

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B - TUESDAY 07 MARCH 2017
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**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 07 MARCH 2017
AT 1000 HOURS IN COMMITTEE
ROOM 1, COUNCIL HOUSE,
BIRMINGHAM**

PRESENT: - Councillor Lynda Clinton in the Chair

Councillors Alex Buchanan and Gareth Moore

ALSO PRESENT

Shaid Yasser, Licensing Section
Joanne Swampillai, Committee Lawyer
Tayyibah Daud, Committee Manager

NOTICE OF RECORDING

01/070317 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there were confidential or exempt items.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

02/070317 Apologies were submitted on behalf of Councillor Ali. It was noted that Councillor Dring had been identified as the nominated member. However, Councillor Dring advised that she would be unable to remain if the meeting continued after 1200 hours and Councillor Buchanan replaced her as the nominated member.

MINUTES

03/070317 The public section of the Minutes of the meeting held on 3 January 2017 were noted.

The Minutes of the meetings held on 17 January 2017 and 24 January 2017 were noted.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT SHENLEY
GREEN STORES, 2-3 SHENLEY GREEN, BIRMINGHAM, B29 4HH**

The following persons attended the meeting.

On behalf of the applicant:

Thangarajah Kamalakannan - Applicant
Anil Bhawsar – Licensing Agent on behalf of applicant

Making Representations in respect of the application

Naomi Gilchrist – Counsel for the Bournville Trust
Anthony Kimber – Bournville Village Trust
Jenny Shardlow – Local Resident

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

(See Documents No. 1)

Following introductions by the Chairman, the main points of the report were outlined by Shaïd Yasser, Licensing Section. Mr Yasser confirmed that the representation at appendix 12 in the report has been withdrawn.

Mr Bhawsar, in presenting the case on behalf of the applicant and in response to questions from Members, made the following points:-

1. Mr Kamalakannan has been an established business owner for the last 7 years and has been the owner of two businesses in Coventry.
2. He has now moved to a new area, which he believes is a good area for him to settle down in terms of schooling for his children and in general family life.
3. There are current disputes in regards to the lease of the premises; however, in regards to the licensing objectives Mr Kamalakannan feels he is able to uphold the objectives.
4. He feels he is responsible enough to handle all different situations that may arise.
5. He has taken the time and effort to put in conditions and measures such as: CCTV cameras, health and safety training and having extra staff at the premises.

6. The opening times for this convenience store are 0700 hours to 2100 hours, which is early compared to the closing times of other convenience stores.
7. The licence is being sought as an addition to the currently operating convenience store and newsagent.
8. Only a very small section of the store, approximately 10%, would have alcohol to be sold to the public.
9. There would be CCTV in the area where the alcohol would be placed.
10. Any behaviour from prospective customers would be tackled in the appropriate way.
11. Mr Kamalakannan takes his responsibility as a retailer very seriously. He would be the proposed DPS at the premises and would ensure that all other staff members would be trained; age verification and log registers would be in place at the premises.
12. Mr Kamalakannan shares what the residents feel, however, they can be rest assured as he would make sure all measures implemented are safe; inside and outside the shop.
13. Mr Kamalakannan has 10 years of experience in running convenience stores that sell alcohol.
14. He has never had any issued relating to his licence.
15. There would be two staff members plus himself at the premises.
16. Mr Kamalakannan has had no consultation with the local residents.

Ms Gilchrest through the chair wished to seek clarification in regards to where Mr Kamalakannan is currently residing as it was her understanding that the applicant is still living in Coventry.

17. Mr Kamalakannan stated that he is currently living in Coventry but intends to move to Bournville soon.
18. There is a flat above the premises which is occupied by an individual who has no connection with the business.

Ms Shardlow, presenting the case and in response to questions from Members, made the following points:

1. Referring to plans of the residential area around the shop. Ms Shardlow stated that residents are concerned as there are sensitive areas around the premises.

(See documents no.2).

2. The map of Shenley Green shows little shops, chemist and Church Hall which are used well by the local population,
3. There are retirement bungalows which are occupied by elderly people
4. The route on the way to the shops, Church Hall and surgery is regularly used by young people and elderly people. Elderly people who usually attend the Church or go to the Church Hall would pass the shops.
5. It is an area where many young people come as there is a nursery; that take children out for walks. There are children who go to and back from school also pass the area.
6. There is a youth centre in close proximity; Ms Shardlow stated that the owner of this youth centre was not keen on the idea of children being able to get alcohol.
7. In the evening, people pass who are attending social activities at the Church Hall.
8. In the past there have been problems with the Church car park, in regards to vandalism and drugs. However this has now calmed down.
9. There are places behind shops and garages where residents have stated that young people gather.
10. Ms Shardlow stated that she lives near two off-licences. She stated she regularly has to pick up bottles and alcohol debris.
11. Ms Shardlow stressed area that she lives in, is indeed a pleasant area and that the residents views are expressed in their written representations.
12. Ms Shardlow stated that she is regularly involved with people in the neighbourhood and has been informed by residents, that if the licence is granted, residents would 'vote with their feet' and would not use the shop.
13. She would like the shop to be successful, but not at the expense of 'our nature'.

Ms Gilchrist, presenting the case on behalf of Bournville Trust and in response to questions from Members, made the following points:

1. There is an alcohol restriction zone in place within the immediate area, as there was a problem with anti-social behaviour and crime.
2. People were bringing alcohol within the adjoining area, drinking it and causing problems which resulted in significant disorder.

3. The Police were granted a restricted zone. It has had an effect and made a difference.
4. There are problems with off- licences as they attract youths.
5. With an off-licence one needs absolute confident from the applicant to ensure that no problems would occur.
6. Historically there has been a problem which reflects the fear of local residents, that the grant of this licence may bring issues that took a lot of effort to resolve back.
7. The crimes that occurred in the area have been produced in the bundle (See documents no.3).
8. The figures had come from a website (street check). The figures on this site are uploaded by the police.
9. The exact postcode of the premises has been inputted, the data shows crimes within a mile radius and in the immediate area.
10. Briefly, Ms Gilchrist went through the figures and demonstrated that through the calendar year, the amount of crimes went up or stayed similar.
11. Ms Gilchrist stressed that this was clear evidence that there is an issue within the area.
12. Allowing alcohol to be sold in the area could risk escalating and bringing problems back.
13. Ms Gilchrist stated that it is of concern that the applicant already runs two shops, which are significant distance from Birmingham and that no indication has been given by the applicant as to how much time he is proposing to spend at the premises.
14. There is no confidence on behalf of Bournville Trust that the applicant has tried to find out about the nature of the area, or consult with local residents as per the Guidance issued under Section 182 of the Licensing Act 2003.
15. Due to an error by Bournville Village Trust, the lease that the applicant currently has does not include the relevant clause or covenant prohibiting the sale of alcohol.
16. The applicant does not have sufficient knowledge of the area.
17. Ms Gilchrist stressed that it was misleading for the applicant to state he had moved to the area.
18. It is an area which is used by vulnerable people such as the elderly, young children and youths. There are surrounding open spaces where youths can gather and cause potential issues.

19. The applicant's application has gone nowhere near indicating that the four licensing objectives would be upheld.

Members were concerned that the impression given by the legal representative was that institutions in the area are concerned about this particular off-licence. However, they have not made any objections.

20. Ms Gilchrist stated that she did not intend to give this impression and stressed that there are a number of sensitive areas that may be impacted by an off-licence.
21. A matter of concern was that not many people were aware there had been an application for an off-licence made.
22. Mr Kimber stated that when a manager from the Bournville Trust went to the premises one blue notice was put on calf level and one was 'way up high' and partially covered by a drain pipe.
23. Even though the schools and nurseries have not objected, it does not mean that the Committee cannot take into account young people would be there.
24. The fact that the premises close at 2100 hours rather than 2300 hours makes little difference as an off-licence still attracts youths.

Mr Yasser stated that a Licensing Enforcement officer went out to the premises to check if the notices were displayed in an adequate manner. It had been confirmed that the notices were displayed entirely correctly and met the statutory requirements.

25. The applicant was not aware of the preferences until after dialogue with the Estates Manager, as there was an issue with the lease.
26. There is an issue that something should have been included in the lease.
27. Mr Kimber stated that he feels the sale of alcohol on the Bournville Estate is a very emotive issue.

In order to seek legal advice, at 1109 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1112 hours, after an adjournment, all parties were recalled to the meeting and continued.

28. Ms Gilchrist stated that she was concerned that the onerous is on her and her client to prove that the off-licence would undermine the licensing objectives; when it is for the applicant to prove that the objectives would not be undermined in his application.

29. In response to a direct question from the Sub-Committee, Mr Kimber confirmed that within the Bournville estate that there were 'about four' premises that permitted the sale of alcohol.
30. In regards to the lease, Mr Kimber stated that the lease was renewed in 2007 with the previous lease going on for 10 years. The old lease had a standard prohibition of alcohol clause. This clause was missed in the new lease and 'should have been in' the current lease.
31. Mr Kimber stated this is something that the Trust would be seeking to rectify.

Ms Gilchrist, summing up stated that it is for the applicant to demonstrate that if he is granted a licence he would uphold the licencing objectives. In her opinion he has not out forward an application which would reflect this.

The area itself is one that is used and lived in by vulnerable people not only the elderly and young. Ms Gilchrist reiterated that. Historically there had been a problem that needed extensive assistance from the police. There are people who are going to be exposed by groups who gather and intimated other residents. Premises do not always adhere to conditions; it is only when they are strictly adhered to that a difference is made. There is not a sufficient amount of staff at the premises. Ms Gilchrist stressed this all should be taken into account and the application should be rejected.

In summing up, Ms Shardlow stated that she represents the Shenley network. Mr Shardlow stated that she is part of the Estates Management Committee and represent residents. There are vulnerable people that use the area a lot. The Bournville Estates has always been a desirable area, reflected by property values. After consultation with residents it became apparent that people from both ages of the spectrum were against the grant of this off-licence.

In order to seek legal advice at 1127 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1129 hours, after an adjournment, all parties were recalled to the meeting and continued.

Furthermore, Mrs Shardlow stated that she had been informed by other residents that the premises currently provide newspapers to local residents. However, there have been issues in regards of the pay and delivery of the papers. Mr Shardlow stated there would have been more objections if people were aware that an grant application was going through as well as people did not 'expect it to happen' as everyone is aware of the 'Bournville Ethos'.

In summing up, Mr Bhawsar stated that the applicant does understand the concerns the local residents may have. However, he has got sufficient experience

of running an off-licence. The primary objective of the premises is not to be an off-licence as reflected in the plan, only a small area of the premises would sell alcohol. There are other services the premises provide such as a convenience store, lottery, pay point and newsagent. The applicant has experience and would implement measures such as incident logs, challenge 25 policy and staff training.

The applicant has looked at all circumstances before submitting the application. The applicant has discussed with his customers, as the premises has been open for three months, that he was seeking an alcohol licence. The applicant would refurbish the premises and wishes to be a responsible retailer, thus requests that he should be granted the licence.

At 1144 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1242 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

04/070317

RESOLVED:-

That the application by Mr Thangarajah Kamalakannan, for a premises licence in respect of Shenley Green Stores, 2-3 Shenley Green, Birmingham, B29 4HH:

BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS, to promote the prevention of crime and disorder, the prevention of public nuisance and the protection of children from harm objectives in the Act:

1. All Conditions as agreed with West Midlands Police in the Police email dated 19th January 2017, namely:

- CCTV to be installed and maintained to the satisfaction of West Midlands Police, the CCTV system to be in full working order at all times when the premises are open for licensable activities
- The CCTV system shall record and store images for a minimum of 28 days, images to be made available to West Midlands Police and Local Authority officers upon request
- An incident log book will be kept and maintained on the premises which will be available for inspection by any of the Responsible Authorities
- A refusal log to be maintained at the premises which will be available for inspection by any of the Responsible Authorities; staff to record all refusals of sale of alcohol

Licensing Sub Committee B – 7 March 2017

- The premises shall adopt the Challenge 25 Scheme and appropriate signage will be placed at the entrance to the premises and adjacent to the bar servery.
- Members of staff will receive regular training in their responsibilities under the Licensing Act 2003, to include use of the proof of age scheme adopted by the premises, such training to be documented and records shall be retained at the premises and produced to Responsible Authorities upon reasonable request

AND ALSO THE FOLLOWING FURTHER CONDITION:

2. The applicant shall erect prominent, clear and legible signage inside the premises requesting customers to be considerate of local residents when leaving the premises

The Sub-Committee's reasons for imposing these conditions are due to the submissions made by other persons regarding the location and impact of the proposed operation, and the likelihood of nuisance from the premises.

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application but did not accept that there was evidence of a significant public nuisance, or risk to crime and disorder, or risk to the protection of children from harm, arising from the proposed operation of the premises – especially given that West Midlands Police had agreed Conditions with the applicant.

The Sub-Committee noted that the applicant was a Premises Licence Holder elsewhere, and was accustomed to selling alcohol by retail in his two shops in the Coventry area. The Shenley Green shop was a newsagent and convenience store, and it was proposed that alcohol would be only 10% of the shop floor space (as shown on the Plan); therefore the premises would not be an Off-Licence, but a convenience store offering alcohol. The applicant was intending to refurbish the premises and to move to Shenley Green. The proposed times of operation were examined carefully by the Sub-Committee. They noted that the closing time, namely 9pm, upheld the spirit of the Licensing Objectives.

The concerns of the other persons were taken into account by imposing suitable conditions that would allay their apprehension about the potential for nuisance from arising in connection with the proposed operation of the premises – namely all the Conditions suggested by West Midlands Police, and in addition, a further Condition to display signage.

In hearing the representations from other persons, the Sub-Committee noted that the evidence relating to crime statistics had been taken from a website, not sought directly from West Midlands Police.

The Sub-Committee carefully took into account the objections made by a local resident, which included representations regarding the protection of children from harm objective given that there was a Church, a nursery and also a school in the area. However the Sub-Committee noted that no objections had been made by these organisations themselves. These organisations would have been aware of the application due to the Notices which the applicant had displayed in accordance with statutory requirements.

The Sub-Committee also heard from a person making objections, a representative of the Bournville Village Trust, who confirmed that the Lease of the premises, which had been granted by the Bournville Village Trust, did not include the relevant clause or covenant prohibiting the sale of alcohol. The person making representations on behalf of the Bournville Village Trust stated that this had been omitted from the Lease “due to an error”. Therefore the applicant, through no fault of his own, had taken the premises without being made aware of the preferences of the Bournville Village Trust.

The Sub-Committee also asked if there were other alcohol licensed premises in the Bournville Village Trust area, and were informed that there were “about four” of them.

On examining the Conditions required by West Midlands Police, the Sub-Committee considered those Conditions to be appropriate, reasonable and proportionate to address concerns raised. The Sub-Committee felt that an additional condition, namely that customers behave with consideration for local residents when leaving the premises, would satisfactorily ensure the promotion of the licensing objectives.

In addition to the above Conditions, those matters detailed in the operating schedule and the relevant Mandatory Conditions under the Licensing Act 2003 will form part of the licence issued.

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 information in the application, the written representations received and the submissions made at the hearing by the applicant and by 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.