

BIRMINGHAM CITY COUNCIL

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| LICENSING SUB- COMMITTEE C 22 JUNE 2016 |
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**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE C HELD
ON WEDNESDAY 22 JUNE 2016
AT 1000 HOURS IN COMMITTEE ROOM 1,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Alex Buchanan in the Chair;

Councillors Mike Leddy and Neil Eustace.

ALSO PRESENT:

David Kennedy – Licensing Section
Sanjeev Bhopal – Legal Services
Gwin Pountney – Committee Services.

NOTICE OF RECORDING

01/220616 The Chairman advised the meeting that members of the press/public may record and take photographs except where there are confidential or exempt items.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

02/220616 No apologies were submitted.

APPOINTMENT OF SUB-COMMITTEE

03/220616 The appointment by the City Council of the Sub-committee and Chairman for the Municipal Year 2016/2017 was noted.

It was further noted that Members of the Sub-Committee may nominate another Member of their respective Party Group to attend in their place.

DELEGATIONS TO SUB-COMMITTEE

04/220616 To note the delegations to the Sub-Committee as follows:-

To determine matters relating to the Licensing Act 2003, the Gambling Act 2005, hackney carriage licences and private hire licences and such business as may be referred by the Director of Regulation and Enforcement.

DATES OF MEETINGS

05/220616

To note the Sub-Committee will meet on Wednesdays at 1000 hours, subject to business.

LICENSING ACT 2003 PREMISES LICENCE – GRANT THE MONASTERY, 173 – 175 DIGBETH HIGH STREET, DERITEND, BIRMINGHAM, B12 0LD

The following reports of the Director of Regulation and Enforcement were submitted:-

(See Document No. 1)

The following persons attended the meeting.

On behalf of the Premises Licence Holder

Mr A Curtis – Solicitor representing the Premises Licence Holder
Mr H Chauhan – Premises Licence Holder

On behalf those making representations

Mr A Mroczkowski – Licensing Officer, West Midlands Police
PC B Reader – West Midlands Police

Following introductions by the Chairman, David Kennedy, Licensing Section, made introductory comments relating to the report. He indicated that West Midlands Police had submitted a further document entitled 'Police Evidence Bundle – The Monastery'.

(See Document No. 2)

David Kennedy continued that the applicant had submitted further documentation in the form of an Email dated 15 June 2016 containing a plan, noise control measures, operational plan, detail of TENs and a fly posting contract.

(See Document No. 3)

Mr Curtis and Mr Chauhan in presenting the Premises Licence Holder's case made the following points:-

- a) Mr Chauhan had purchased the building when it was in a derelict state following a fire and had invested significantly to return the building to its former glory in conjunction with heritage organisations.
- b) The intention was to use the building as a nightclub.
- c) A lot pre planning and project management had taken place including discussions with Environmental Health. Site meetings with them also took place, the Fire Service and West Midlands Police.

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- d) Whilst there was a large external area the application was for the internal space only with the second floor of the building not been used.
- e) Reference in the Police bundle to the Q Club was not an appropriate comparison as the Q Club was a 2,000 capacity venue under Review and the current application was for the grant for a venue with a capacity of 400-600. The Premises Licence Holder had learnt from the issues at the Q Club and had a history of working closely with Responsible Authorities.
- f) It was intended to operate the premises as a late club with party events until 0400 hours in the morning three times a week. The premises would not be open more than 106 times a year.
- g) With reference to the time in the second condition on page 19 of the documentation the Premises Licence Holder was agreeable to it becoming 0600 hours.
- h) Within the supplementary documentation provided were details of TENs under which the premises had operated. This demonstrated the premises could operate to 0500 and 0800 hours without any issues. It was noted that no conditions were attached to the TENs
- i) Following the issues at the Q Club the DPS had been changed and the security company at The Monastery was that used at the Q Club.
- j) Reference was made to a statement from an owner of a business at an adjacent unit which indicated that the premises at 173 – 175 Digbeth High Street had been derelict and had attracted drug dealing and squatters. It had now been restored to its former glory and there had been no issues with the clientele using the premises. The business owner was supportive of the application. (Representatives of West Midlands Police noted that the statement had not been shared with them but were happy for it to be read out)
- k) It was noted that the Police had the power to close the premises immediately and the Premises Licence Holder was aware of this.
- l) The Premises Licence Holder was offering to limit the number of times the premises were used and the police veto for events after 0600 hours.

In response to questions from Members of the Sub-Committee, Mr Curtis and Mr Chauhan made the following points:-

- a) Mr Chauhan had been the Premises Licence Holder when the premises had operated under TENs and was the sole Director of Soundscape Limited.
- b) For the event on 1 May 2016 proposed to be held under a TEN an objection had been received from the Police and in addition the application had not been submitted within 5 working days of the event. The TENs were for 499 capacity but had used all floors of the premises whereas the

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application for the grant of the licence was for the ground and first floors of the premises following discussions with Environmental Health and Heritage people on this.

- c) The proposal to brick up the windows on the building and not use double glazing was because of objections from Environmental Health that public nuisance would be caused.
- d) The evidence bundle submitted alleged flyposting and the use of drugs on the premises but the Premises Licence Holder had submitted the fly posting contract and the operational plan which confirmed the premises' drug policy. Should the premises be notified of any flyposting advertising an event to be held at the premises then the promoters would be asked to remove it within 48 hours.

In presenting the representations of the police, Mr Mroczkowski and PC Reader made the following points:-

- a) The policy around flyposting was historic and had not been adhered to.
- b) The positive endorsement from the adjoining business should not be given too much weight.
- c) There could be no control on the changes in Directorship of the company.
- d) The issues highlighted by the review of the Q club included poor management and failings and the Police felt that any conditions on the licence if granted would not be adhered to.
- e) In the Police evidence bundle there is a report from CSAW, an independent compliance company relating to the Q club. The report highlighted a number of weak areas around safety management and the need for a revised management structure. In addition page 6 of the evidence was an email to PC Demuth setting out the conditions on the Q Club licence which were of concern to the police with the reasons for those concerns. The Police felt that the same management that ran the Q club would not operate the Monastery any better.
- f) The pictures of drugs use and flyposting on the Instagram page are now out of the public domain.

Mr Mroczkowski and PC Reader further commented on particular issues as follows:

- a) Capacity was set by the Fire service and there was no reason for the Premises Licence Holder to be in doubt about capacity.
- b) Opening 106 times a year was every weekend. West Midlands Police had been expecting a lower figure
- c) With regard to the Police veto, the concession of 30 minutes was negligible.

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- d) There was no pub watch scheme condition.
- e) Sound checks needed to have a documented audit trail.
- f) In addition with reference to the conditions modified for the Q club on page 2 of the bundle the police noted that there was no need to change the door company, the noise limiter would be managed by Environmental Health, all policies and procedures should be sent to the Police, robust risk assessments should be undertaken for recurring events and these should be undertaken 28 days before an event.

In response to questions from Members of the Sub-Committee, Mr Mroczkowski and PC Reader confirmed that risk assessments needed to be sent to the Police in a timely manner with an intelligence led deployment plan as they were very important. The images on pages 13, 14 and 15 of the evidence bundle were from an Instagram page of a DJ who held events at the Monastery but the premises needed a management plan to engage with DJs and promoters to deal with these type of issues. 'Void' was a reference to the premises own event.

In summing up, PC Reader indicated that the premises were responsible for the 'Void' event which had a reputation for a place for drugs. The Police would like to see the hours, policies and procedures amending. Once put in place then evidence was needed to ensure that they were being complied with on an ongoing basis otherwise the premises would be before the Sub-Committee in the near future.

In summing up, Mr Curtis emphasised that the evidence from the Police had all related to the Q club whereas the Monastery had held events under TENS without any problems. The DJ cannot control what advertising on his own page. In addition Environmental Health had had not objected to the licence being granted.

There was no reason why the premises could not open every weekend as other venues did and for later hours. The premises were happy to undertake risk assessments but had concerns re the power of veto for the police which could be abused by them. The Police had to have a certificate for Expedited Reviews for this reason.

The application should be considered on its own merits with appropriate evidence. The premises had no issue working with the Fire Service about the capacity of the premises. The operational plan could be improved re the drugs policy. The premises would look in to the issue of flyposting and have contracts with DJ around images on social media. It was noted that the Police had not advised the premises of these images. Regular sound checks would be documented.

The premises would also hold corporate events, advertorial programmes and children's events.

The premises had worked with Environmental Health, the Police and members of the local community. The owner of Soundscape Bars and Clubs Limited was not the Designated Premises Supervisor (DPS) but just part of the management

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team. The DPS had been a Personal Licence Holder for 5 years having worked in premises in Gas Street. The licence should therefore be granted with the extra condition as suggested.

At 1140 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1347 hours and the decision of the Sub-Committee was announced as follows:-

06/220616 **RESOLVED:-**

That the application by Soundscape Bars and Clubs Limited for a premises licence in respect of The Monastery, 173 – 175 Digbeth High Street, Deritend, Birmingham, B12 0LD be granted subject to the following conditions to promote the prevention of crime and disorder and the prevention of public nuisance objectives in the Act:

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| A. | Modification of hours – Supply of Alcohol and regulated entertainment | The hours for the supply of alcohol and provision of regulated entertainment shall apply as follows: Sunday to Thursday 1000 hours to 0200 hours Friday and Saturday 1000 hours to 0500 hours Non Standard Hours in respect of Statutory Bank Holidays and New Year's Eve. 1000 hours to 0500 hours |
| B. | Modification of hours – Late night refreshment | The hours for the provision of late night refreshment shall apply as follows: Sunday to Thursday 2300 hours to 0200 hours Friday and Saturday 2300 hours to 0500 hours Non Standard Hours in respect of Statutory Bank Holidays and New Year's Eve 2300 hours to 0500 hours |
| C. | Opening hours | The premises to remain open to the public as follows: Sunday to Thursday |

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| | | <p>1000 hours to 0200 hours</p> <p>Friday and Saturday 1000 hours to 0500 hours</p> <p>Non Standard Hours in respect of Statutory Bank Holidays and New Year's Eve</p> <p>1000 hours to 0500 hours</p> |
| D. | Noise limiter | The premises licence holder must consult with Environmental Health of Birmingham City Council to establish the need for a noise limiter at the premises. If in the opinion of Environmental Health, a limiter is required, this must be calibrated at a level set by Environmental Health, Birmingham City Council. |
| E. | Premises Covered under the Licence | The licensed premises will be restricted to the First Floor within the Plan submitted with the premises application. The Ground floor and Second floor as set out within the submitted application will not be used for any licensable activities. |
| F. | (Other conditions if offered or agreed by applicant) | <p>The condition agreed with Environmental Health of Birmingham City Council will be amended as follows:</p> <p>The First floor area will not be used for Regulated Entertainment until such time as adequate mitigation measures are undertaken to a standard agreed by Birmingham City Council Environmental Health so as not to cause a public nuisance.</p> |
| G. | Policies and Procedures | BEFORE the premises undertake any licensable activities, the premises licence holder will undertake a thorough review of ALL the premises' policies and procedures, particularly those that relate to the deployment of security personnel, incident handling, health and safety of patrons, staff, and other users of the building where the premises are located, fire safety and risk assessments of all types of events the premises intend to hold, as well as training for all staff on the promotion of the four licensing objectives. [It is a matter for the Premises Licence as to who should be engaged to carry out this review for or on behalf of the licence holder, but this should be an appropriately qualified person or |

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| | | <p>organisation that has relevant experience within this field having regard to obligations set out above.]</p> <p>All evidence relating to the review should be retained and made available to West Midlands Police, Licensing Section, and any other Responsible Authority upon request within 48 hours.</p> <p>Risk Assessments for all events MUST be disclosed to West Midlands Police at least 28 days before any event, unless in the opinion of the West Midlands Police, Licensing Section, the premises hold a regular or recurring event for which there is already a robust Risk Assessment in place.</p> <p>West Midlands Police, Licensing Section may exercise a power of veto for any proposed event, where they are of the opinion that any of the licensing objectives have been or are likely to be breached</p> |
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The Sub-Committee's reasons for imposing these conditions are due to the submissions made by West Midlands Police regarding the management of the proposed operation and to a lesser extent the location of the venue, which is within close proximity of residential properties.

The Sub-Committee were mindful that each application is determined on its individual merits and were careful to have regard only to those matters which related to the proposed premises and the proper promotion of the licensing objectives, as well as the matters set out below.

However, they were apprehensive that West Midlands Police had expressed concerns over the suitability the Premises Licence Holder and proposed Designated Premises Supervisor ("DPS") ability to properly promote the licensing objectives. The Sub-Committee had heard unchallenged representations from West Midlands Police that the Director of the applicant Company was closely associated with the management of another licensed premises which had been subject to Review Proceedings. During the course of these proceedings, West Midlands Police had referred to various management failings and non-compliance with licensing conditions.

The Sub-Committee had been informed by West Midlands Police that they were not objecting to the Grant of the application in principle, but they did continue to hold concerns over the ability of the applicant company's, Sole Director/Member and proposed DPS to properly promote the Licensing Objectives, unless the licence included the imposition of the conditions referred to above.

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In light of the concerns expressed by West Midlands Police, the Sub-Committee also considered it was appropriate to modify the hours of operation; the hours of licensable activities and the extent of the premises, as referred to above.

The Sub-Committee considers the conditions imposed to be appropriate, reasonable and proportionate to address concerns raised.

In addition to the above conditions, those matters detailed in the operating schedule (insofar as they are not inconsistent with the Conditions referred to above) and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

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 information in the application, the written representations received and the submissions made at the hearing by the applicant, their legal adviser and 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.

GAMBLING ACT 2005 VARIATION OF A LICENSED PREMISES GAMING MACHINE PERMIT YATES, 15 – 19 BIRMINGHAM ROAD, SUTTON COLDFIELD, B72 1QA

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

(See Document No. 4)

David Kennedy, Licensing Section, made introductory comments relating to the report.

Having considered the application it was-

07/220616 **RESOLVED:-**

That the application by Stonegate Pub Company Ltd, for a Licensed Premises Gaming Machine Permit in respect of Yates, 15 – 19 Birmingham Road, Sutton Coldfield, B72 1QA be granted.

The Sub Committee deliberated the application, including policies and procedures, put forward by the applicant and the likely impact of the application, and concluded that by granting this application, the three Licensing Objectives contained in the Act will be properly promoted.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Principles, the Guidance issued under Section 25 of the Gambling Act 2005 by the Commission, the application for the

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variation of a Licensed Premises Gaming Machine Permit, and the findings of the Licensing Enforcement Department (who carried out an inspection of the premises on 9th May 2016, and identified no matters for concern in relation to the existing gaming machines being made available for use, and stated they had no concerns if the Licensing Sub-Committee were minded to grant the application).

OTHER URGENT BUSINESS

08/220616 No items of other urgent business were submitted.

The meeting ended at 1405 hours.

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CHAIRPERSON