

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 28 JULY 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 28 JULY 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Nicky Brennan and Adam Higgs.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

NOTICE OF RECORDING/WEBCAST

1/280720 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/280720 DECLARATION OF INTERESTS

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

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/280720 No apologies were submitted.

LICENSING ACT 2003 – TEMPORARY EVENT NOTICE – 31 ASHFURLONG CRESCENT, SUTTON COLDFIELD, B75 6EN.

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Amy Losak – Applicant

Those Making Representations

Paul Samms – Environmental Health – (EH)

* * *

The Chairman introduced the Members and officers present 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 this stage Amy Losak made the following points: -

- a) That she had spoken with Paul Samms and taken his points on board in terms of the Covid-19 risk assessment and she had been working with the owners of the property and she felt as though they had put everything in place.
- b) She was trying to manage the risks as best she could.
- c) There were only 21 people attending.
- d) It was a small birthday party, with the main feature being cocktails in the garden. There would be a pop-up bar to serve drinks between 2-5pm. She had applied for extra time on the TEN to cover herself.
- e) She was working with the property owners to ensure a one-way system with people arriving through the front door and exiting through the back door. They were going to stagger the arrival times to ensure people were able to socially distance. There would be sanitising stations and no cash, as everything was pre-paid.
- f) It was a private event for friends and family. If numbers did go over the target, she would raise it with the owners and stop serving everyone until the numbers decreased. The 21 people had been invited and had pre-paid for a package.

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g) She would be the only member of staff – so 22 people in total.

At this stage Paul Samms on behalf of EH made the following points: -

- a) That he had been liaising with the applicant via email especially regarding a Covid-19 risk assessment as there were two issues with it. He was concerned about Amy Losak having to ask the home owners to put measures in place, but he was glad to hear she would cease operation if the numbers went over the specified amount.
- b) It was not a normal venue where stewards would be present to ensure people complied with the measures put in place. It was someone's home and, as such, the home owner had all the power, so if people didn't comply with the risk assessment he thought it was unlikely that they would turn their friends away.
- c) That would increase the pressure on the applicant.
- d) He did not think it should go ahead.

Neither party had any closing submissions to make.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/280720

RESOLVED:-

That, having considered the objection notice from Environmental Health in respect of the temporary event notice as submitted by Amy Lasok, the premises user (or 'applicant'), for an event to be held on 2nd August 2020 at 31 Ashfurlong Crescent, Sutton Coldfield, B75 6EN this Sub-Committee determines that a Counter Notice be issued under section 105 of the Licensing Act 2003.

The Sub-Committee's reason for issuing a Counter Notice is to prevent the temporary event from taking place, in order to promote the public safety licensing objective in the Act, during the ongoing Covid-19 pandemic. The Sub-Committee was of the opinion that allowing the event to proceed ran the risk of undermining the official guidance issued by HM Government and published on the "gov.uk" website, entitled "*Meeting people from outside your household from 4th July 2020*".

The applicant attended the meeting and addressed the Sub-Committee. The event was to be a birthday party. She was a sole trader whose company had been engaged to provide the alcohol (in the form of a "pop-up" cocktail bar) at the birthday party, to be held in a customer's own back garden. She stated that it would be a small party of 21 people, plus herself serving the alcohol, making 22 people in total. The party guests would be from three households; two of the

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three households had formed a so-called 'bubble' together, following the general advice issued by HM Government during the pandemic. She said that she had worked with the householder to set up the arrangements for the event, and assured the Sub-Committee that she would police the numbers and stop serving if the numbers were exceeded.

Although due regard was given to the applicant's representation, the Sub-Committee was not confident that the proposed event could run safely, or that the applicant could overcome the concerns raised relating to the official guidance, in light of evidence presented by the Responsible Authority attending the meeting, namely Environmental Health.

The Environmental Health officer addressed the Sub-Committee and explained that although he had had discussions with the applicant, and had assessed all the submitted risk assessments, he remained concerned that the Covid-19 risk assessment did not comply with the HM Government guidance. The issue was how there could be compliance in such a small area, namely the garden of a residential property, as shown on the site location plans in the Report.

The officer observed that the applicant, who operated her business as a sole trader, would be the only staff member on duty in the customer's private garden; it would not be a commercial venue where stewards would deal with non-compliance. Whilst the applicant had confirmed to the Sub-Committee that she would be the person who would ultimately have responsibility for the implementation of the Covid-19 protection measures, the wording in the application was that the applicant would "ask" the householder to do certain things; the Environmental Health officer surmised that there was a distinct possibility that the householder, hosting a birthday party in their own garden, might not in fact comply.

The Environmental Health officer also remarked that in the event that the householder did not comply with the risk assessment, there was doubt as to whether the applicant would be willing or able to enforce it – for example in relation to the arrangements to operate staggered arrival times. The Environmental Health officer raised the issue of whether the applicant really would order those guests who might arrive early for the birthday party to wait outside until their scheduled entry time; the officer felt that this was highly unlikely. The Sub-Committee agreed with this, observing that the party would be held in a private garden of a residential property, not a commercial venue. The Sub-Committee noted that the householder did not attend the meeting, and therefore the Members were unable to seek reassurance from the householder. The recommendation of the Environmental Health officer was that the Sub-Committee reject the temporary event notice.

The Sub-Committee was satisfied that on the balance of probabilities there would be a risk to the public safety objective if the proposed event went ahead, as it was likely that the event would not uphold the Covid-19 guidance. The Sub-Committee therefore determined that the correct course was to issue a Counter Notice.

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The Sub-Committee has had regard to the evidence, argument and submissions placed before it, in addition to the Report, the section 182 Home Office Guidance, and its own statement of licensing policy.

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. No appeal may be brought later than five working days before the day on which the event period specified in the Temporary Event Notice begins.

Please note, the meeting ended at 1027.