

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B 9 OCTOBER 2018

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 9 OCTOBER 2018
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Nagina Kauser in the Chair

Councillors Barbara Dring and Adam Higgs (Cllr Sharpe observed.)

ALSO PRESENT

Bhapinder Nandra, Licensing Section
Joanne Swampillai, Committee Lawyer
Katy Poole, Committee Manager

NOTICE OF RECORDING

1/091018 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

2/091018 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 to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/091018 There were no apologies submitted.

MINUTES – PUBLIC

4/091018 That the Minute of meetings held on 6th September 2018 were confirmed and signed by the Chairman.

That the public part of the minutes of meeting held on the 18th September 2018 were noted.

**LICENSING ACT 2003 PREMISES LICENCE – THE MINIMARKET, 235-237
LOZELLS ROAD, BIRMINGHAM, B19 1RJ**

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

(See document No. 1)

The following persons attended the meeting.

On behalf of the applicant

Saman Kahrahman – Applicant
Rob Edge - Agent

Those making representations

PC Abdool Rohomon – West Midlands Police
Mahir Akgul – Neighbouring shop owner
Heath Thomas – Representing Mr Akgul

* * *

Following introductions by the Chairman, Bhupinder Nandhra, Licensing Section, made introductory comments relating to the report.

In response to questions from Members of the Sub-Committee, Mr Rob Edge, on behalf of the applicant, made the following points:-

- a) That the applicant intended to run the business as a professional enterprise.
- b) That his client had put time, money and passion into the business to make it successful, without compromising the licensing objectives.
- c) That he would run the business in accordance with the Licensing Act and work with the responsible authorities to promote the licensing objectives in the act.
- d) That his client had employed a consultant to train staff, which evidenced that, his client was a responsible applicant.
- e) That they had requested reasonable hours and had taken into consideration the problems in the local area.

- f) That the applicant had previously ran premises in Dudley Road, Wolverhampton and Telford. The premises were similar and his client was used to managing licensed premises.
- g) That they were aware the Councillors were concerned with behaviours of premises licence holders.
- h) That the general ASB issues should not be related to the applicant as his premises was not even open yet.
- i) He was an experienced operator and the proposed operating schedule would be run as intended.
- j) That the licensing objectives would not be undermined.
- k) That if any issues did arise a review of the premises would address the problems; should the licensing objectives be compromised.

Responding to Councillor Higgs, Mr Rob Edge explained that the hours were greatly reduced from the last application and they had submitted a stronger operating schedule and staff training manual. That the applicant had taken on board everything that was said at the last hearing and was looking to move from Telford to Birmingham, in order to manage the premises better. Staff training would take place prior to the premises trading.

Mr Kahrahman added:-

- a) That he had a shop in Telford; a bigger shop. He wanted to be in Birmingham to earn extra money.
- b) That the other shops he had run previously had issues with anti-social behaviour. Every area had problems, but it was how the shop was managed and how the staff talked to people.
- c) That he was aware of the issues in the area.
- d) That he was already paying rent on the premises even though it was not open. He was unable to make money without an alcohol licence.

Mr Edge continued:-

- a) That the premises was not located within a Cumulative Impact Zone, therefore, with strict management there was no reason why this premises could not operate successfully and uphold the licensing objectives.
- b) That there was a PSO in the area and the intention was to work with them before opening the premises; whether that is no single can sales to discourage street drinking or whatever it may be.
- c) That they believed the premises could run without impacting the ASB in

the area.

- d) That the conditions would only apply to that premises, they could not apply to crime and disorder down the road as that had been there 10 years.
- e) That the crime and disorder in the area needed addressing by the premises that were causing it.
- f) They could not relate it to their premises as it was not operating.
- g) That they had a good strong operating schedule.
- h) That the premises would only open until 2200 hours.
- i) That the premises would offer a wider range of products; food and other items.
- j) That the premises in Wolverhampton would not tolerate single can sales and not fuel street drinking.
- k) That the premises would have CCTV outside the front of the premises and staff would be trained to look out for proxy sales.
- l) That his client's first intentions were to clean up the area outside the shop and give it a refurbishment. That way it will indicate to customers that the premises was not a place to buy cheap booze and hang around outside.
- m) That anyone lingering outside would be asked in a polite but firm manner, not to hang around outside drinking.

Mr Kahrahman interjected:-

- a) That he would have 4 staff and they would do 6 or 8 hour shifts.
- b) That the shop would sell "everything".
- c) He asked the Members to give him a 6 month trail and see "how [he] worked", if anything bad happened they could close the shop.
- d) That the shutters would be closed on the alcohol when alcohol was not permitted for sale.

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

- a) That they had a strong operating schedule and would offer to change the operating hours to 1000 hours in the morning.
- b) However they were not willing to adjust the evening hours.

At this stage Mr Heath Thomas requested to ask the applicant and his representative a number of questions, through the chair.

The Chairman granted Mr Thomas's request.

Mr Thomas directed a number of questions to the applicant, namely:

1. Between 6th August and 9th August did they consult with the police?
2. At the last hearing evidence was given that the applicant was living in Telford and would only be attending the shop occasionally. Why has that changed?
3. Was it the applicant's intention to give the shop up in Telford?

In response to Mr Thomas's questions Mr Edge made the following points:-

1. That they had not met with the police (PC Abdool Rohomon also confirmed this).
2. That his client had invested a lot of time in the premises and it was crucial he obtained a premises licence in order to run the business successfully. In addition his client had no ties to Telford and therefore had decided that moving to Birmingham was a good option.
3. Mr Edge advised Mr Thomas that his final question was not relevant to today's hearing.

In response to questions from Members of the Sub-Committee, PC Abdool Rohomon, on behalf of West Midlands Police made the following points:-

- a) That in relation to the application it was condensed, non-relevant stuff had been taken out. The new application according to Mr Edge had dramatically reduced the operating hours, however, in fact they had only seen a 30 minute change in the morning and then the evening was 2200 hours.
- b) There was no previous reference made to late night drinking being a concern for West Midlands Police in their representations.
- c) That Mr Edge had stated that the operating schedule was "strong", however the staff training had actually been reduced and the stories were changing all the time.
- d) In relation to crime and disorder the operating schedule states that a till prompt will be used for all sales and alcohol, all VAT receipts shall be kept, there will be signage, no ASB to be tolerated, but there was no contextual facts to go with it.
- e) Then in terms of public safety, there will always be a minimum of 3 staff after 2100 hours; meaning that for 1 hour there will be 3 staff.
- f) The training period differs throughout the schedule.

- g) That no single can sales had been mentioned, but at the last hearing PC Rohomon said that it would not even be considered, the Committee also considered it last time.
- h) The mention of proxy sales and underage drinking, yet the objections were regarding ASB.
- i) That fundamental changes but no consultation with the police.
- j) They submitted the second application 3 days after the first but again with no consultation with the police.
- k) The applicant/representative stated they would meet with the PSO once the application was granted. However, they need to know what the problems are before they submit the application and the Act says they should be aware of issues and address them in the application. They have not done that.
- l) That West Midlands Police had concerns with the short difference in time between this application and the previous one.
- m) That their concerns were the same as last time.
- n) He referred to page 4 in the evidence bundle which was a statement from PSO Capella who had worked in the area for over 12 years; he produced photographs and evidence to show the problems in the area.
- o) That page 10 showed people drinking in the street, not underage drinkers. They are legally allowed to drink and it was daytime drinking.
- p) That the applicant had referred to proxy sales and underage drinking, but the police concerns were around street drinking.
- q) He made reference to page 11 and explained that the options available to the Committee were the same as at the previous hearing. He then pointed Members to the decision notice from last time and explained that the Committee gave consideration whether modifying any conditions would be relevant, however, they concluded that modifying conditions would not help promote to licensing objectives.
- r) The premises had not done enough in the new application to alleviate concerns previously.
- s) That the decision notice was a strong document and much weight should be held on that document.
- t) He made reference to Daniel Thwaites plc Wirral Magistrates' Court and Others (Page 16 of WMP evidence bundle), he read verbatim from page 16. "This case, referred to as 'The Thwaites case', is important because it emphasises the imp[ortant role the Responsible Authorities have in

providing information to decision makers to contextualise the issue before them.

This case is sometimes misconstrued as requiring decisions to be based on 'real evidence', and that conditions cannot be imposed until problems have actually occurred. This is wrong. The purpose of the Act is to prevent problems from happening. Decisions can and should be based on well-informed common sense. The case recognises that Responsible Authorities are experts in their fields, and that weight should be attached to their representations. It is most relevant when opposing grant applications."

- u) That they had closed another premises round the corner, which showed the extent of the problems in that area.
- v) That they were experts in crime and disorder.
- w) That the case about Hope and Glory (page 15 WMP evidence bundle) emphasises what they were saying.
- x) That the application was submitted 3 days after the first one was refused, with only minor changes. Those conditions considered by the Licensing Committee in August were considered not appropriate, what was different now?
- y) That he felt there were no additional conditions that would negate the concerns by West Midlands Police.

In response to PC Rohomon's comments, Mr Edge, made the following points:

- a) That they did have conversations with PC Jones, unfortunately not during 6th-9th as Mr Edge was away.
- b) That they have added additional conditions, amended opening times, and have demonstrated that Mr Kahrahman is a responsible person with previous experience of managing premises.
- c) That they initially had the staff training within a time frame but changed it for a more rigorous and thorough programme that would take place before the premises opened to ensure everyone who worked there would be able to deal with any issues and uphold the licensing objectives.

In response to Mr Edge, PC Abdool Rohomon, made the following points:

- a) That there had been a conversation with Mr Jones, but they were emails. They were asking if WMP would consider not objecting and they responded that they would be objecting.
- b) In addition, should Mr Jones have been happy he would not have objected, yet it was him who lodged the objection.

At this stage in the meeting, a phone rang. The Committee Lawyer announced “Please, whoever’s phone is ringing and buzzing, can you please turn it off.”

In response to Members questions, Mr Heath Thomas, on behalf of Mr Akgul, made the following points:-

- a) That they completely endorsed the comments of West Midlands Police.
- b) That his client had always engaged with authorities in order to report bad operators.
- c) His client knew the problems in the area extremely well.
- d) That this area was difficult, with alcohol related issues that need addressing.
- e) That during the last hearing it was set out clearly, his client had been a victim of robbery, knife crime, theft of money and alcohol from his store, gangs and drugs. His clients ability to deal with these issues was by working with WMP.
- f) His client was living and breathing this and therefore, new the existing problems.
- g) The fresh application 3 days after the first had only taken on the comments from the last hearing, we haven’t heard that he was already trading and working. He has said he shall not open without an alcohol licence and that shows how significant alcohol sales would be for his premises, which was a concern.
- h) That the issue of rent was an issue for him as a business man.
- i) That the applicant was not living here, nor was he immersed in the problems.
- j) That the 182 guidance would suggest that this licensing authority should look to the police for guidance on crime and disorder.
- k) That the decision from 6th August 2018 was relevant to consider.
- l) That his client had genuine concerns, he suffered himself and understood the problems in the area.
- m) He did not want them exasperated by another licensed premises.
- n) He referred to the previous decision “Members considered that neither modifying the conditions of the licence nor excluding any of the licensable activities from the scope of the licence would mitigate the concerns raised by those making representations” (quoted from page 13 of WMP evidence bundle, the previous decision of the Licensing Sub-Committee 6th August

2018.) The measure that the applicant had put forward, were not from experience but from what they said at the last hearing.

- o) That whilst the person had experience trading in Telford, they didn't think this could be compared as the location was entirely different. So whilst they had experience it was not related to this location.
- p) That he had not heard any evidence that would make the Committees previous doubts go away.
- q) That they did not believe the conditions put forward would alleviate the concerns and resolve the problems that already exist when the sale of alcohol was clearly very important to the business.
- r) That there was already too much street drinking.
- s) That they had nothing to add.

In summing up, Mr Heath Thomas, on behalf of Mr Akgul, made the following points:

- a) That he would be mindful of the 182 guidance, given the proximity of the last application and the 6th August decision it was still relevant.
- b) They did not believe the licensing objectives could be upheld with the grant of this licence.

In summing up, PC Abdool Rohomon, on behalf of West Midlands Police, made the following points:

- a) That the licensing objectives could not be upheld.
- b) That the decision from the 6th August was relevant at this hearing as little had changed and the problems still existed.

In summing up, Mr Rob Edge, on behalf of Mr Kahrahman, made the following points:

- a) That they believed they had put forward a full operating schedule which including staff training being carried out prior to the premise being opened.
- b) That the training manual included conflict resolution, challenge 25, refusals log, everything you would expect.
- c) That they had a refurbishment planned and that would change the concept of the premises.
- d) That there was no evidence that the application would undermine the licensing objectives.

Licensing Sub Committee B – 9 October 2018

- e) No evidence produced to show that his client was anything other than an experienced operator.
- f) That if the crime and disorder was so high, why had WMP not requested that the area become a CIZ.
- g) That Environmental Health had no public nuisance concerns.
- h) That they had offered to change the hours again during the hearing.
- i) That the photos produced by WMP show street drinkers, whom have existed for a number of years. This was already a problem that had not been addressed.
- j) The strong operating schedule and good manager would ensure that the premises would not add to the problems already existing in the area.
- k) In reference to the decision notice from 6th August 2018, the Committee considered that a grant could be considered by a well-managed premises with an experienced person, they felt they had demonstrated that in the hearing.
- l) They felt that the objection from the shop next door was a competition objection.
- m) That there was no factual evidence that the premises would not act in accordance with the licensing objectives.
- n) That it was only anecdotal evidence from the police.
- o) On that basis the licence should be granted.

Mr Kahrahman interjected and explained that the photo was the same as the previous hearing and that it was not a “big deal”, they had made the changes and resolved the concerns.

He directed his comments to Mr Thomas explaining that his shop was bigger, cleaner, better designed and therefore, the objections made were due to competition. The police should work with them.

At 1058, the meeting was adjourned. All parties with the exception of Members, the Committee Lawyer and Committee Manager left the meeting.

At 1142 the meeting was reconvened and all parties were invited back into the meeting room and the decision of the Licensing Sub-Committee was announced as follows:-

5/091018

RESOLVED:-

That the application by Mr Saman Jowhar Kahrahman for a premises licence in respect of THE MINIMARKET, 235-237 LOZELLS ROAD, BIRMINGHAM B19 1RJ **BE REFUSED.**

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

Mr Kahrahman had previously made an application for a premises licence which was refused by the Licensing Sub-Committee on 6th August 2018. He had submitted a fresh application for the instant hearing. The Sub-Committee's reasons for refusing the fresh application are again due to concerns expressed by West Midlands Police regarding the management of the proposed operation in what had for many years been a very difficult and challenging area for the neighbourhood Police team.

The Police provided the detailed statement from the local PCSO which had originally been submitted for the meeting of 6th August 2018. This statement described the crime & disorder, and antisocial behaviour, in and around Lozells Road. These issues were overwhelmingly created through irresponsible alcohol consumption; over the years it had been observed that the cause was the prevalence of street drinkers. The Police dealt constantly with drunkenness and associated problems. The level of antisocial behaviour was high; the long-term demand on Police resources had been, and continued to be, significant.

The Police stated that they were not confident that the applicant would be capable of promoting the licensing objectives. The Police considered that the applicant, and the fresh operating schedule, continued to show insufficient understanding of the Lozells Road environment. All the new aspects of the application were of limited relevance (namely the shortening of the proposed hours; refurbishment; training; measures relating to proxy sales). The new proposals did not address the sale of alcohol in an area plagued by street drinking, which had been the overwhelming worry preoccupying the Police at the meeting of 6th August 2018.

The Police observed that the fresh application had been submitted three days after the last hearing, and without consulting the Police about the amendments. The applicant of course knew the Police had grave concerns; the concerns had been discussed at length at the meeting of 6th August 2018, when it was explained that the area generated a huge amount of work for the neighbourhood Police team. The Police therefore looked askance at the applicant's offer, made during the hearing, to meet the Police 'if the licence were to be granted'. The Police had expected that the applicant would ask to meet them after the Sub-Committee hearing of 6th August; instead he had simply submitted a fresh application three days later.

The Sub-Committee agreed that the applicant's offer to meet the Police 'if the licence were to be granted' did not inspire confidence, as it showed a lack of willingness to cooperate with the Police in the manner expected of an applicant wanting to operate in an area which had significant levels of crime, disorder and nuisance. A request for a meeting with the Police should have been made before the submission of the fresh application.

The applicant's fresh operating schedule still did not address how the specific problems of crime, disorder and nuisance would be managed, such that the licensing objectives could be upheld. Furthermore the Police noted that at the previous hearing, the possibility of modification of the proposed conditions had been considered by the Sub-Committee, in case the licence could be granted after some modifications to the conditions; however Members had considered that modifying the conditions would not mitigate the concerns raised by those making representations, and the application had been refused. The applicant's new operating schedule did not address the concerns either; accordingly, the Police maintained their objection. The Sub-Committee accepted the Police submissions.

The neighbouring shopkeeper who runs the premises adjacent to The Minimarket again attended, represented by a solicitor, and confirmed that Lozells Road continued to be exactly as described by the PCSO, with the problem of street drinking dominating the area, along with associated problems of crime, disorder and nuisance.

The neighbouring shopkeeper also confirmed, as per the previous meeting on 6th August 2018, that his own shop had been targeted by criminals, and therefore he was able to speak with first-hand knowledge of the crime and disorder in Lozells Road. He stated that the Police were in and around Lozells Road every day, and that police sirens were heard every day, as would be expected in a 'difficult' area. He had had to adapt his own operation to manage problems. He had also been assisting the Police where he could, and had passed evidence to them relating to the general goings-on in the area, in an effort to help to reduce crime and disorder, but the problems were persisting. The Sub-Committee accepted the submissions of the neighbouring shopkeeper.

The Sub-Committee carefully considered the fresh operating schedule put forward by the applicant, and the likely impact of the fresh application, but was still not persuaded that the applicant and the proposed operation of the premises could promote the licensing objectives. The fresh application did not satisfactorily address the issues of crime, disorder and nuisance.

Some aspects of the proposed operation had been amended since the previous meeting. However the Members were mindful of the Police's observation that the main problem in Lozells Road was

street drinking, and associated crime & disorder. The amendments did not persuade the Sub-Committee that the applicant understood these problems, and in any event he had not sought advice from the Police about them.

All in all, the new application did not persuade the Members that the licensing objectives could be upheld in such a challenging area. The Police considered the application unsatisfactory as there was nothing to address the issue of street drinking and the associated crime & disorder; a neighbouring shopkeeper had remarked that the levels of crime & nuisance were such that the Police were in attendance at Lozells Road every single day. 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, their adviser, and those 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.

OTHER URGENT BUSINESS

6/091018 There was no urgent business.

EXCLUSION OF THE PUBLIC

7/091018

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:-
(Paragraphs 3 & 4)
