

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 20 NOVEMBER 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 20 NOVEMBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Mary Locke and Julien Pritchard.

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)

1/201123

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.

2/201123

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.

A disclosure was made by Councillor Sam Forsyth – in respect of the application – A pecuniary interest as they had previous professional relations with Mr Duncan Craig who was acting on behalf of the Applicant involved in the application. However, she only knew Mr Craig in a professional capacity as she was also a practising Barrister.

A disclosure was made by Councillor Izzy Knowles – in respect of the application – A pecuniary interest as they were a Member of the Licensing and Public Protection Committee, however they had not discussed the matter with any other Committee Member.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/201123 Apologies were submitted on behalf of Councillors Phil Davis and Simon Morrall and Councillors Sam Forsyth and Julien Pritchard were the nominated substitute Members.

MINUTES

- 4/201123 That the Public section of the Minutes of the meeting held on 6 November 2023 at 1000 hours were noted and the Minutes as a whole were circulated and confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – PICKWICK ATHLETIC CLUB, WINDERMERE ROAD, SPRINGFIELD, BIRMINGHAM, B13 9JS.

On Behalf of the Applicant

Duncan Craig – Barrister
Wahid Najib - Applicant
Shakil Hussain - Applicant
Kerry Cox – Associate of Duncan Craig

On Behalf of Those Making Representations

Cllr Izzy Knowles – Local Ward Councillor
Peter Brown – Environmental Health (EH)
Mrs Connor – Local Resident
Sarah Bowers – Local Resident
Janice Burns – Local Resident
Fiona Adams – The Moseley Society
John Wilson – Local Resident

* * *

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

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/their representative to make their presentation and Duncan Craig made the following points: -

- a) That the premises came to his attention in the summer, June 2023.
- b) EH were investigating complaints in relation to noise, the officer investigating was not Peter Brown at that stage. The residents would have been involved in that process.
- c) The premises were engaged in activities that they were not licensed for. The activities fell under the realms of recorded music so that was the reason they had made an application.
- d) Mr Craig advised his client to get the application in as soon as possible, therefore there was not any engagement with residents prior to the application going in.
- e) The Club provided sporting facilities for much of the local community, most of the children were under 18 years old and many were under 14 years old.
- f) In order for the club to continue offering the facilities they needed to put on events in order to bring in funding.
- g) That they recognised, following the representations made, that the application needed to be scaled back and reflect the fact that there are residential properties nearby. They had scaled back the hours and amended conditions.
- h) The representations were primarily concerned with public nuisance, however, they had submitted a noise risk management plan and were happy to have a noise limiting device.
- i) Furthermore, they would reduce the number of events to 50 per year, instead of the 75 events they had applied for.
- j) The events would only take place on Friday, Saturday and Sunday.
- k) The noise limiting device would add another level of protection and external doors would be kept closed.
- l) The Licensing Act 2003 recommended that marquees were classed as 'indoors'. The marquee would be included in the licensable area.

- m) Significant concerns had been raised about the marquee. They had made an application to planning for the marquee, seeking to rectify the position in relation to planning permission.
- n) In order for the Club to function they needed to hold events, without that revenue the premises wouldn't be able to function or provide facilities for the local community.
- o) Much of the events were aimed at the Muslim and Asian community.
- p) That some of the representations included issues about Covid, however those issues were nothing to do with the current operator.
- q) The representations about wildlife and fireworks were not relevant under the Licensing regime.
- r) Parking was also not a licensable activity however his client recognised that parking needed managing in a much more robust fashion and they accepted that.
- s) Any breaches of conditions could result in a criminal charge.
- t) He asked the Committee to grant the application.

In response to a question from Councillor Locke, Mr Craig advised that events usually started about midday.

Th Chair invited EH to make their presentation and Peter Brown made the following points: -

- a) That there was a history of complaints regarding the premises and there had been investigations into the complaints by officers in a different section.
- b) They had received six complaints dating back to 2022 and most of the complaints were from multiple complainants at the site. Not all complaints were in relation to noise.
- c) That whilst the premises did have a right to raise revenue, it was a sporting club and not an event space.
- d) The application that was submitted in June had the licensable area as the entire pitch, marquee and clubhouse. He objected on that basis, to licence the outdoor space for 365 days a year would not be the correct thing to do. He would have been happy with the clubhouse only as they could have applied conditions in respect of noise. With outdoor spaces, conditions in terms of noise are much harder to manage.
- e) That the planning application in terms of the marquee would be reviewed by EH, but he did not know what the position would be in relation to that application.

- f) That he was not convinced that the licence conditions could be upheld.
- g) That the offer of reducing events was a double-edged sword – it reduced the risk of noise issues arising however, it acknowledged that events would cause noise nuisance. 50 events were still a lot, 2 events every weekend for half of the year.
- h) That the number of events was a diversion, by reducing them they were implying that those type of events would cause issues or complaints from residents.
- i) That professionally he was not a fan of noise limiters as it was easy to dodge round them.
- j) There needed to be more evidence of how noise break out would be prevented in the marquee.

In answer to Members questions Peter Brown gave the following responses: -

- a) That noise limiters worked well in premises like nightclubs where they were fixed to decks, or in certain places. Therefore, there was no way of bypassing the limiter.
- b) That he didn't get to hear about the premises that were operating well with noise limiters, but he was sure there are many that are operating well.
- c) That 150 people in a marquee would cause a fair amount of noise.

The Chair invited Cllr Izzy Knowles to make her case and the local Councillor made the following points: -

- a) That the address was not 102 Windermere Road, it was important that the address was correct.
- b) That the premises was originally on lease from Birmingham City Council.
- c) In 2018 an additional building was added, called The Clubhouse, which was granted planning permission as a 'meeting place/changing room'. It was not the original Clubhouse.
- d) Due to complaints about noise, fireworks and events previous to 2018, representations were made against the planning application and conditions were imposed that there would be no events after 2000 hours and no large events such as weddings or other large events.
- e) There was another planning application submitted in 2022 (At this stage the Chair advised that the meeting was a Licensing Committee and asked Cllr Knowles to stick to licensing matters).
- f) That there were residential roads on both sides of the premises.

- g) There was also a history of complaints over many years.
- h) They erected a large marquee at least 5 years ago which was used for weddings and other type of events. They were also playing amplified music in the marquee and there had been lots of residential complaints. However, the management changed in 2022 and the new management had tried to work with residents.
- i) The main issues were amplified music, drumming and parking issues. The road was narrow and people were parking dangerously, blocking driveways and slamming car doors.
- j) Large crowds leaving the events on foot was also dangerous.
- k) That it would have been better if the planning consent issues had been resolved prior to the licensing hearing.
- l) That she welcomed the reduction of hours. However she still felt that 50 events was excessive, especially if they were weddings and non-sporting events. It would mean that most of the summer weekends would be used to hold events.
- m) The club did a lot of work with young people and they did work with the residents but they had real concerns about whether they would be able to manage large events using the Clubhouse and marquee.
- n) A couple of weekends after she had met with the premises flares were fired from a car after a wedding events held at the premises. The flare was set off in the car park and the premises weren't able to deal with it.
- o) According to the planning consent the premises should not be used for amplified events of weddings.

The Chair invited Mrs Connor to make her presentation and she made the following points: -

- a) That the premises was a running a lucrative business hosting Asian weddings and the nature of those events involved drumming, fireworks, car revving and amplified music. The site was not suitable for those type of events. It had caused a lot of misery to the residents over many years.
- b) The residents wanted the site to be used for sporting activity. She queried why the club couldn't take subs off members and do fundraising throughout the year like other sporting venues had done successfully for many years.
- c) That it was lovely for local children to have the opportunity to play cricket.
- d) The premises didn't need tens of thousands of pounds in funding.
- e) The residents had tried to work with EH but due to the nature of the events they hadn't been able to visit the events and record the sound levels.

- f) There were 12 events in August, 3 of which were attended by West Midlands Police due to disturbance.
- g) That she didn't think the events were appropriate given how residential the area was.
- h) She lived across the road from the premises.

The Chair invited Janice Burns to make her case and she made the following points: -

- a) That she had lived in the area for 40 years and the premises originally was a sports club that held social events, not massive events like they had now.
- b) The events used to be held in the clubhouse so the noise was limited and the social events were organised by Members of the club.
- c) The size of the more recent events were huge and the marquee couldn't limit noise.
- d) That she lived across the fields.
- e) Even further away it was still possible to hear the noise emitted from the marquee.
- f) That fewer events on a smaller scale and held in the Clubhouse would be much better for the residents.

The Chair then invited Sarah Bowers to make her representation and she made the following statement in the chat as she had to leave the meeting: -

'Apologies, I have another meeting at 11. I stand by my previously submitted objections around public safety, public nuisance and crime & disorder. I would like to work with the cricket club to find a resolution but so far I have no faith that any of the conditions would actually be adhered to'

The Chair then invited Fiona Adams to make her objection and she made the following points: -

- a) That she responded to lots of complaints from residents and there were a great number of complaints.
- b) That she was pleased to see some modification to the application.

The Chair then invited John Wilson to make his objection and he made the following points: -

- a) That the loud noise had been terrific at times, even with windows closed they could hear drumming and loud noise. It was often difficult to sit outside in the summer due to the noise.

- b) That the noise was so bad one day that he went down to the marquee and spoke to the Manager, who said that the clients liked loud music. However, that didn't help the residents.
- c) That he was dubious about a noise limiter, the premises needed proper noise management.
- d) That people were parking dangerously, blocking residents' driveways and parking on pavements.
- e) He had concerns about public nuisance and public safety.
- f) The number of events was excessive and the size of the wedding events caused issues.
- g) The numbers attending were very high, sometimes 100-150 people in a marquee which caused a lot of noise.
- h) The site was not suitable for large wedding events.
- i) The noise levels were high, not just music but background noise over a number of hours was a disturbance.

The Chair invited those making representations to make a closing submission. The only person who wished to make a closing submission out of the objectors was Peter Brown, from EH. He made the following closing statements: -

- That in addition to Mr Wilsons point about noise over periods of time, they would also take into account the character of noise. Music had a character that forced you to listen to it, compared with traffic noise which they generally didn't get many complaints about as it is considered normal.
- Music was designed to be listened to and therefore created more emotion.
- They wouldn't necessarily record the volume of noise, instead they would listen to it and use their own judgement to establish if it was a nuisance.

The Chair invited Duncan Craig to make a closing submission on behalf of the applicant, he made the following closing statements: -

- That it was the first time he had ever heard an EH officer comment on the efficacy of noise limiter devices.
- That the conditions proposed should address any issues with noise nuisance and disturbing residents.
- A noise limiter would control all source of amplified music.
- The noise limiter would be set at a level approved by EH.

- It was 50 event days and not 50 events.
- The premises needed to be able to raise funds and that's what the application was aimed at.
- The police had been called on 3 occasions but West Midlands Police had not made any representations against the application.
- That the marquee was closer to Astor Drive than Windermere and there were no objections made by anyone from Astor Drive.
- That he invited the Committee to grant the application.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the short decision of the Sub-Committee was announced in public, then a full written decision was sent to all parties as follows;

5/201123 **RESOLVED:-**

That the application by Pickwick Venue Ltd for a premises licence in respect of Pickwick Athletic Cricket Club, Windermere Road, Springfield, Birmingham B13 9JS be refused. In reaching this decision, the Sub-Committee was mindful of the promotion of the prevention of public nuisance objective in the Act.

The Sub-Committee's reasons for refusing this application for a premises licence were due to concerns expressed by the Environmental Health department of the City Council, and by other persons (led by the local Ward Councillor), regarding the impact of the proposed operation on the particular locality of the premises.

The Sub-Committee carefully considered the operating schedule put forward (and amended thereafter) by the applicant company, and the likely impact of the application, but was not persuaded that the proposed operation of the premises would satisfactorily promote the licensing objectives; nor did the Sub-Committee feel that the conditions could be modified to an extent sufficient to mitigate against the risks to the licensing objectives. The application had already been amended significantly by the applicant company.

At the start of the meeting the parties were introduced. The applicant was a limited company. The director attended and was represented by counsel. Also in attendance were the Environmental Health officer, the Ward Councillor, and several local residents, including a representative of the Moseley Society.

Counsel for the applicant company drew the Sub-Committee's attention to the application; this was in the Committee Report. It had originally been submitted in the summer, and had recently been amended with some further modifications, which had been made in light of the concerns expressed by those making representations, which had related principally to the potential for noise nuisance. The applicant company acknowledged that local residents had contacted

Environmental Health regarding noise emanating from the site, and hoped that the objectors would be reassured by the modifications which had been offered.

The club provided sporting facilities for the local community. The majority of the users were children under the age of 18, many of them under the age of 14; some were from deprived backgrounds and had found that the equipment required to play cricket was expensive. In order for the club to be able to provide the facilities and be viable, it had to put a number of events on. The purpose behind the application was therefore simply to ensure that the club could continue to provide sports facilities for the community.

The applicant company had noted the representations which were in the Committee Report. The representations suggested the application ought to be scaled back to reflect the fact that there were residential properties nearby. Counsel reminded the Sub-Committee that its decision should be a balancing exercise between the concerns of the local community and the legitimate business interest of the premises.

The original operating schedule, submitted in the summer of 2023, included all the standard provisions regarding CCTV, incident books, and conditions around public safety. The reason for the instant meeting was because of the persisting concerns around the prevention of public nuisance objective, and therefore the applicant company had submitted an amended application, including a noise risk assessment and noise management plan.

The hours had been scaled back significantly, and key to the amended application were the provisions to guard against noise emanating from the premises, which would avoid the risk of public nuisance arising inside any neighbouring noise-sensitive properties. In addition, there were conditions in relation to waste and notices.

Discussions had been held with the Ward Councillor, and the applicant company had also carefully noted the written representations from those living nearby. The reduction of the hours down to 20:00 was an early time for the end of licensable activities. The applicant company had also reduced the number of event days down to 50 per year, to be held only at weekends (not from Monday to Thursday).

Counsel observed that the number of event days was low, and asked the Sub-Committee to bear in mind the proportionality of the application. He further reminded the Members that the applicant company had agreed to include a noise limiting device. He observed that Environmental Health would be able to advise on noise attenuation matters within the marquee, and the two noise-related conditions (one that there would be no nuisance to noise-sensitive premises, and another in relation to a noise limiter) would also protect residents. In addition, all external doors and windows would be kept closed. Other provisions included adequate speed bumps in the premises' car park, and the use of car parking attendants.

Counsel noted that the marquee was central to the concerns expressed by many of the local residents. He reminded the Members that under the Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005, a

tent/marquee was classed as “indoors” in terms of conducting licensable activities. The Sub-Committee noted this. A planning application for the marquee was in preparation, and also an application to remove two of the planning conditions that related to events and amplified music.

Counsel stressed that whilst the applicant company was not looking to alienate local residents, the reality was that in order for the club to function and to provide sports facilities for the local community, the ability to hold events was necessary. The events were principally aimed at the local Asian/Muslim community; there was therefore no interest in applying for an alcohol licence.

Regarding other points made in the representations, counsel confirmed that the premises had definitely not been operating during the Covid-19 lockdowns. Issues in relation to wildlife and fireworks were not matters for consideration by the Sub-Committee; nor was parking, but notwithstanding that, the company intended to ensure that the car park would be managed in a robust fashion. The nitrous oxide canisters noted by those living nearby were a widespread problem in many areas, not just around the instant premises.

The company felt that the shortened hours, together with the amended conditions, would cover the concerns of residents, such that the application could be safely granted. The scope of the application had been reduced down to 50 event days per year, only on a Friday and Saturday and Sunday, and furthermore, those activities would start at midday and cease at 20:00. There would be the ‘double protection’ of a noise limiter and a condition to cover nuisance within noise-sensitive premises. Counsel reiterated that the position was that the company needed these activities in order to survive and provide the sporting facilities.

The Sub-Committee noted that under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk to the promotion of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact have an adverse effect on the licensing objectives by considering the submissions of those making representations, several of whom had attended the meeting in person.

Environmental Health addressed the Sub-Committee first, to explain that there had been a history of complaints of noise from the site. The officer was concerned about noise generated by licensable activities at the premises.

Whilst the officer acknowledged that the premises did have a right, and perhaps even an obligation, to raise revenue for sporting activities at the club, the view of Environmental Health was that it was “a sporting club and not an event space”. He remarked that there were many other event spaces available in Birmingham, which were usually situated in locations where compliance with noise regulations and with licensing regulations could be achieved “without too much of a problem”.

The officer felt that this was not the case at the applicant’s premises, and remarked that he would have preferred that licensable activities should have been limited to the clubhouse only, as it would have enabled Environmental

Health to apply suitable conditions in respect of noise, such as keeping the windows shut, and keeping the doors shut from the location of the smoking area. He remarked that with noise emanating from a marquee, this was not possible.

Although he accepted that under the 2005 Regulations the marquee was classed as an indoor space for licensing purposes, he advised the Members that acoustically it was effectively more of an outdoor space. He observed that “the marquee has virtually no acoustic attenuation properties at all”, and noted that any music played or noise generated by patrons inside the marquee would be audible outside, in exactly the same way as from an outdoor space. He felt that a further difficulty would be created because the sound would be focused in one location, namely the marquee, and accordingly would tend to have more character than a general hubbub in a wider area.

All in all, the officer did not consider that the marquee was suitable as an entertainment space. He welcomed the news that a planning application would shortly be submitted for the marquee as Environmental Health would be consulted on it.

Regarding the complaints made in the past, the officer stated that this did worry Environmental Health in terms of the future. He repeated his view that he was not convinced that the licensing objectives could be upheld at the premises; the overriding concern was noise management. He was uncertain whether the clubhouse was a suitable structure to hold events, and questioned whether the windows, even if kept shut, would keep the noise in or not, but regardless of that, he observed that if the licensable activities had been limited to the clubhouse, Environmental Health would have had a greater ability to apply conditions regarding noise breakout.

The officer had noted the drastic reduction of the number of events per year, but said that he considered this to be something of a double-edged sword. On one hand, it was to be welcomed, as there would be fewer opportunities for noise problems to arise; on the other hand, 50 events a year would still be “two events every weekend for half the year, and because they occur at the weekend, they tend to occur at times when people are more likely to be at home”. The events, held as they would be in the marquee, were also overwhelmingly likely to be held in warmer months, when local residents would hope to be enjoying their gardens. The Sub-Committee noted this.

The officer also considered that the reduction of the number of events to 50 per year was “a tacit admission that those events are likely to cause a problem”, and it was this which had necessitated the reduction. He therefore had concerns that it would be 50 occasions a year which had the potential to create an adverse effect on local residents. Whilst this might not be true of every event, he observed that the more events that were held, the more likely it was that this would be the case. He felt that in reducing the number of events to reduce the nuisance, it was implied that those events would still be likely to have a potential adverse effect on residents, and therefore result in complaints.

Regarding the use of a noise limiter, the officer had doubts that this would achieve the aim of reducing the risk of noise nuisance for local residents. He

considered that they worked well in establishments where the location of the equipment was fixed, but felt that they were “not a universal panacea for noise problems”. He also pointed out that noise created by patrons in a smoking area, or if patrons congregated outside, would not be controlled at all by a noise limiter. He repeated his concerns about the structure of the building and whether it was capable of preventing noise breakout, and confirmed that he was not satisfied that the proposed use of the marquee would not create risks to the public nuisance objective.

The Ward Councillor then addressed the Sub-Committee to confirm that she was aware of complaints about noise from events dating back even before 2018. The cricket ground had residential roads around it, with families including children on two sides and in very close proximity. The large marquee in the grounds had been there for at least five years, and was used for weddings and other events. Amplified music emanating from the marquee had caused a lot of tension with residents and numerous noise complaints had been made.

The applicant company had responded to complaints, and had banned groups which had misused the facilities, but the Ward Councillor felt that this had not addressed the core issue, namely that of the public nuisance created by amplified music and the noise of large amounts of people attending the site for events.

She was pleased that the proposed use would be at weekends only, and limited to 20:00 hours, but felt that 50 events per year would be excessive, especially if these were going to be weddings and other non-sporting events. She suspected that this would be in addition to the normal cricket activities, and observed that this was likely to mean that events would be held “pretty much every weekend evening over the summer period”.

She had been impressed with the work that the premises had done with young people in trying to get children involved with cricket, and had seen that they had built extra facilities such as nets. However, she had concerns over whether the company would be able to manage large events using the marquee and/or the clubhouse. She felt that there should be no amplified music “for external use”, and commented that the site was not suitable for weddings.

Local residents then addressed the Sub-Committee, endorsing the representations from Environmental Health and the Ward Councillor. They considered that whilst the premises was supposed to be a cricket club, it was in fact “running a very lucrative business in Asian weddings”; the nature of such weddings was that they involved noise, particularly from amplified music. The residents did not consider the site to be suitable for this type of use, and felt that it had created public nuisance for residents across a period of years. They would have preferred that the site be used purely for sporting activity.

Regarding the need to raise revenue, they felt that the proper model was that which was seen at other sporting clubs – the taking of subscriptions from members, and the holding of occasional fundraising events throughout the year to support a club. They were supportive of the facility for local children to have the opportunity to play cricket, but did not see that the “tens of thousands of pounds” generated via a lucrative business model was necessary to fund this.

They felt that the income generated was at local people's expense, remarking that “we are suffering for it, and there is no way of controlling it” (apart from making complaints); all in all, they felt that the use was not appropriate for a residential area. One resident who had occupied her property for 40 years observed that originally the premises had been a sports club that held social events for the club, not the “massive events” which had been seen in recent years; she felt that this was the central issue. In the past, events had been held in the clubhouse, so noise was limited, and they had tended to be social events organised by the members of the club, rather than commercial ventures in which significant numbers would arrive for a large celebration.

Another resident mentioned complaints which had been made in the past, and indicated that she had “no faith” in the applicant company to abide by any of the proposed conditions. A representative of the Moseley Society confirmed that she had received “a great number” of complaints about the premises; whilst she was pleased to see that there had been some modification to the application, she remained concerned that very large events were still likely to be held, and that consequently there would be risks to the public nuisance objective.

Another resident observed that “the noise has been terrific at times”, which had made it very difficult to sit outside in summer, particularly with the style of events held at the premises, which had tended to “go on for hours”. He remarked that the noise over a period of time was considerable. On one occasion, when he had gone to the marquee to have a word with the manager, he had been told that the premises’ clients liked the loud music. He observed that residents did not share this view. He had doubts about the noise limiter, and whether it would be able to properly limit the disturbance to residents.

He also felt that 50 as the number of events per year was “probably excessive” given that the size of the events, and numbers of persons attending, was such that they caused public nuisance problems, particularly from noise – observing that 100 to 150 people in the marquee in itself caused a lot of noise, as well as the music. He felt that the site was simply not suitable for large events such as weddings; he agreed with the other objectors that the use should be scaled down to smaller social events of the type that would be expected at a cricket club located in a residential area.

The Environmental Health officer noted a resident’s comment about “the equivalent noise over a period of time”, and observed that the Sub-Committee should also take into account the fact that the noise from music had character. Music encouraged those living nearby to listen to it, unlike traffic noise, which people often accepted as part of the background noise in an area. He remarked that this was why music “generated more emotion than noise without character”.

When summing up, counsel for the applicant company expressed surprise that the Environmental Health officer had questioned the efficacy of a noise limiting device. What was being proposed was a machine which would compress the noise and limit the level of the output. The two conditions regarding noise would provide a double layer of protection - a noise limiting device installed at the premises and maintained in such a manner as to control all sources of amplified

music, and a condition contained in the operating schedule that there would be no noise emanating from the premises which would cause a public nuisance inside any neighbouring noise-sensitive premises. Music would be set at a level such that it could not be heard inside nearby properties, and this would be done in conjunction with Environmental Health.

Counsel also clarified that the application was for 50 event days per year, not 50 events; an “event” could stretch to a whole weekend, but here the proposal was for 50 days only. Regarding one resident’s comment that the premises had other means of raising money, counsel noted that other premises generally had a bar offering alcohol, which the instant premises did not have; it therefore had to find reasonable, proportionate ways to raise funds which were considerate to those living nearby.

Counsel reminded the Sub-Committee that West Midlands Police had not made a representation in respect of the application, and therefore they did not consider that the crime and disorder objective was engaged. He further noted that there had been no representation from residents in the street closest to the marquee. He again reminded the Sub-Committee that the hours had been shortened, and the request to operate on 50 days a year was simply in order to make the club viable. He stated that the marquee could hold a maximum of 120 persons. He considered that, all in all, the amended application was relatively modest, and asked that the Sub-Committee grant it.

Having heard all of the evidence, the Sub-Committee retired to determine the application. The Sub-Committee examined the operating schedule put forward by the applicant company, and considered that the premises had made efforts to respond to the concerns expressed by those making representations. The Sub-Committee took on board that the presumption was that the application should be granted in the absence of evidence-based risks to the promotion of the licensing objectives.

The Members therefore reflected on all of the submissions, whether written or oral, to ensure that concerns raised were not merely speculative, but based on evidence, and found that, in the particular circumstances of the specific location, the observations of Environmental Health carried significant weight. The Environmental Health department of the City Council was of course the expert in the prevention of public nuisance, particularly relating to noise. Very detailed submissions had been made by the officer; these submissions had strongly suggested that noise nuisance would be created for local residents even with the proposed shortened hours and limited days of operation.

The representations made by the Ward Councillor and local residents had been compelling evidence of the extent of the problems created by the use of the premises for events, and the public nuisance created by noise escaping and disturbing residents in their homes. Taking all the evidence into consideration, the Sub-Committee determined that the shortening of the hours, the limited days, and the noise measures, would not be sufficient to enable the premises to uphold the public nuisance objective. The Members agreed with those who had expressed fears that every weekend in the summer would feature an event at the premises, with associated noise problems emanating from the marquee.

Accordingly, to grant the licence would be a significant risk to the promotion of the licensing objective of the prevention of public nuisance. The evidence submitted by Environmental Health persuaded the Members that the only correct course was to reject the application, in order to ensure that the objective could be upheld. The Sub-Committee noted that the position taken by Environmental Health had also been endorsed by those making representations, all of whom had direct knowledge and experience of living in the vicinity, and of how the events held at the club had created public nuisance over the years.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the licensing objectives were adequately promoted and that therefore the licence might be granted. However, after reflecting on the application, the Members did not see that this was possible. The Members noted the comments that the premises was a sports club which had become a commercial events venue - to the detriment of those living nearby, who had made repeated complaints to Environmental Health, to the Ward Councillor, and to the Moseley Society. The Sub-Committee therefore resolved to reject the application.

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 contained in the application, the written representations received and the submissions made at the hearing by the applicant company via its counsel, and by all of 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.

EXCLUSION OF THE PUBLIC

6/201123

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:-

Exempt Paragraph 3

Chair.....