

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 14 JUNE 2021

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 14 JUNE 2021 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mike Leddy 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)

1/140621 **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 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.

2/140621 **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.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/140621 Apologies were submitted from Cllr Donaldson and Councillor Locke was the nominated Member.

APPOINTMENT OF SUB-COMMITTEE

- 4/140621 The Committee noted the appointment by the City Council of the Committee and Chairman for the Municipal Year 2021/22.

The Chairman advised that Members of the Sub-Committee may nominate another Member of their respective Party Group on the Licensing and Public Protection Committee to attend in their place. Any Member nominated must have had formal training as set out in Paragraph 9.6 of the Licensing Committee Code of Practice for Councillors and Officers set out in the Constitution.

DELEGATIONS TO SUB-COMMITTEE

- 5/140621 The Committee noted the delegations to the Sub-Committee as follows: -

To determine matters relating to the Licensing Act 2003, the Gambling Act 2005, when sitting as a Statutory Licensing Committee as defined by those Acts, Hackney Carriage Licences, Private Hire Licences when sitting as a general Licensing Committee and such business may be referred by the Assistant Director of Regulation and Enforcement.

- 6/140621 **MINUTES**

That the Minutes of the meeting held on 23 April 2021 were confirmed and signed by the Chairman.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – THE ARK
BIRMINGHAM, 74 JOHN BRIGHT STREET, BIRMINGHAM, B1 1BN.**

On Behalf of the Applicant

Jugdeep Singh – Applicant
Adrian Curtis – Solicitor

Those Making Representations

Clare White – Resident

* * *

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 Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Bhapinder Nandhra, to outline the report.

The Chair invited the applicant to make their submissions, at which stage Adrian Curtis on behalf of the applicant made the following points: -

- a) That the application was submitted in line with the obligations.
- b) During the last week of the representation period they engaged with Environmental Health over historical noise issues. They went through the application and agreed a set of extremely strict conditions.
- c) They also agreed to reduce regulated entertainment hours.
- d) That there were residential properties nearby and therefore it was important to blend into the night life.
- e) It was a new business venture in an old cinema building.
- f) That they were new operators.
- g) It was a brand new licence not an extension of the old one.
- h) There was no connection to the old operators.
- i) It was a huge site, with tenants downstairs. They would operate the first and second floor.
- j) The first floor would comprise of a modern cocktail area with an Indian dining area with fine dishes.
- k) The second floor had no windows and entry was through one lobby door. The aim is to use local artists and upcoming bands.
- l) They wanted to bring something different to the area.
- m) It was aimed at getting young couples and families into the premises.
- n) They wanted to work closely with responsible authorities and the Council.
- o) West Midlands Police made no objection to the application.
- p) He went through the Environmental Health conditions which were detailed in the paperwork.
- q) His client had not operated in this area yet and therefore none of the issues could be attributed to him.
- r) There would be signage up to ask people to be respectful of their neighbours.
- s) They would employ SIA security staff.

In answer to Members questions Mr Curtis made the following points: -

- a) There would be between 150-160 covers in the restaurant.
- b) The premises below was a completely different venue and was nothing to do with his client.
- c) His client had completed the personal licence course.
- d) Staff would be fully trained.
- e) Dispersal policy would be at the core of their operation and they would be working extremely hard to follow up that policy.
- f) They had relationships established with taxi companies.
- g) His client was fully aware of the problems and didn't want to add to them.
- h) That bad operators should not spoil it for good operators.

The Chairman then invited those making representations to make their submissions, at which stage Clare White made the following points: -

- a) That the residents were excited about an Indian restaurant, however they were concerned about noise nuisance. It was already a loud area.
- b) That there was a lot of nice bars in the area, but outside the premises was an issue. When people leave premises they make a lot of noise.
- c) The dispersal policy was the crux of this and she needed to know the details of that.
- d) There were more flats being given planning permission.
- e) The premises was pitching itself as nightclub, and the night time economy was in places like Broad Street and Arcadian.
- f) People were already suffering because of patrons behaviours on weekends.
- g) That the Committee needed to consider the impact on residents.
- h) That the residents wanted the economy to grow, but not necessarily to include a nightclub.
- i) There was only one other premises open until 2am and that was a Sisha Lounge.

In summing up Clare White made the following points: -

- That she had sympathy for residents as they had been suffering for years.
- It would be very difficult to disperse people from such a big premises.

- They would hear everything that happened outside the premises.

In summing up Mr Curtis made the following points: -

- The premises was an upstairs music venue not a nightclub.
- That many of the issues were not related to licensing.
- His client understood the issues and wouldn't be adding to them.
- He invited the Committee to look at the evidence before them and the lack of objection from WMP.
- The opening hours were 0230 hours.
- Last entry would be 12 midnight.
- Dispersal policy was awaiting sign off by EH

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

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was sent out to all parties as follows;

7/140621

RESOLVED:-

That the application by **Ark Indian Dining and Bar Limited** for a premises licence in respect of The Ark Birmingham, 74 John Bright Street, Birmingham B1 1BN **BE GRANTED** with the shortened operating hours for regulated entertainment as offered by the applicant company in advance of the meeting.

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued, together with the conditions agreed with the Environmental Health department of the City Council in advance of the meeting, namely:

1. The premises shall have an approved documented dispersal policy (approval needed in writing from West Midlands Police Licensing Department and Birmingham City Council Environmental Health department), which shall be implemented for dispersal on any day/night when Regulated Entertainment has taken place
2. To avoid nuisance being caused to neighbours the premises licence holder, or other nominated person/staff, shall monitor the external areas of the Premises after 23:00 hours. If necessary, they shall remind customers to be respectful of neighbours and shall limit the number of customers going outside to use the smoking area to no more than 5 persons at any time and take appropriate steps to avoid customers who use the frontage of the premises causing a nuisance

3. All external doors and windows shall be kept closed after 20.00 whenever there is regulated entertainment except as necessary for safe and effective access and egress
4. No drinks shall be removed from the premises other than in sealed containers
5. All noise associated with live music or amplified music, speech or sound outside the licensed hours for regulated entertainment shall be background and shall be inaudible outside the building
6. 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
7. There shall be no speakers used for amplified music, speech or sound outside the building
8. 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
9. There shall be no first entry or admission to the premises after 00.00 (midnight)
10. There shall be no regulated entertainment on the first floor between 23.00 and 10.00 the following day
11. The first floor balcony shall not be used for any purpose between 23.00 and 10.00 the following day
12. The second floor sound system shall incorporate a distributed speaker system facing inwards to the entertainment area
13. The premises licence holder shall supply a written noise risk assessment and noise management plan to Birmingham City Council Environmental Health Department for approval prior to any regulated entertainment taking place which addresses the specific noise impacts and controls relevant for the premises. The noise management plan shall outline the measures to be adopted to reduce the noise impact of activities associated with the premises including music, deliveries, recycling and refuse collections, smoking areas, dispersal and customers. All operational controls and management actions required by the approved noise management plan shall be instigated at all times
14. An assessment of the building design and structure and a proposed scheme of noise insulation and attenuation for the licensed area on the second floor shall be produced by a suitably qualified and experienced acoustic specialist. This scheme shall be submitted in writing to the Environmental Protection Unit of Birmingham City Council and no licensable activity shall take place until the mitigation measures that have been approved in writing by the Environmental Protection Unit of Birmingham City Council have been implemented. The noise mitigation measures shall be thereafter maintained
15. A Noise limiting Device (NLD's) shall be installed to the sound system on the second floor entertainment area and this shall be of a type approved by the Birmingham City Council Environmental Health Department and shall be fitted to the amplification system and set at a level approved by the Birmingham City Council Environmental Health Department, to ensure the volume of music is pre-set so as not to cause a noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall be notified to the Environmental Protection Unit at least 14 days before its' initial operation and shall fulfil the following criteria:
 - a) The device shall be fitted in an approved position by a competent person and once fitted shall not be moved from the approved position unless prior approval is given

- b) The device shall be capable of cutting off the mains power to the amplification system if the volume exceeds the pre-set level determined by the Environmental Protection Unit or shall be capable of maintaining the volume of the music at the pre-set level determined by the Environmental Protection Unit and shall not restore power to the sound system until the NLD is reset by the licensee or their nominated person
- c) The amplification system shall only be operated through the sockets/power points linked to and controlled by the NLD at all times
- d) The NLD shall be maintained in full working order and at the approved pre-set volume whilst the amplification system is operational
- e) Any damage or malfunction to the NLD shall be reported to the Environmental Protection Unit as soon as possible and within 24 working hours of the damage occurring or malfunction being noted. The NLD shall not be used in this damaged or malfunctioning state until approval has been given by the Environmental Protection Unit

The licence will also include the two conditions agreed with the Licensing Enforcement department of the City Council in advance of the meeting, namely:

- The Premises Licence holder shall ensure all Security Staff (when on duty working at the premises) will be SIA Registered and will be required to sign a register with details of their name and badge number at the start and end of their shifts. The register will be kept at the premises at all times and will be produced upon request to any authorised officer
- The premises will adopt the 'Challenge 25' or similar policy as proof of age scheme to be in operation during licensed hours. Any refused sales of alcohol shall be recorded either electronically or in suitable book which will state the date, product, time, the name of the person or description, any observations and the name of the member of staff refusing the sale. The record of refused sales will be kept at the premises at all times and produced upon request to any authorised officer

The Sub Committee deliberated the operating schedule put forward by the applicant company 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.

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. Stringent conditions suggested by departments of the City Council had been agreed, and those representing the applicant company were keen to cooperate with neighbours and other businesses to make the premises a success.

Those making representations, one of whom attended the meeting to address the Sub-Committee, raised concerns about the potential for noise and antisocial behaviour, but as the applicant company's solicitor confirmed, the applicant company had not operated from the location before. Given the strict conditions, there was no reason to suppose that the premises would not be capable of upholding the licensing objectives.

Licensing Sub-Committee A – 14 June 2021

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 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 company, its 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.