business purchase transaction; the contract has been terminated.

The agent remarked that the Police concerns had related to the previous operator. The agent assured the Sub-Committee that the previous operator was no longer anything to do with the premises, as the contract had been terminated. It was a fresh application.

Regarding the failure to produce the documents, the agent remarked, "there was a contract, a termination, you know, agreed. That has been terminated and the new application is put forward". He also stated that "it didn't give the opportunity to respond to the police things" [sic].

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The agent suggested that the licence should be granted with conditions attached, and confirmed that the applicant had already put forward a proposed condition to the Police that the previous operator should have nothing to do with the running of the premises. The landlord was taking back the premises, and alcohol was part of the business. The intention was for the applicant to start running the premises himself, and to completely exclude the previous operator.

The agent went on to suggest that the Sub-Committee could grant the licence with “a condition to say that we will submit all the documents”. The Sub-Committee was surprised at this suggestion, and was further surprised that the agent then remarked, “in honesty we could have submitted 24 hours before, the documents to the committee to look at today, but we were not able to do that”. He said that he was “requesting an opportunity to present the documents, but we could have a condition on the licence to do that”. The Sub-Committee did not consider that this was a suitable way forward, and was unsure why the documents had not been produced at any point during the previous seven weeks, or indeed at the meeting itself.

The agent stated that the only document that would be offered was a termination letter, which would state that the contract had been terminated. He added that the applicant also had the Land Registry entry showing that he was the owner of the premises. The agent considered that these items would be sufficient, and asked the Sub-Committee to grant the application with his suggested 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 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 by considering the submissions of those making representations.

West Midlands Police addressed the Members and directed their attention to the Committee Report, which contained a copy of the Police email of 12th February 2024 requesting the documents. The applicant had been asked to provide items which would show proof of separation from the previous operator; these documents should have been easily available. However, seven weeks later, there had been no proof that the new business would be separate from the KVK Supermarket operation, which had had its licence revoked for irresponsible and illegal practices relating to counterfeit alcohol.

An aggravating factor had been that the premises licence holder at KVK Supermarket had attempted to deceive Trading Standards officers that the counterfeit alcohol had been purchased legitimately, by providing officers with a false receipt of sale from a legitimate warehouse company.

The Police observed that the Licensing Sub-Committee which had revoked the licence had noted that the way the premises was operated was not merely irresponsible, but also illegal, and had also commented that the company

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director's explanations had not inspired any confidence whatsoever that she understood the licensing objectives.

Regarding the appeal, the Police confirmed that the premises licence holder of KVK Supermarket had withdrawn the appeal against the revocation at a late stage. The premises licence holder was instructed to attend court, as a District Judge wanted to ensure that she understood the consequences of withdrawing the appeal. She did attend, and the District Judge was satisfied that she was aware that the revocation of the premises licence became effective from that time.

It was only 8 days after the withdrawal that the current grant application had been lodged. The Police had been concerned about the short period of time, in case it was an attempt to subvert the process and the requirements of the Licensing Act 2003. Documents were therefore requested that showed that the applicant was the legitimate owner of the business, and was separated from the previous licence holder of KVK Supermarket.

The email in the Committee Report detailed what had been requested; none of the documents had been forthcoming. The request was chased up on 5th March and again there was no reply to this email. The Police had concluded that the documents were not available, and would not be available. They were therefore concerned that the applicant was not separated from the previous licence holder, and that there was a risk that the instant application could be an attempt to subvert the process and the spirit of the Licensing Act 2003.

The Police recommended that the application should be refused, observing that without proof of separation from the previous licence holder, there were concerns for the promotion of the licensing objectives, especially around the prevention of crime and disorder, and public safety. The police confirmed that they had no confidence in the applicant without the proof of separation from the previous licence holder. The Sub-Committee noted this.

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 that such documents should have been readily available, and noted that nothing at all had been forthcoming. This did not inspire confidence in the applicant.

The Sub-Committee also agreed with the Police observation that there were significant risks to the promotion of the licensing objectives unless a proper separation could be shown. The Police had explained that the application was not a normal application due to the previous history, which had involved a revocation of the premises licence after counterfeit alcohol had been found within the KVK Supermarket.

The Members considered that a particular concern was that the licence holder at the time had attempted to deceive officers via the use of a false receipt; this made it all the more important that a true separation should be shown, via documents.

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The Members examined the list of documents that the Police had requested, and found it to be entirely reasonable.

A 'normal' application involving a changeover of premises licence holder would perhaps not be subject to such a level of scrutiny. However, the Members bore in mind that in the instant application, the Police had observed that to grant the application where there had been a licence revocation, and then a withdrawal of an appeal, would place the licensing objectives at risk, as there was no confirmation of a proper separation between the current 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. The Police had looked askance at the submission of the application only eight days after the withdrawal of the appeal; the Members agreed that this was a concern, and were not at all reassured that the two businesses were separate.

The Sub-Committee accepted the Police advice that it would place the prevention of crime and disorder objective, and the public safety 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 licensing objectives. Whilst the agent had said that he considered that a "termination letter" and the Land Registry record would be sufficient, the Police had requested specific documents. The list of documents had been reasonable, and the Sub-Committee considered that the applicant should have endeavoured to supply the documents, and to do so in a timely fashion. This had not happened.

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 suggestions made by the applicant's agent were entirely unsatisfactory – in particular the proposal that the licence should be granted with a condition requiring that the documents should be produced. It was obvious to the Members that the production of satisfactory documents should precede the grant of the licence – not the other way round.

In any event, the Sub-Committee shared the confusion expressed by the Police regarding the reason why these documents, which should have been readily at hand, had instead been unavailable for numerous weeks; moreover, the documents had not even been produced at the meeting itself. The Members had been surprised that the agent had not given a clear reason as to why the documents had not been produced; the comments that he had made in the meeting had not addressed the issue satisfactorily.

In the light of the past history, which had involved a licence revocation, the Sub-Committee determined that evidence (via documents) of a proper separation was essential. This had been the advice of the Police; their view had been that without proof of a proper separation, the licensing objectives would be put at risk. The conditions proposed by the agent during the meeting did not adequately address

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the risks. Accordingly, the Sub-Committee resolved to follow the Police recommendation, and rejected 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.

The meeting ended at 1044 hours.

CHAIR.....