

BIRMINGHAM CITY COUNCIL

LICENSING SUB - COMMITTEE B - 14 NOVEMBER 2017

**MINUTES OF A MEETING OF
LICENSING SUB-COMMITTEE B HELD
ON TUESDAY 14 NOVEMBER 2017
AT 1000 HOURS IN COMMITTEE ROOM 1,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Lynda Clinton in the Chair;

Councillors Barbara Dring and Des Flood.

ALSO PRESENT:

Chris Arundel – Licensing Section
Sanjeev Bhopal – Legal Services
Katy Poole – Committee Services.

NOTICE OF RECORDING

01/141117 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

02/141117 Apologies were submitted on behalf of Councillor Nawaz Ali and Councillor Barbara Dring was the nominee member.

MINUTES

03/141117 That the minutes of the meeting held on 24 October were noted.

EXCLUSION OF THE PUBLIC

04/141117 **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)

05/141117 **ANY OTHER URGENT BUSINESS**

The Chair was of the opinion that the following report could be considered as a matter of urgency in view of the need to expedite consideration thereof.

TEMPORARY EVENT NOTICE – UNIT 3, 30- 40 RIVER STREET, DIGBETH, B5 5SA

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

(See document No. 2)

On behalf of the Applicant

Tom Jenkins – Unit 3
Olivia Rhoden – Unit 3

Those Making Representations

PC Deano Walker – West Midlands Police (WMP)
Sgt Talib Hussain – West Midlands Police

On behalf of the Applicant

Tom Jenkins – Unit 3
Olivia Rhoden – Unit 3

The meeting commenced at 1500 hours.

The Chairman introduced the Members and officers present and explained the hearing procedure. Prior to the commencement of proceedings the Chair asked if there were any preliminary points for the Sub-Committee to consider and expressed her concern that some of the paperwork for West Midlands Police had been received so late that it had left the Sub-Committee with little or no time to absorb it. PC Walker expressed his apologies for this.

The main points of the report were outlined by Shaid Yasser, Licensing Section.

In presenting her case and in response to questions from Members, Ms Rhoden and Mr Jenkins made the following points:

1. That this event was for 80 -100 special volunteers between the ages 40 and 65 who had acted as cleaners, movers and decorators for the charity. It would not be a high risk event as the music played would be for the older generation and not loud.
2. The event would run from 10.00pm to 2.30am and would have a low impact on the community – plans had been made regarding dispersal after the event (with it being envisaged that not everyone would stay to the end

of the event), music being turned down later in the evening and sales of alcohol would cease 30 minutes before the end of the event.

3. While there would be no noise limitation devices at the event the music would be turned down to an audible level which people could speak over and would be background music.
4. That there had been no cases of anti-social behaviour at or around the venue.
5. That the organisation worked closely with the Police for other events and at Safety Advice Group (SAG) meetings and had tried to set up a meeting regarding this event with WMP without success.
6. That windows and doors would be closed at the event and checks for noise levels would be carried out outside the building and from the location of the first house in the area.
7. That the smoking area in the street outside the premises with a maximum of 15 people outside at any time and no drinks being allowed outside.
8. The venue had a capacity of 450 and 80 tickets had been sold to this point,
9. That they were both personal licence holders and were well versed with the licensing objectives operating a Challenge 25 at all times, with no children being allowed into the building. With regard to crime and disorder there would be 3 security staff on the doors and no drinks would be allowed outside the building. Public nuisance would be addressed via noise checks to avoid noise nuisance to local residents.

In presenting the case for West Midlands Police and in response to questions from Members, PC Walker made the following points:

1. He apologised for the late serving of some papers - this was due to the fact that he had never presented evidence for a Temporary Event Notice (TEN) before and had only recently obtained the information regarding the closure notice for this venue and the evidence and information regarding the notice.
2. That WMP had made representations against the application as they had had no confidence in the applicant's abilities to meet the licensing objectives and had concerns regarding health and safety issues at the venue.
3. Furthermore, in the last 3 years there had been 3 licence applications for the premises – all of which had been refused due to objections from responsible authorities and interested parties.
4. That the premises' landlord had concerns about how the venue was run and was aware that large events had taken place there at the weekends without a licence and without any liability insurance.

5. That West Midlands Police had concerns regarding anti-social behaviour and crime within the area as well as concerns about the roof of the building and had applied for AntiSocial Behaviour closure order.
6. The TEN would undermine all the licensing objectives particularly the crime and disorder and public nuisance and no conditions could be applied to enforce them as the venue was not a licensed premises.
7. This was a case of profit over public safety.
8. That the landlord had applied for a repossession order.
9. That with only 3 security staff at the event - and the venue having a capacity of 350, there could be a rush at the door which they would be unable to handle.
10. That although the applicant had provided a comprehensive risk assessment the history of/issues at the premises resulting in an AntiSocial Behaviour closure order gave WMP no confidence in the applicant's abilities to meet the licensing objectives.
11. At this point Ms Rhoden responded and stated that the applicant had held 390 TENs events at the premises without incident and no objections from WMP.
12. That this was a thank you event for volunteers and they would not want to tarnish their reputation by running an unsafe/poorly organised event.

In summing up PC Walker made the following points:

1. That he had no confidence that the risk assessment that had been drawn up by the applicant would be adhered to at the event.
2. That even though this was a 'Thank You Party', alcohol would not be free it would be on sale and a TEN would be required for this.
3. WMP had real concerns regarding the premises and a repossession order was in place for the premises to be taken by the landlord the following week.

In summing up Mr Jenkins and Ms Rhoden made the following points:

1. That alcohol would be on sale at the event with the money from the alcohol sales put back into future events.
2. That until recently they had had a very good relationship with West Midlands Police and had had no problems with the last event.
3. They had successfully run many TEN events, they both had personal licences and had just wanted to have a nice night and thank volunteers – they would never put profit before safety – they were a not for profit charity and used any money raised from events for daytime classes – including some for WMP.

At 1550 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.

At 1628 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

06/141117 **RESOLVED:-**

That, having considered the objection notice from West Midlands Police in respect of the temporary event notice, as submitted by Tom Jenkins, the premises user, for an event to be held on 18-19 November 2017 (10.00pm – 02:30am) at Unit 3, 30-34 River Street, Digbeth, Birmingham, B5 5SA, 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 to promote the prevention of crime and disorder and prevention of public nuisance, the promotion of public safety licensing objectives in the Act.

The Sub-Committee were of the opinion that on the balance of probabilities by allowing the event to proceed at the premises there was no way to guarantee that the applicant could properly promote the licensing objectives as set out above, because it was not possible for the Sub-Committee to attach Conditions to the event, given that a premises licence is not currently in operation at the premises.

Whilst the Sub Committee were pleased to note that the event in question had been risk assessed by the applicant, such that they were presented with a Temporary Events Manual for Saturday 18 November 2017, they were nevertheless concerned that they were powerless to impose a Condition on the Temporary Event, which would ensure that the applicant had to comply with the measures they had put forward to ensure they would properly promote the licensing objectives.

Against this background, West Midlands Police similarly expressed concern about the Event in question and how the licensing objectives could all be promoted. In their evidence, West Midlands Police submitted that the premises had been the subject of an Anti-Social, Crime and Policing Act 2014 Closure Order, which they had allowed to lapse on the basis that they were on the opinion that no further events would be held at the premises. The grounds for the Order were that the use of the premises has resulted or was likely soon to result in nuisance to members of the public, or that there has been or there was likely to be disorder near the premises associated with the use of these premises, and that the notice was necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

Although due regard was given to the premises user's representation, the Sub-Committee were however, not confident that the proposed event could run well to overcome the concerns raised in light of evidence presented by West Midlands Police.

The Sub-Committee were satisfied that on the balance of probabilities crime and disorder, public nuisance or public safety issues would arise in connection with the proposed event.

The Sub-Committee therefore determined that it would be appropriate to reject the temporary event notice for the promotion of the prevention of crime and disorder and prevention of public nuisance and promotion of public safety licensing objectives in the Act.

The Sub-Committee has had regard to the evidence, argument and submissions placed before it, in addition to the report, Section 182 – Home Office Guidance and its own licensing policy.

All parties are reminded that under the provisions contained within Schedule 5 Licensing Act 2003, there is the right of appeal against the decision of the Licer Authority to the Magistrates' Court, such an appeal to be made within twenty-or days of the date of notification of the decision. No appeal may be brought later five working days before the day on which the event period specified in the Temporary Event Notice begins.

The meeting ended at 1635 hours.

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CHAIRMAN