

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 12 OCTOBER 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 12 OCTOBER 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Philip Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp.

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

- 1/121020 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.

2/121020 **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

- 3/121020 No apologies were submitted.
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MINUTES

4/121020 The Minutes of meeting held on 7th September September 2020 were circulated, confirmed and signed by the Chairman.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – FLAMINGO CAFÉ & RESTAURANT, 104 VILLA ROAD, LOZELLS, BIRMINGHAM, B19 1NN

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

(See document No. 1)

On Behalf of the Applicant

Duncan Craig – Barrister, Citadel Chambers
Samsom Kahsay – Applicant

Those Making Representations

Councillor Zaffar – Local Ward Councillor.
Mohammed Ali – Resident

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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. At this stage Duncan Craig confirmed that he had sent some supporting documents and wanted to be sure that the Committee had received them.

The Chairman confirmed that the supporting documents had been received and read by all three Members.

Cllr Zaffar interjected and queried whether the documents submitted by Mr Craig were within the statutory time frames, the Licensing Officer, Bhapinder Nandhra advised Cllr Zaffar that the procedural rules were 'best practice' only and not statutory, therefore Mr Craig had acted within the rules and procedures.

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 or their representative to outline their application, at this stage Mr Craig made the following points: -

- a) That the supplementary documents were served at that time as Mr Craig was making efforts to contact the two Councillors who had made representations. He rang Cllr Zaffar's office on Tuesday and sent numerous emails, unfortunately he never received any response.

- b) The representation from Cllr Zaffar was based on misapprehension and misunderstanding of the application and the circumstances behind it.
- c) Within the framework of the Section 182 Guidance it was encouraged for parties to enter dialog so issues can be narrowed down and in order that matters may be resolved.
- d) The local Cllr did not take the opportunity to discuss matters with himself or his client and he was unsure why in Cllr Zaffar's mind it was not appropriate or necessary to engage with the applicant.
- e) Efforts were also made to speak with Cllr Hussain who had also made representations, however Cllr Hussain was hesitant to speak with him and even suggested that it wasn't appropriate to speak with Mr Craig. Therefore, an email was sent to Cllr Hussain, given that he was uncomfortable engaging with Mr Craig, copied into the email was BCC's Licensing team. The email was at page 3 of the supporting documents.
- f) That he based his practice on collaboration and discussion, as it was normally the case that progress could be made.
- g) That in future perhaps both Cllr's would consider engaging as it would assist the Members making the decision but also may assist the process and their constituents as well.
- h) The applicant already held a premises licence on Villa Road and given the discussions with WMP (West Midlands Police) the hours applied for on this licence were less than the current licence.
- i) The new site needed some work which had already started, and the building was much more pleasing than the current one.
- j) The applicant didn't want to operate the other business and that's why Mr Craig proposed another condition to hopefully bring a degree of comfort to the Committee. The condition proposed was that if the new licence was granted, no licensable activity could take place until the other licence was suspended.
- k) That many of the conditions were duplicated and there would be no need to have two sets of conditions on the same points.
- l) The conditions that had been copied from the existing licence with the further condition of SIA door staff should be included.
- m) The conditions comprehensively mitigated any concerns and in a more robust fashion than the existing licence – the police conditions should be adopted into the premises licence if the Committee were minded to grant the application.

Licensing Sub-Committee A – 12 October 2020.

- n) The conditions about deliveries only during the day time needed to be considered as he wasn't sure it was sufficiently precise and might be better to stipulate hours to ensure it was enforceable.
- o) There were also two conditions about waste and therefore the Committee should impose the one that is more onerous on the business.
- p) The objection from Cllr Zaffar was dated 20th September after the email from WMP representative Mark Swallow which was dated 4th September. Cllr Zaffar stated that WMP said there should never be the sale of alcohol from the premises, however, that was clearly at odds with WMP as they had agreed conditions for the licence to be granted.
- q) Cllr Zaffar also referred to the Bulls Head which was shut down 12 years ago. It was a long time ago and ultimately lots of premises had their licences revoked and then new applications submitted and granted. It wasn't buildings that were bad but the individuals who ran them. It was irrelevant.
- r) There were no indications of issues with crime and disorder at the current premises and this premises would be run by the same licence holder.
- s) The reference about stabbings was also not relevant to the application.
- t) In terms of the parking situation it was not relevant to the promotion of the licensing objectives and there was no evidence that granting the licence would change the parking situation.
- u) The reference to another revocation of a premises on Baker Street was not relevant as all applications should be dealt with on their own merits.
- v) Much of the representation was based on speculation.
- w) Cllr Hussain was said to have received many representations from nearby residents yet none of them made representations individually and therefore, Mr Craig questioned the strength of the resident's concerns.
- x) That he wasn't a huge fan of petitions, and only submitted one because his client had gone to the trouble of getting one. Petitions were of limited value and had a huge number of question marks in terms of the provenance of the signatures and therefore he expected the Committee to attach the appropriate weight to them and consider what he had said about it.
- y) He hoped he had reassured those with concerns that there simply wouldn't be any further licensable activity until the existing licence was suspended. And the licence, if granted, would have more robust conditions and the endorsement of WMP and EH.

In answer to questions from Members Duncan Craig, on behalf of the applicant made the following points: -

- a) That the premises had all Covid mitigation measures in place and if they weren't complying then he expected WMP or EH to be proactive.
- b) That training was dealt with at page 33.
- c) The new premises was larger than the existing one, but that was good with Covid and social distancing.
- d) The rear area would be for smoking.
- e) That WMP were content with the application.

Members asked further questions which were answered by the applicant, Mr Kahsay: -

- a) That it was a family run business. His 2 brothers and his wife worked at the premises.
- b) The new shop was a bit wider but it was a nicer premises.

At this stage Cllr Zaffar was invited to make his representation. Cllr Zaffar made the following points: -

- a) That Mr Craig had been disingenuous by saying that there had been a lack of communication as there had been discussions between himself and the applicant.
- b) Therefore, Mr Craig painting a picture that local Councillors were not bothered was largely unfair. Mr Craig had made assumptions that he had not been in conversations with WMP, when he had been in communication with WMP and the local police team over the application. The position of WMP was clear however the local police team were in a very different place. The same officers were involved in the Bulls Head 12 years ago and they were campaigning to get the building closed.
- c) 12 years was a long time ago, however there were still major challenges in Villa Road.
- d) WMP had allocated extra resources to the local police team.
- e) There had been an illegal club operating in Villa Road, which had no link to the application but there were still significant issues.
- f) An incident took place last week just yards away from the premises, it was very serious, and the police were seeking evidence on it.
- g) The Bulls Head revocation was very serious.
- h) There was also an unresolved murder across the road as well as drug issues and gang issues.

Licensing Sub-Committee A – 12 October 2020.

- i) The Observatory pub was also located 50-100 yards from the premises and that had its licence revoked.
- j) That he welcomed the applicant making investment in a bigger premises, along with creating jobs – he considered himself to be ‘pro business’.
- k) His concern was the alcohol licence itself. The Observatory pub down the road couldn’t meet the demand and issues were then spilling out onto the street. Once people hear that the Bulls Head is reopening it would create serious challenges.
- l) That the comments Mr Craig made about the petition were concerning and demeaning of residents. The residents signed the petition because they were deeply concerned that should the licence be granted it would significantly impact their quality of life.
- m) There were also concerns over parking illegally. This was very much the case with the previous licence that was in place at the premises.
- n) That painting a picture that WMP were entirely behind the application would be unfair.
- o) He was making a plea on behalf of residents and granting the licence at the property with previous issues would be unfair and setting them back.

Mr Ali was then invited to make his submission and made the following points: -

- a) He had been a resident in Lozells all his life and lived close to the premises. He had experienced people robbing children, urinating on properties and the road was a ‘no go zone’.
- b) He found it demeaning that Mr Craig did not accept the petition as it was accepted by government and he didn’t get the sense that Mr Craig had any understanding of what residents were feeling.
- c) The premises was located near gangs and people drug dealing.
- d) That if Mr Craig wanted evidence he had plenty of CCTV footage of the issues.
- e) There was already parking issues and people obstructing driveways, the granting of the licence would only make that worse.
- f) That a nearby road was a bottleneck and he was worried the premises would only make the issues worse; causing further accidents, damage to properties and ASB (anti-social behaviour).
- g) That it would be in public interest to postpone activities at premises under government guidance changed.

Licensing Sub-Committee A – 12 October 2020.

The Chairman invited Members to ask questions to Cllr Zaffar and Mr Ali. They gave the following responses: -

- a) Cllr Zaffar advised that the conversations he had with WMP local officers and neighbourhood teams indicated that they had concerns. Lozells was already a priority area for them. Licensing police team had gone away and done a back-door deal with the applicant. If the Committee grant the licence it would make the police position difficult.
- b) That he had a family business on the corner of Villa Road and remembers as a child he wasn't allowed to go to the business by walking as it wasn't safe.

In summing up Cllr Zaffar made the following points: -

- That he was making a plea on behalf of his constituents and community activists who worked hard to make the area a better place for residents and others.
- That by granting the licence with the history of the Bulls Head the Committee would be making the local police teams' job harder.
- It was a bigger premises and therefore would attract a lot more people.
- That he wanted Villa Road to return to the brilliant environment it was years ago.
- He pleaded with the Committee to reject the application and keep the Bulls Head closed.

In summing up Mr Ali made the following points: -

- That his main issue was the parking, the premises couldn't accommodate parking for clients.
- The police didn't have the resources to manage the premises and the further problems that would arise.
- The applicant wasn't prepared to deal with the increased public safety issue.
- The licence should be refused in order to promote public safety.

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

- That Cllr Zaffar was out of order saying he was disingenuous and to suggest that he would mislead a hearing and what that would entail for his reputation was laughable.

Licensing Sub-Committee A – 12 October 2020.

- He was not aware that his client had spoken with Cllr Zaffar and maybe if Cllr Zaffar had responded to his email that could have been discussed.
- Cllr Zaffar had not referenced why he didn't contact Mr Craig.
- That Cllr Zaffar suggested that WMP had done a back-door deal – he wasn't sure what Cllr Zaffar was implying in terms of WMP. He was also saying he needed to protect WMP as they couldn't make rational decisions themselves, however Mr Craig stated that they were great officers who were highly capable of making a decision on the application and were the Committee's main source of advice when it came to crime and disorder.
- That the comments about petitions that Mr Craig made were in general terms and included his client's petition as well.
- That residents hadn't made personal representations or attended the hearing.
- The application involved the surrender of the existing licence. The licence would have more stringent conditions, better management and mitigation measures in place. For all those reasons Mr Craig invited the Committee to grant the application.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the Teams 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: -

5/121020

RESOLVED:-

That the application by Samsom Kahsay for a premises licence in respect of Flamingo Café and Restaurant, 104 Villa Road, Lozells, Birmingham B19 1NN, **BE GRANTED** with the terminal hour for licensable activities from Sunday to Thursday to be 23.00, and on Friday and Saturday to be 01.00.

It shall be a condition of the licence that the premises shall not undertake licensable activities until the premises licence for 83 Villa Road (**Licence number 5015**) is surrendered.

The relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued, together with those conditions as agreed with West Midlands Police and with Environmental Health in advance of the meeting, as follows:

- The Premises Licence Holder shall install and maintain CCTV inside and outside the premises
- CCTV will be recording at all times the premises are open for any

licensable activities and images will be held for a minimum of 28 days and made available immediately on request by any of the Responsible Authorities

- The Premises License Holder will ensure that a trained member of staff will be on duty and be available to download the CCTV to any of the Responsible Authorities
- Any person who appears drunk/aggressive will not be permitted on the premises
- SIA Supervisors will be appointed every Friday, Saturday from the hours of 23:00 until the premises close (being 1.00am Friday & Saturday as per the applicant's agreement to modify opening hours). Details of all SIA Supervisors will be kept in a register
- The Premises Licence Holder shall ensure floor staff will conduct physical sweep inside the premises to remove hazardous objects/waste as deemed necessary by the management
- The Designated Premises Supervisor is aware of their responsibilities to the staff and customers in respect of public safety and will take all reasonable steps to ensure the maintenance of all provided safety arrangements and equipment in accordance with the requirements of current installations
- All deliveries will be received between the hours of 08.00 and 18.00 to control noise nuisance
- Signs will be displayed on exits asking customers to leave quietly
- A refusal register will be maintained as well as an incident log
- The Designated Premises Supervisor and staff will at all times remain aware of their responsibilities under the objectives, including that alcohol shall not be sold to anyone under the age of 18. Staff on duty will be trained and made aware of a challenge 25 policy and the requirements, and the need to demand an acceptable form of age ID
- No adult entertainment is permitted at these premises
- All members of staff must receive training regarding the: four licensing objectives contained in the Licensing Act 2003; responsible retailing of alcohol, and the law; protection of children from harm (and this must include how to competently check customers' identification where necessary); authorised hours for licensable activities and the conditions attached to the premises licence. All training provided to staff will be recorded and each member of staff will sign and date the training records to confirm they have received and understood the training and ongoing refresher training every six months. The staff training records will be maintained at the premises and made available to any Responsible Authority upon request
- To avoid nuisance being caused to neighbours the DPS, or other nominated person/staff, shall monitor the external areas of the premises after 23:00 hours, including the frontage onto Villa Road. If necessary, they shall remind customers to be respectful of neighbours and where necessary they shall limit the number of customers going outside to use the smoking area, and take appropriate steps to avoid customers who use the frontage of the

premises causing a nuisance

- All external doors and windows shall be kept closed except as necessary for safe and effective access and egress
- There shall be no live music or amplified music, speech or sound other than background music, and any such background music shall be inaudible outside the building
- The DPS shall, within 3 months of the date of issue of this licence, submit in writing a noise management plan to the Environmental Protection Unit of Birmingham City Council. The noise management plan shall outline the measures to be adopted to reduce the noise impact of activities associated with the premises including deliveries, recycling and refuse collections, smoking areas, customers and taxi pick up. The noise management plan shall be updated regularly and all staff shall be adequately trained in their role in implementing the plan
- No waste or recyclable material, including bottles, shall be moved, removed or placed in areas outside the premises building between the hours of 22.00 and 08.00
- No drinks shall be removed from the premises
- Patrons shall not remove from the premises any late night refreshment provided at the premises
- The premises shall have an approved documented dispersal policy (approval needed in writing from the Environmental Protection Unit of Birmingham City Council), which shall be implemented for dispersal at all times the premises are open for licensable activity. The policy shall include the dispersal of customers exiting the premises away from nearby residential properties. The dispersal policy shall be reviewed periodically, or in the event of noise complaints relating to dispersal activities, and revised as necessary, and the revised policy shall be submitted in writing to the Environmental Protection Unit of Birmingham City Council for approval. All operational controls and management actions required by the approved dispersal policy shall be instigated at all times
- There shall be no speakers used for amplified music, speech or sound outside the building
- Protection of Children from Harm - the premises licence holder will implement and operate a Challenge 25 age verification policy to prevent the sale or supply of alcohol to persons under 18 years of age. A copy of the written age verification policy must be signed by all members of staff to confirm they have read and understand the policy and the signed copy must be maintained at the premises and made available for inspection by any Responsible Authority on request.
- The Premises Licence Holder shall ensure notices are displayed at all entrances and exits of the premises advising customers to have respect for the nearby residents and keep noise levels to a minimum as they depart.
- The outside area shall not to be used for any licensable activities outside of the hours of 10.00 - 23.00

Members carefully considered the representations made by other persons, but were not convinced that there was an evidential and causal link between the issues raised and the effect on the licensing objectives. Two of the objectors (one a Ward Councillor, the other a local resident), attended the meeting and addressed the Sub-Committee.

It appeared that their fears were based mainly on a previous operator, entirely unconnected to Mr Kahsay, who many years ago had operated a public house on the site until the licence was revoked in 2008. The Sub-Committee observed that the revocation of that licence had happened some twelve years ago; it was not relevant to the instant application and the Members therefore disregarded it. Similarly a discussion about “an illegal nightclub”, which the Ward Councillor said had recently been discovered nearby, was not relevant to an application for a café and restaurant premises. Other objections were speculative in nature – for example relating to potential parking difficulties.

The Sub Committee deliberated the operating schedule put forward by the applicant and the likely impact of the application, including the agreed conditions, and concluded that by granting this application, the four licensing objectives contained in the Act will be properly promoted. Mr Kahsay confirmed that it would be a family-run business. The old licence, for 83 Villa Road, would be surrendered before licensable activities began at 104 Villa Road. The Sub-Committee noted in particular that the hours were shorter than those at the old premises; it was therefore unlikely that there would be any adverse effect on the licensing objectives in granting the application. The agreed conditions had been suggested by West Midlands Police and were comprehensive; this was therefore sufficient to allay the fears of those making representations.

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 via his 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 1205.