

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A
26 JUNE 2023**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 26 JUNE 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Saddak Miah.

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)

8/260623 **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.

9/260623 **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

10/260623 Apologies were submitted on behalf of Councillor Simon Morrall and Councillor Saddak Miah was the nominated substitute Member.

LICENSING ACT 2003 – TEMPORARY EVENT NOTICE – CJ MORE, 143 HOCKLEY HILL, NEWTOWN, BIRMINGHAM, B18 5AN

On Behalf of the Applicant

Kerryn Seale – Applicant

On Behalf of Those Making Representations

Mark Swallow – West Midlands Police (WMP)

Martin Key – Environmental Health (EH)

* * *

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

Mark Swallow confirmed that he had formally withdrawn his representation. He stayed at the meeting in case Members had any questions.

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

At this stage the chair invited the applicant to make their presentation and Kerryn Seale made the following points: -

- a) That he was the Director of CJ More Limited. The address for the premises was incorrect, it should be 143 Hockley Hill.
- b) The location of the premises was near a dual carriage way and surrounded by commercial buildings.
- c) The distance from residents to the premises is 220 meters (the nearest residents). The petrol station was also on the roundabout.
- d) There were not any residents close by.
- e) That they were not a hinderance to the residential community.
- f) There were nightclubs in the area which were much closer to residents.
- g) He was a law-abiding citizen and for 3 years he hadn't held any events due to Covid 19.

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- h) It was a family business; he was also a builder and had made sure that sound was greatly reduced and would limit the sound inside the premises.
- i) He fed the homeless people on the street out of his own pocket.
- j) He did everything to help the community.
- k) It was his time for the business to flourish.
- l) 40% of all profits went back into the community.
- m) The application was for a 60th birthday party.

The Members asked questions and Kerry Seale gave the following responses: -

- a) The residents were around 220 meters away.
- b) They were surrounded by commercial properties.

At this stage the chair invited those making representations to make their presentation and Martin Key EH made the following points: -

- a) That he wanted to share his screen to show the area. (Martin Key shared his screen and showed the area to Members, particularly how close residential properties were).
- b) The nearest residential was a homeless shelter, only 77 meters away. With lots of other residential under 200 meters away.
- c) That the lateness of the application was the primary issue as there was no noise management in place.
- d) There was history with TEN's in Soho Road bar area with a 2am finish that caused issues with noise nuisance when they ended.
- e) There was no history with the premises and no information had been submitted with the application; no noise management plan, noise mitigation, management or any details of what type of noise the event could hold.
- f) There has been no contact from the applicant.
- g) There was no information submitted about access and egress, or how the smoking area would be managed.
- h) That his view was that the residential was too close and there is no noise mitigation submitted with the application. The application wouldn't uphold the licensing objectives and would cause nuisance, they requested that the application be refused.

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The Chair invited all parties to make a brief closing submission. Martin Key, EH, confirmed that he had nothing further to add other than that the application should be refused as there were insufficient controls offered and they had significant concerns over public nuisance.

The Chair then invited Kerryn Seale to make a closing submission, he made the following closing statements: -

- They had a no smoking policy at the venue.
- They had more security than what was recommended by the security firm.
- That he was constantly engaging with everyone to ensure the function ran well.
- He would be monitoring the situation at the venue.
- They were not a nuisance.
- Other premises played loud music that they could hear.
- They deserved a chance.
- He gave to the community and it was a 60th Birthday party.

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;

11/260623 **RESOLVED**

That, having considered the objection notice from Environmental Health in respect of the temporary event notice as submitted by Kerryn Seale, the premises user, for an event to be held on 30 June 2023 at CJ More, 145 Hockley Hill, Birmingham B18 5AN, 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.

The Sub-Committee is of the opinion that the event should be allowed to proceed at the premises as there is not sufficient evidence to suggest that the premises is related or connected to any public nuisance. It is also noted that there had been no incident at the premises which would indicate that the premises could give rise to public nuisance.

Although some evidence was presented by 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. Consequently the Sub-Committee, on the balance of probabilities, did not think the premises to be unsuitable for such an event.

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At the start of the meeting the Sub-Committee noted that West Midlands Police had attended as they had made representations relating to the prevention of crime and disorder objective. However, the Police immediately notified the Sub-Committee that they were withdrawing their representation because they had received satisfactory documents from the premises user over the weekend. The Sub-Committee therefore noted that the only representation against the temporary event was from Environmental Health.

The Sub-Committee heard first from Mr Kerry Seale, the premises user. He was the director of CJ More Ltd (the venue). He began by clarifying that the address of the premises was in fact 143A Hockley Hill. The Members noted this when viewing the maps which were in the Committee Report. Mr Seale had observed that the main point of concern which had been raised by Environmental Health related to the distance to the nearest residential properties in the area.

The premises user explained that the CJ More premises was situated by the busy dual carriageway leading to the Hockley Flyover, and was surrounded by commercial buildings; indeed it was in the middle of a block of industrial and commercial buildings. The premises user had measured the distance from the premises to the closest residence, and had found it to be 220 metres. He therefore took issue with the suggestion from Environmental Health in the Report, namely that the premises was 150 metres away from the closest residential properties.

He observed that the venue was 200 metres from the Hockley Circus roundabout, and more than 200 metres from the petrol station on the other roundabout. It was also a distance away from the branch of Tesco. He described the premises as “encircled by roads”, and stated that there was no residential property in close proximity. He further noted that on the road further up, towards the city, there were nightclub venues. The Members noted from the maps in the Report that much of the area was designated as commercial and/or industrial, with factories, a depot and several sites described as “works”. A school was located a further distance away.

The premises user queried why he should not be permitted to hold a temporary event, given that during the Covid-19 pandemic he had respected the law by closing the premises for almost three years. It was a family business operated by him and his wife and their two children. He was a builder by trade, and had ensured that the potential for noise nuisance at the venue was limited, via the flooring; he would also ensure that anyone using the premises for a function did not create noise nuisance from music (by limiting the volume of the music played). He had noted that when standing directly outside the site he “could hardly even hear the music inside”.

He was involved in the local community; he and his family had, for the past eight years, “been feeding the homeless people on the streets, out of [*their*] own pockets”. This had especially been the case during the pandemic. He remarked that they had been “doing everything that we could do to help the community”, and that this included youth projects and help for the elderly. He was keen to be able to host events in order that his business could start to flourish.

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The proposed event was to be a 60th birthday party. The guests would therefore not be restricted to young people, and in any event the premises user was very conscious of the need to be careful about who he allowed to come in to use the venue. He was keen that the premises should preserve its good name.

The Sub-Committee then heard from Environmental Health, who showed the Members the general location via Google Maps. A grey building on the opposite side of the road had recently been converted into a homeless shelter and was 77 metres from the CJ More venue. Thereafter, the nearest residential properties at the rear were on Barr Street, 95 metres away. Other residences were between 150 and 200 metres away.

The Environmental Health officer considered that premises around the area were best described as “mixed use”. He agreed that there were some licensed premises further towards the city centre, as the premises user had outlined, but noted that such premises were all controlled by premises licence conditions. The Sub-Committee was aware that the CJ More venue was not a licensed premises and therefore conditions could not be attached to any temporary event notice.

The officer noted that the site was an extension of an old factory, and was operated as a community use building. It had an external space. The hours for operation had been amended because the original application was for longer, but Environmental Health considered that the primary issue was the lateness of the hour, and the lack of any noise management measures in the application.

Environmental Health had received complaints about other (unrelated) premises in the area around Hockley Hill. Furthermore, last year, during the summer, they had experienced issues with temporary event notices within the Soho Hill/ Barr Street area. These had been linked to parties with finish times of 02.00 and 03.00 hours, which had created complaints about noise. However, the officer could find no history regarding the instant premises.

The officer remarked that he would have expected to see information about the form of entertainment, and also information about the management of noise. Whilst he had heard Mr Seale explain that he would control the volume himself, the officer stated that he considered that the buildings were “not particularly high quality in terms of noise mitigation”. They were single storey with a flat roof; the officer’s opinion was that they would have limited noise attenuation capacity.

As the officer had not been contacted by the premises user he had only been able to consider the application information in the Report, and on that basis, his view was that the location had residential housing nearby. The officer had also observed that there was no external area at the front of the building. There were no noise mitigation measures in the premises and, as it was not a licensed premises, no conditions could be attached to any temporary event notice. There had been no information in the application about access and egress, or people arriving and leaving (and managing the noise created); nor was there any detail about smoking and the use of the outside space.

All in all, the officer was concerned that insufficient controls had been offered. Therefore, the concern was that the temporary event would not uphold the licensing

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objective of the prevention of public nuisance. Environmental Health therefore recommended that a counter notice be issued.

In summing up, the premises user confirmed that there was a no smoking policy throughout the whole venue. The premises user declared that he had no intention whatsoever of hosting the style of function that could cause any disruption for anyone in the vicinity, remarking that a 60th birthday party would be “a decent event”. He would be careful to stipulate that patrons would have to accept that controls should be put in place, for example regarding security, and assured the Sub-Committee that he was constantly engaging, or would engage, with anyone, concerning the smooth running of the event. He would be at the site and would be monitoring the situation in the venue on the night of the event.

At the end of the meeting the Chairman recommended that the premises user should contact Environmental Health to discuss matters generally.

When deliberating, the Sub-Committee considered all submissions very carefully. The starting point was that there was no risk to the upholding of the crime prevention objective, as West Midlands Police had confirmed that all was in order and had withdrawn their representation.

Although the Sub-Committee carefully considered the submissions of Environmental Health, on the balance of probabilities the Sub Committee did not consider that the proposed event would undermine the public nuisance objective within the Act. Having viewed the location on Google Maps, the Members considered that the homeless accommodation across the road was separated from the premises by a dual carriageway leading to and from the Hockley Flyover; it was therefore some distance away. Moreover, traffic on this busy road would create noise of its own, and at all hours. Other residential property was much further away; the immediate neighbours were all commercial and industrial premises.

It therefore appeared to the Sub-Committee that there was no significant risk in allowing the holding of a 60th birthday party as a temporary event, regardless of the fact that there was no possibility of attaching conditions (as the venue was unlicensed); after all, such events were not normally associated with any significant likelihood of public nuisance.

The Members also considered that the premises user was a trustworthy person who had shown a genuine desire to be part of the community, and who would operate in a style which would not disturb local people in the Hockley Hill area. The Sub-Committee felt confident that he would contact Environmental Health after the meeting to discuss the proposed event, and would listen to their comments.

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

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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 1247 hours.

Chair.....