

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A,
MONDAY 13 MAY, 2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY, 13 MAY, 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Julien Pritchard.

ALSO PRESENT

Bhapinder Nandhra – 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)

1/130523 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/130523 **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.

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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.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/130523 An apology was submitted on behalf of Councillor Simon Morrall. Councillor Julien Pritchard was the nominee Member.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – THE CUBE AND CARNIVAL CLUB, THE CUBE, UNITS 189-191, 193 (LEVEL 5) AND UNIT 196 (LEVEL 6), WHARFSIDE STREET, BIRMINGHAM, B1 1RN.

4/130523 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On Behalf of the Applicant

Sarah Clover – Barrister
Elliot Craven – DPS (Designated Premises Supervisor)
Edwards Mellors – Operator, Applicant Company

Those Making Representations

Sophie Laycock

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 Chair raised a procedural point and stated that 'The City Council has received a request from the objector at Appendix 5, who is not attending the meeting. He has asked that "the Committee initially consider my application to vacate today's hearing - and determination of the licensing application - pending the outcome of the determination of the connected application to the Council Planning Department for a Lawful Development Certificate in relation to the same premises". Secondly he asks that "the Committee consider all my e mail communications (of which there are many) with the Council Licensing Department and Council Licensing Committee and also with the Council Planning Department (and which all relate to the same premises) when determining that application to vacate - and if the application to vacate is refused – when also determining the licensing application".'

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The Committee had considered the requests outlined above, and the Committee determined that: -

- They were not able to vacate the hearing as Licensing and Planning were separate regimes.
- The Committee would consider the gentleman's relevant representations when making its decision.

The Chair also reminded all parties that it was normal practice for the Sub-Committee to read all paperwork carefully before the commencement of the meeting.

The Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present the report. Bhapinder Nandhra, Licensing Section, outlined the report.

The Chair then invited the applicant/representative to make their submission, Sarah Clover, Counsel on behalf of the applicant made the following points: -

- a) That the applicant had agreed to curtail the hours which had reassured 3 out of 5 of the objectors.
- b) Edward Mellors is the operator of the applicant company and Elliot Craven is the DPS.
- c) The reduction of hours would alleviate the concerns of residents.
- d) All the responsible authorities were content with the application, and it was particularly encouraging that Ms Laycock specifically identified that noise nuisance was not the nature of her concerns.
- e) The premises was not likely to give rise to noise concerns.
- f) The units had previously been operated as a bar.
- g) The concept was to mimic 'The Cube; TV show. People attended the venue to socialise and play in groups of 4, in teams of 2 whom played against each other. Alcohol and food were very much ancillary to the games – it was not the primary focus.
- h) It was a new international brand and was highly desirable. There were already other premises with the same concept in London, Liverpool and particularly Manchester, which was run by the same company with no issues or concerns. It was an expanding operation which centred itself on excellence and strict compliance with regulations.
- i) The demographic was there to play the games and then go home.
- j) There was no indication of trouble or conflict of the licensing objectives in the operations running elsewhere.

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- k) On page 25-27 of the agenda pack (published on CMIS) there were conditions presented by responsible authorities which were accepted by the applicant.
- l) The concept and premises did not need planning permission, it was already in the correct use class already.
- m) The applicant had requested confirmation from planning for a certificate of lawfulness, but it was not appropriate to delay proceedings.
- n) There was no objection from planning because they were happy and satisfied with the application.
- o) It was never taken lightly when residents had concerns and the reduction in hours was in response to those concerns.
- p) The solicitor offered residents the opportunity to go to Manchester and see the concept in action. It was not a rowdy type of establishment.
- q) The anti-social behaviour concerns were not really in line with what the application was about.
- r) Ms Clover commended the application to the Committee.
- s) The key take away points were that the responsible authorities had looked carefully at the application and were confident that it would not give rise to any breaches of the licensing objectives.

Members asked questions and Sarah Clover and Edward Mellors gave the following responses: -

- a) Ms Clover stated that the application originally sought hours beyond 2300 because there was no reason to curtail the hours to a certain time and the later hours were not usual for a City Centre location. The reason they were reduced was due to residents' feedback – it was a compromise.
- b) Edward Mellors added that they mirrored the hours applied for in Manchester when it was a proof-of-concept site, however they only usually operated until 2100 or 2200 hours at the latest during the week. They did not need the extra hours.
- c) They expected that the maximum footfall to be around 500 persons on a busy Saturday night.
- d) That there were no residents on the same levels as the premises – Level 5 was below ground with no windows and that was where most of the activity would take place. Level 6 was ground level. He believed that residential started at Level 8 or 9 going upwards.

The Chair then invited Sophie Laycock to make her submission, and she made the following points: -

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- a) Her concerns were in relation to the location of the premises. There were lots of homeless people walking around in the early hours begging for money. Many homeless people were also sleeping rough around the building.
- b) During the warmer evenings it was very lively around The Cube and there was a lot of alcohol consumption. Homeless people tended to have difficulties with alcohol or drug abuse and would hang around bars begging for money.
- c) She was anxious and apprehensive that up to 500 people could be attending the premises and it could provoke or encourage violence or crime.
- d) The bowling alley in the building seemed to work well despite her initial concerns.
- e) That she lived in the building and was accepting of noise as living in the City Centre meant that noise was a possibility.
- f) Much of the noise came from Marco Pierre White's restaurant. However, people who lived below her did get noise disturbance from the bowling alley.
- g) She was pleased to note that the hours had been reduced.
- h) Whilst she did not know what the outcome would be regarding the application, she wanted the Committee to know that she was anxious and apprehensive about it.
- i) That she supported new businesses and people enjoying themselves but if that caused nuisance, she was less sympathetic.
- j) That the venue sounded particularly large.
- k) She was concerned that people would get excited playing the games and that tended to result in people drinking more.
- l) The reduction in hours provided some reassurance but the volume of customers caused her anxiety.
- m) There was one of the largest homeless accommodation properties just outside the building and that needed to be taken into consideration.
- n) There was a premises that was attached to the hotel, which served coffee and also wine, it also had gym and spa facilities, but closed around 1900 hours. She did not recall it opening later than 1900 hours.

Members asked questions and Sophie Laycock responded: -

- a) That the issues regarding homelessness and drug taking had not been reported to police but she had spoke with other residents and they had expressed concerns to the West Midlands Mayor. Birmingham was trying to work on schemes to help it, but they had not seen any improvements.

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- b) That anti-social behaviour did occur inside The Cube. Homeless people were constantly walking in one end and out the other, it was like a corridor for them.
- c) The police around that area struggled.
- d) The one woman must have serious mental health issues as she could be heard screaming into the early hours.
- e) The residents in The Cube had a 'Whatsapp' group which they used to exchange any issues or concerns ranging from hot water problems to noise issues and any problems that arise regarding homelessness – in order that everyone was aware.

The Chair invited all parties to make a brief closing submission. Sophie Laycock made the following closing statements: -

- Her main concerns were safety and the safety of the environment surrounding The Cube given then large capacity of the venue itself. 500 people could potentially generate a lot of noise which would affect the residents.
- The issues around homelessness were a concern and this venue would have a large capacity of people for them to target.
- She had a lot of anxiety and apprehension about the application.
- She was extremely concerned about the amount of people, homelessness, and alcohol issues.

Ms Clover was then invited to make a closing submission on behalf of the applicant and as such, she made the following closing statements: -

- That they took residents concerns seriously and were committed to being a good neighbour. It would have been helpful for Ms Laycock to go to Manchester to see the other venue in operation.
- That people who were busy playing games generally did not drink more. The games had strict time limits and therefore that reduced drinking time.
- The venue was better than a vertical drinking establishment or a nightclub.
- That she believed Ms Laycocks representation was at Appendix 4 in the documents (available on CMIS) and noise nuisance had not been raised in that objection. It was also unfair for any objections to be raised in relation to other residents living on the 15/15th floor.
- If there was noise issues they could be raised through a review procedure.
- The Committee should not pre-empt issues and the correct approach was the grant the application; responsible authorities had raised no objections. The

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responsible authorities had identified a package of conditions which were agreed by the applicant and the Committee should take their recommendation as they are the experts. Ms Clover also drew the Committee's attention to the case of R (on the application of Daniel Thwaites plc) v Wirral Borough Magistrates' Court [2008] EWHC 838 (Admin), which emphasised the principles laid down by the Licensing Act 2003 and its accompanying guidance – namely that there should be light touch bureaucracy applied to applications and variations for licences, and that restrictions should only be attached to premises licences where they were necessary to promote the licensing objectives.

- The objection raised by Ms Laycock at Appendix 4 did not highlight concerns around homelessness and it was important to be clear on what was a concern to Ms Laycock. If there was a homeless unit close to The Cube, it was not surprising that they were walking back and forth through the area. The grant of a licence was not going to impact that, homelessness was not happening because of licences.
- That Counsel also reminded the Members that the Guidance issued under section 182 of the Act encouraged licensing decision makers to take into account the financial aspects. Financial issues were a relevant concern for the Sub-Committee in terms of policy and supporting the city economy, supporting recovery post-Covid and also dealing with the cost of living crisis. It was a good thing to encourage business into the units, especially a popular brand which would not cause any harm as a consequence. She requested that the Committee supported the application and Counsel recommended the application accordingly.

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;

5/130523

RESOLVED:-

That the application by Mellors Group U P No 3 Limited for a premises licence in respect of The Cube and Carnival Club, The Cube, Units 189-191, 193 (Level 5) and Unit 196 (Level 6), Wharfside Street, Birmingham B1 1RN, be granted subject to those amendments offered in advance of the meeting by the solicitor to the applicant company, namely that the standard timings for licensable activities shall be reduced to:

- 11:00 until 23:00 hours on Mondays to Saturdays and
- 11:00 until 22:00 on Sundays

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

The applicant company was represented at the meeting by counsel, who was accompanied by the solicitor to the company and others from the company. Three of the six persons who had made representations had withdrawn their representations in advance of the meeting; these persons were shown at

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appendices 1 to 3. One of the remaining persons who had maintained representations against the application attended to address the Sub-Committee in person. Her representation was at appendix 4.

At the start of the meeting the Chair raised a procedural point relating to the person making representations in writing at appendix 5 of the Committee Report. The Chair announced that the City Council had received a request from that person, who was not attending the meeting in person. He had made two requests.

First, he asked that the Sub-Committee consider his application to vacate the hearing and postpone the determination of the application pending the outcome of the determination of an application to the City Council Planning department, for a Lawful Development Certificate in relation to the same premises.

Secondly, he asked that the Sub-Committee consider “consider all my e mail communications (of which there are many) with the Council Licensing Department and Council Licensing Committee and also with the Council Planning Department (and which all relate to the same premises) when determining that application to vacate - and if the application to vacate is refused – when also determining the licensing application”.

The Chair explained that the Sub-Committee was not able to vacate the hearing as Licensing and Planning are entirely separate regimes, but confirmed that the Sub-Committee would take into account the gentleman’s relevant representations when making its decision. The meeting then began as usual.

The Sub-Committee heard from counsel for the applicant. She noted that the curtailment of the hours sought had reassured three out of the six objectors. The responsible authorities were all satisfied. The Police had checked the CCTV provision and were content with it.

There had been no concerns expressed by Environmental Health as far as any public nuisance issue might be concerned, and moreover the objector at appendix 4 had specifically identified that noise nuisance was not the problem. Counsel observed that the style of operation was not likely to give rise to any noise nuisance at all.

The units had been taken on to create an innovative concept which mimicked the television show ‘The Cube’, involving the playing of interactive games, such as escape rooms and Formula One. Patrons would attend to socialise, and play skill games in teams of four against each other. It was not in any way an alcohol-led concept or entertainment; the alcohol and the food provision were very much ancillary to the main purpose of playing games.

The applicant company was an international brand. The company had already opened a branch in Manchester, which was very successful and was trading without problems; now it had chosen Birmingham to have one of the concepts. The clientele was a high-end demographic, as there was of course a cost attached to playing the games. It was not an entertainment based around drinking, but playing games.

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The applicant company was a highly experienced operator. It offered different concepts and hospitality venues all around the world in locations such as Dubai, Kuwait, London, Liverpool, Nottingham and Manchester. A new concept would be opening in Canary Wharf shortly. It was an expanding operation, and was doing so with a history of excellence and strict compliance with regulatory requirements. There had been no issues with the responsible authorities at any of the locations, and no negative feedback.

Counsel confirmed that there had been no issues in upholding the licensing objectives at the company's venues elsewhere. She asked the Members to examine the operating schedule with all the conditions which had been presented to the responsible authorities and accepted as suitable by them. The Sub-Committee found all to be in order.

Regarding the suggestion of Planning issues which had been made by one objector, counsel observed that the concept did not in fact need planning permission. The premises had the permission that it required and in the correct use class; there was no change of use, as suggested by that objector.

The applicant company had submitted an application for a certificate of lawfulness, as confirmation that what was required was already in place. Counsel agreed that it would not have been correct to delay the meeting, as requested by the objector; she remarked that there had been no breach of planning control and no feedback from the Planning department. The Sub-Committee noted this.

The company acknowledged that it was of concern when residents gave feedback that they might be agitated by an incoming licence; the company did not take this lightly. The solicitor to the company had dealt with the objections carefully, and as a result had offered the reduction in hours. This had placated three of the six residents who had made representations.

The solicitors had also offered to enable the residents to go up to the Manchester branch to actually see The Cube and Carnival Club in operation with the games, and to see what kind of an evening out it was. Counsel was confident that this would allay concerns that the operating style was not a rowdy drinking type of environment at all. She said that the concerns about antisocial behaviour as a result of alcohol consumption were really not commensurate with what was planned for the venue. The Sub-Committee noted this.

Members asked why the original application had proposed later opening. Counsel replied that the original hours requested were not unusual hours for any city centre location, and that the applicant company's solicitors would typically request such hours. The residents in the instant matter had put forward representations; their comments had been taken on board and the operating times reduced accordingly. The director added that at Urban Playground Manchester, the company also operated to 21.30 or 22.00 hours.

Regarding deliveries and waste, The Cube building had its own loading bay underground and its own policies. The applicant company would fit into the building management's arrangements. When the venue was particularly busy, the expected footfall on a typical night would be around 500 people, but the director clarified that that would be a very busy Saturday.

The venue was situated at level 5 and level 6 of the building. Members asked where the residential apartment area was, in relation to the premises. The director explained that level 5 was below ground with no windows, and that was where the main activity would be; level 6 was effectively ground level. He thought that residents and the hotel were probably at floors 8 or 9, going upwards. The Sub-Committee noted this.

The Sub-Committee was aware that, under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk to the promotion of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact have an adverse effect on the licensing objectives.

The person who had made representations at appendix 4 addressed the meeting to explain that a large homeless facility was situated very nearby, and as a result begging was a problem in the area, especially in the early hours of the morning, together with numbers of homeless people sleeping rough around the building.

She remarked that there were numerous bars and restaurants in the vicinity, and therefore alcohol consumption. She had observed homeless people hanging around outside the bars and begging. She was therefore anxious and apprehensive at the thought that if perhaps 500 people were in attendance, it could encourage violence or crime.

She acknowledged that the bowling alley in the building seemed to work quite well, even though she had been apprehensive about that at the beginning. Regarding the reduction in the hours offered by the applicant company, she was pleased by this, but then said that she was anxious and apprehensive as it sounded like a huge venue. She was concerned that when playing games, competitive streaks and excitement could mean patrons drinking more alcohol. This caused her to feel apprehensive and anxious.

Regarding the hotel which had been mentioned, she confirmed that she had been living in the building for the last 10 years and there was not a bar, it was more of a coffee house for the gym and spa of the hotel which closed at around 19.00 hours. However, she then stated that it did serve wine. She stated that she herself was not unduly concerned about noise as she lived on a high floor, but asked the Sub-Committee to consider those living on lower floors.

Members asked if the instances of antisocial behaviour, homelessness and drug use had been reported to the police. The objector confirmed that they had not been reported to the police, but she had mentioned the issues in passing to the West Midlands Mayor. She confirmed that the issues were happening “right on our doorstep” and remarked, “I never understood why, it must be something to do with planning or with security”. She said that there were automatic opening doors on the bottom level and the homeless people “just walk constantly in and out, in and out. It's like a corridor for them”.

She summed up her concerns as being unsure whether “it was going to be a safe environment around The Cube and Carnival Club”, first because of the amount of people expected to attend the premises, which could create noise nuisance. Secondly, she felt that the expected numbers would be a lot of people for the beggars and homeless persons to target. She said that she felt apprehensive and anxious about it “because it is the unknown”. She was also worried about alcohol consumption and security at the building.

Whilst the Members appreciated the resident’s comments and understood that she had concerns, they felt that her worries were somewhat speculative. It was acknowledged that there was a homeless shelter nearby, and problem behaviours from those using that service; however, it was not at all clear how a well-run games-style entertainment premises would contribute to such problems.

The lady herself had described feeling “apprehensive and anxious” several times, yet careful examination of the operating schedule strongly suggested that these fears were likely to be groundless. The company was an experienced international operator and the style of offer was not likely to appeal to problem drinkers. The issues relating to homeless persons and beggars were preexisting complaints, yet the lady confirmed that they had not been reported to the Police.

Upon examining the relevant parts of the remaining representations in the Committee Report, the Members found that that these too were rather speculative in content, and observed that if they were to give weight to speculative opinions, they would fail to follow the Guidance issued under section 182 of the Act, and the City Council’s own Statement of Licensing Policy.

The Members were aware of the case of *R (on the application of Daniel Thwaites plc) v Wirral Borough Magistrates’ Court [2008] EWHC 838 (Admin)*, which emphasised the principles laid down by the Licensing Act 2003 and its accompanying guidance – namely that there should be light touch bureaucracy applied to applications and variations for licences, and that restrictions should only be attached to premises licences where they were necessary to promote the licensing objectives. The case also highlighted the fact that decisions on applications should be made on evidence, and not based on speculation. The Members therefore noted the additional conditions suggested by the objector at appendix 5, but did not consider that these were required to promote the licensing objectives.

Counsel had assured the Sub-Committee that the applicant company was very committed to being a good neighbour and has demonstrated that elsewhere. She questioned the suggestion that people playing games would become competitive and consequently drink more alcohol, remarking that the opposite was true, namely that people occupied in a game would not be going to the bar and drinking. She considered that this was the right operation for the location, better perhaps than a vertical drinking establishment or a nightclub. The Sub-Committee accepted this.

Counsel observed that noise nuisance had not been an issue for the resident who spoke in the meeting, even with an operation there like the bowling alley, which was analogous. Counsel added that noise would be confined to the basement

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area in any event. Counsel also reminded the Members that the resident could not raise objections on behalf of other people who had not attended, by asking the Sub-Committee to consider those on lower floors. The Sub-Committee accepted this and disregarded the request.

Counsel reminded the Members of the safety net provided by the Review procedure; if residents actually began to experience evidence-based problems, the issues could be dealt with when they arose. She observed that it was not appropriate in the licensing regime to be preemptive about things that had not been demonstrated to be a problem yet. The Sub-Committee agreed with this.

She noted that in the objection at appendix 4, the resident had not highlighted any homelessness problem. Leaving that aside, she remarked that given that there was a homeless facility in the locality, one could hardly be surprised if such people were moving backwards and forwards in the area. The Sub-Committee agreed with this, and considered that such issues were a matter for the building security, not individual operators.

She observed that the fact that the homelessness issue in the vicinity was not caused by the licensed operations, and would not be created if the instant application were to be granted. There was no correlation; the grant of a licence was not connected to such issues in terms of the licensing objectives. The Sub-Committee agreed with this.

Counsel also reminded the Members that the Guidance issued under section 182 of the Act encouraged licensing decision makers to take into account the financial aspects. Financial issues were a relevant concern for the Sub-Committee in terms of policy and supporting the city economy, supporting recovery post-Covid and also dealing with the cost of living crisis. She remarked that it was “a good thing” to encourage a responsible business, with a good track record and integrity, to come into the units and to establish a popular brand that would improve the local economy without causing any negative effect on the licensing objectives. The Sub-Committee agreed with this.

When deliberating, the Sub-Committee noted that the operating schedule had been drafted with consideration of the licensing objectives, and had been approved by the responsible authorities. Moreover, the hours had been reduced in response to residents’ concerns. This was reassuring. After careful consideration, the Sub-Committee determined that the application could safely be granted.

Members considered that by granting the application with the reduced hours, the four licensing objectives in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and noted that the relevant areas of concern had been satisfactorily addressed by adjustment of the hours. The application was therefore granted with the amended hours.

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 remaining written representations received, and the submissions made at the hearing by the counsel and those representing the applicant company, and by the resident who attended.

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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.

The meeting ended at 1052 hours.

Chair