

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD
ON WEDNESDAY 28 FEBRUARY 2024 AT 1200 HOURS AS AN ON-LINE
MEETING.**

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Julien Pritchard and Penny Wagg.

ALSO PRESENT

David Kennedy – Licensing Section
Andrew Evans – Legal Services
Katy Poole – Committee Services

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

8/280224 **NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I 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.

9/280224 **DECLARATION OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are 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 is a 'sensitive interest', Members do 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 is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

10/280224 Apologies were submitted on behalf of Councillor Bermingham and Councillor Pritchard was the nominated substitute Member.

LICENSING ACT 2003 – TEMPORARY EVENT NOTICE – YORK ROAD, KINGS HEATH, BIRMINGHAM, B14

On Behalf of the Applicant

Rachel Parkin – Marriage Celebrant

On Behalf of Those Making Representations

Mark Swallow – West Midlands Police (WMP)

* * *

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

At this stage, 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 asked the applicant to make her representation, Rachel Parkin made the following points: -

- a) That she had applied for the Temporary Event Notice (TEN) as she became aware she needed permission to conduct any kind of activity on the pavement.
- b) The reason for the TEN was due to a client whom wanted to exchange vows on the road, a special place where they got engaged on York Road.
- c) There had been other events on the road such as Pride and Street Fest and the Artisan Market, all of which were held without issues.
- d) She was doing everything to make sure she was going through the right channels.
- e) WMP had had an objection due to the highways permission not being applied for. She had not made that application and was waiting for the outcome.
- f) She hoped that the application would be granted and that WMP would withdraw their objection.

- g) She had canvassed local residents and businesses and they were firmly in favour of the application.

Members asked questions and Rachel Parkin gave the following responses: -

- a) She canvassed all residents and businesses on York Road and Waterloo Road – distributing letters to all residents and emails to all businesses.
- b) The number of guests invited to the wedding at the café would be 80, but she had applied for 499 on York Road as she expected people would be out on York Road on that Saturday evening. Only 80 people would be designated wedding guests.
- c) The event would be outside Fletchers bar on York Road, there is an area of empty land where the advertising boards are situated – it would be on the road there.
- d) The rostrum would be roughly 3x2m and would just be small stage blocks – not a big structure.

The Chair invited the objector to make their presentation, Mark Swallow, on behalf of WMP made the following points: -

- a) The application was made by Rachel Parkin, a wedding celebrant.
- b) The application was for a ceremony of the exchange of vows on York Road.
- c) After WMP received the application they requested further information from the applicant in order to ensure the application promoted the Licensing Objectives in particular the promotion of public safety, they also requested the permission from Highway (which had not been applied for at the time of the objection).
- d) The applicant had made an application to Highways, however that had not been granted as yet and therefore WMP could not approve the application or withdraw their representation.
- e) The event would not be lawful without the Highways permission and therefore WMP could not support the application.

The Chair invited both parties to make a brief closing submission.

Mark Swallow of WMP summarised his points by requesting that the Committee refuse the application due to the relevant permissions and considerations not being in place which could not ensure that the public safety objective would be met.

Rachel Parkin summarised by advising that the relevant permissions had been applied for and she had submitted a risk assessment where full consideration had been given to public safety and she had also been in discussions with Matt

Powell regarding street wardens to ensure crowd safety. She had also considered emergency services having access to the road.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the short decision was announced at the meeting. A full written decision of the Sub-Committee was sent to all parties as follows;

11/280224 **RESOLVED:-**

That, having considered the objection notice from West Midlands Police in respect of the temporary event notice (“TEN”), as submitted by Rachel Parkin, the premises user, for an event to be held between 7pm and 8pm on 15th June 2024 at York Road, Kings Heath, Birmingham, B14 this Sub-Committee determines that a Counter Notice be issued under Section 105 of the Licensing Act 2003, and the application for a TEN thereby refused.

The reasons for the determination are as follows:

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 licensing policy

The TEN applied for seeks to licence part of York Road in Kings Heath for the provision of regulated entertainment for the purposes of a civil celebration between the hours of 7pm and 8pm on Saturday 15th June 2024. The Sub-Committee notes at the outset, and was pleased to see that this application was made in good time before the intended event and sought to ensure that appropriate licensing permission was in place for regulated entertainment. The premises, to the extent it is defined in the application, is a place comprised of the pedestrianised section of York Road at the crossroads of Kings Heath High Street along from the Hare and Hounds public house. As the result of a Traffic Restriction Order this place is part of a Low Traffic Neighbourhood. Vehicles are prevented from entering York Road from the High Street, but vehicles can enter through partial obstructions from the other end of York Road. This place is a section of public highway (pavement and carriageway) open to the public, along which there are a number of shops and licensed premises including the Kitchen Garden Café, where an earlier part of the celebration will take place, the aforementioned Hare and Hounds, Fletchers, Schooners and the Juke. Pedestrians and cyclists may travel freely along this section of the highway and vehicles are restricted by signage on an “access only” basis. The application identifies that there is an intention to establish the provision of regulated entertainment outdoors, outside of Fletchers Bar/Kitchen Garden Cafe for the purpose of the celebration with a rostrum. Numbers of attendees are expected to be around 80 for the official celebration party. It is anticipated in the application that members of the public will join the official celebration party from other licensed premises in the locality of York Road. There is a stated expectation that numbers will not exceed 499 persons. West-Midlands Police served an objection notice to the application primarily on the grounds of public safety because they were concerned about the use of the public highway at this place for any licensable activities absent permissions from

the Council to use the public highway. In the hearing today the Police also identified that holding an event on the public highway absent permission from the Council's Highways Authority may amount to obstruction of the highway which is a criminal offence.

Ms Parkin, the Applicant, informed the Sub-Committee that she had, in light of the Police's concerns, recently submitted applications to close the public highway at the relevant time, and for permission for a street party, to the relevant sections of the Council. She also stated that an initial risk assessment had been completed in support of those applications, that safety wardens would be on duty to assist in the management of the event, and that the application enjoyed the support of local businesses and their representatives.

The Police today maintained their representation against the grant of the TEN so long as the necessary permissions as to closure of the highway and for a street party had not been secured by the Applicant. The Sub-Committee kept in mind that the Police are its main source of advice on crime and disorder issues and balanced this against what Ms Parkin told them in support of the application.

The question for the Sub-Committee today, on the information and representations put before it, is whether granting the TEN at this time would undermine the licensing objectives, in particular the public safety and/or the prevention of crime and disorder licensing objectives. The Sub-Committee considers that both objectives in the Act are engaged by the application and the Police's representation at this time. The Sub-Committee also noted that there is no background premises licence in place so it is not open to it to impose conditions on any grant of this application for a TEN.

The Sub-Committee identified that the use of this place has not yet been sanctioned by the Highways Authority in that there is no agreement in place to close the public highway in question, or for a street party. This raises significant safety concerns because cyclists and vehicles may still lawfully enter the premises in question during the proposed celebration and provision of regulated entertainment. Although the risk of an accident or incident may be low in relative terms the risk of harm is high, and overall the public safety licensing objective would be undermined by granting the application at this time.

There remains obvious potential however for any outstanding safety concerns to be adequately risk assessed, thought through and planned for through the process and finalisation of other permissions that are currently being sought. The Sub-Committee recognised that its existing concerns may come to be adequately addressed at some point in the future.

The Sub-Committee was initially concerned by the potential for numbers to exceed 499 because the premises is open to the public whether passersby or patrons of the nearby licensed premises. The Sub-Committee was encouraged to hear that the intention is to utilise safety wardens but the plans to do so and the detail has yet to be agreed through the risk assessment and with the Police in respect of the outstanding applications to other departments of the Council.

At the present time, in the absence of a road closure and a street party permission, and any clear and finalised plans to prevent people coming into conflict with vehicles or manage the risk of crowds, the Sub-Committee reluctantly concluded that the application ought to be refused on public safety grounds.

The Sub-Committee was also concerned that the proposal for this event as it stands could amount to obstructing the public highway, which is a criminal

offence. On this basis, the prevention of crime and disorder licensing objective is engaged and may also be undermined by the current proposal.

The Sub-Committee determines at this time on the application and representations before it to refuse the application and issue a Counter Notice. The Sub-Committee has reached this conclusion reluctantly given the nature of the proposed event and the efforts Ms Parkin has made to date to ensure regulatory compliance. In her representations Ms Parkin referenced other successful licensed events that have taken place in or around the place in question but the Sub-Committee anticipates that those applications for licensing permissions, whether by TENs or applications for premises licenses proceeded after other necessary permissions had been obtained to permit the lawful use of the public highway and/or for street parties, and with the benefit of clear agreed plans with the Police to promote the licensing objectives including public safety. The application before the Sub-Committee today has not yet reached that state of preparation and preparedness, and has to be refused with the issuing of a Counter Notice. To do is appropriate and proportionate weighing up all relevant considerations.

The Applicant is reminded that this refusal of a TEN is without prejudice to her right to issue a further application after she has obtained any necessary permissions for highway closure and a street party to the relevant departments of the Council, such further application for a TEN to be determined on its merits at that time.

All parties are also reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against this 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 1225 hours.

CHAIR.....