



Licensing Sub- Committee

Tuesday, 8th June, 2021

MINUTES

Present:

Councillors Salman Akbar, Joanne Beecham and Julian Grubb

Also Present:

Mr. S. Mahmood, Applicant
Mr. M. Burton, Partner, MFG Solicitors, Applicant's representative
Mrs. P. Oldfield
Mr. P. Berry

Officers:

Vanessa Brown and Paul Morrish

Democratic Services Officers:

Pauline Ross

6. ELECTION OF CHAIR FOR THE MEETING

Councillor Julian Grubb was elected as Chair for the meeting.

7. CHAIRS WELCOME

The Chair welcomed the Committee members, officers, the applicant and his representative and other parties to the virtual Licensing Sub-Committee meeting.

The Chair informed all those present that the meeting was being live streamed on the Council's YouTube channel to enable members of the public to observe the Sub-Committee meeting.

8. APOLOGIES

There were no apologies or substitutions on the part of the Councillors making up the Sub-Committee.

Chair

One of the interested parties who had registered to speak, Mrs Maureen Berry, was not able to attend and had asked for her apologies to be given.

9. DECLARATIONS OF INTEREST

There were no declarations of interest.

10. PRELIMINARY ISSUES

Prior to the commencement of the Hearing and with the agreement of the Chair; the Council's Legal Advisor, informed Members that the Technical Officer (Licensing), Worcestershire Regulatory Services had received a copy of a letter (dated 27th April 2021), sent to the Applicant, from Hereford and Worcester Fire and Rescue Service (HWFRS).

The Council's Legal Advisor then asked the Applicant's representative, Mr. M. Burton, Partner, MFG Solicitors, if he intended to refer to this letter when he addressed the Committee in support of his client's application.

Mr. Burton referred to the Licensing Sub-Committee agenda pack and the letter from HWFRS, as detailed on page 31 of the agenda pack. His client confirmed that he had not received the additional letter from HWFRS.

With the agreement of the Chair, the Council's Legal Advisor provided Mr. Burton with a copy of the letter from HWFRS dated 27th April 2021. The Chair further agreed to a short adjournment in order for Mr. Burton to speak privately with his client regarding the contents of the letter.

Accordingly, the meeting stood adjourned from 14:24 hours to 14:30 hours.

Having reconvened, Mr. Burton explained that he had gone through the contents of the letter with his client and the three areas of work as detailed in the letter.

Mr. Burton agreed for a copy of the letter to be provided to Sub-Committee Members, the two people in attendance at the Hearing, who had submitted representations and for the letter to be published on the Council's website as Supplementary Agenda papers.

In response to Mr. Burton, the Council's Legal Advisor, clarified that the Technical Officer (Licensing), WRS had been notified that the original objection from HWFRS remained.

In response to Mr. Burton, the Council's Legal Advisor further clarified that Sub-Committee Members could issue such a licence, should they so wish, subject to a condition that all fire safety standards were met.

11. PREMISES LICENCE APPLICATION: CHILLIES (FORMER BLUE INN) FAR MOOR LANE WINYATES REDDITCH B98 0SD

The Sub-Committee then considered an application for a Premises Licence, submitted by Mr. S. Mahmood, in respect of Chillies Restaurant and Takeaway, The Blue Inn, Far Moor Lane, Redditch, Worcestershire, B98 0SD.

The application was subject to a Hearing in light of 16 representations being received from members of the public. The basis of their representations was on the grounds of Public Nuisance and the Prevention of Crime and Disorder, as detailed on pages 33 to 58 of the main agenda report.

Hereford and Worcester Fire & Rescue Service (HWFRS), as a Responsible Authority, had also submitted a representation in objection, as detailed on page 31 of the main agenda report. A copy of a further letter to Mr. Mahmood, dated 27th April 2021 was received by the Technical Officer (Licensing), WRS, as detailed by the Council's Legal Advisor prior to the commencement of the Hearing.

The Technical Officer (Licensing) WRS, introduced the report and in doing so highlighted that, during the application process the applicant had agreed with West Mercia Police to amend the hours for the sale of alcohol, as detailed at paragraph 3.1, page 3 of the main agenda report, as follows:-

Sale of Alcohol

Sunday to Thursday	12:00 to 22:30
Friday and Saturday	12:00 to 23:30

The Technical Officer (Licensing), WRS drew Members' attention to the conditions from West Mercia Police, which the applicant had agreed to, as detailed on pages 3 to 5, of the main agenda report.

Licensing Sub-Committee

Tuesday, 8th June, 2021

The Technical Officer (Licensing), WRS further drew Members' attention to the representations received, as detailed on pages 33 to 58 of the main agenda report.

In response to Mr. P. Berry, the Council's Legal Advisor highlighted that the meeting of the Sub-Committee held on 4th May 2021, when Members first considered the application; was that, following a request from the applicant to adjourn the meeting, Sub-Committee Members had agreed to adjourn the meeting in order for the applicant to seek legal representation at a future meeting.

In response to further questions from Mr. Berry, the Chair highlighted that as explained and as highlighted in the Council's Hearing Procedures, that following on from the Technical Officers report, all those present could ask questions of the Technical Officer on his report. Those who were present at the virtual meeting, who had submitted representations, would be invited to address Sub-Committee Members, as detailed in the Hearing procedures.

The Chair then invited Mr. M. Burton, Partner, MFG Solicitors, the applicant's representative, to put forward the case in support of the application.

Mr. Burton informed Members that his client, Mr. S. Mahmood, had purchased the property from the appointed receivers, who had surrendered the premises licence. The property had previously held a more extensive premises licence, than that being sought by his client, from 2005 until 2020.

Mr. Burton continued and explained that, after having spoken with West Mercia Police, that his client had agreed to the reduced hours and conditions as requested by West Mercia Police and therefore the police have not objected to the application.

The owners were new management, and his client had responded to the concerns raised by local residents and West Mercia Police by agreeing to the reduced hours for the sale of alcohol. The premises owners were entitled to hold a premises licence if the required criteria were met.

With regard to the fire service requirements, his client had found it difficult to get workmen to do what was required. However, his client would be fully content for a condition to be added to the premises licence, that it could not be operational until such a time that the fire service was happy that all fire safety standards had been met.

Licensing Sub-Committee

Tuesday, 8th June, 2021

In response to the Chair, Mr. Mahmood confirmed that he had nothing further to add in support of his application.

In response to further questions from Members, Mr. Mahmood explained that the music would not be loud music, just background music as the premises was a restaurant. The music would be monitored during any private functions and if it could be heard outside it would be turned down as he had to consider the guests staying at the hotel, he did not want to disturb any guests with loud music.

Mr. Mahmood stated that he had not had any previous involvement with the premises.

In response to the Chair, Mr. Mahmood explained that the premises was a restaurant with tables and chairs, there was no dance floor, the music would be background music for diners, even during private functions.

In response to further questions from Members with regard to loud music emanating from the premises into the beer garden, Mr. Mahmood clarified that the recorded music would be played via low wattage amplifiers, so the noise would not be loud.

Mr. Burton reiterated that his client was not applying for a dance licence, his client had made it perfectly clear that the primary use was for a restaurant and to provide late night refreshments for his restaurant clientele. It was not to hold parties on a regular basis.

In response to additional questions from Sub-Committee Members with regard to private functions, music and clients asking for some tables and chairs to be removed to enable dancing; Mr. Mahmood stated that he would have to consider such requests. However, as stated previously he would not increase the volume of the music, as he would not want to disturb other people, namely guests staying at the hotel and nearby residents.

The Council's Legal Advisor highlighted to Members that the Local Authority would not regulate music between the hours of 08:00am and 11:00pm, as a licence for music entertainment was not required for the playing of recorded music during these hours.

The Technical Officer (Licensing), WRS further reiterated that if a premises held a premises licence for the sale of alcohol, under the Licensing Act 2003, no licence was required for the playing of recorded music between the hours of 08:00am and 11:00pm.

Licensing Sub-Committee

Tuesday, 8th June, 2021

At the invitation of the Chair, Mrs. Oldfield and Mr. Berry, who had submitted representations in objection to the application, were asked if they had any questions for Mr. Mahmood or Mr. Burton.

In response to questions from Mrs. Oldfield, Mr. Burton stated that the information received from HWFRS referred solely to the restaurant premises and not the Hotel.

The Chair reiterated that the Hotel fire regulations were not a matter for Licensing Sub-Committee Members consideration, Members were being asked to consider a premises licence application for the restaurant.

Mr. Berry stated that he was the closest resident to the premises and had no objections to Mr. Mahmood wanting to run a successful business. He was concerned that having the doors open during the summer months you would be able to hear every word. He would accept background music being played, but not being amplified until 01:00am. Would Mr. Mahmood consider reducing the hours to 11:00pm? If so, he would withdraw his representations.

With the agreement of the Chair and as suggested by the Council's Legal Advisor the meeting was adjourned in order for Mr. Burton to privately discuss with his client, the request put forward by Mr. Berry; and for Sub-Committee Members to take a comfort break.

Accordingly, the meeting stood adjourned from 15:23 hours to 15:30 hours.

Having reconvened, Mr. Burton stated that his client was willing to amend his application with regards to the playing of recorded music as follows:-

Sunday – Thursday 11:00 hrs to 23:00 hrs
Friday and Saturday 11:00 hrs to 23.30hrs.

With the agreement of the Chair, the meeting was further adjourned in order for Mr. Burton and Mrs. Oldfield to privately discuss Mr. Berry's request and the representations put forward by Mrs. Oldfield.

Accordingly, the meeting stood adjourned from 15:35 hours to 15:39 hours.

Having reconvened the Chair briefly recapped and continued the Hearing following the Hearing procedures.

Licensing Sub-Committee

Tuesday, 8th June, 2021

At the invitation of the Chair, Mr. P. Berry and Mrs P. Oldfield were invited to address the Sub-Committee, speaking in objection to the application.

Mrs. Oldfield commented that she was very pleased that Mr. Mahmood had agreed to reduce the hours with regard to the playing of recorded music.

Mrs. Oldfield continued and stated that there had not been a great of consideration given to the sale of alcohol and the premises also operating as a take-away. Take-aways had lots of people and traffic, which created a bit of noise late at night. One concern was that should the licence be granted, alcohol could be purchased with a take-away and consumed off the premises, so people could sit outside and drink the alcohol. Could it be considered that alcohol could only be purchased to be consumed inside the premises?

The premises were untidy, the Hotel was generally a mess, which showed a lack of care. There had been incidents outside of the premises of fighting and disturbance, not with the previous applicants or owners, but very recently. So, she had concerns regards alcohol and Anti-Social Behaviour.

Customers would have to arrive by taxi/car for a take-away and that would lead to door slamming, engine revving and general public nuisance. Chats and talking carry, so noise from the beer garden would be just as disturbing for residents as noise coming from the car park. Would Mr. Mahmood consider reducing the hours for the sale of alcohol to 10:30pm?

Mr. Berry then addressed the Sub-Committee and in doing so acknowledged that Mr. Mahmood had cooperated with his request to reduce the times for the playing of recorded music.

Mr. Berry then referred to recent incidents that had involved police attendance at the Hotel, plus noise disturbance in the early hours of the morning with people noisily leaving the Hotel and getting into vehicles parked outside of the restaurant, which was not acceptable in a residential area. He had tried to ring the Hotel without any success and he was very concerned that there was no supervision of the Hotel or restaurant at any time of the day. He was concerned that having been unable to contact anyone at the Hotel he had had to contact the police regarding incidents he had witnessed outside of the Hotel.

Licensing Sub-Committee

Tuesday, 8th June, 2021

In response to Councillor S. Akbar, the Council's Legal Advisor, stated that matters regarding the Hotel and noise from the car park, did not fall under the remit of the Sub-Committee. Sub-Committee Members should only consider those matters that related to the premises for which the premises licence application referred to.

The Technical Officer (Licensing) WRS, clarified that the premises licence was being sought for Chillies Indian Restaurant and Take-Away, as detailed on the plan on page 29 of the main agenda report.

At the invitation of the Chair, Mr. Berry in summing up, stated that he would again acknowledge and thank Mr. Mahmood for agreeing to reduce the hours of the playing of recorded music. He was mindful of the four licensing objectives and the problems that he had witnessed and was of the opinion that these could have been addressed with suitable management. He would ask that Mr. Mahmood ensured that the premises were well managed, that was what local residents wanted.

At the invitation of the Chair, Mrs. Oldfield in summing up, stated that she would concur with the comments made by Mr. Berry. The main concern that residents had, was that the area was a quiet residential area and residents did not want drunk, rowdy people swanning around. Good management, which was currently lacking, was needed.

At the invitation of the Chair, Mr. Burton in summing up, stated that the premises had previously been licensed for 15 years and that there was no evidence from the police to suggest there had been any issues with the licence during that 15 year period. The licence had been surrendered, had it not been, his client would not be before the Sub-Committee.

The premises was a 40 cover restaurant and reference had been made to the Take-Away, but primarily it would be a restaurant.

His client had willingly and had significantly reduced the hours for the playing of recorded music and the sale of alcohol, compared to the previous licence held; and he would hope that these concessions made by his client would go a long way in addressing the concerns raised by local resident. The fact that his client was happy to restrict his licence in that way was indicative of his managerial ability.

The police had raised no objections, if they had had any real concerns regarding the premises, they would have objected to the

application. There were processes and regulatory bodies that would deal with any noise issues at the premises, should any concerns manifest themselves.

At the invitation of the Chair, the Council's Legal Advisor explained to the Sub-Committee that, they were governed by the Licensing Act 2003 with regard to the application they were being asked to consider. As detailed at paragraph 3.1, on page 3 of the main agenda report; the applicant had agreed to amend the hours for the sale of alcohol. The applicant had also agreed to amend the hours of the playing of recorded music, as suggested by Mr. Berry during the course of the Hearing.

Members should consider the evidence as presented during the course of the Hearing and the objection received from HWFRS. Mr. Burton had indicated that his client would be fully content for a condition to be added to the premises licence, that it could not be operational until such a time that the fire service was happy that all fire safety standards had been met.

Members should also consider the oral representations submitted by Mrs. Oldfield and Mr. Berry during the course of the Hearing; and the written representations received, as detailed on pages 33 to 58 of the main agenda report.

Members should disregard any issues which fell outside of the Licensing Sub-Committee's jurisdiction and must only consider those matters and evidence directly relevant to the premises.

The Sub-Committee were reminded that the S182 Guidance stated that the licensing authority should look to the police as the main source of advice on crime and disorder.

Having had regard to:

- The licensing objectives set out in the Licensing Act 2003.
- The Council's Statement of Licensing Policy.
- The guidance issued under section 182 of the Act.
- The Report presented by the Technical Officer, Licensing, Worcestershire Regulatory Services.
- The application and oral representations made at the Hearing by the applicant Mr. S. Mahmood and his solicitor Mr. M. Burton, Partner, MFG Solicitors.
- The written representation and oral representations made at the Hearing by Mr. P. Berry and Mrs. P. Oldfield.

Licensing Sub-Committee

Tuesday, 8th June, 2021

- The written representations submitted by the Hereford & Worcester Fire and Rescue Service (HWFRS). The letter from HWFRS to the applicant dated the 27th April 2021.
- The written representation of other persons as detailed at pages 33 – 58 of the report.

The Sub-Committee decided to **grant** the application for a premises licence relating to Chillies Restaurant and Take-away in the terms set out in the report and application and as amended by the applicant during the Sub-Committee hearing with regards to the playing of recorded music namely:

Sunday – Thursday 11:00 hrs to 23:00 hrs
Friday and Saturday 11:00 hrs to 23.30hrs.

The licence was granted **subject** to a condition that the licence will not be operational until such time as the Hereford & Worcester Fire and Rescue Service confirm that any outstanding fire safety requirements have been satisfied.

The reasons for the Sub-Committee's decision were as follows:

- The Sub-Committee Members considered both the written and oral representations submitted by and on behalf of the applicant and noted that the premises operated as a restaurant and takeaway business with the possibility of private functions. The application for the sale of alcohol was to enhance the business and the music was intended, primarily, as background ambient music for diners within the restaurant.
- The Sub-Committee noted that the applicant had been in discussions with West Mercia Police regarding the application and that had resulted in an agreement to amend the hours for the sale of alcohol and additional conditions on the licence.
- The Sub-Committee had sight of a letter (27th April 2021) to the applicant from Hereford & Worcester Fire and Rescue Service (HWFRS) which stated that following a fire safety audit carried out at the premises that "the standard of fire safety was reasonable". The letter suggested that the fire safety requirements had been satisfied, but as the objection had not formally been withdrawn, the Sub-Committee imposed a condition that the licence would not be operational until such time as HWFRS confirm that the premises has met their requirements.

Licensing Sub-Committee

Tuesday, 8th June, 2021

- During the Sub-Committee, the applicant amended the application with regards to the hours for recorded music when requested to do so during the hearing by Mr. Berry.
- In considering the representations received the Sub-Committee was only able to have regard to matters that were within their remit and related to the premises for which the licence was sought. Matters such as, the condition and suitability of the premises at this location, parking, noise emanating from other businesses and road infrastructure were outside of the Licensing Act and therefore could not form part of the Sub-Committee's considerations.
- With regards to the representations regarding the crime and disorder licensing objective, Sub-Committee was directed to the s182 Guidance which states that Members should look to the police as a main source of advice on crime and disorder. The police had agreed amended hours and conditions with the applicant and confirmed that they had no objections to the application. The Sub-Committee therefore did not give weight to the references to crime and disorder in the representations from other parties.
- The application under consideration was for the restaurant not the hotel which was on the same site. Some of the representations related to a previous premises licence, and as a new application the Sub-Committee considered only matters relating to the area as defined on the application plan, and its future business operation.
- Having regard to the nature of the business and the amended hours for the recorded music, the Sub-Committee did not consider that the public nuisance licensing objective would be undermined by the grant of the licence.
- In considering the objections received the Sub-Committee appreciated that those living near the premises were concerned about the impact this business may have on the nearby residents. However, the Sub-Committee considered that the representations made were primarily objections to the operation of the business in a predominately residential area and not specific to the sale of alcohol, recorded music or late-night refreshments.
- The Sub-Committee considered that the applicant had demonstrated an understanding of the licensing objectives and the concerns of those who had raised objections and had taken

Licensing Sub-Committee

Tuesday, 8th June, 2021

steps throughout the process to address those concerns. Members therefore have every confidence that the applicant would be a responsible licensee who would make every effort to promote the licensing objectives.

- The licence was therefore granted in the terms as agreed in the report, application, and hearing, with a condition that the licence will not be operational until such time as the Hereford & Worcester Fire and Rescue Service confirm that any outstanding fire safety requirements had been satisfied.
- The Sub-Committee would remind all parties of the review process that applies to any premises that fails to promote the licensing objectives. Any party was able to request a review of a licence where evidence indicated that the licensing objectives were not being met.

The following legal advice was given:

- That the Licensing Objectives must be the paramount consideration.
- That the Sub-Committee may only have regard to the representations which promote the four licensing objectives.
- The Sub-Committee must consider only those matters directly relevant to the premises under consideration and only those matters that fall under the Licensing Sub-Committee's jurisdiction.
- The Sub-Committee may not modify the conditions or reject the whole or part of the application merely because it considers it desirable to do so. Conditions must be appropriate in order to promote the licensing objectives.
- The review process was available to any party if evidence was established to indicate that the licensing objectives were not being met.

An appeal to the Magistrates' Court against the Sub-Committee's decision must be lodged within 21 days of the date on which written confirmation of the decision was received, 14th June 2021.

The Meeting commenced at 2.07 pm
and closed at 4.20 pm