

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 2 JUNE 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 2 JUNE 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Nicky Brennan and Adam Higgs.

ALSO PRESENT

Bhapinder Nhandra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services
Phil Wright – Committee Services

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

NOTICE OF RECORDING/WEBCAST

1/020620 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.

2/020620 **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

3/020620 No apologies were submitted.

MINUTES

4/020620 The Minutes of meeting held on 10 March 2020 and 17 March 2020 were circulated and confirmed and signed by the Chairman.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – A1 BROADNEWS & CONVENIENCE STORE, 83 BROADSTONE ROAD, YARDLEY, BIRMINGHAM, B26 2BY

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

(See document No. 1)

On Behalf of the Applicant

Sarah Clover – Barrister – Kings Chambers
Mir Awais Khan – Applicant
Adil Sadiq (joined the meeting at 1041 hours)

Those Making Representations

PC Abdool Rohomon – West Midlands Police (WMP)
Chris Jones – WMP
Martin Williams – Trading Standards (TS)
Sharon Watts – Licensing Enforcement (LE)

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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.

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

Afterwards, the Chairman invited the applicant to make their submission. At which stage Sarah Clover, on behalf of the applicant made the following points: -

- a) That Mr Khan is the director of the company and it was Mr Sadiq who applied for the licence and she was speaking on behalf of them. The Committee should have received 4 statements on behalf of interested parties to the premises.
- b) The application itself was positive – it was an application for a new premises licence. The licence application reflected what had already been at the premises for some time; it had already been operational.
- c) A comprehensive operating schedule was detailed at pages 20-27. She invited the Committee to look carefully at it, it had been worked on by Mr

Sadiq and Mr Khan to put forward all the protections to further the licensing objectives. Detailing all the training, challenge 25 policy, mystery shoppers, training records, refresher courses, recording of incidents, CCTV covered, public safety procedures and notices, and so on.

- d) It was a frank and comprehensive application.
- e) Suggestion from representations that it is a behind the scenes or puppet application that will not disturb the previous arrangement. Mr Abdullah Khan held the licence for some time, with Mr Mailvaganam. Some detail within representations from RA about a review of the licence in Mr Abdullah Khan's name. The application was being tied to the review and yet the details of that were not detailed within the report and she did not have any paperwork for the review. The objections to the application, appears to be on basis that Mr Sadiq and Mr Khan were connected to the previous licence holder – there was nothing shadowy or behind the scenes about the application. The change of command was clear. Mr Sadiq was the freeholder of the property, he had a premises licence for the shop in 2008, so had been associated with premises for a significant period of time and ran the premises previously. He had no objections or complaints about him during that time. The premises licence was transferred, and Mr Abdullah Khan took the lease of the property.
- f) Mr Mir Awais Khan was the director of the company and was a stock manager. There was nothing underhand about the relationships.
- g) There was no objection to Mr Sadiq taking the licence back, he did not approve of any of the transgressions against the licensing objectives which had taken place under the management of Mr Abdullah Khan. Mr Khan would surrender the lease/tenancy back to Mr Sadiq. PC Rohomon made comment that he doubted the surrender of the lease within his objection, but that was the situation and due to the current Pandemic, it was a business arrangement that would take place as soon as possible.
- h) Mr Sadiq and Mr Mir Awais Khan were not responsible for any of the review proceedings that took place against the previous premises licence.
- i) There was an incident in November 2019, which looked the be a vigilante justice meeting out by a family; a mother alleged there was an under-age sale that had took place. The situation was muddled at best. There were a number of allegations of assault that took place that day. The truth was unclear. The person involved in serving that day was Ms Habib, she was also the individual involved with the failure of a test purchase. Neither Mr Sadiq or Mr Khan were involved in those incidents, yet there was some suggestion from the RA that they were involved with the premises. They were not present at the store when the incidents occurred.
- j) Mr Sadiq wanted to get into business with Mr Mir Awais Khan because he was reliable, trustworthy and was there when he was needed or called upon.
- k) She was troubled to note that PC Rohomon had made some rather oblique references in his objection to criminal convictions against staff (plural) without

specifying what he was talking about, and further, in his supplementary documents he mentioned it was Ms Habib he was talking about and he made reference to a foreign conviction. Yet it was unspecified; no details put forward to the Committee. It was an inappropriate thing for a police officer to do.

- l) Mr Sadiq and Mr Khan were personal licence holders.
- m) She was not aware of a direct objection by the police to the DPS application. There had been some criticism regarding addresses. Mr Sadiq had indicated that he had difficulty filling out the form and the postcode had not gone in correctly, which would explain why the address seemed to not exist. He had not done anything wrong and had been perfectly transparent.
- n) The applicant had employed a training company called 'Prozone', to ensure the training requirements were met.
- o) The application was entirely stand alone from the previous premises licence and should be judged in that regard.
- p) The she had been informed via Mr Duncan Craig that the review revocation decision was likely to be appealed.
- q) Mr Khan had not done anything wrong and the licence should go ahead with the appropriate licence conditions.

The Chairman invited PC Rohomon of WMP to make his representation, at which stage PC Rohomon made the following points: -

- a) That the objection from WMP and the other responsible authorities related to the relationship between Mr Mir Awais Khan to the previous tenant and the incidents since November last year where Mr Khan was involved; his sister was the one responsible for selling the alcohol to underage persons. There were also issues about the filling out of a form for the DPS.
- b) The statements served yesterday were not signed, there was no declaration to say they were of any truth within the statements, therefore they were not considered statements.
- c) The relationship with Mr Khan to the previous licence holder and the revocation of the licence were all relevant to this application. (PC Rohomon read out a section of the review decision in order to demonstrate the reasons for that revocation).
- d) That WMP knew Mr Khan was linked to the issues with the previous licence.

At this stage Mr Sadiq joined the meeting and confirmed his name for the benefit of all parties present.

PC Rohomon highlighted that Mr Sadiq had missed some of the presentations and whether it would be appropriate to repeat them.

The Committee Lawyer suggested a brief adjournment would be necessary. However, it was then announced that Miss Clover had a point to make.

Sarah Clover confirmed that she was representing him and therefore, there was no need to repeat anything.

PC Rohomon was invited by the Chairman to continue: -

- a) PC Rohomon referred to the crime report documents (page 1) and the incident in January 2019, during which it was Mr Mir Awais Khan who was in charge of the premises on that day and was the person who refused to sell alcohol to the man with an outstanding tab. Therefore, he proposed that Mr Khan had a much higher degree of control over the premises than previously suggested.
- b) That Mr Khan was not a stock manager, he was the store manager, it was a play on words. He clearly had a degree of control over the premises. So, it was not the case that this was just a new application with no link to the previous operation of the premises.
- c) The report stated later that Mr Khan was unable to get the CCTV as he needed to get hold of Mr Abdullah Khan.
- d) In reference to page 9 of the crime report, 13 November 2019. A 999 call was received from the premises and there was an altercation with a member of the public. There was a second 999 call from a worried mother who had found alcohol in her sons' bedroom which was said to have come from the premises. Even in November 2019 Ms Habib called Mr Mir Awais Khan to attend the premises. So, it was clear there was a link.
- e) The statement from Ms Habib said she was in the premises on three occasions, she stated she thought PC Rohomon and Chris Jones were salesman as they didn't introduce themselves. However, that was not the truth, they always introduced themselves and produced their cards. The visit was during lockdown, so the shop was quiet. PC Rohomon asked if she was the manager and she said she wasn't, so she called the manager. When she was asked about who authorised her to sell alcohol, she said it was Abdullah Khan. Therefore for her to say she lost interest was untrue. It was just a distraction from the fact she didn't know what she was doing. The manager who turned up was Mr Mir Awais Khan. There was confusion over who the DPS was and as such enquiries were made to ascertain if Ms Habib had the authority to sell alcohol. They were unable to do that, and therefore WMP told them they should not continue to sell alcohol without the authority of the DPS and they could be breaking the law.
- f) There was a clear link between what had happened previously and the proposed new operation.

Chris Jones added: -

- a) That he could confirm that PC Rohomon's recollection and statement of the visit was correct and the statement submitted from Ms Habib was incorrect.
- b) The notion that the surrender of the lease was difficult due to Covid-19 was strange, they only had to fill out a form.
- c) The form that was filled out incorrectly had a postcode which did not exist.
- d) Mr Mir Awais Khan was always called to attend the premise because he was in charge.

In answer to questions from Members, PC Rohomon gave the following responses: -

- a) That WMP requested CCTV on two occasions and it was not provided.
- b) A crucial piece of evidence could not be provided.

After a short comfort break all parties re-joined the meeting.

The Chair invited Mr Williams, TS to make his submissions and therefore, he made the following points: -

- a) When he saw PC Rohomon's representation in April the link concerned him.
- b) That there was no change in management or ownership of the premises and that meant it would continue to trade in an unacceptable manner.
- c) He would have expected the new licence application would have been new people, entirely separate from the previous operation.
- d) He had not gone into detail regarding the test purchase.

Sharon Watts, on behalf of LE, made the following points: -

- a) That she supported the representations from WMP and TS.
- b) On 9 April they received the application by Mr Adil Sadiq but the company director for A1 Broadnews was indicated as Mr Mir Awais Khan.
- c) The test purchase carried out at the premises was a result of complaints received that the premises was selling age restricted products to under 18s. Mr Abdullah Khan had already been given advice in relation to under age sales.
- d) A1 Broadnews had connections between Mr Mir Awais Khan and Mr Abdullah Khan. When Mr Mir Awais Khan spoke to WMP he gave his details as the store manager.
- e) That her concerns primarily focused on the current owner. Mr Sadiq had a personal licence which he had since May 2016, however when he put his

address on the application it was an address that didn't exist. If a personal licence holder changed address or name, they were expected, under legal obligation, to notify LE.

- f) That the licensing functions must be carried out in order to promote the licensing objectives.
- g) There was a link between the previous operation and the new application and LE supported WMP objection.

In summing up Sharon Watts, on behalf of LE, made the following points: -

- That there were clear concerns that the prevention of crime and disorder and the protections of children from hard licensing objectives could be jeopardised if the applicant was associated with the previous licence holder.
- The application should be refused.

In summing up Mr Williams, of TS made the following points: -

- That he echoed what Sharon Watts had said.
- He was not convinced that the new proposed licence holder was separate from the previous one, and therefore would continue operate in the same way.

In summing up, PC Rohomon, on behalf of WMP made the following points: -

- The evidence was clear – there is a link.
- That Sarah Clover mentioned the notice of appeal and yet that had not been served anywhere so how had she obtained that information.
- It also went against what had been said about the lease being surrendered.
- The statements should have been signed and dated.
- That he supported TS and LE officers – the application should be refused.
- He advised the Committee not to grant the licence.

In summing up, Miss Sarah Clover on behalf of the applicant, made the following points: -

- That a reality check was needed, PC Rohomon over stepped the mark in a number of ways. The 4 written submissions – it was not a court of law and it was perfectly acceptable to submit something even on the back of a beer mat if they so wished. The Committee wouldn't turn away a submission from a resident submitted on a scruffy bit of paper.

Licensing Sub-Committee B – 2 June 2020

- In relation to the incident in January 2019, she was unclear what her client had done wrong, they refused to sell alcohol to someone who was drunk and refused to allow him credit. It was not evidence against him.
- That the nature of her client's role was clear.
- That the officers talked about intelligence and links being uncovered – but the links were never hidden. It was not revealing anything of that sort. The links were clear and obvious. Everyone was aware that Mr Sadiq was the freeholder and granted the lease to the previous licence holder.
- Mr Mir Awais Khan and Mr Sadiq had done nothing wrong and she utterly rejected any attempt of innuendo or insinuation about criminal convictions.
- That it was not unusual for a family relation to be called upon when Ms Habib felt under threat. That was not an indication that he was running the premises.
- Mr Khan had no control over who was employed at the premises or over the training that was provided. Therefore, it wasn't that he had had too much control, it was that he had too little.
- It was perfectly reasonable for Mr Khan and Mr Sadiq to run the premises.
- That everyone should think about how it would play out in an appeal court in 6 months' time.
- The visit carried out by PC Rohomon and Chris Jones in 10th April was not relevant and had nothing to do with the issues.
- Mr Khan wanted to have a full stake in the business and Mr Sadiq would be the DPS. There were no submissions from WMP to object to Mr Sadiq going forward as the DPS and so she assumed that application was going through unopposed.
- No complaints from the public.
- In 12 years, there had only been 2 incidents.
- Mr Sadiq was the freeholder so people operating the premises would always be connected to him in some way.
- It was the alcohol sales that made premises like this one viable.
- To refuse the application on the basis of the evidence submitted at the hearing would be wrong.

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: -

5/020620 **RESOLVED:-**

That the application by A1 Broadnews and Convenience Store Ltd for a premises licence in respect of A1 Broadnews and Convenience Store Ltd, 83 Broadstone Road, Yardley, Birmingham B26 2BY, 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 the protection of children from harm.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns expressed by West Midlands Police, by Trading Standards and by Licensing Enforcement regarding the close connection between those making the new application and the previous licence holder.

The Police drew the attention of the Sub-Committee to the recent decision notice included in the Report. The decision notice was for the meeting of 11th May 2020, in which the premises licence for the same off licence shop had been examined. The shop was at that time known as 'Yardley Cut Price', with the licence holder being a Mr Abdullah Khan.

The licence held by Mr Abdullah Khan had been revoked at that meeting, after poor management and a lack of responsibility had been found to be undermining the licensing objectives. A test purchase exercise had been carried out in February 2020 by Trading Standards, in which the shop had sold alcohol to an underage teenager without checking age-related ID, or even asking the teenager's age.

The Sub-Committee of 11th May 2020 had been unimpressed with the management style described by the responsible authorities; it had been clear that the shop had not been properly managed, properly staffed, or capable of following the law. The Sub-Committee had not been satisfied that the premises was capable of proper operation.

The Sub-Committee therefore carefully considered the operating schedule put forward by the new applicant, and the likely impact of the proposed operation, but was not persuaded that the applicant company (via its director) was sufficiently separate from the previous licence holder in order that the Sub-Committee could have any confidence that the 'new' management style would be any different from that shown by the previous licence holder. This also applied to the proposed designated premises supervisor.

The Sub-Committee observed from the documents in the Report that Mr Adil Sadiq, the person who had submitted the application describing himself as the 'owner', and who proposed himself as the new designated premises supervisor, had arrived at the shop during the failed test purchase incident in February 2020.

Licensing Sub-Committee B – 2 June 2020

Mr Sadiq had spoken to Trading Standards officers in the shop on that day, and had described himself to them as ‘the manager’.

The Police went on to explain that the director of the applicant company, Mr Mir Awais Khan, who was the sole officer of that company, had also been an employee of the previous licence holder (Mr Abdullah Khan). When the Police visited the shop on 10th April 2020, Mr Mir Awais Khan had spoken to them to confirm that he was a ‘manager’ in the shop and indeed stated that he had been so for three years.

It was therefore clear that both the director of the applicant company (Mr Mir Awais Khan), and the proposed new designated premises supervisor (Mr Adil Sadiq), were closely connected to the previous operation under Mr Abdullah Khan, which had been managed so poorly that its licence had been revoked in May 2020.

The Police were therefore of the view that the application appeared to be an attempt to pass the licence from one person to another so it looked like a new applicant, when in fact the same people were involved; the proposed licence holder and designated premises supervisor were both employed in the shop, and in fact had managerial responsibilities, at the time of the test purchase failure which had led to the revocation of the previous licence. The Police observed that both of them were therefore associated with unsatisfactory operating, and a risk to the promotion of the licensing objectives. Accordingly the Police recommended that the Sub-Committee refuse the application.

The Police recommendation was supported by both Trading Standards and Licensing Enforcement. They each addressed the Sub-Committee to confirm that the close connection to the previous problem management meant that the applicant company could not be a truly separate and new operation with a satisfactory management style.

Licensing Enforcement confirmed that the proposed designated premises supervisor Mr Adil Sadiq had himself once been the licence holder for the shop, namely from 2008 to 2017; at the present time he was the landlord of the property and Mr Abdullah Khan the tenant. The meeting was informed that Mr Abdullah Khan intended to surrender the lease; however this had not yet happened. Trading Standards observed that without a proper change in ownership and personnel, the premises was likely to continue to trade in an unacceptable manner.

The Sub-Committee heard submissions from the applicant company via its legal representative. The applicant company accepted that Mr Sadiq and Mr Awais Khan were indeed linked to the previous operation, but asserted that they personally had “done nothing wrong” in terms of the unsatisfactory trading which had led to the revocation of the licence in May 2020. However the Sub-Committee considered that two gentlemen who had each described themselves as ‘manager’ to the responsible authorities should be taken to have had a degree of control and responsibility beyond that of mere ‘staff’, or ‘workers’.

The legal representative stated that Mr Abdullah Khan was in the process of surrendering the lease of the shop back to the landlord Mr Adil Sadiq, but had not quite completed it. The Sub-Committee was therefore confused to hear, later in the meeting, the legal representative confirm that Mr Abdullah Khan had filed a Notice of Appeal with the Magistrates' Court (against the decision to revoke), which the legal representative had herself seen; this rather suggested that Mr Abdullah Khan perhaps had little intention of giving up his involvement in the premises. The Sub-Committee again noted the Police's observation in the Report, that the application appeared to be "an attempt to pass the licence from one person to another so it looked like a new applicant".

The legal representative also reminded the Sub-Committee that the premises, being an off-licence and convenience shop in the Yardley area, served the community and was a valuable local resource – particularly so given the current Covid-19 pandemic situation. The Sub-Committee would ordinarily have wholeheartedly accepted this, but the issue was the suitability of the operators. Both Mr Sadiq and Mr Awais Khan had been management under the previous unsatisfactory licence holder, and the connections between the two of them and Mr Abdullah Khan were too close for the new operation to truly be a separate professionally-run business; as such the Sub-Committee did not have any confidence in them to take on a new licence, to trade responsibly, or to uphold the licensing objectives.

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 Members considered that neither modifying conditions of the licence, refusing the proposed Designated Premises Supervisor nor excluding any of the licensable activities from the scope of the licence would mitigate the concerns raised by those making representations. The issue was the close connection between the former licence holder and each of the gentlemen making the new 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 company via its legal adviser, 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.

Please note, the meeting ended at 1144.