

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 17 AUGUST 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 17 AUGUST 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Mary Locke and Bob Beauchamp.

ALSO PRESENT

David Kennedy – 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

- 1/170820 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.

2/170820 **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

- 3/170820 Apologies were submitted on behalf of Councillor Phil Davis and Councillor Nagina Kauser was the nominated Member.
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**LICESNING ACT 2003 PREMISES LICENCE – GRANT – HURST STREET @
LADYWELL WALK, PART PAVEMENT/PART ROAD OF HURST STREET
WITH LADYWELL WALK, SOUTHSIDE BIRMINGHAM, B5 4BN**

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

(See document No. 1)

On Behalf of the Applicant

Sarah Clover – Kings Chambers – Barrister
Wayne Tracey – Night Scene Limited – Applicant
Carl Moore – Agent

Those Making Representations

Paul Samms – Environmental Health (EH)

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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.

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

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

- a) That it was a slightly unusual situation, as there was already a licence operating at this location, belonging to Southside BID.
- b) The EH Officer, Paul Samms was concerned about another licence in this locality.
- c) However, it was a shared space between Southside BID and Wayne Tracey.
- d) This was not a duplication. It was a limited application; up to 6 events over the course of a year and the total number of days not to exceed 21.
- e) There had been no objections from local residents or from any other local authority.
- f) The special conditions restricted each event and would be decided via a MAG/SAG.
- g) The Hippodrome would be invited to the meetings too.

- h) The meetings would take place significantly in advance to produce an Event Management Plan that all responsible authorities would be in agreement with.
- i) Wayne Tracey would be employing independent sound experts to ensure that the events ran smoothly and would also provide advanced notice of events to locals. There would also be a dedicated hotline for local residents to use if they experienced any issues.
- j) As a matter of law, the objection put forward was in relation to noise and as such, it did not affect the special policy that was in effect in the area as it did not add to crime, disorder or anti-social behaviour; it fell outside those terms.
- k) Therefore, the Committee should determine the case in the normal way.
- l) Paul Samms had put forward that it was in the Cumulative Impact Zone and the rebuttable presumption was to say no to the application. However, she stated that was not correct as his objection was in relation to noise. (Sarah Clover shared the following via the chat function in Microsoft Teams and made reference to it during the meeting - *R (on the application of JD Wetherspoon plc) v Guildford Borough Council - [2006] EWHC 815 (Admin) Special policies can also not be used to justify rejecting applications except where directly relevant to the policy . . . and strictly necessary for the promotion of the licensing objectives.*)
- m) That the live music deregulation meant the premises could conduct licensable activity until 11pm and these events would cut off sooner anyway. The difference was in the audience number and the representation was regarding the nature of the entertainment and not the audience.
- n) The relationship between Wayne Tracey and Southside BID was a cooperative one and there wouldn't be additional events, the licence already in place was not heavily used.
- o) The application had more controls and conditions than the current one.
- p) WMP were happy with the application submitted by Wayne Tracey, they had requested a condition which they had no difficulty accepting.
- q) The email from Paul Samms made allegations of noise episodes in 2019, about the Arcadian generally. There were 4-5 instances over the course of a year.
- r) There had been no warnings or letters about the noise.
- s) Paul Samms also raised concerns about future residential blocks which had not been built yet. However, she pointed out that it wasn't the way Licensing worked. The application had to be determined at the time and then reviewed if problems occurred. It was not the case that applications could be refused due to prediction.

- t) Wayne Tracey was a very experienced and valued operation in Birmingham and had some iconic venues such as 'Snobs'. He was well respected by WMP and was highly experienced in terms of noise outbreak and patron management; he knew what was required to keep on top of licensed premises.
- u) Due to Covid it was important for Councils to take a pragmatic approach to give extra support to businesses getting back up and running at this difficult time.
- v) The application should be determined on its own merits and there was no need to give a blanket 'no'.

Paul Samms on behalf of Environmental Health made the following points: -

- a) The application was for the external area and was so 'Snobs' could have outdoor events if they wanted to.
- b) The disturbance to local residents was a concern. The noise and music would disturb them.
- c) He sent an email last week about the number of times officers had issues with noise from Arcadian and 'Snobs'.
- d) The noise was escaping from windows and in front of the premises.
- e) Those instances had not been fully investigated due to Covid.
- f) There had only been a few occasions of noise because the officers had only been out on those occasions. the noise from 'Snobs' was considered loud and intrusive.

Sarah Clover indicated via the Chat function that she had a legal point – the Chair permitted it.

Sarah Clover advised that Paul Samms had made a representation about the premises being in a CIZ and he was entitled to amplify his representation, however he then submitted random evidence about noise – he would not be permitted to give extensive detail about that as the applicant was entitled to know what would be said at the hearing in order to challenge the evidence. Mr Samms was going too far now.

Paul Samms advised that he would limit his points to the duplication - there had been no representations from the public, however sometimes residents didn't know how to object. He didn't think it was a good idea to accept the application.

The Chair invited Paul Samms to make a closing submission – however he confirmed he had nothing further to add. At this stage the Chair asked the application and/or their representative to make their closing submission.

In summing up, Sarah Clover on behalf of the applicant made the following points: -

- The application was nothing to do with 'Snobs' it was a free-standing application.
- There were only a small number of instances of noise break out in the area and it was a bogus point by Paul Samms that if they went out more, they would have witnessed more noise breakout. Similarly, his point about residents not knowing how to object – residents complained all the time and did know how to complain.
- It was a very small number of events and the hours were not late.
- The responsible authorities had control over this via the MAG/SAG meetings. Any issues and it could be reviewed which was the correct way of dealing with it.
- Paul Samms was asking the Committee to speculate, and this was a permissible regime.

Paul Samms wanted to make a point, but the Chair would not allow it at this stage in the meeting.

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: -

4/170820

RESOLVED:-

That the application by Nightscene Ltd for a premises licence in respect of Hurst Street @ Ladywell Walk, Part Pavement / Part Road of Hurst Street with Ladywell Walk, Southside, Birmingham, B5 4BN **BE GRANTED SUBJECT TO THOSE CONDITIONS AGREED IN ADVANCE OF THE MEETING, namely:**

- The premises licence holder will call a Multi Agency Group ('MAG') meeting at least 28 days in advance of any planned event or sooner by agreement with the responsible authorities. Attendees of the MAG meeting should include as a minimum representatives from West Midlands Police (BW Licensing), West Midlands Fire Service, First Aid provider, West Midlands Ambulance Service, BCC Highways dept, BCC Environmental Health and any other statutory body that could be affected by the event. The licence holder will also invite Southside BID and Birmingham Hippodrome to attend the MAG meeting.
 - The premise licence holder will call the MAG meeting set against the below criteria (whichever is the larger takes precedence):
 - o Event lasting less than 2 days or less – 3 months' notice
 - o More than 2 days but less than 7 days – 4 months' notice
 - o More than 7 days – 6 months' notice
- Or:
- o Event for less than 1000 people – 3 months' notice

Licensing Sub-Committee A – 17 August 2020.

- o For 1000 but less than 5000 people – 4 months' notice
- o For 5000+ people – 6 months' notice
- Any other interested parties as identified by either the premise licence holder or any responsible authority will be invited to the meeting
- At least 7 days prior to the MAG meeting, the premise licence holder will send the first iteration of the event manual EMSP (or other terminology) to all responsible authorities (email details as contained within BCC Statement of Licensing Policy) and any interested party
- The EMSP (or other terminology) must detail control measures for the promotion of the licensing objectives, and as a minimum contain
 - o Site plans
 - o Hierarchy/control
 - o Definitions of roles and responsibilities
 - o Build and de-rig schedules
 - o Command and control plan
 - o Alcohol management plan
 - o Ingress and Egress plan
 - o Security and stewarding plan
 - o Incident management plan
 - o Evacuation plan
 - o Medical and vulnerability plan
 - o Noise management plan
 - o Site capacity plans (and individual units if plan indicates more than one structure)
 - o Major incident plan
 - o Search plan
 - o Waste management plan
 - o Public transport plan
 - o Trader information and food hygiene
 - o Fire detection and prevention plan
 - o Counter terrorism plan (restricted)
- The number and frequency of any meeting or the requirement for updated EMSP, will be determined through the MAG
- At least 28 days before the event the final iteration of the EMSP (or other terminology) will be signed off by those responsible authorities which were present at the MAG meetings
- Any changes to the EMSP after the 28 day deadline must be notified in writing to all MAG members, and if any MAG member deems the change to undermine any of the licensing objectives they retain the power to veto the amendments
- This veto to be done in writing with explanation, at which point the signed EMSP remains as the operating condition for the purposes of the premise licence
- If the amendments are agreed (written proof required from the MAG members) then the EMSP can be amended accordingly and this to become the new operating schedule for the purposes of the premise licence.
- The signed off EMSP will become the operating condition for that event and be a condition of the premise licence during its operation

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

Licensing Sub-Committee A – 17 August 2020.

After examining the operating schedule and proposed conditions in detail, the Sub-Committee found the applicant company to be suitable. The company director in particular, who is the operator of Snobs Nightclub and therefore a highly experienced person, inspired confidence.

Members carefully considered the representations made by other persons, but bore in mind that the Hurst Street/Arcadian Special Policy Area had been designated in order to prevent further cumulative impact relating to crime, disorder and antisocial behaviour; whilst the Sub-Committee heard some submissions from Environmental Health, the Members did not consider that there was any evidential or causal link to any risk of an increase in crime, disorder and antisocial behaviour. The Sub-Committee therefore resolved to grant the application.

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 application for a premises licence, the written representations received and the submissions made at the hearing by the applicant company via its legal adviser, and by those making representations.

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..

Please note, the meeting ended at 1110.