

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE A 14 SEPTEMBER 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 14 SEPTEMBER 2020, AT 1000 HOURS, AS AN ONLINE MEETING

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Errol Wilson – Committee Services

NOTICE OF RECORDING

1/140920 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.

DECLARATIONS OF INTERESTS

2/140920 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/140920 No apologies were submitted.

MINUTES

4/140920 That the Minutes of meeting held on 17 August 2020 were noted.

**LICENSING ACT 2003 PREMISES LICENCE – VARIATION – TINA’S CLUB 1st
AND 2nd FLOOR, 240 BROAD STREET, BIRMINGHAM, B1 2HG**

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

Hung Phan – Applicant
Duncan Craig – Barrister

Those Making Representations

PC Abdool Rohomon – West Midlands Police (WMP)

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The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

Mr Duncan Craig, Barrister for the applicant indicated that there were some preliminary points and referred the Sub-Committee to the supporting documents he had sent earlier this morning.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Bhapinder Nandhra to outline the report.

Afterwards, the Chairman invited the applicant to make their submission. At which stage Mr Craig, made the following points on behalf of the applicant: -

- a) That the overarching points mentioned in his email sent this morning to the Committee was seeking clarification on the Statement of Licensing Policy as it needed to be reviewed every five years.
- b) That the current Statement of Licensing Policy expired on the ... July 2020 and may not be in force and that he would be grateful for the City Council's position on that as five years had expired and there may be good reasons why the policy had not been reviewed.
- c) That the application for variation of the licence was an unusual application as we were in an unusual time.
- d) That the licensing trade was suffering enormously in recent months and that in Birmingham this was arguably going to get worse.
- e) That in relation to the Cumulative Impact Policy (CIP) the world had changed since then and so was the City Centre and that the Sub-Committee needed to take this into consideration.
- f) That Broad Street was significantly quieter and there was no CIP and they were looking at a different landscape from January 2020 when West Midlands Police (WMP) visited the premises.
- g) That page 1 of the applicant's supplemental documents sets out the rationale behind the application.

- h) That one of the principal points WMP was seeking revocation was because of the dancing. A number of conditions were imposed on the premises was via the operating schedule such as the premises shall operate as a Burlesque Club; the concept of the premises shall not be changed without an application for full variation being made to the City Council. There will be a burlesque performance every hour the premises were open to the public.
- i) That the section 182 Guidance was abundantly clear on these things, but these conditions could not be met under the current situation.
- j) That one can envisage the current situation existing well into the next year and the applicant was requesting that these conditions be lifted. This was based on the CIP existing currently.
- k) That the applicant had bought the business but was unable to open it for some time which was the reason he had employed Mr Craig to see if the situation could be resolved.
- l) That in terms of the Conditions, the premises should not be considered a vertical drinking establishment. That page 2 of the supporting documents paragraphs 18.17.1 and 18.17.2 were Conditions that dealt with that which should not subsist on the licence.
- m) That he would not be discharging his duty to his client if he was not upholding his licensing duty. That the Condition was not enforceable, and this was essentially the nature of the Condition set out on page 4 of the document.
- n) That if this was not granted the premises could trade and the licensing activities in Birmingham had been decimated. That the applicant had tried to cooperate with WMP the best he could, but the licensing business could be decimated in 12 months' time.
- o) That the Covid-19 risk assessment (pages 12 -16) had dealt with a lot of the issues which were generic for good reasons and were good practice.
- p) That the applicant considered his premises and his practice and there were a few steps the premises had taken such as no karaoke etc. and that it was hoped these were appropriate.
- q) That significant portions of WMP's evidence was considered at a visit on 12 January 2020. These did not prove licensing activities had been carried out beyond the hours.
- r) That the gathering was a private function. In terms of the fire risk assessment if the application was granted the client was not proposing to operate straight away as the CCTV, and fire risk needed to be dealt with.
- s) That the door was not bolted shut as it had a push bar and no representation was made by West Midlands Fire Service or Environmental Health. The fire escape was the applicant's and the door were capable of being open from the inside.
- t) That the applicant speaks perfect English and may have been misunderstood by WMP when he stated that the premises was only for the use of Chinese. That events would be held for Chinese and other community groups.
- u) That the licence holder wanted to run the premises lawfully and urged the Sub-Committee to consider the application given the situation we were in.

In response to Members questions Mr Craig made the following statements:-

1. That vertical drinking was where people stood up drinking. Mr. Craig questioned how this could be enforced.

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2. That the application was in the Sub-Committee's hand to grant the application etc. or to add further Condition(s).
3. That his client was thinking about the medium-term and the long-term and this was the reason he had separated out the item and Section 35 was the point he was making for the terms of the contract. The question was how vertical drinking was evaluated as this was different from saying that a company needed 10 CCTV cameras. This was virtually unenforceable.
4. That there were 4-6 staff and that on the Covid-19 risk assessment there was provision for waiting staff and this was based on the numbers being safe.

PC Abdool Rohomon, on behalf of West Midlands Police, made the following points and concerns for WMP:-

1. That the Statement of Licensing Policy was in place when the licence was granted, and the owner took the lease over.
2. That the private gathering in January 2020 and comments made by Mr. Hung Phan was a comment he had disagreed with.
3. That in terms of the Statement of Licensing Policy, the premises licence was granted in 2013 on appeal by Birmingham Magistrates' Court and at the time the licence was granted the policy was in place.
4. That it did not mean that a licence would not be granted and that the Sub-Committee's decision was based on the merit of each application, but WMP would seek to impose condition(s).
5. That once a licensable activity is granted the licensee could do whatever they wanted such as dancing etc. and this was the reason WMP wanted conditions imposed.
6. PC Rohomon drew the attention of the Sub-Committee to page 15 of WMP bundle concerning an email dated 3 October 2013 and advised that this was a communication from the licence holder as a lap-dancing venue only and that he did not get Mr. Craig's argument.
7. That the Conditions were accepted by the City Council and Birmingham Magistrates Court by a District Judge and the applicant chose not to amend the Conditions but agreed to a lap-dancing club where people sat down and had a drink.
8. That the owner did not agree to vertical drinking and the fact was that several people could go into the premises which could cause a problem, and this was the reason those Conditions were imposed.
9. That Mr. Craig's exceptionality was not correct as the licence was granted in 2013. That on page 11 of the bundle this was transferred to a holding company.
10. That in September 2019 the lease of the premises was taken over by Mr. Phan and the premises licence was not transferred over in 2016.

At this juncture Mr Craig interjected and explained that this was an error on his part.

PC Rohomon continued

11. That Mr. Phan took over the lease of the premises and did not request for the licence to be transferred over. That WMP was fully aware of what was

- happening in relation to Covid-19 and that the premises was not trading previously. And was not suffering as a result of Covid-19.
12. That Mr. Phan naively took over the premises and did not request a transfer of the licence. By allowing the premises to be trading, they were not suffering in any way as they had taken over the lease of a restaurant in September 2019 and knew fully well what the restrictions were. He chose to transfer it rather than apply for a new licence.
 13. In January 2020 the statement of PC Foulds on page 1 of WMP bundle where he was required to police the nighttime economy. That PC Foulds and colleague attended the premises as they could hear loud music coming from the premises and noticed that the premises had a set of double doors and that the windows upstairs were blocked out.
 14. That PC Foulds had tried the door and saw security at the door and asked to be let in, but the security had refused entry and the door appeared to be locked at the top which was not a push bar as Mr. Phan was now advocating.
 15. That this was not exposed in January 2020 and it was only now this so-called argument comes to the Sub-Committee.
 16. That eventually someone came and let PC Foulds and colleague into the premises.
 17. PC Rohomon drew the attention of the Sub-Committee to the information relating to the fire exit and advised that the officers found the fire exit signs taped over and the signs removed and the others not working.
 18. That a birthday party was being held with balloons on the ceiling and that page 6 of the bundle showed ice buckets, Jack Daniels, coke and Budweiser and that the officers referred the premises to WMP Licensing.
 19. That when Mr. Phan was questioned about the fire exit, he was not reassuring to the officers who were present at the premises.
 20. That the licence holder was not Mr. Phan nor was he the Designated Premises Supervisor and that he had spoken with Mr. Phan on numerous occasions and the licence holder was a company in the Isle of Man.
 21. That he took exception to Mr. Phan's comment about who the licensing activities were aimed at as Mr. Phan had stated this to him on the telephone and stating that there was nowhere for them to go to on Broad Street.
 22. That they had pointed out to Mr. Phan that his comment was racist, and Mr. Phan then claimed that WMP was racist.
 23. That a site visit of the premises was arranged and there was no CCTV. A dance floor was erected etc. Page 19 of bundle showed the current plan of the premises.
 24. The first floor was the only room being used which was used as a smoking area that was all enclosed. Mr. Phan allowed smoking to take place there.
 25. That the officers had tried to find a fire exit but there was no other fire exit. The only fire exit there was in the premises led to a flat roof and it was clear to WMP that Mr. Phan had what the taken on the premises to operate a vertical drinking club and not a burlesque premises.
 26. That he could not emphasized enough the difference between a vertical drinking establishment and a burlesque club. That Mr. Phan took on the premises knowing full well what the licence was for.

27. That Mr. Phan was not being disadvantaged by Covid-19 as he was not trading before Covid-19 and that they could not compare what was seen now prior to Covid-19 as exceptional.
28. That all other licensed premises on Broad Street were doing good when the licensing policy was taken into effect. Paragraph 14.5 was market forces that the Council's Licensing Policy was not likely to consider.
29. That smoking was allowed inside the premises and the exclusive door entry policy as per the email to the current licence holder on page 10 of the bundle and the concerns WMP had when they visited the premises.
30. That the check sheet being submitted was not a risk assessment and there was no control regarding this. Mr. Phan had not carried out a risk assessment and had just printed off a check sheet.
31. That Mr. Phan was not a person that could be responsible for a drinking establishment and WMP had more than enough crime and disorder issues to deal with on Broad Street. The Cumulative Impact Policy had been in place since 2007.

In answer to Members questions PC Rohomon made the following points:-

- a) That in terms of what could make the premises a vertical drinking establishment he found it difficult to give an answer as it was never a vertical drinking establishment as it had been agreed that the premise should be a non-vertical drinking establishment.
- b) That the owner was trying to get the Sub-Committee to agree with something that was not there.
- c) That if the Sub-Committee removed the Conditions the premises would become a full-on vertical drinking establishment.
- d) That they currently could not do that not because of Covid-19, but because of the licence that was currently in operation. Once the conditions were removed the controls would be gone.

At this juncture Mr Craig interjected and stated the following:

That WMP was unable to assist him in PC Rohomon's recording of music was ancillary and that the conditions were on the licence in 2014 as was contained at page 24 of the document and was not on the licence now and the reason for this was not known.

That his client's position was that on PC Rohomon's visit to the premises he stated that whatever Mr Phan applied for would be rejected.

PC Rohomon responded that in terms of the conditions this was on page 17 of WMP bundle and was therefore under the Sub-Committee's decision. Under the second point the connotation of racism was made in a telephone conversation where he had stated that WMP would object to any application for a change in licensing conditions and that he had no other conversation with Mr Phan. He added that he had stated that he would oppose any condition being granted.

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In summing up, Mr Craig, on behalf of the premises made the following points:-

- That in relation to PC Rohomon's statement that once the licence was granted a licensee could do anything was not true and that if a premises was not complying with the conditions and Covid-19 conditions he disagreed with PC Rohomon on the efficacy of conditions.
- That he had a view that PC Rohomon was right to say that he had more experience over section 126. A perfectly legitimate decision to grant licence in whole or in part.
- That he was conscious to delineate the application so that it falls into two sections – invite the Sub-Committee to consider both. That it was not fair that PC Rohomon stated that his client's business was not suffering due to Covid-19.
- That the smoking issue was unfortunate and that if the licence was granted for WMP to re-visit the premises.
- That it was right to say that the licence was granted when Covid-19 was in Europe etc., but his client had to try and adopt his business accordingly and he wanted to operate lawfully and safely.
- That currently there was Cumulative Impact Policy on Broad Street due to Covid and that if his client was not operating in accordance with the Covid conditions then WMP could bring an action.

In summing up, PC Rohomon, on behalf of West Midlands Police (WMP) made the following points:-

- i. That he drew some inference to what Mr Craig had stated in relation to dancing, music and do what they wanted. Hence the reason the conditions were in force.
- ii. That he drew point that the premises was suffering as the premises would still operate when Covid-19 was not there and that the owner needed a new licence.
- iii. That the argument was because of Covid-19, but it was not a vertical drinking establishment, but a burlesque bar.
- iv. That the application should be refused on all grounds and no variation should be granted as they also got a lot of problems in the area.

At 1147 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1155 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/140920

RESOLVED: -

That the application by Tina's Club Limited to vary the premises licence in respect of Tina's Club, 1st and 2nd Floor, 240 Broad Street, Birmingham, B1 2HG under section 34 of the Licensing Act 2003 **BE REFUSED**.

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the variation application but is not satisfied that the crime and disorder licensing objective would be promoted.

The Sub-Committee noted that a Cumulative Impact Policy is in force for the Broad Street area, which was the first one granted by Birmingham City Council, and the effect of which is to create a rebuttable presumption that applications will normally be refused unless it can be shown that the premises concerned will not add to the cumulative impact on the licensing objectives being experienced.

The original licence application had been submitted in 2013, and the conditions which the applicant company now sought to remove were in fact volunteered by the then applicant, as a way to show that the premises would not add to crime and disorder in the area.

It was for these reasons only, and the imposition of these conditions on the licence in 2013, that West Midlands Police had been satisfied there would not be an increase in crime and disorder. Had the conditions not been accepted, the Police would have objected to the 2013 grant application, as another late-night vertical drinking establishment would have led to further crime and disorder.

The Police addressed the Sub-Committee to explain that they found the variation application to be completely unsatisfactory, and a significant risk to the upholding of the licensing objectives in the Cumulative Impact Zone around Broad Street. Police had conducted a site visit and witnessed evidence that works had taken place to change the premises, including installation of music decks, dance floors and lighting. There were issues relating to CCTV - namely the amount of coverage, and also the fact that it had not been upgraded. A fire risk assessment had been requested but was not forthcoming; indeed the Police had concerns around the whole issue of fire safety. It had also been observed by the Police that smoking had been allowed on the premises.

For these reasons, it was the recommendation of the Police that the application should be refused. To remove the conditions would result in the premises becoming a nightclub and vertical drinking establishment and lead inevitably to an increase in crime and disorder. The Police reminded the Sub-Committee of the presumption that the application should not be granted unless the applicant company could show that they would not add to crime and disorder, given that the premises was within the Cumulative Impact Zone. The Police considered that the applicant company had already demonstrated a lack of understanding of the licensing objectives.

The submissions made on behalf of the applicant company focused on the struggle that the business was facing due to the Covid-19 situation. However, as the Police observed, the premises had not been trading before the national lockdown (imposed by HM Government in March 2020), and so had not suffered any loss of income.

Having heard the submissions of the applicant company, the Sub-Committee agreed with Police that to allow the variation (either in whole or in part) would undermine the crime and disorder licensing objective. The Sub-Committee noted in particular that the condition prohibiting vertical drinking had been imposed by Birmingham Magistrates' Court at the Appeal hearing in 2013; Members agreed with the Police that it was imperative that that condition should remain on the licence. It was commonly known that burlesque establishments did not unduly trouble the responsible authorities; however vertical drinking premises were a different matter entirely, and all the more so within a Cumulative Impact Zone.

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 for a variation, the written representations received and the submissions made at the hearing by the applicant company via its legal adviser, and by West Midlands Police.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

6/140920

OTHER URGENT BUSINESS

There were no matters of urgent business.

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CHAIRMAN