

**Minutes of the Licensing Sub-Committee 3
Tuesday, 4th July 2023 at 10.00 am
In Meeting Room 6, Saltwells Education Development Centre,
Bowling Green Road, Netherton**

Present:

Councillor M Evans (Chair)
Councillors S Mughal and K Razzaq

Officers:

N Slym – Assistant Team Manager (Waste, Fleet and Licensing) (Directorate of Public Realm), T Holder – Solicitor and K Taylor – Senior Democratic Services Officer (Directorate of Finance and Legal).

1. **Apology for Absence**

An apology for absence from the meeting was submitted on behalf of Councillor A Goddard.

2. **Appointment of Substitute Member**

It was reported that Councillor K Razzaq had been appointed as substitute member for Councillor A Goddard for this meeting of the Sub-Committee only.

3. **Declarations of Interest**

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

4. **Minutes**

Resolved

That the minutes of the meeting held on 21st February 2023, be approved as a correct record, and signed.

5. **Application for Grant of a New Premises Licence – AFC Birmingham, Illey Lane, Halesowen**

A report of the Interim Service Director of Environment was submitted on an application for the grant of a new premises licence in respect of the premises known as AFC Birmingham, Illey Lane, Halesowen.

The following persons were in attendance at the meeting:-

Mr J Baker – Applicant and Chairman and Secretary of AFC Birmingham
Mr A Rohomon BEM – Licensing Consultant for the applicant
Mr A Wheatley - Objector
Mr P Stockton – Objector
Mr S Howell – Objector

Following introductions, T Holder declared, for transparency purposes, that he was a colleague of Mr P Stockton, Objector, however he assured those present that he had not previously discussed the case with Mr Stockton and that they worked within different teams. All parties had no objection to T Holder, in his capacity as Legal Advisor to the Sub-Committee, being present in relation to this matter.

The Assistant Team Manager (Waste, Fleet and Licensing) then presented the report on behalf of the Council and confirmed that since the writing of the report, one of the four objections submitted had now been withdrawn.

Mr S Howell, local resident, then outlined the reasons for the objections, and in doing so referred to the primary concerns of residents in relation to public safety, given that the premises was situated off a narrow lane and accessed via a farm track. Due to the limited access available on site, further concerns were also raised to access by emergency service vehicles and the potential increase to traffic congestion should a premises licence be granted.

Reference was made to the potential anti-social behaviour issues within a rural area should the premises be allowed to sell alcohol for the requested licensable hours of Monday to Sunday between 12 midday and 23.00hrs. Although it was acknowledged that the site was of some distance from nearby buildings, the football pitch was within close proximity of residents who had reported that they could hear shouting and swearing by attendees. It was anticipated that this could be further exacerbated should alcohol be available before, during and after football matches / events as intended.

Given the nature of the premises being a Football Club it was evident that a number of children were in attendance on a regular basis, and therefore by allowing the premises to sell alcohol could result in a number of safeguarding issues for children on-site who were not being supervised appropriately, in particular potential access to the two neighbouring working farms equipped with agricultural machinery and livestock.

Mr Howell further commented on the potential increase of public nuisance should the application be granted and raised concerns that the application submitted had suggested the use of live and recorded music, including showcasing films, given that there were no sound restrictions to the existing porta cabins. He suggested that the application submitted was not specific in the type and number of events likely to happen during the year and therefore caused some uncertainty and concern to residents.

Reference was made to existing floodlights at the premises which was suggested had been used in contravention to the planning permission granted. It was further stated that the premises was situated on green belt and a local heritage site with an abundance of wildlife, in particular nocturnal animals such as bats and owls, which would be disrupted and disturbed. It was anticipated that the additional noise and lighting pollution resulting from the application being granted would be detrimental to the area.

Mr A Wheatley considered that the site was unsuitable for a licensed premises which was located in the middle of a working farm within a rural area and suggested that a nearby local public house, namely, the Black Horse, could be used by supporters and players as an alternative option.

In responding to questions raised by the Chair, Mr Howell confirmed that cattle were present on the field on one of the farms adjacent to the premises on a regular basis and should parents be consuming alcohol and not supervising their children appropriately, this raised some safeguarding concerns to the children's safety. He also confirmed that he had heard shouting and swearing during a football match from his daughter's bedroom.

In responding to further questions raised by the Chair in relation to access to agricultural machinery, Mr Wheatley reiterated the concerns raised to potential access to agricultural machinery located on one of the working farms and referred to difficulties encountered where a fire engine was unable to access one of the farms to attend to a fire.

At this juncture, the Assistant Team Manager (Waste, Fleet and Licensing) confirmed that no representations had been received from the Fire Authority.

In responding to comments made by the objectors, Mr A Rohomon confirmed that the site had been established as a football pitch since 1973 and a Rugby pitch beforehand. In referring to comments made in relation to a response to a fire at one of the adjacent farms, Mr J Baker confirmed that the difficulties encountered was trying to locate nearby fire hydrants and not in relation to access to the area. He also confirmed that ambulance vehicles had attended the site previously with no concerns raised.

Mr A Rohomon then presented the case on behalf of Mr J Baker and in doing so referred to the supporting documents submitted which had been circulated to all parties prior to the hearing and included aerial photographs highlighting the site and surrounding properties and boundary fencing.

Reference was made to the limited information contained within the public notice of the application which outlined the hours requested for the premises licence only. It was confirmed that the purpose of the application was to allow the sale of alcohol on the premises within a small bar area and occasional events during the off season which would be subject to conditions. It was noted that the applicant had included a condition to the operating schedule in where the outside space was used for an event this would be subject to event paperwork being completed and submitted to responsible authorities.

Mr Rohomon confirmed that the application sought a premises licence for 7 days a week between the hours of 12:00 and 23:00, and that as a football club, there were matches both at the weekend and during the week. It was noted that midweek games were varied and were not confirmed until the fixtures were released, and therefore the application provided a level of flexibility needed to accommodate all matches.

It was noted that Mr J Baker was the Chairman and Secretary for AFC Birmingham and is a member of a full Committee Team, that met once a month to discuss the club, taking it forward and developing youth sport. The Committee included voluntary members who were either retired or worked full time, including Mr Baker, who was also employed as a builder. Mr Baker founded the club following concerns about both the lack of facilities and how local children were being coached.

Mr Rohomon emphasised that it was not the applicant's intention to develop a destination pub and that the area where alcohol would be sold would be in a small portacabin on the site and reiterated that the Committee would not want to stay on the premises until 23:00 each night. The intention was for the patrons to buy alcohol and either sit with just a drink or with a meal and to the viewing areas for the pitch only. Whilst it was accepted that some revenue would be made each week, the profits would be put back into the club to help support local communities and continue offering sporting opportunities to young children.

It was noted that Mr Baker founded AFC Birmingham in 2012, and due to his passion and commitment, having started off with a youth team, quickly became recognised as a well-run club, which resulted in him agreeing to take over the football ground at Illey Lane, Halesowen in March, 2020. With the support of the committee, players and supporters, the facilities at the club have been greatly improved and a safe space created for young children and adults.

The club now run 6 teams, including S.Collins coaching and football development who train on a Wednesday evening at the ground, attracting up to 40 young women aged between 11-14. Local schools were also allowed to use the pitch to play their school football.

Reference was made to the adjoining properties and Mr Baker's commitment to being a good neighbour, including updating the lighting and allowing children of people working on the farm to play on the pitch.

It was noted that an average 40 people attended each week which included mainly friends and family of players.

A significant amount of work had been undertaken to the premises including upgrading the changing rooms and toilets; upgrading floodlights to directional and improved LED lighting and links with a Physic Therapist to offer free therapy to the players.

With regard to comments made by the objectors, Mr Rohomon assured the Sub-Committee that it was not the intention for people to be intoxicated at the premises and also suggested that the security of the agricultural machinery and access to the neighbouring farms were the responsibility of the owners and not Mr Baker.

It was further reiterated that no representations had been submitted by any of the responsible authorities. A local Ward Councillor had expressed their support for the application submitted which were included within the supporting documentation. It was noted that Mr Rohomon had contacted the four objectors to provide further details with regard to the application in order to try to address and alleviate the concerns raised, which resulted in one objection being withdrawn.

In responding to the objections raised, Mr Rohomon disagreed that traffic congestion would increase should the application be granted given that the football club had been playing matches since 2012. He suggested that claims of swearing and shouting could also have been heard at the local public house and gave assurances that stewards were on site to monitor behaviour and any patrons that displayed any anti-social behaviour would be removed and banned accordingly. He further reiterated that the site was enclosed from neighbouring farms, and that the concerns raised regarding lighting was not for consideration by the Sub-Committee.

It was also confirmed that Mr Baker had undertaken a personal licence course and understood his responsibilities as a premises licence holder.

In concluding, Mr Baker reiterated that the purpose of the application was not to open a pub but to provide a welcoming environment for players and supporters, and the additional income would enable the premises to become more self-sufficient instead of asking for financial support from parents, supporters, and other businesses. The Committee members were happy to support training and matches and it was confirmed that they would not open the bar if there was nothing scheduled at the premises.

Mr Howell acknowledged Mr Baker's motivation and determination, however stated that his concerns remained as to why the application for a premises licence requested licensable hours until 23:00, seven days a week. In responding, Mr Rohomon confirmed that the hours requested was to provide the premises the flexibility for opening in the event of football game changes and fixtures. Whilst it was accepted that the majority of games were held during the day on weekends, midweek games would finish later allowing for showers and hospitality. Mr Rohomon again confirmed that the premises would not be advertised as a public house.

In responding to a question raised by Councillor K Razzaq in relation to planned events should the application be granted, Mr Rohomon confirmed that a condition had been included to the operating schedule in where any proposed events would be subject to event paperwork being completed and submitted to responsible authorities, and risk assessments undertaken accordingly.

In responding to a question raised by the Chair, Mr Rohomon confirmed the days currently allocated for matches and training and reiterated that the premises would not open on days where these were not taking place.

In responding to a question raised by the Solicitor, Mr Rohomon confirmed that the proposed measures in promoting the four licensing objectives were contained within the operating schedule submitted including staff undertaking training which would be recorded and refreshed every six months or sooner if needed. A Challenge 25 policy would also be implemented, with children not being allowed to stand by the bar, and any unsealed alcohol drinks would not be permitted to be taken off site.

In responding to a question by the Assistant Team Manager (Waste, Fleet and Licensing), it was noted that the premises currently provided hospitality to players and supporters without alcohol and that there had been no complaints or issues raised.

Further to comments made and observations in relation to the licensable hours sought, Mr Rohomon, on behalf of the applicant, suggested an additional condition should the Sub-Committee be minded to grant the application as follows:

Where the Premises is not open for either a football match, training and/or an event, the Premises Licence will not have effect.

All parties were provided with the opportunity to sum up their cases, following which all parties withdrew from the meeting to enable the Sub-Committee to determine the application.

Having made their decision, the meeting was reconvened, and the Solicitor outlined the decision.

Resolved

That following careful consideration of the information contained in the report submitted and presented by all parties at the meeting, the application for a new premises licence in respect of the premises known as AFC Birmingham, Illey Lane, Halesowen be approved, in principle, subject to satisfactory discussions in relation to the implementation of Closed Circuit Television (CCTV) to address concerns raised in relation to the protection of children from harm, together with the conditions contained in the operating schedule to the application and an additional condition as set out below:-

Where the Premises is not open for either a football match, training and/or an event, the Premises Licence will not have effect.

6. **Transfer of Premises Licence and Variation of the DPS (Designated Premises Supervisor) The Broadway Service Station, 154 South Road, Stourbridge**

A report of the Interim Service Director of Environment was submitted on an application for a transfer of premises licence and to vary the Designated Premises Supervisor in respect of the Broadway Service Station, 154 South Road, Stourbridge.

The following persons were in attendance, at the meeting: -

Ms K Turley (West Midlands Police)

Mr R Jones (Environmental Health and Trading Standards)

Mr K Mann (Environmental Health and Trading Standards)

It was noted that neither the Designated Premises Supervisor nor the Premises Licence Holder were in attendance at the meeting.

Following introductions, the Assistant Team Manager (Waste, Fleet and Licensing) presented the report on behalf of the Council, referring to the application that had originally been received on the 18th April 2023 to transfer the premises licence and vary the Designated Premises Supervisor. It was noted that the matter was due to be considered by the Licensing Sub-Committee on 1st June, 2023 however at the request of the applicants solicitor the matter was deferred to a future meeting.

The Assistant Team Manager (Waste, Fleet and Licensing) further advised that notification had been received that Hayleys Solicitors were no longer representing the Designated Premises Supervisor. A further request had been received on 3rd July, 2023, from Forrest Solicitors who had recently been instructed by the Designated Premises Supervisor, and requested that the application be deferred for them to prepare representations on behalf of their client.

In considering the request for deferment, having already deferred consideration of the application previously and concerns raised that the Premises Licence Holder and Designated Premises Supervisor had failed to attend two hearings despite sufficient notice being given, the Sub-Committee agreed to hear the matter in the absence of the Premises Licence Holder and Designated Premises Supervisor.

Ms K Turley presented the representations of West Midlands Police relating to the prevention of crime and disorder and the protection of children from harm under the Licensing Act 2003, and outlined the reasons that had resulted in the objections to the transfer of the premises licence and variation of the designated premises licence.

It was noted that on 11th April, 2023, two sixteen year old females were sold a disposable e-cigarette, and intelligence had also been received that the premises were selling illegal oversized e-cigarettes. Following the test purchase and having entered the premises, an unknown male was present stacking the shelves and was informed of the underage sale. Having identified illegal e-cigarettes in a display cabinet on the shop counter, Trading Standards Enforcement Officers carried out an inspection of the premises under the Consumer Rights Act 2015. The inspection found additional illegal e-cigarettes under the counter and three further boxes on the floor, which were then seized. Having been informed of the inspection, the proposed designated premises supervisor, Mr Salar, attended the premises and was aggressive and obstructive and refused to provide his details.

During the seizure of the illegal products, it was reported that Mr Salar assaulted one of the officers present, and the Sub-Committee were informed that Mr Salar was currently under investigation by West Midlands Police for Common Assault.

The Sub-Committee were further advised that on 18th April, 2023, Trading Standards Enforcement Officers visited the premises and seized an illegal e-cigarette and a packet of counterfeit cigarettes. Following the seizure, officers intended to conduct a full inspection of the premises under the Consumer Rights Act 2015, however they were unable to gain access as the roller shutter on the premises had been pulled down and locked to prevent entry.

It was noted that on 16th May, 2023, Trading Standards Enforcement Officers, assisted by Officers from West Midlands Police, executed search warrants granted by Dudley Magistrates Court at the premises following suspected storage and sale of illegal tobacco and disposable e-cigarettes. During the search, a large amount of counterfeit cigarettes and illegal oversized e-cigarettes were recovered from a motor vehicle and residential property, both of which were associated with the shop premises and business operators, leading to a criminal investigation being pursued.

It was also noted that on 19th June, 2023, a 15 year old test purchaser was sold a can of 4% alcohol by volume, namely Strongbow Cider, by a male identified to be Mr S Mehmud, the proposed premises licence holder.

In concluding, Ms Turley stated that the West Midlands Police strongly objected to both the transfer of premises licence and variation of the designated premises supervisor for their failure to uphold the licensing objectives in relation to prevention of crime and disorders and protection of children from harm and a number of ongoing investigations by Trading Standards.

Mr R Jones shared his concerns and supported the representations submitted by West Midlands Police and in doing so informed the Sub-Committee that details provided by Mr Salah during the seizure of illegal e-cigarettes on 11th April, 2023 were false. It was also noted that a notice had been served to the premises in accordance with the Policing Act 2014 to close the premises for a three-month period following complaints received in relation to nuisance, sale of alcohol to children and the sale of illegal products.

It was suggested that Mr Salar continued selling the illegal products despite being informed that they were counterfeit.

All parties were provided with the opportunity to sum up their cases, following which all parties withdrew from the meeting to enable the Sub-Committee to determine the application.

Having made their decision, the meeting was reconvened, and the Solicitor outlined the decision.

Resolved

That following careful consideration of the information contained in the report submitted and presented by all parties at the meeting, the application for the transfer of premises licence and vary of Designated Premises Supervisor in respect of the premises known as the Broadway Service Station, 154 South Road, Stourbridge, be refused.

7. **Application for Renewal of Consent to Engage in Street Trading – Build A Burga Ltd**

A report of the Interim Service Director of Environment was submitted in respect of an application made by Mr M Ikhlas (Build A Burga Ltd) for the renewal of a consent to engage in street trading in Dudley Town Centre.

The following persons were in attendance at the meeting:-

Mr M Ikhlas – Applicant
Mr M Bieganski – Strategy and Governance Section Manager
Councillor C Bayton – Local Ward Councillor and Objector

Following introductions, the Assistant Team Manager (Waste, Fleet and Licensing) presented the report on behalf of the Council, advising that an application had been received from Mr M Ikhlas on 20th March, 2023 to renew the consent from the 2nd August, 2023 in Stone Street Square, Dudley to sell Burgers, Fries and Canned Drinks, Monday to Sunday between the hours of 12pm to 11pm. The application together with details of the proposed site and photographs of the trading vehicle had been circulated to the Committee and interested parties.

Mr M Bieganski, Strategy and Governance Section Manager, made comments on behalf of Corporate Landlord Services in particular that it was understood that the Stone Street Square area was not a designated public highway and was owned and maintained by Dudley Council as a public space. It was reported that the department would have objected to the original application, which was considered by a Licensing Sub-Committee on 2nd August, 2022, however they had not been consulted at the time.

It was noted that Dudley Council had recently agreed terms to relet the former Glasshouse restaurant, located on Stone Street Square, for use as a good quality restaurant which was due to open shortly and it was considered that the presence of the applicants vehicle was not appropriate for the area. Reference was also made to the detailed discussions undertaken by the Council in relation to the redevelopment of the businesses around the square amounting to a proposed £4m investment.

In responding to comments made, Mr Ikhlas suggested that his business would not affect the re-opening of the restaurant and that the location on which he had traded from since August, 2022 was agreed by the Council, however he would be agreeable to situate the van wherever the Sub-Committee deemed appropriate within the square.

Councillor C Bayton then presented her representations and in doing so stated that the location was a pedestrianised area and was accessed by two bollards, however these had since been removed. Concerns were raised on the number of delivery drivers driving into the square to collect online orders and with the anticipated increased footfall following the re-opening of the restaurant, this could result in crime and disorder and anti-social behaviour within the area. Councillor Bayton further confirmed that she had no concerns or objections to Mr Ikhlas application for a street trading consent but objected to the area requested.

In responding to comments made, Mr Ikhlas confirmed that he had contacted Dudley Council requesting replacement of the bollards but that he had not yet received a response, as he was also concerned of the safety of pedestrians.

In responding to a question raised by Councillor K Razzaq, Councillor Bayton confirmed that there had been no complaints received from constituents in relation to Mr Ikhlas with regard to his business, however it was noted that during the last twelve months, the restaurant had been vacant. In responding, Mr Ikhlas referred to the increase in the number of vehicles associated with the restaurant on the pedestrianised area during the refurbishment works.

Mr M Ikhlas then presented his case and in doing so stated that his vehicle was not a standard burger van and that the business had been successful and popular with local businesses, council employees and college students, with some customers attending from areas including Birmingham and Wolverhampton. Mr Ikhlas welcomed the re-opening of the restaurant and reiterated that he would be agreeable to situate the van wherever the Sub-Committee deemed appropriate, however requested that he remained on Stone Street Square where he had built his reputation.

Mr Ikhlas further stated that he had been flexible and accommodating since his consent had been granted by not attending on days to allow for scheduled events and filming. He further stated that the majority of his trade related to walk-in customers rather than online orders due to associated excessive fees.

In responding to questions raised by the Chair, Mr Ikhlas confirmed that he would prefer to remain in the Stone Street Square location due to accessibility and given that his business had been established in the area for almost a year.

All parties were provided with the opportunity to sum up their cases, following which all parties withdrew from the meeting to enable the Sub-Committee to determine the application.

Having made their decision, the meeting was reconvened, and the Solicitor outlined the decision.

Resolved

That, following careful consideration of the information contained in the report submitted and presented at the meeting, the application made by Mr M Ikhlas (Build A Burga Ltd) for the renewal of a consent to engage in street trading in Dudley Town Centre be deferred to the next meeting of Licensing Sub-Committee 3 pending further investigation on the consent awarded to Stone Street Square, Dudley.

8. **Questions Under Council Procedure Rule 11.8**

There were no questions to the Chair pursuant to Council Procedure Rule 11.8.

The meeting ended at 1.30pm

CHAIR