

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE A 2 OCTOBER 2017

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE A
HELD ON MONDAY 2 OCTOBER 2017
AT 0930 HOURS IN COMMITTEE
ROOM 1, COUNCIL HOUSE,
BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair

Councillors Nagina Kauser and Bob Beauchamp

ALSO PRESENT

Shaid Yasser, Licensing Section
Joanne Swampillai, Committee Lawyer
Katy Poole, Committee Manager

NOTICE OF RECORDING

1/021017 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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

2/021017 There were no Nominee members.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT COSTCUTTER, UNIT 2,
492 SHELDON HEATH ROAD, SHELDON, BIRMINGHAM, B26 2RU**

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

Javed Iqbal – Applicant – Director, Sheldon Gardens Ltd.

Gill Sherratt – Licensing Matters – Agent acting on behalf of the applicant

Those making representations

Cllr Sue Anderson – On behalf of the residents

The meeting started late at 1004 hours, due to Members late arrival caused by traffic delays.

Following introductions by the Chairman, Shaïd Yasser, Licensing Section, made introductory comments relating to the report.

In response to questions from Members of the Sub-Committee, Ms Gill Sherratt and Mr Javed Iqbal made the following points:-

- a) That Mr Iqbal was the director of Sheldon Gardens Ltd., to which Ms Gill Sherratt was acting on their behalf.
- b) That the company has three brothers and they have been in business together for 20 years.
- c) They own 4 shops, one of which was located 4 miles away from the premises on Sheldon Heath Road. The other 2 had been leased out.
- d) The brothers have vast experience in running shops.
- e) That the company has invested £100,000 in the shop, purely investment.
- f) That the store was ready to open.
- g) That the store would be operating as a convenience store, providing frozen food, fresh food, the lottery, alcohol, and facilities to pay bills.
- h) That alcohol sales would make up 20-20% of total sales.
- i) That there had been some issues raised regarding parking of which they wanted to address. The store has 5 parking spaces out the front, with an additional loading bay.
- j) The store will have shutters on the front of the unit.
- k) That the store will have adequate staffing – including 6 full time members, 3 part-time and Mr Iqbal will be working there full-time.
- l) That there is CCTV installed at the premises; 14 cameras, 2 of which are external. The CCTV is a modern system and will retain the footage for 31 days; it was also available on mobile devices.

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- m) The tills are electronically operated.
- n) That refresher training will continue, they suggested 3 monthly refreshers.
- o) That staff will receive training in licensing matters also.
- p) They will be operating a Challenge 25 policy; to which staff will be fully trained on.
- q) That they will also operate refusal and incidents register (paper).
- r) That they do not anticipate an increase in public nuisance.
- s) That they will ensure signage is placed outside the premises asking customers to leave quietly and respect the neighbor's.
- t) That they would include training on public nuisance and were happy to include this as a condition.
- u) That they have consulted 10 other authorities including the police who have no objections to the application, but correspondence has taken place and subsequently further conditions agreed with the police.
- v) That the petition submitted to the Committee was received from a competitor, and therefore, they felt that no weight should be given to the objection as it was a trade objection and on the ground of competition it should not be allowed. The petition had been located on the counter of the competitor's store.
- w) That they felt the fears and speculation the residents have would be resolved over time. Ms Sherratt made reference to The Thwaite's Case in order to remind the Committee that speculation should have no weight on decision making.
- x) That in relation to the opening hours and the sale of alcohol; it is usual for supermarkets to sell alcohol for the duration of their opening hours, up until a time where problems or issues arise.
- y) That the deliveries to the premises usually take place between 0800 hours and 1200 hours. The deliveries take place in the loading bay.
- z) That legally alcohol was connected to opening hours and that it was a legal offence to have alcohol on display if it was not for sale.

At 1023 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

The adjournment was to allow the Members to seek legal clarification from the Committee Lawyer.

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

Ms Sherratt and Mr Iqbal continued.

- a) That the opening hours were not about the need to sell alcohol; it was about the point mentioned earlier in regard to the opening hours. If the premises were capable of selling alcohol late into the night during busy periods on Friday nights, clearly they would be capable of selling alcohol early morning, during quiet times.
- b) That back in 1964 when the legislation came into force, premises would open until 2300 hours.
- c) That on the map the counter was on the bottom end, alcohol would be down the bottom wall, ensuring it would have maximum supervision.
- d) That they have not considered shutters for the alcohol, as they do not need them due to the opening hours and alcohol licensing being for the same hours.
- e) That in regards to child protection they have all the procedures in place to manage this, however, due to the store not being open yet they were unable to comment on whether it would be an issue or not.
- f) That if customers cause trouble, staff will be fully trained on how to deal with this. It will be a refusal if it was a drunken person trying to buy alcohol or if it was a child.
- g) That if trouble starts outside the shop, Mr Iqbal will ensure they are told to move on and leave the premises.
- h) That Mr Iqbal will only be working in this shop as he partners work in the other shops.
- i) That the shop will be branded as a Costcutter; they are a franchise and therefore they ensure that the shop will be fitted with all their branding.
- j) That the promotions are instructed by Costcutter; who endorsed and controlled the promotions.
- k) That a convenience store will not survive without alcohol.
- l) That the condition regarding training was quite broad and they would be happy for it to be tailored and made more specific if Members wished.
- m) That they were happy for Members to include conditions regarding training and refresher training, as well as polite notices.
- n) That they clean up and sweep outside the premises anyway.
- o) The DPS was the point of contact.

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- p) If the DPS was absent it would fall to the assistant manager.
- q) That in terms of security they would have the storage room locked and the back door locked, which also has a shutter to make it more secure.

In response to questions from Members of the Sub-Committee, Cllr Sue Anderson, on behalf of the residents, made the following points:

- a) That there were already a number of convenience stores in the local area, as well as takeaways, barbers and a pet shop.
- b) That it was a busy area and the other local convenience stores close at 2200 hours.
- c) That there is sheltered accommodation near the premises with up to 36 elderly occupants.
- d) That she was not happy about the proposal to open until 2300 hours.
- e) That there were also concerns regarding noise, and the limited parking space.
- f) That the premises allocated parking was not controlled by gates, therefore, people park there when going to other stores; such as the chicken shop.
- g) That the local residents will suffer more nuisance than they do now; due to the premises being open later than others in the area.
- h) That the area has previously had problems with youths, brick throwing, and anti-social behaviour.
- i) That there was a secondary school local to this premises, and many of the children can be a nuisance when going to and from school. They send people in to buy them alcohol and cigarettes. Then they congregate outside the premises drinking and causing a nuisance.
- j) That the rented properties above the premises had been difficult to occupy and that she felt the residents of those properties would not want the shop beneath them open till 2300 hours.
- k) That newspaper delivered would take place outside the hours stated by the applicant earlier; as newspaper deliveries usually take place early morning.
- l) That the issues Cllr Anderson had raised were her own personal issues.
- m) That Sunday should have easier closing times.
- n) That children walk past the shop on their way to school; that raised concerns for Cllr Anderson regarding the sale of alcohol during opening hours.

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- o) That there had been a public house next to the premises but it was now a vets.
- p) That there were already 3 convenience stores in the area that sold alcohol.

In summing up, Cllr sue Anderson made the following points:

- a) That there were already underage drinking problems, anti-social behaviour issues.
- b) That the opening times were Cllr Anderson's biggest concern; particularly the 2300 hours closing time.
- c) That the sheltered accommodation was a big concern; those residents are entitled to the right to peace and quiet.
- d) That there are already issues with youths in the area.

In summing up, Ms Sherratt and Mr Iqbal made the following points:

- a) That the representations made against the application had been brief.
- b) That Mr Iqbal had 20 years of flawless training and experience.
- c) That the company already has a 24hour license with no problems.
- d) That there is no reason for anyone to assume they would not do their job properly.
- e) That any conditions the Members feel may assist in respect of notices they would be happy with.
- f) That is regard to parking they have a further 10 spaces at the rear of the premises; therefore there would be plenty of spaces for customers.
- g) That there is no possible evidence to amend the opening hours. Mr Iqbal wants to open 0700 hours - 2300 hours.
- h) That the Committee has the power of review should any issues with the premises come to their attention.
- i) That Mr Iqbal's other shops close at 2200 hours.

At 1059 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1205 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

3/021017 **RESOLVED:-**

That the application by Sheldon Gardens LTD. for a premises licence in respect of Costcutter, Unit 2, 492 Sheldon Heath Road, Sheldon, Birmingham B26 2RU be granted subject to the following conditions to promote the prevention of public nuisance and the protection of children from harm objectives in the Act:

1. The opening and closing times of the premises shall be no earlier than 0700, and no later than 2300 hours, daily
2. The hours for the sale of alcohol shall be from 0900 hours to 2300 hours, daily, with all alcohol products to be covered with shutters outside these times such that they are not exposed for sale by retail
3. Deliveries to the premises to be undertaken between 0800 hours and 1200 (noon) daily
4. All advertisements and/ or promotions of alcohol to be displayed inside the premises only, and in such a manner that they are not visible outside the premises
5. Signage to be erected requesting customers to be considerate to local residents when leaving the premises
6. Those further conditions agreed in advance with West Midlands Police, as per their email of 15th August 2017 at 0736 hours, shall apply - namely:
 - CCTV to record through the whole of the licensable activity, CCTV to be downloadable and supplied to any of the responsible authorities not later than 24 hours after their initial request. CCTV will display the correct time and date stamp and will cover both the internal and external of the premises. Outside lighting will be maintained at the premises to ensure clear CCTV images. CCTV will meet the recommendations and specifications of West Midlands Police.
 - CCTV signage will be prominently display on the entrance door.
 - A refusals register will be kept on the premises either electronically on the till system or manually by means of a book or folder. The refusals register will be made available to any of the responsible authorities on request.
 - Staff training regarding the licensing act and their

responsibilities and will be documented and signed by the trainee and trainer. No staff to carry out licensable activity at the premises without the documented training with the exception of personal licence holders. This documented training to be made immediately available on request of any of the responsible authorities.

- Challenge 25 signage to be prominently displayed on the entrance door and point of sale.
- No alcohol allowed on the premises in open containers or consumed on the premises.
- If the DPS / premises licence holder is not at the premises there will be a member of staff on duty at the premises who is responsible for the premises and be capable of liaising with any of the responsible authorities if required.
- No alcohol to be displayed within 3 meters of the entrance door, expect for behind the point of sale.

7. Regarding staff training, the premises to arrange refresher training for staff as necessary

Those other matters detailed in the proposed operating schedule and which are not addressed above, and the relevant mandatory conditions under the Licensing Act 2003, will also form part of the licence issued.

A 16-page petition against the application had been sent anonymously to the Licensing Department in advance of the hearing. However the Sub-Committee heard that the petition had in fact been organised by a competitor (a supermarket premises situated nearby), who had displayed it on their shop counter for their customers to sign. Accordingly, from the start of the meeting the Sub-Committee disregarded this petition in its entirety, and attached no weight at all to it when making their decision.

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 an overwhelming risk to the promotion of the licensing objectives arising from the proposed operation of the premises, except in terms of the hours for the sale of alcohol. West Midlands Police had agreed conditions with the applicant in advance of the meeting, relating to the use of CCTV, staff training, display of alcohol and the management arrangements. No representations had been made by other Responsible Authorities.

However when the concerns of another person, namely a Ward Councillor who attended the meeting, were heard, the Sub-Committee felt that there were legitimate concerns regarding both the public nuisance objective, and the protection of children from harm objective. The Ward Councillor confirmed that there were 36 sheltered accommodation apartments directly opposite the premises (for the elderly/ vulnerable), and also a secondary school in the vicinity, as well as the further apartments which were situated directly on top of the premises.

The concerns of the Ward Councillor were not based on mere fears or speculation; she stated that she knew the area extremely well and could report that there had been problems with youths in the area causing trouble, such as throwing bricks at buses and otherwise interfering with traffic. She also confirmed that there were issues with underage drinking and drug use in the area. The entrance to a local secondary school was not far away from the premises; this was a worry given the known problem of underage drinking in the area. Children would be passing by the shop on their way to and from school, and the thought of alcohol being on sale as early as 0700 hours daily gave rise to concerns about an increase in the levels of underage drinking which local residents had already observed, and a consequent increase in drink-related anti-social behaviour, which included noise nuisance.

In summary, the Sub-Committee considered that the nuisance & anti-social behaviour already known to be a problem in the area (as described by the Ward Councillor) could increase if the Sub-Committee were to grant the Licence to start at the very early hour requested by the applicant. The applicant's representative stated that the proposed 0700 start time for alcohol sales had not been raised as an issue in any representation, and suggested that the proposed start time should therefore automatically be granted. However the Sub-Committee felt it important to exercise their discretion in terms of examining the relevant facts regarding the local area – namely the close proximity to sheltered accommodation for the elderly/ vulnerable; a secondary school; other apartments located directly above the premises. These facts had been reported to them by an elected representative, and it was important to consider the likelihood of increased public nuisance, and the risks to local children, that would arise from commencing the sale of alcohol as early as 0700 hours daily.

The Sub-Committee therefore determined that a delay in the start-time for alcohol sales, namely alcohol sales only to be permitted from 0900 hours daily (not 0700 hours as requested) was necessary for the promotion of the licensing objectives, and indeed in order to ensure that the licensing objectives could be upheld by the applicant, given the proximity of a secondary school in an area known to have problems with underage drinking.

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Outside the hours of 0900 to 2300 daily, alcohol products could not be exposed for sale by retail, and instead would have to be covered with shutters.

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 (but excluding the petition in its entirety) and the submissions made at the hearing by the applicant, his representative and by a Ward Councillor 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.

LICENSING ACT 2003 PREMISES LICENCE – GRANT COSTCUTTER, UNIT 2, 492 SHELDON HEATH ROAD, SHELDON, BIRMINGHAM, B26 2RU

4/021017 **RESOLVED:-**

The application had been withdrawn prior to the meeting.

OTHER URGENT BUSINESS

5/021017 There was no urgent business.

The meeting ended at 1212 hours

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CHAIRMAN