

## Meeting of the Licensing Sub-Committee 3

**Tuesday 10<sup>th</sup> March, 2020 at 10.00am**

**In the Council Chamber at the Council House, Priory Road, Dudley**

### **Agenda - Public Session**

**(Meeting open to the public and press)**

1. Apologies for absence.
2. To report the appointment of any substitute members serving for this meeting of the Committee.
3. To receive any declarations of interest under the Members' Code of Conduct.
4. To confirm and sign the minutes of the meetings held on 1<sup>st</sup> May, 2018, as a correct record.

***The following application is to be considered under the provisions of the Licensing Act 2003:-***

5. [Application for Grant of a New Premises Licence – McDonald's Restaurant, Birmingham New Road/Ivy House Lane, Bilston \(Pages 1 - 5\)](#)
6. [Application to Vary a Premises Licence – The Barnett Lane Post Office \(Pages 6 - 9\)](#)
7. To consider any questions from Members to the Chair where two clear days notice has been given to the Monitoring Officer (Council Procedure Rule 11.8).



**Chief Executive**

**Dated: 27<sup>th</sup> February, 2020**



## Distribution:

Councillor A Taylor (Chair)  
Councillors K Finch and S Greenaway

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**Minutes of the Licensing Sub-Committee 3**

**Tuesday 1<sup>st</sup> May, 2018 at 10.00 am**  
**in the Council Chamber at The Council House, Dudley**

**Present:**

Councillor M Evans (Chair)  
Councillors J Baines and C Elcock

**Officers:**

B Hughes – Assistant Team Manager (Waste and Fleet Care) (Place Directorate), R Clark - Principal Solicitor and K Taylor – Democratic Services Officer (both Chief Executive's Directorate).

15. **Apology for Absence**

An apology for absence was received on behalf of Councillor S Henley.

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16. **Appointment of Substitute Member**

It was reported that Councillor C Elcock had been appointed as substitute Member for Councillor S Henley for this meeting of the Sub-Committee only.

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17. **Declarations of Interest**

No Member made a declaration of interest in accordance with the Member's Code of Conduct.

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18. **Minutes**

**Resolved**

That the minutes of the meeting held on 24<sup>th</sup> August 2017, be approved as a correct record and signed.

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19. **Application to Vary a Premises Licence – Select and Save, 64a – 65 Long Lane, Halesowen**

A report of the Strategic Director Place was submitted on an application to vary a premises licence in respect of Select and Save, 64a – 65 Long Lane, Halesowen.

The following persons were in attendance at the meeting:

N Suresh – Arka Licensing Consultants  
S Sathyanathan – Premises Licence Holder  
K Mullings – Enforcement Officer  
K Turley – West Midlands Police

Following introductions, the Assistant Team Manager (Waste and Fleet Care) presented the report on behalf of the Council.

K Mullings made representations on behalf of Dudley Licensing Authority and commented on a previous application for a variation to the licence that was granted by a Licensing Sub-Committee on 7<sup>th</sup> March, 2018 following requisite amendments.

During a meeting on 13<sup>th</sup> March, 2018 that involved West Midlands Police, the Local Authority, Mrs Sathyanathan and Mr Suresh, it was apparent that Mrs Sathyanathan was not confident in answering questions and was unable to provide details of the manager of the premises.

During an inspection of the premises on 6<sup>th</sup> March, 2018, it was discovered that a kiosk hatch for the sale of alcohol had been created without planning permission or the requisite variation to the premises licence being approved, allowing this variation. K Mullings stated that there was no evidence that the kiosk had been utilised. Photographs of the kiosk was circulated to all parties at the hearing. It was the view of the Local Authority that the installation of the kiosk without planning permission and the variation to the licence being approved, could result in the current licence being invalid. Once informed Mrs Sathyanathan removed the kiosk.

It was also noted that an ATM machine had also been installed without planning permission and therefore appropriate enforcement action was currently being undertaken for its removal.

During a visit on 9<sup>th</sup> March, 2018, a blue notice was displayed highlighting the details of the application, however the notice was amended as the closing date for representations was incorrect and misleading. K Mullings stated that the Licensing Authority could not support the increase in the hours requested and considered it unlikely that the applicants could adhere to the extra responsibility in preventing public nuisance and crime and disorder.

K Turley reported that West Midlands Police had objected to the variation of the premises licence in relation to the Prevention of Crime and Disorder licensing objective. She indicated that the Local Neighbourhood Policing Team had advised that there were constant anti-social behaviour and drug related issues in that particular area and that since June 2017 there had been 162 calls for police service, 25% of which related to anti-social behaviour. Further concerns to the Police was the potential increase in crime and disorder and that there would be no enforcement during the proposed extended licensing hours should the Sub-Committee be minded to grant the application.

In responding to a number of questions asked by Mr Suresh, K Mullings confirmed that the Licensing Authority had attempted to contact Mrs Sathyanathan five times prior to the meeting held on 13<sup>th</sup> March, 2018, and confirmed that the kiosk had been removed once Mrs Sathyanathan had been notified. She did however consider that the installation of the kiosk, which was intended for the premises operating 24 hours, impacted the present licence and the four licensing objectives, given that the changes had been made prior to any application being granted.

Following comments made, Mr Suresh commented that the issues concerning the installation of an ATM machine was a planning matter and unrelated to the application considered by the Licensing Sub-Committee.

In responding to questions asked by the Sub-Committee, K Turley confirmed that the local Neighbourhood Teams would be unable to operate during the hours requested due to varying shift patterns between the hours of 8am and 11pm, and that the anti-social behaviour in the area was primarily relating to youths and the dealing of substance misuse.

Mr Suresh then presented his case on behalf of Mrs Sathyanathan and in doing so confirmed that Mrs Sathyanathan had taken over the management of the premises with effect from 3<sup>rd</sup> November 2017, and referred to her long experience of working in and managing similar establishments. It was noted that Mrs Sathyanathan, together with her husband and manager, worked various shifts at the premises.

Reference was made to concerns raised by the responsible authorities, however, the issues raised, particularly those relating to anti-social behaviour were potential concerns and could not be considered factual as there had been no evidence of crime or nuisance related issues relating specifically to the premises. He confirmed that the premises operated a refusals register and adequate CCTV had been installed, and the employees, including two managers, were on site to address any issues and therefore did not foresee how the proposed extended licensing hours would contribute to the existing anti-social behaviour.

Arising from a number of questions, Members raised concerns that Mrs Sathyanathan was unable to answer confidently questions regarding the management of the premises and her understanding of her responsibility and duties.

At this juncture, and in response to concerns raised, Mr Suresh suggested that the Sub-Committee may wish to consider the possibility of reducing the requested licensing hours from 1am to 12 midnight, and retain the existing opening time of 8am as it was not anticipated that customers would purchase age restricted products at the proposed time of 6am.

Following summing up the parties then withdrew from the meeting to enable the Sub-Committee to determine the application.

The Sub-Committee having made their decision invited the parties to return and the Principal Solicitor outlined the decision.

## **Resolved**

That, following consideration of the information contained in the report and presented at the meeting, the application to vary a premises licence in respect of Select and Save, 64a – 65 Long Lane, Halesowen be refused.

Mrs Sathyanathan was informed of her right of appeal.

### Further Detailed Information and Reasons for Decision

This is an application dated 7<sup>th</sup> March 2018 by Select and Save, Halesowen, to vary the premises licence by extending the time for the sale of alcohol to between 6:00am and 01:00 seven days a week. The current hours are from 8:00am to 23:00 hours.

In the alternative, she asked the Sub-Committee to consider a lesser increase in hours, such as from 8:00am to midnight each day.

The applicant is Mrs Subeetha Sathyanathan. She is both the premises licence holder and designated premises supervisor.

The West Midlands Police, Trading Standards, the local Licensing Authority and a local Ward Councillor have all made representations opposing the extended hours.

Trading Standards and the West Midland Police raised concerns that extended availability of alcohol for sale will lead to an increase in anti-social behaviour in the local area. The police report that the neighbourhood team encounters constant issues of anti-social behaviour (principally young persons) and illicit substance misuse and dealing in the area around "shell corner". Their data is that since June 2017 (9 months) there were 162 calls for police service in Long Lane, 25% of which were anti-social behaviour related. The police could not say how significant alcohol was in this ASB. The local neighbourhood team do not operate between 11pm and 1am and between 6am and 8am, and Trading Standards officers cannot monitor the licence during these hours.

The Licencing Authority has also raised concerns. It draws attention to an application in early 2018 in which the applicant proposed to sell alcohol through a hatch directly onto the (narrow) pavement in Long Lane. The Licencing Sub-Committee found that application to be ill conceived and refused it on 9<sup>th</sup> January 2018. The applicant persisted with this plan of sale in a fresh application dated 19<sup>th</sup> February 2018, but this was rejected, and then the application with a new plan submitted in its current form.

The Licensing Authority has raised concerns that the applicant created the kiosk hatch for the sale of alcohol onto the street without permission (there is no evidence that this has been used for sales), and that an ATM was also installed at the window and was in use. This will have to be removed when planning permission was not subsequently granted. It also states that premises inspections were difficult to arrange (about five attempts were made) and that Mrs. Sathyanathan showed a lack of clarity as to the details of the manager of her premises and could not engage in discussions about the management of the premises generally.

Mrs. Sathyanathan states that she is an experienced premises licence holder (she has worked in a Select and Save on the Bristol Road, Birmingham), but left the planning issues to her business manager, and that the planning issues were not relevant to the licensing issues. She has had a personal licence for four years. She submitted that there was no evidence to suggest that increased sale of alcohol from these premises would contribute to crime and disorder, nuisance or anti-social behaviour.

The Sub-Committee accepts the evidence of the West Midlands Police that the area is one in which there is significant anti-social behaviour, much of it from young persons and involving drug dealing.

The police raised concerns about how the applicant would manage the business in what is a difficult area of the borough. The applicant was asked how she would manage the premises. She was not able today to give a clear explanation of the basic duties of a premises licence holder. With prompting, she mentioned that alcohol should not be sold to children. She was apparently unaware that her builders were altering the premises to install a hatch and a cash machine, and make internal alterations, and appeared unaware that these would breach her then premises licence. She appeared to have given this responsibility to other managers.

There was also concern that she could not name her managers, who are her husband and a man named Kassinghan. She did not give his second name today or give any further details about him.

The Sub-Committee is not satisfied that the applicant fully understood her role as a premises licence holder and designated premises supervisor, and that she failed to keep herself fully aware of the building works on the premises, and allowed alterations to be made in breach of the then premises licence. Having known that the Sub-Committee did not sanction the sale of alcohol through a hatch on 9<sup>th</sup> January 2018, she appears to have not been proactive in ensuring that the hatch was not created, or then taken out quickly, until this was pointed out to her. She gave the Sub-Committee no confidence that she fully understood her duties and responsibilities and was prioritising the licencing objectives.

Further, the Sub-Committee accepts that this is a difficult area of the borough in terms of youth anti-social behaviour, and that selling alcohol in this area requires strong premises management. The applicant did not demonstrate that she understood her duties and responsibilities, was managing the refurbishment of the premises and that she was engaging with the local police and licencing authority to address these concerns. She did not present as a confident and competent licence holder.

The Sub-Committee therefore is not confident that it is safe to extend the hours in which alcohol is sold from these premises, in this particular area, and at these times, which are very early and very late.

The Sub-Committee has considered granting a lesser increase in hours, but based on the lack of confidence it has in Mrs. Sathyanathan and her ability as a premises licence holder, it does not consider any increase in hours to be appropriate. Any increase is likely to put the licensing objectives of preventing crime and disorder and maintaining public safety at risk.

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20. **Application for Grant of a New Premises Licence – The Co-Op, Bassnage Road, Halesowen (Formerly the Maypole Public House)**

It was reported that the application for grant of a new premises licence had been withdrawn by the applicant prior to the meeting.

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21. **Application for Grant of Consent to Engage in Street Trading – Midland Supercream (Brierley Hill Ltd) – Mr P Calleia**

It was reported that the application for grant of consent to engage in street trading had been withdrawn by the applicant prior to the meeting.

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The meeting ended at 11.35 am

CHAIR

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## **Licensing Sub-Committee 3 – 10<sup>th</sup> March, 2020**

### **Report of the Director of Public Realm**

### **Application for Grant of a New Premises Licence**

### **McDonald's Restaurant, Birmingham New Road/Ivy House Lane, Bilston West Midlands, WV14 9JH.**

#### **Purpose**

1. To consider the application for the grant of a new premises licence in respect of the premises known as McDonald's Restaurant, Birmingham New Road/Ivy House Lane, Bilston, WV14 9JH.

#### **Recommendation**

2. That the Sub-Committee determine the application for the grant of a premises licence in light of the representations raised.

#### **Background**

3. On the 16<sup>th</sup> January 2020, an application for the grant of a new premises licence was received from Shoosmiths, on behalf of BCR Restaurants Limited, in respect of the premises known as McDonald's Restaurant, Birmingham New Road/Ivy House Lane, Bilston, WV14 9JH. A copy of that application has been forwarded to the Committee Members and interested parties in accordance with the Licensing Act 2003.
4. The application had the following documents enclosed:-
  - Plan of the premises
  - Correct fee



5. The application for a premises licence is as follows:

**Late Night Refreshment**

Monday to Sunday inc. 23.00 until 05.00

**Hours Premises are Open to the Public**

Monday to Sunday inc. 05.00 until 05.00

6. Confirmation that copies of the application form and supporting documentation have been served on the relevant authorities has been received.
7. Representations have been received from three local residents and a local Ward Councillor. Environmental Health and Safety have also made comments that the Committee may wish to take into consideration. A copy of the representations/comments have been forwarded to the applicant, Committee Members and interested parties in accordance with the Licensing Act 2003.

**Finance**

8. There are no direct financial implications to the Local Authority arising from this report.

**Law**

9. The law relating to the determination of applications for the grant of a premises licence is governed by the Licensing Act 2003, Part 3, Section 18.
10. Pursuant to Section 18(3) of the Licensing Act 2003, where a relevant authority has made representations, the Licensing Authority must:-
- (a) hold a hearing to consider them, unless the authority, the applicant each person who has made such representations agree that a hearing is unnecessary, and
  - (b) having regard to the representations, take such of the steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the Licensing objectives.
11. Pursuant to Section 18(4) the steps are:-



- (a) to grant the licence subject to:-
    - (i) such conditions as are consistent with the operating schedule accompanying the application modified to such extent as the authority considers necessary for the promotion of the licensing objectives, and
    - (ii) any condition which must under Section 19, 20 or 21 be included in the licence;
  - (b) to exclude from the scope of the licence any of the licensable activities to which the application relates;
  - (c) to refuse to specify a person in the licence as the premises supervisor;
  - (d) to reject the application
12. Pursuant to Section 23(1) of the Licensing Act 2003 where an application (or any part of an application) is granted under Section 18 of the Licensing Act 2003, the Licensing Authority must immediately give notice to that effect to:-
- 1 (a) (i) the applicant
  - 1 (a) (ii) any person who made relevant representations in respect of the application and
  - 1 (a) (iii) the Chief Officer of Police for the police area in which the premises are situated and
  - 1 (b) issue the application with the licence and a summary of it
13. Pursuant to Section 23(2) where relevant representations were made in respect of the application, the notice under subsection (1)(a) must state the authority's reasons for its decisions as to the steps (if any) to take under Section 18(3)(b).
14. Pursuant to Section 23(3) where an application is rejected under Section 18, the licensing authority must forthwith give a notice to that effect stating its reasons for the decision, to
- (a) the applicant
  - (b) any person who made relevant representations in respect of the application, and



- (c) the Chief of Police for the police area or each police area in which the premises are situated
15. Where a Local Authority grant a licence under Section 18 pursuant to Schedule 5 of the Licensing Act, Section 2 the holder of the licence may appeal against any decision:-
    - (a) to impose conditions on the licence under subsection (2)(a) or 3(b) of that section, or
    - (b) to take any step mentioned in subsection (4)(b) or (c) of that section (exclusion of licensable activity or refusal to specify person as premises supervisor)
  16. Where a person who made relevant representations in relation to the application desires to contend:-
    - (a) that the licence ought not to have been granted, or
    - (b) that, on granting the licence, the licensing authority ought to have imposed different or additional conditions, or to have taken a step mentioned in subsection (4)(b) or (c) of that section, he may appeal against the decision.
  17. In pursuance of regulation 26(2) of the Licensing Act 2003 (Hearing Regulations 2005) the Licensing Authority must make its determination within five working days of the conclusion of the hearing.
  18. If the Licensing Authority refuse to grant the application, there is a right of appeal. The appeal under this part must be made to a Magistrates' Court pursuant to Schedule 5 Section 9 of the Licensing Act 2003.

**Equality Impact**

19. This report takes into account the Council's policy on equal opportunities.
20. The licensing of premises and individuals will impact on children and young people through their attendance at licensed premises.
21. There has been no consultation or involvement of children and young people in developing these proposals.

**Human Resources/Organisational Development**

22. There are no direct human resources/organisational development implications.



## **Commercial/Procurement**

23. There are no direct commercial/procurement implications.

## **Health, Wellbeing and Safety**

24. This application falls within the Council's responsibility for liquor licensing which has a direct link to the Council's key corporate priority that safety matters.

*Matt Williams*

**Director of Public Realm**

Contact Officer: Mr S Smith  
Telephone: 01384 815377  
Email: [simon.smith@dudley.gov.uk](mailto:simon.smith@dudley.gov.uk)

## **Appendices**

None

## **List of Background Documents**

None



## **Licensing Sub-Committee 3 - 10<sup>th</sup> March 2020**

### **Report of the Director of Public Realm**

### **Application to Vary a Premises Licence**

### **The Barnett Lane Post Office**

#### **Purpose**

- 1 To consider the application for variation of the premises licence in respect of the premises known as The Barnett Lane Post Office, 3 Barnett Lane, Kingswinford, DY6 9PJ.

#### **Recommendation**

2. That the Sub-Committee determine the application for variation of hours for the Supply of Alcohol together with the opening hours in respect of the premises known as the Barnett Lane Post Office.

#### **Background**

3. The Barnett Lane Post Office was first issued with a premises licence on the 9<sup>th</sup> May, 2006 by the Licensing Sub-Committee, following objections from local residents.
4. The current premises licence was transferred into the name of Mrs Nekalaya Kuganesan and Mr Shanmugasuntharam Kathirgamuttiah on the 9<sup>th</sup> February 2018, and is issued for the following:

**Supply of Alcohol/** - Monday to Sunday inclusive 06.30 until 20.00  
**Opening Hours**

5. On the 17<sup>th</sup> January 2020, PMB Licensing made application on behalf of Mrs Nekalaya Kuganesan and Mr Shanmugasuntharam Kathirgamuttiah in respect of the premises known as Barnett Lane Post Office for the following variation:



The variation is to extend the hours for Licensable Activity and the opening hours:

**Supply of Alcohol/ Hours premises open to the public.** - Monday to Sunday inc 06.30 until 23.00

6. Confirmation that copies of the application form and supporting documentation have been served on the relevant authorities has been received.
7. Representations objecting to the application have been received from a local Ward Councillor and the West Midlands Police.
8. Representations in the form of a petition signed by local residents in support of the application has been received from PMB Licensing. Copies of all representations have been forwarded to Committee Members and interested parties in accordance with the Licensing Act 2003.

### **Finance**

9. There are no direct financial implications.

### **Law**

10. The law relating to the granting of applications to vary premises licences is governed by the Licensing Act 2003, Part 3, Section 34.
11. Pursuant to Section 35(3)(a) of the Licensing Act 2003, where a relevant authority has made representations, the Licensing Authority must:-
  - Hold a hearing to consider item, unless the authority, the applicant and each person who has made such representations agree that a hearing is unnecessary, and,
  - Having regard to the representations, take such of steps mentioned in subsection (4) (if any) as it considers necessary for the promotion of the licensing objectives.
  - The steps are:-
  - To modify the conditions of licence;
  - To reject the whole or part of the application.



12. Pursuant to Section 36(1) and (4) of the Licensing Act 2003 where an application (or any part of an application) is granted or rejected under Section 35 of the Licensing Act 2003, the Licensing Authority must immediately give notice to that effect to :-
- the applicant;
  - any person who made relevant representations in respect of the application and
  - the Chief Officer of Police for the police area in which the premises are situated.
13. In pursuance of regulation 26(1) of the Licensing Act 2003 (Hearing Regulations 2005), the licensing authority must make its determination at the conclusion of the hearing.
14. In pursuance of Schedule 5, Section 4 if the Licensing Authority refuse to grant the application vary the premises licence, there is a right of appeal to the Magistrates' Court.
15. In pursuance of Schedule 5, Section 4(2) where the Licensing Authority grant an application to vary a premises licence in whole or in part. The applicant may appeal against any decision to modify the conditions of the licence under subsection 4(a) of Section 35 of the Licensing Act 2003.
16. In pursuance of Schedule 5 Section 4(3) where a person who made relevant representations to the application desires to contend:-
- a) that any variation made ought not to have been made, or
  - b) that, when varying the licence, the Licensing Authority ought not to have modified the conditions of the licence, or ought to have modified item in a different way, under subsection 4(a) of Section 35 of the Licensing Act.
- They have the right of appeal to the Magistrates' Court.

### **Equality Impact**

17. This report complies with the Council's policy on equal opportunities.
18. The licensing of premises and individuals will impact on children and young people through their attendance at licensed premises.



19. There has been no consultation or involvement of children and young people in developing these proposals.

**Human Resources/Organisational Development**

20. There are no direct Human Resources/Organisational Development implications.

**Commercial/Procurement**

21. There are no direct commercial/procurement implications.

**Health, Wellbeing and Safety**

22. This applications falls within the Council's responsibility for liquor licensing which has a direct link to the Council's key corporate priority that safety matters.

*Matt Williams*

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**Director of Public Realm**

Contact Officer: Mr S Smith  
Telephone: 01384 815377  
Email: [simon.smith@dudley.gov.uk](mailto:simon.smith@dudley.gov.uk)

**Appendices**

None

**List of Background Documents**

None

