

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB - COMMITTEE C - 2 OCTOBER 2019</b>
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**MINUTES OF A MEETING OF  
LICENSING SUB-COMMITTEE C HELD  
ON WEDNESDAY 2 OCTOBER 2019  
AT 0930 HOURS IN COMMITTEE ROOM 1,  
COUNCIL HOUSE, BIRMINGHAM**

**PRESENT:** - Councillor Mike Leddy in the Chair;

Councillors Phil Davis and Neil Eustace.

**ALSO PRESENT:**

Chris Arundel (Drivers) Shaid Yasser (Temporary Event Notice) – Licensing Section  
Joanne Swampillai – Legal Services  
Katy Townshend – Committee Services.

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**NOTICE OF RECORDING**

01/021019 The Chairman advised the meeting that members of the press/public may record and take photographs except where there are confidential or exempt items.

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**DECLARATIONS OF INTERESTS**

02/021019 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the meeting. If a disclosable pecuniary interest are declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

03/021019 No apologies were submitted.

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**EXCLUSION OF THE PUBLIC**

04/021019 **RESOLVED:**

That in view of the nature of the business to be transacted, which includes exempt information of the category indicated, the public be now excluded from the meeting:-  
(Paragraphs 3 & 4)

05/021019

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**ANY OTHER URGENT BUSINESS**

To Consider any items of business by reason of special circumstances that in the opinion of the Chairman are matters of urgency. That the Temporary Event Notice be considered in order to meet statutory time frames.

**LICENSING ACT 2003 – TEMPORARY EVENT NOTICE – FLAMINGO CAFÉ 7 RESTAURANT, 81-83 VILLA ROAD, BIRMINGHAM, B19 1NH.**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See document No. 1)

The following persons attended the meeting.

**On behalf of the Applicant**

No one attended on behalf of the applicant.

**Those Making Representations**

Mr Martin Keys – Environmental Health (EH)

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The Chairman went through the procedure to be followed at the meeting. Shaid Yasser, Licensing Officer read the report.

Mr Martin Keys on behalf of EH made the following points: -

- a) The premises was located within retail shops with residents above.
- b) That there were other licensed premises locally, but nothing past midnight/ 0030 hours. The area was not a late-night activity area.
- c) That the premises previously had a TENs in 2017 and applied for premises licence at the end of 2018 which came before the Committee. In 2018 the premises had a change of use for A3 restaurant usage. EH had significant concerns and attached several conditions including restricting the house.
- d) That the premises was small but had no insulation for noise and he was not sure what separated the premises from the flats above it.

- e) That access and egress noise was a concern.
- f) That he had concerns that any regulated activity for a party could be noisy and the premises had no provisions for noise mitigation.
- g) That the premises also had the complication of 2 licences.
- h) That long list of conditions attached to the licence would be disregarded if the TEN was granted.
- i) There would be an overlap of hours.
- j) That the conditions reduced the hours, no regulated entertainment and no wider amplified music other than background music.
- k) That EH withdrew their representation for the premises licence grant application based on those conditions so to grant the TEN would disapply those conditions. As such it would have an adverse impact and would undermine the licensing objectives, so they requested a counter notice be issued.

Mr Shaid Yasser advised the Committee that the premises had surrendered one of their licences the day prior to the hearing.

In summing up Martin Keys made the following points: -

- a) That late hours had been requested and the previous history and the fact this TEN would overwrite the existing conditions gave them great concern for public nuisance as residents resided in the same building therefore, they requested that a counter notice be issued.

At 1504 the meeting was adjourned to make a decision and all parties with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

At 1507 the meeting was reconvened and all parties were invited to re-join the meeting and the decision of the Sub Committee was announced as follows:-

06/021019

**RESOLVED:-**

That, having considered the objection notice from Environmental Health in respect of the temporary event notice as submitted by Samsom Kahsay, the premises user, for an event to be held on 19<sup>th</sup>-20<sup>th</sup> October 2019 at Flamingo Café & Restaurant, 81-83 Villa Road, Birmingham B19 1NH, this Sub-Committee determines that a Counter Notice be issued under Section 105 of the Licensing Act 2003.

The Sub-Committee's reason for issuing a Counter Notice is to prevent the temporary event from taking place, in order to uphold the prevention of public nuisance licensing objective in the Act.

An officer from the City Council's Environmental Health department addressed the Sub-Committee, and explained that the concern was that the temporary event

would disapply the conditions of the Licence, and it was therefore likely that public nuisance would be caused to the residents of the flats above the premises.

The application had been submitted proposing that the event should start at 23.00 hours and operate through the night until 04.00 hours. Environmental Health observed that the noise insulation standard of the building was unknown, but in any event no effective operational controls had been proposed by the applicant. It was a concern to Environmental Health that despite the description of the event as a 'party' which would run from 23.00 to 04.00, there was no mitigation regarding the potential for noise; nor was there a dispersal policy. Moreover the other licensed premises in and around this part of Villa Road did not operate beyond 00.00 hours, so it was not an area associated with late night entertainment. Environmental Health observed that it was also likely that taxis and cars would be arriving and departing once the event ended, namely from 04.00 onwards.

The premises user did not attend the meeting, but sent written representations by email. Although due regard was given to the premises user's representations, the Sub-Committee was not confident that the premises user could overcome the concerns raised by Environmental Health. The Sub-Committee was of the opinion that to allow the event to proceed would involve an unacceptable level of risk. The Sub-Committee accepted the view of Environmental Health, namely that the proposed event would cause unnecessary disturbance to neighbouring residents as a result of noise breakout from the premises, and the noise of patrons leaving the premises in the early hours of the morning, particularly due to the close proximity of these residential properties.

The Sub-Committee has had regard to the evidence, argument and submissions placed before it, in addition to the Report, the Home Office Guidance issued under Section 182, and its own 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.

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Meeting ended at 1510 hours.

..... Chairman