

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE A 11 NOVEMBER 2024</b>
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**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 11 NOVEMBER 2024 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Sam Forsyth in the Chair.

Councillors Maureen Cornish and Ziaul Islam

**ALSO PRESENT**

Bhupinder Nandhra– 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)

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1/111124 **NOTICE OF RECORDING/WEBCAST**

The Chair advised the meeting that the meeting would 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.

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2/111124 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at the meeting. If a disclosable pecuniary interest was declared, a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they had been granted a dispensation. If other registerable interests were declared, a Member may speak on the matter only if members of the public were 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 was a 'sensitive interest', Members did 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 was set out via <http://bit.ly/3WtGQnN>. This included, at Appendix 1, an interests flowchart which provided a simple guide to declaring interests at meetings.

**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/111124 There were no apologies received.

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**LICENSING ACT 2003 – PREMISES LICENCE – FRIENDS EXPRESS, 15 SOLIHULL LANE, HALL GREEN, BIRMINGHAM, B28 9LS**

**On Behalf of the Applicant**

Mr Naga Rajesh – Applicants Agent

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

The Chair outlined the procedure to be followed at the hearing and invited the Applicants Agent to make their presentation. The following points were made: -

- a) The premises had only been taken over by the applicant a few months prior and the application to change licence to applicant's name, only a few weeks prior. Since then, the premises had been closed for refurbishment. The applicant had not got all documentation from previous owners as the premises had been closed for some time. The application had been made with summary documentation that had no conditions attached hence the applicant was unaware of all the conditions.
- b) In the South Indian culture, an auspicious day and time were selected to allow a priest to carry out some prayers and rituals before a business opened. At the time of the inspection, the rituals were taking place with family and friends present. The premises fully opened on the evening of that day, after the prayers. The CCTV footage had been provided from the afternoon of that day.
- c) The agent requested that since there was no direct evidence, could the sub-committee grant a temporary licence for 12 months before making it permanent. This would allow for the applicant to show the police that they were a responsible premises licence holder. The agent suggested additional conditions as follows:
  - Stop selling single cans of beer, cider and lager.
  - Only sell 6.4cl as a minimum of four in a single transaction.
  - Training records to be available at premises for inspection.
  - Alcohol and tobacco not to be sold to vulnerable individuals.
  - No deliveries after 11pm and 7am.
  - All sales through night hatch between 11pm and 6am.
  - Have correct signage in place, including Challenge 25, CCTV.

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- d) The agent highlighted that Environmental Health had made representations about alcohol being sold 24 hours, but this facility was already available with online shopping where no questions were asked and no checks were carried out. At a local convenience store, smaller quantities were purchased and only when required. The premises had its own parking, on a roundabout and it was a dual carriageway, the premises was not in a residential road. Planning consent had already been given for a 24-hour trading licence as it seemed suitable for that, and all the correct measures had been put into place and all assurances given for the alcohol licence.
- e) The agent informed the sub-committee that no objections had been made by local residents or councillors. A trial had been run, being open for trading without selling alcohol and it was encouraged by local residents. The agent commented that there was a service road that surrounded the shop and there were no immediate residents. There were many other premises with a licence beyond midnight but there had been no incidents or complaints in the area.
- f) The agent responded to a Member question about whether the records had been shown to the Police after the day of inspection and had there been any updates from the Police after the inspection day situation had been explained to them. The agent informed the sub-committee that he had submitted the application on behalf of the applicant who was not aware of all the conditions on the previous licence. The premises had been open at the time of the religious ceremony but not for trade. Trading had commenced later on the same day. The agent had been informed that trained staff from another premises had been relocated to this premises.
- g) The agent was asked the name of the Dedicated Premises Supervisor (DPS) and how the 24-hour licence would be managed, and he informed the sub-committee that the applicants sister would be the DPS and there were a team of staff with experience to run the shop. The Chair invited the agent to get the name for the DPS, what experience they had and what the other family business was. The agent informed the sub-committee that the DPS was Ms Vijayatheepan Thavanesan, who was the DPS for another 24-hour premises in Solihull and had 5-6 years' experience. The legal representative and the Licensing Officer clarified that the applicant was the current DPS.

West Midlands Police made the following representations:

- a) Mr Jones of West Midlands Police had visited the premises to carry out due diligence checks after receiving the application on 25<sup>th</sup> September 2024 and noticed that the premises was very close to residential houses and flats directly above the premises. The premises was not open and undergoing refurbishment. The owner was not present at the premises but Mt Jones was informed that the flat above the premises was occupied.
- b) Mr Jones revisited the premises on 3 October 2024 at 11.45am. The shop was open and was trading and alcohol was being offered for sale behind the counter and in the fridges. The premises licence holder and the named DPS, the applicant advised that the premises had just opened after the refurbishment. As part of the due diligence, the current licence conditions were checked.

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Firstly, a refusals book would be fully maintained and available for inspection at all times and that the premises licence holder would ensure that all employees involved in the sale of alcohol were fully trained under the Licensing Act and in any changes in the legislation. Secondly, that all written training records available for inspection at any time. Neither of these were available and the applicant stated that they at home and could be shown on the following day. Another condition for CCTV stated that the premises have internal and external CCTV, recalling for 31 days, all staff be trained in the use and storage of the CCTV. Mr Jones had asked to see the footage from 10am on the day and the applicant had stated that it was unavailable as it was not working, and the engineer was coming later to repair.

- c) Due to the failings, Mr Jones asked the applicant what the licensing objectives were, and he had been told that it was not to sell alcohol to children, ask for ID and make sure it was photographic ID. This was taken as the objective for the protection of children from harm. There was no mention of any of the other objectives.
- d) Mr Jones felt that the premises was very near to residential properties and had the flats above the premises. He felt that there would be an increase in footfall, traffic and noise, leading in crime and anti-social behaviour when residents were trying to sleep. This would be the only 24-hour premises besides a petrol station. There was also a young vulnerable children's home close to the premises.
- e) West Midlands Police were disappointed that the correct measures had not been in place when the premises reopened after the refurbishment. The applicant had failed to fulfil the premises licence conditions and did not know the licensing objectives. The location was not suitable for a 24-hour premises and the proximity of the residential properties and the vulnerable children's home.
- f) Mr Jones responded to the additional conditions that the agent had put forward. The concerns were that the night hatch would cause an increase in noise and nuisance, the staff training was already a condition, and it would be difficult to deter persons loitering outside the premises without confrontation. It was unsatisfactory that the applicant was unaware of the premises licence conditions and the agent did not have the name of the DPS.
- g) If the premises licence was granted, it would be detrimental and would not adhere to the licensing objectives; prevention of public nuisance, children to harm and prevention of crime and disorder.

The Chair invited all parties to make brief closing submissions.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and a full written decision was sent to all parties as follows;

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That the application by Pathmakumar Vijayatheepan to vary the premises licence in respect of Friends Express, 15 Solihull Lane, Hall Green, Birmingham B28 9LS, under section 34 of the Licensing Act 2003, be refused.

The Sub-Committee carefully considered the proposed operating schedule put forward by the applicant and the likely impact of the variation application, but was not satisfied that the licensing objectives, in particular the prevention of crime and disorder and the prevention of public nuisance, and also the protection of children from harm, would be promoted if the variation of the licence were to be permitted.

Members examined the application form, which was in the Committee Report. The Sub-Committee determined that the variation sought was substantial, given that the applicant had requested to extend the hours for the sale of alcohol (for consumption off the premises) to operate across 24 hours from Monday to Sunday.

Consequently, significant weight was attached to the concerns voiced by the responsible authorities - West Midlands Police and Public Health. The Police attended the meeting. The applicant also attended, represented by a licensing agent.

The agent explained that although the applicant respected the concerns raised by the responsible authorities, he wished to clarify an issue regarding the Police visit. The statement from the Police had stated that on the 3<sup>rd</sup> October 2024 some issues had been found at the premises, and the CCTV footage had not been provided when requested.

The agent explained that the premises had been taken over by the applicant a few months previously, and had been closed for refurbishment since then. At the time of the inspection, the application to transfer the licence had only just been made (two weeks previously), and therefore the applicant did not have the full licence documents from the previous management.

The application had been made using the licence summary document, which was on display at the premises; that part of the licence did not show the conditions. The agent stated that the applicant had not been aware of any conditions on the premises licence, but the shop had not been trading during the refurbishment period.

The agent said that the applicant had taken over a business which had been closed down for some time; usually, when a licence was transferred, consent would be given/signed by the previous licence holder, but in this case the previous management had long since left the business, so the applicant had had to provide other documents to prove occupancy. The applicant was still

going through the process, and was waiting for the licence document from the City Council.

Regarding the inspection, the agent explained that there had been some confusion over what had been observed on the day. All the family had gathered in the premises as a South Asian ritual was being performed by a priest before the business started trading. The agent said that “the premises was briefly open for an hour, hour and a half, just for this process”, and was then fully opened the same evening for the first day’s trade. The applicant had felt “a little panicked when he was asked questions by the Police” about licensing matters, said the agent.

The agent assured the Sub-Committee that before the premises had begun to trade, the applicant had complied with every condition, and all the requirements were in place. The applicant had found out about the additional measures during the inspection by Police (during which the premises was not yet open to the public).

He remarked that the fears expressed in the representations, about the risks to the licensing objectives, were not based on any direct evidence or facts, but on mere circumstance and perceptions. Regardless of that, the applicant did not wish to undermine any of the representations, and therefore proposed that the Sub-Committee could grant a ‘temporary licence’ for a limited period. The Sub-Committee was aware that there was no provision for this in a variation application.

Additional conditions were proposed by the applicant, said the agent. No sales of single cans would be permitted. Full staff training records would be kept on the premises for inspection. No deliveries would be allowed between 23.00 hours and 07.00 hours. All service between 23.00 hours and 06.00 hours would be conducted through a night hatch. Alcohol and tobacco products would not be served to vulnerable individuals. Signage would be displayed to keep the front area clear. Arrangements for CCTV, Challenge 25, refusals and incident recordings would be in place.

The agent noted that Public Health had raised a concern about the availability of alcohol for 24 hours, but reminded the Sub-Committee that “these days, people don’t even have to step out of the house to buy alcohol”; they could order online and major supermarket chains would deliver to their doorsteps. He observed that small businesses were taking all the blame, and said that this was because they were “on the front line”.

He noted that many of the additional conditions which the applicant had offered were not seen on the licences of other premises already operating in the area, and remarked that it was unfair to say that the Friends Express premises was going to cause problems when alcohol was already available

for delivery across 24 hours via the bigger chain supermarkets and online platforms.

The agent further remarked that online sales were known to be a means for customers to buy alcohol in bulk, to save the journey and to stock up alcohol in their houses. He said that customers would not use a small convenience shop such as Friends Express to make large purchases of alcohol. He felt that this was relevant, given that one of the concerns raised by Public Health was simply the availability of alcohol. He said that a corner shop was there for small quantities, whenever customers needed it; the premises was "surrounded by Sainsbury's, Asda, Aldi and Tesco" all within walking distance, and all had online sales platforms.

He observed that the applicant was a family man with children, who was "trying to run a decent business among these big multi million pound corporations". The agent felt that the applicant was an easy target in terms of alcohol related issues - yet the applicant had offered numerous conditions and extra measures to promote the licensing objectives, which none of the other premises in the area had on their licences.

The premises was not in any special policy area, and there was no PSPO in force. It was near a major roundabout, with its own parking in front of the premises. It was on a dual carriageway which was reasonably busy at all times. The area was not residential, but a retail area on a roundabout. The Planning department of the City Council had not raised concerns about 24 hour operation. There was customer demand for operation across 24 hours. The agent asked the Sub-Committee not to be anti-business when making its decision.

The agent asked the Sub-Committee to refer to the documents in the Committee Report to see that there were no residential properties in the immediate vicinity. There was an off-licence at the petrol station on the same road. The Friends Express was currently licensed for the sale of alcohol from 09.00 hours to 22.00 hours; the agent observed that other licensed premises nearby traded beyond midnight, and some pubs beyond 01.00 hours, without creating complaint.

He asked the Sub-Committee to bear in mind that the premises was not a nightclub or public house – it was a convenience store for the local community. It sold groceries; alcohol was only part of the offer at Friends Express. There was customer demand for alcohol sales at night, and the applicant felt that he should be able to offer this. He had invested into the business and had offered new conditions.

He already had a trained staff, because the designated premises supervisor, who was the applicant's sister, was a personal licence holder with a number of years of experience in the licensed trade. The Senior Licensing Officer

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confirmed that although the licence shown in the Committee Report showed the applicant's name as the designated premises supervisor, it had recently been updated to reflect the correct person (his sister).

His sister had another business in Solihull with other family members; they would be moving the staff from that business to the Friends Express business. The staff were therefore trained people, but they did not have any documents on the premises on the day of the inspection. They had experience in running a 24 hour business, and at night time they would only be selling through the service hatch.

The Sub-Committee then heard from West Midlands Police, who made submissions as per their documents in the Committee Report. The officer had visited and had seen that the premises was near to residential housing, and moreover there were flats directly above the premises.

He had originally visited with the intention of carrying out a due diligence check in relation to the application, but the premises was not open to the public and was being refurbished. Contractors informed him that the flat above the premises was occupied.

The officer revisited the premises on the 3<sup>rd</sup> October at around 11.45am. The shop was open and trading, the door was open and alcohol was being offered for sale openly behind the counter. The applicant was behind the counter of the premises.

The Police noted that although the premises was open and conducting licensable activities, neither the refusals book nor the written training records were available on the premises; the applicant stated they were at home, and that he could bring them in the next day. The officer asked to view the CCTV from 10.00 hours that morning, but the applicant stated he could not show the footage as the system was not fully working and an engineer would be coming out to the shop later in the day. The answers given by the applicant to the officer's questions about the licensing objectives had not been satisfactory.

The officer considered that the premises was situated very close to residential housing and had flats above it. He felt that it was "quite easy to foresee an increase in footfall, traffic, noise nuisance, and [it] will probably lead to an increase in crime and antisocial behaviour, all at a time when residents are trying to sleep".

There was one other 24 hour off-licence nearby – at a petrol filling station, but this was on the main dual carriageway, not a residential street. The officer directed the Sub-Committee to the photographs of the residential properties in the Police documents in the Committee Report, and remarked that the nearest house was less than 10 metres from the premises.



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Also nearby was a house which operated as a children's residential home. It was only three minutes' walk away from the premises and housed young, vulnerable persons. The Police were concerned that a nearby premises offering alcohol 24 hours a day "could add to their vulnerabilities".

The officer had noted that the current licensed hours for Friends Express were the times when the local neighbourhood policing teams were on duty and could deal with any local policing issues; if the variation were to be granted for 24 hours, the policing of the area at those times would fall solely on to the response policing teams, where incidents were answered in order of priority, and there therefore might be a delay in responding to reports of low-level antisocial behaviour, crime and disorder, whilst major incidents elsewhere were being handled. This would mean that local residents could suffer disturbance and noise when they were trying to sleep.

The local neighbourhood sergeant had remarked that the children's home was already a high demand location for the neighbourhood policing team, and had stated that he would not support the application for this reason.

The failings noted during the 3<sup>rd</sup> October inspection had worried the Police, and it had been noted in particular that the applicant had not seemed familiar with the licensing objectives when, as licence holder, he had sole responsibility for the premises. The Police felt that this also called into question the training he could deliver to staff working at the shop.

The Police advised the Sub-Committee that the location of the premises was not suitable for a 24 hour licence, and that the Police would not support any extension at all to the current licensable hours, due to the extremely close proximity of residents, and the additional factor of vulnerable youngsters living in a children's home so close to the premises. The Police also did not have confidence in the applicant after what had been seen on the 3<sup>rd</sup> October.

The Police were also unhappy at the some of the applicant's proposals for new conditions. The use of a service hatch through the night would only add to an increase in noise and public nuisance, with customers standing outside the premises, ordering, chatting and generally hanging around outside the shop - with the residents of the flats above being disproportionately affected by this noise.

There had been mention of active deterrence of persons found loitering outside the shop, but the Police felt it was unclear how the premises could achieve this, and what action they could take. The Police felt that it was easy to foresee confrontation between staff in the shop and the public, which could easily lead to an increase in reported crime, and even the likelihood of staff becoming victims themselves.

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It had appeared on the 3<sup>rd</sup> October that the applicant had not been aware of his responsibilities and the licence conditions, but all licences could be found on the City Council's public register along with all the licensing decisions. The Police view was that upon taking on the premises it was the applicant's responsibility to make himself aware of the conditions. The Sub-Committee agreed with this.

Instead, when asked for the training and the refusals book (which were required under the licence conditions), the applicant had said they were at home. Moreover, the CCTV had not been working whilst the premises was open and trading – a serious concern.

The agent had said that other premises in the area did not have such strict conditions on their licences, but the Police noted that there was only one other premises trading to very long hours. The Police were also not supportive of the suggestion of a "temporary licence", remarking that this would do nothing to allay their concerns.

The Police view was that to grant any variation would be detrimental to the local residents. People in residential houses were close by, there were flats above the shop, and also there was a nearby children's home. The Police therefore objected to the variation application in the interests of the promotion of the licensing objectives of the prevention of public nuisance, the prevention of crime and disorder, and the protection of children from harm. The Sub-Committee noted this.

The Sub-Committee also noted that Public Health had submitted written representations which were in the Committee Report, and considered these carefully.

In deliberating, the Sub-Committee considered all the submissions made in writing and in the meeting, and noted in particular that the premises had already become a cause for concern, after a Police inspection had found unsatisfactory practices. This had been the fault of the applicant, who was the licence holder.

The Sub-Committee noted that the evidence from the two responsible authorities had been that the area included residential properties which would be affected by noise created by late night trading at the premises.

The premises was already licensed to 22.00 hours, but the applicant wanted to extend this across 24 hours due to customer demand. Ordinarily, that would be understandable, and perhaps not likely to be of concern where the applicant had a history of safe and responsible operation. However, the Sub-Committee noted that in the instant matter the issue was that the Police had not been impressed with what they had seen on the 3<sup>rd</sup> October, and considered that there was a likelihood that risks to the licensing objectives

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would be created by the requested variation. Indeed, the Police had confirmed that they opposed any variation of the licensed hours at all.

The Police feared that there would be a significant impact on the local community in a residential area. Moreover, the applicant had shown an inability to follow the terms of the licence. The Police considered that they had no confidence in the applicant, and had therefore recommended that in order to uphold the licensing objectives, and to prevent disturbance to local residents, the variation should not be granted.

The Sub-Committee accepted the recommendation of the Police. The Police were an expert responsible authority; their submissions were not merely speculative, but were based on direct professional knowledge. The local neighbourhood Sergeant had expressed his concerns. The Police had confirmed that to extend the hours was likely to attract crime and disorder, as well as creating public nuisance. Similarly Public Health, as the other responsible authority, did not support the variation application.

All in all, the Sub-Committee was persuaded by the representations made by the responsible authorities. The Members agreed that there were residential properties in the area which would be negatively affected by trading late into the night. The Members were not reassured by the proposed new conditions; in particular, they agreed with Police that the use of a service hatch throughout the night would be likely to disturb those living in flats above the shop.

The Police had expressed disquiet about the applicant's management style even in terms of the existing permitted hours. The Members therefore considered it likely that the applicant had not properly thought through the requirements of late night operation in this style of area, with residential properties nearby. The Members noted that as those at the premises operated other premises elsewhere, they should be aware of everything that was required in terms of safe operation; this did not appear to be the case at Friends Express.

The grant of a 'temporary licence' as suggested by the agent was not possible. Ordinarily, the Sub-Committee would consider perhaps granting a variation to shorter hours than those requested, if the applicant inspired confidence. However, after considering the evidence discussed in the meeting, the Sub-Committee was not minded to go against the direct advice of the Police – namely that any variation at all would be a risk to the upholding of the licensing objectives.

The Sub-Committee was not prepared to permit risks to the public nuisance objective where residential properties were nearby, and were certainly not minded to grant in the face of Police advice that to permit the application could have a negative impact on the crime prevention objective. Accordingly, the

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application to vary the licence was rejected in its entirety, in order to ensure the promotion of the licensing objectives.

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 in the Report, and the submissions made at the meeting 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 1114 hours.**

*Chair*.....