

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A
15 APRIL 2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 15 APRIL 2024 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair.

Councillors Mary Locke and Saddak Miah.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Katy Poole – Committee Services

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

1/150424 **NOTICE OF RECORDING/WEBCAST**

The Chair advised the meeting that the meeting would be webcast for live or subsequent broadcast via the Council's Public-1 microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/150424 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at the meeting. If a disclosable pecuniary interest was declared, a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they had been granted a dispensation.

If other registerable interests were declared, a Member may speak on the matter only if members of the public were allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it was a 'sensitive interest', Members did not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct was set out via <http://bit.ly/3WtGQnN>. This included, at Appendix 1, an interests flowchart which provided a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/150424 Apologies were submitted on behalf of Councillor Simon Morrall and Councillor Saddak Miah was the nominated substitute Member.

**LICENSING ACT 2003 – TEMPORARY EVENT NOTICE – COURTYARD AREAS
@ THE RAINBOW, 160 HIGH STREET, BORDESLEY, BIRMINGHAM, B12 0LD**

On Behalf of the Applicant

Savanna Courteney – Applicant's Solicitor
Nick Rendall – Applicant

On Behalf of Those Making Representations

Peter R Brown – Environmental Health (EH)

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The Chair introduced the Members and officers present and asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were made.

The Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. David Kennedy, Licensing Section, outlined the report.

At this stage the chair invited the applicant and his solicitor to make their presentation. The following points were made: -

- a) The application related to the provision of outdoor music entertainment in the courtyard. The existing licence restricted the use of music in the courtyard from 9:00pm, a condition that had been imposed on the licence voluntarily.
- b) The applicant took over the site in 2021. Prior to that, the site had a history of complaints associated with poor management on the part of the previous tenant. Since the applicant took over the site, there had been no significant incidences and complaints.
- c) The applicant had invested a significant amount in restoring The Rainbow.
- d) The Rainbow Pub had been conferred an award, the 'Best Live Music Venue Under 500 Capacity'. It was also a finalist in the British Pub of the Year awards.
- e) The Rainbow Pub was enjoyed by thousands of customers and was a cultural hub and had worked closely with Arts Council England to help deliver creative and cultural experiences to many people.
- f) The current licence permitted live music indoors between 8:00pm and 11:00pm without seeking authorisation.

- g) In February 2024, the applicant applied for a similar Temporary Event Notice (TEN). No objections were received. No complaints or noise related issues were raised in connection with the March event.
- h) The Council's Licensing Policy recognised that proper account must be taken of the need to encourage and promote live music for the wider cultural benefit of communities.
- i) The applicant was fully aware of his duties and had been on site since 2021 running successful operations. The applicant was an experienced operator with other operating sites in the area.

The Members asked questions and the solicitor, as well as the applicant, gave the following responses: -

- a) The courtyard was at the rear of the pub adjacent to Adderley Street.
- b) There was one apartment in the building next door, but no person resided there.
- c) A complaint that was raised in December 2023 was never substantiated and no other complaint had been raised after that.

At this stage the chair invited Peter Brown -Environmental Health to make representations. The following points were made: -

- a) A noise complaint had been raised in early December 2023 by a person who resided about 180 meters south of the pub. Subsequent communication with the complainant was not responded to or substantiated and no evidence was produced by the complainant.
- b) The Rainbow had come to the attention of the officer during a noise assessment related to a planning licence matter unconnected to The Rainbow.
- c) The decision to object was arrived at considering two pieces of guidance relating to noise nuisance. The Noise Council's Code of Practice on Environmental Noise Control at Concerts recommended 23:00pm as the curfew on outside music. The Institute of Acoustics Guide, which was not formally adopted, referenced that noise should not be audible between 23:00hrs and 07:00hrs.
- d) The existing licence by the applicant permitted live music permitted indoors.
- e) In the event of a noise nuisance, the officer may issue a noise abatement notice.
- f) There were no complaints against the applicant for the event that was held in March 2024. Environmental Health had not objected to this event.

- g) The applicant had an alternative location within the premises that could host live music events until 02:00pm.
- h) Large scale events with public interest rarely had inclusive time curfew. In the case of the Rainbow Pub, there was no wider public interest.

The Chair invited all parties to make brief closing submissions. Peter R Brown, EH, confirmed that he had nothing further to add other than that the application should be refused as there was no wider public interest.

The applicant and his solicitor made the following closing statements: -

- The application was meant to diversify and increase revenue streams. The additional capacity would generate the revenue required to cover operational costs.
- Roadworks in the area had affected several businesses in the area, and The Rainbow had endured a year and a half of revenue decline.
- There was no need for the Sub-Committee to attach significant weight to the unpublished guidance by the Institute of Acoustics.
- The pub was well run, and no substantive complaints had been received over the years.
- There was a noise management plan in place.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and a full written decision was sent to all parties as follows;

4/150424 **RESOLVED**

That, having considered the objection notice from the Environmental Health department of Birmingham City Council in respect of the temporary event notice, as submitted by Nicholas Rendall, the premises user, for an event to be held on 20th April 2024 – 21st April 2024 at Courtyard Areas @ The Rainbow, 160 High Street, Bordesley, Birmingham B12 0LD, this Sub-Committee determines that a Counter Notice is not issued under section 105 of the Licensing Act 2003, and therefore the event can take place subject to the following:

- all those conditions currently on the premises licence shall apply to the temporary event, save for the condition under Annex 2 (paragraph 2(d) of the conditions) that background music only shall be played after 9pm in the external courtyard/covered courtyard areas.

The Sub-Committee was of the opinion that the event should be allowed to proceed at the premises as there was insufficient evidence to suggest that the premises were related or connected to any public nuisance. It was also noted that there has been

no incident at the premises which would indicate that the premises could give rise to public nuisance; in this regard, the Sub-Committee paid particular attention to the fact that a very recent temporary event at the premises, held on 1st March 2024, had not created any complaint.

Although some evidence was presented by an officer of the Environmental Health department of the City Council, it did not relate directly to the venue or the premises user, or not to any extent that could cause the Members to accept that there was a likelihood that significant public nuisance would arise in connection with the event.

Whilst there were some residential properties nearby, the officer mentioned that a new residential development was planned, which was not relevant to the instant matter. The Members therefore disregarded it. The Rainbow had come to the attention of the officer as a result of a noise assessment relating to a planning application for a “completely unconnected matter”; the Members did not feel this was of relevance either.

One complaint about The Rainbow had been received in December 2023, but there had been no complaints over the Christmas period, nor any over New Year. The person who had complained had not objected to the temporary event that had taken place in early March, even though the officer had directly contacted him to let him know that the event was going ahead, and had asked the person to confirm whether it affected him. The Sub-Committee noted that nothing at all had been heard from the person since December 2023.

The officer confirmed that a 9pm curfew for outdoor music was “notable by its presence” on the licence as it was an unusual condition, and he acknowledged that the deregulation permissions allowed live music up till 11pm. The Sub-Committee noted the submission by the officer that he had the ability to take action under the Environmental Protection Act 1990, namely *via* a noise abatement notice, should any noise nuisance occur.

The officer confirmed that the department had not had any problems with The Rainbow, and moreover he did not dispute that it had been a well-run premises in recent times. The decision by Environmental Health not to object to the temporary event on 1st March 2024 had been made on a “see what happens” basis, he said.

The 1st March event had gone ahead and there were no complaints received about it. The officer therefore accepted that the event had not caused a problem. Nevertheless, regarding the proposed event, the officer had decided to submit an objection, and in so doing had relied upon two pieces of guidance relating to noise nuisance. However, the Members noted that neither of these documents were official guidance, and they were therefore not minded to place any reliance on them.

In summing up, the officer stated that his principal argument was that he thought the hours requested were too late. He confirmed that The Rainbow was a well-run establishment, and stressed that the objection was simply because he and his colleagues felt that an event until 2am would be audible, whether people complained or not, and felt that it was “just too late where there is no wider public interest”. However, the Sub-Committee was aware that the event in March 2024 had caused

no complaint, which strongly suggested that a repeat event could operate successfully.

The Sub-Committee also heard from the premises user via his representative. Following the Covid-19 pandemic, in order to try to “diversify and have a larger offering to the public”, the premises had divided the interior to create different events, some of which used the courtyard area. The indoor area was in use, but the operator wished to also use the courtyard. It had not been the original plan to use the courtyard space for live events, and certainly not for late night live events; the plan had simply been to use the courtyard as extra capacity. During the proposed temporary event, the downstairs venue would be in use as well as the courtyard.

The additional capacity would generate the revenue required to cover costs. Roadworks in the area had led to a lot of businesses closing down, and The Rainbow had endured a year and a half of revenue being significantly under target. The venue had been looking for ways to generate revenue, and one of the ways was to use the courtyard. Promoters had put on “early” events (i.e. not late at night), and had been successful, but there was demand for late events, and the premises was keen to host them as it needed the revenue. The Sub-Committee was sympathetic to this.

The representative noted that even the Environmental Health officer had commented that the premises was very well run. The premises user had “put an enormous amount of work into it”, she confirmed. The temporary event of the 1st of March, which had run to a late hour, had created no issues at all. The Sub-Committee was reassured by this, and noted that it was only one month since that event. Moreover, the representative confirmed that The Rainbow had a noise management plan which would remain in place for the event. The premises was happy to operate under the existing conditions, but simply asked that the condition requiring background-volume music after 9pm be lifted for this one-off temporary event. The Sub-Committee found this request to be reasonable.

The representative confirmed that The Rainbow had won an award for ‘Best Live Music Venue Under 500 Capacity’, and had been a finalist in the British Pub of the Year awards. She said that The Rainbow was enjoyed by thousands of customers and was a cultural hub, and had “worked closely with Arts Council England to help deliver creative and cultural experiences to as many people as possible”.

She reminded the Members that paragraph 20.8 of the City Council’s own Statement of Licensing Policy highlighted the fact that the City Council recognised that proper account must be taken of the need to encourage and promote live music for the wider cultural benefit of communities, and recommended that the potential for disturbance to neighbours should be carefully balanced with these wider benefits. The Sub-Committee noted this.

When deliberating, the Sub-Committee considered all submissions very carefully and bore in mind section 9.43 of the Guidance issued under s182 of the Act, which stated that any determination should be evidence-based and justified as being appropriate and proportionate for the promotion of the licensing objectives.

Although the Members carefully considered the submissions of Environmental Health, on the balance of probabilities the Sub Committee did not consider that the

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proposed event would undermine the public nuisance objective within the Act. The decision was a balancing exercise between the legitimate business interests of licence holders and the interests of the community, and on reflection the Members found the recent successful event (in March 2024) to be overwhelmingly persuasive that there was no substantial likelihood of a risk to the prevention of public nuisance objective.

The Members also considered that the premises user was a trustworthy person who had shown a desire to improve the operating style at The Rainbow – and had succeeded, as even Environmental Health had acknowledged that the venue was well-managed. The Members considered it likely that he would operate in a style which would not disturb local people or create a risk to the promotion of the licensing objectives.

The Sub-Committee has had regard to the evidence, argument and submissions placed before it, in addition to the Report, the Guidance issued by the Secretary of State under section 182 of the Act, 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.

The Meeting ended at 1243 hours.

Chair.....