

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 26 AUGUST 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 26 AUGUST 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Martin Straker-Welds.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Phil Wright – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

NOTICE OF RECORDING/WEBCAST

1/260820 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.

2/260820 **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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/260820 Apologies were submitted on behalf of Neil Eustace and Councillor Mary Locke was the nominee Member.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT AFRICAN VILLAGE, 2
BARKER STREET, LOZELLS, BIRMINGHAM, B19 1EL**

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

(See document No. 1)

On Behalf of the Applicant

Mr S Aguh – Premises Licence Holder (applicant)

Mr K Mukulu – Counsel Amity Chambers representing the Premises Licence Holder

Those Making Representations

Councillor W Zaffar – Ward Councillor

The Chairman introduced the Members and officers present and asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were made.

At 1021 the meeting was adjourned due to technical difficulties.

At 1023 the meeting was reconvened.

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

Mr K Mukulu made the following points on behalf of the applicant:-

- a) The applicant had accepted the amendments to the opening times and the conditions requested by Environmental Health and documented in the papers.
- b) The applicant had also accepted the conditions proposed by Licensing Enforcement.
- c) The objections related to anti-social behaviour and parking and the Premises License Holder had addressed those points in the additional statement that he had submitted to the Sub-Committee.
- d) Paragraph 8 of the additional statement confirmed that the Premises Licence Holder had negotiated with a nearby premises owner to use their carpark.
- e) The parking on the pavement referred to by Councillor Zaffar could have been anyone and could not be confirmed to be associated to the applicant premises and paragraphs 8 and 9 in the additional statement deals with that issue in more detail.
- f) The applicant intended to put up signs in the restaurant advising patrons about parking in designated parking places.

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- g) Regarding anti-social behaviour the applicant intended to employ appropriately badged security staff so that when the premises closed at night customers could be ushered out and loitering would be prevented. Persons leaving would do so via an exit on to Lozells Road thus avoiding Barker Street which was residential in nature.
- h) The amended hours agreed would alleviate concerns relating to anti-social behaviour.
- i) Submissions relating to a previous licenced premise in the area should be dismissed as the issues were not connected to the application premises.
- j) The representations from Councillor Zaffar made reference to the fact that the applicant had ran a business with the same name at Birchfield Road which was the subject of a number of complaints from residents. The applicant stressed that the previous premises had longer opening hours while the current application was for a restaurant closing earlier. The applicant also highlighted that he had never received any complaints about the premises at Birchfield nor had Councillor Zaffar provided any evidence of such complaints.
- k) The Sub-Committee was asked to grant the licence.

In answer to Members questions Mr K Mukulu and Mr S Aguh made the following points: -

- a) In order to attract the 'right clientele' the applicant would make it clear to prospective customers that the premises were a restaurant and the behaviour expected of customers. Any advertising would include the words 'best behaviour would be appreciated'. In addition, there would be security staff to deal with any issues that arose.
- b) There would be CCTV in operation and any footage would be provided to the police if requested.
- c) Whilst the capacity of the premises was 85 that would not be the figure for operating with Covid restrictions due to the size of the premises.
- d) Customers would be 'sign posted' to the parking which was on Heathfield Road near Villa Cross and a 2-3-minute walk from the restaurant. There was parking for 12 cars.
- e) There would be 4 security staff on duty on Friday and Saturday nights and 2 to 3 on the other nights.
- f) The licenced area being applied for was orange on the plans submitted. The main entrance was off Barker Street which went into a glass lobby before customers went through into the waiting area. The exit to Lozells Road to be used at the end of the evening was the emergency exit top right on the plan.

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- g) Although the plans did not show seating the premise was to operate as a restaurant and not a bar. There would be no standing except for staff and maybe customers in the waiting area

Councillor Zaffar presented his representations and made the following points: -

- a) He was raising the concerns of local residents as the local Councillor.
- b) He was pro-business particularly local business and he welcomed the fact that the building was to be brought back after several years and the diversity of offer to the Lozells area and the wider area. The proposals would create employment and benefit the local economy.
- c) However, residents had grave concerns about the licensing of the premises due to the nature of the area in which they were situated which had had problems in the past. The reduction in hours was acknowledged.
- d) Whilst there were no licenced premises currently in the vicinity of the premises there had been a number operating in the past in the Villa Cross area which had either moved on or had the licences revoked. Whilst the applicant had not been connected to any of these it demonstrated the environment in which the proposed premises would operate.
- e) One premises which had no connection to the applicant was at the other end of Barker Street. Following issues, the licence was revoked, a position supported by local residents, police and the Sub-Committee who took the decision. The reason for the revoking of the licence was the Landlady could not control the clientele using the premises. These people were not from Lozells and would come and park in haphazardly in the surrounding streets. It was acknowledged that the Landlady had tried various measures to deal with the issues without success.
- f) As a Ward Councillor he had received many complaints from local residents, some who were very distressed, mostly following Friday and Saturday nights. Issues raised were people drinking and urinating on the street and in resident's gardens.
- g) Work was being undertaken by the City Council to create a low traffic neighbourhood in Lozells to reduce the amount of through traffic on residential roads such as Barker Street. The application would create more traffic. The ability for traffic to travel down Barker Street because of parking was so bad double yellow lines had had to be introduced.
- h) There appeared to be no evidence of the additional parking the applicant was providing. However, 12 spaces for 4 security staff, other staff and 85 customers was insufficient. Therefore, the premises would add to the parking difficulties in the area.
- i) It was noted that a petition that had been collected before the licence had been applied for could not be considered at the meeting. The reason that this petition was started was because a sign had gone up outside the premises

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with the words African Village Bar and Restaurant which was the same name of a premises on Birchfield Road.

At this point Mr K Mukulu asked if Councillor Zaffar was seeking to reintroduce the petition. Councillor Zaffar explained that he was merely indicating that 430 local residents had signed a petition on the strength of a sign put up by the applicant.

Councillor Zaffar continued by making the following points:-

- j) The provision of security at a restaurant where families would go did not give the impression of a safe environment. The fact that the applicant and his representative had already said security staff would be available suggested that they are expecting the premises to attract the wrong clientele. Other restaurants in the vicinity catering for local residents did not have security.
- k) He felt that if the licence was to be granted it would have a detrimental impact on the local community and the situation that had happened with the licenced premises on Baker Street a few months ago would be recreated. The local residents were relieved when that licence had been revoked as the illegal barbeques and street parties stopped. That environment would be recreated if the license was granted for this restaurant because of the nature of the clientele who would be visiting the premises, would be similar to those visiting the closed premises on Barker Street and the African Village on Birchfield Road where the independent Birchfield Neighbourhood Forum had led a campaign.
- l) The area had many challenges with HMOs and previous riots which take time to recover from and further issues should not be encouraged.
- m) He had lived in the area all his life near the application premises and was familiar with the issues in the area. He could not endorse the application because of the impact on residents of Barker Street and felt that if granted a campaign to review the licence and calling for it to be revoked would be started. The Sub Committee would be looking at the licence again very soon. He felt that a restaurant without a licence would be welcomed.
- n) The premises was surrounded by parking restrictions because it was on a junction. He had been sent pictures of a vehicle which it was hard not to connect to the premises parked on the pavement between the railings and the restaurant. The only way it could have got there was by driving up on to the pavement at the traffic lights. The vehicle could have been connected to refurbishment work at the premises or delivering to it. It raised the question how deliveries would be made to the premises as no details had been given.
- o) He asked the Sub-Committee to understand the environment in which the premises were situated and the issues in the last 12 months with a licenced premises at the other end of Barker Road. The provision of security staff and the operation of the premises as a restaurant and not a night club as the premises on Birchfield Road did, together with reduced hours, would not be sufficient to deter people who would see the name of the restaurant and believe it to be operating in the same way as the premises at Birchfield Road.

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The fact that the name was the same and it was operated by the same person was worrying.

In answer to Members questions Councillor Zaffar made the following points: -

- a) He had not been convinced by what he had heard in the meeting and emphasised that the applicant had known of his representations made on behalf of local residents but had not reached out to him or the local community. He had objected to other licensing applications where the applicant had put in some interventions which had allowed him to withdraw the representations. There had been no reassurances before the meeting or in the meeting. The residents feared that the premises would operate as a night club in the residential area as the same clientele would be attracted by name and the fact the former premises were not far away. He himself felt that the premises would be more of a bar than a restaurant which was reflected in the name on the signs where the word bar was first.
- b) There were no conditions in the licence which would deal with the main issue of anti-social behaviour as had happened with other premises nearby.
- c) He was disappointed that the police had not made representations as he was aware of conversations between local residents and the Neighbourhood Policing Team and the Neighbourhood Policing Team and the Police licensing Team. The police could not deal with the issues at the other premises which led them to seek a review. He had spoken to an experienced local police officer who feared the same problems may arise again.
- d) He did not see the situation with the premises closing at 2330 hours as different to that of the former premises which had longer opening hours as he felt the same clientele would be attracted. Also, the premises had the same name and operator. Whilst the bar would close at 2330 hours that would not stop the people going out onto the streets of Lozells and causing problems in the area. He highlighted that the former premises on Birchfield Road had a large carpark and was in a busier environment with less residential property nearby. The application premises had residential property a couple of doors down Barker Street.
- e) He believed the licensed premises would just attract people to congregate outside in the street which the applicant would find difficult to deal with. There was an issue in the area of illegal parties and people roamed from one licenced premise to another impacting on the quality of life of local residents.

In summing up, Councillor Zaffar explained that the issue was about peoples' lives, who should feel safe and secure in their own homes. Having the prospect of a licenced premises opening late so close to residents' homes had made them remember the problems they recently experienced with another premises in the vicinity. Despite reassurances from the applicant and his representative and the conditions put forward by Council Officers, residents were still not convinced and he requested that the Sub-Committee refuse the licence in order for residents to enjoy the peaceful life they have enjoyed since the other premises licence was revoked.

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In summing up, Mr K Mukulu confirmed in order to comply with Covid guidelines on social distancing the restaurant would reduce its capacity from 85 to 22 persons seated. With reference to the security staff that the applicant intended to put in place, that should reflect on him positively for having the foresight to realise at times when alcohol is consumed by people issues may arise that require trained staff to deal with them. If Councillor Zaffar did not wish to attend a restaurant with security staff than that was his personal preference and should not be used against the applicant. Councillor Zaffar had made reference to anti-social behaviour and the applicant was providing security staff and CCTV to mitigate against that issue. It would appear that no conditions could be put forward by the applicant that would satisfy Councillor Zaffar.

Councillor Zaffar had made much of the fact that the premises would have the same name and operator as the closed African Village premises in Birchfield Road and therefore likely to attract the same clientele. The two premises had different opening hours with the proposed premises operating as a restaurant (not a nightclub) until 2330 hours. The two should not be linked for the purposes of the application.

The applicant had used the formal procedure to deal with the representations made by Councillor Zaffar rather than reach out to him beforehand and no weight should be put on this. The applicant was acting in a professional manner.

At 1125 the meeting was adjourned due to technical difficulties.

At 1127 the meeting was reconvened.

Mr Mukulu asked Mr Mr Aguh to address the issue of deliveries who explained that there was a garden at the rear which could be made into an off-road delivery area.

Mr Mukulu continued by noting the reference to the lack of Police representations by Councillor Straker Welds and Councillor Zaffar's apparent concern. It should be noted that the Police had the resources and the knowledge and intelligence to judge whether this type of application would create the type of issues raised by Councillor Zaffar. It was a material point that the Police had chosen not to make representations on the application which suggested that they viewed that application without reference to the Birchfield Road premises and that the two had different characteristics.

The Sub-Committee should ignore reference to illegal parties as there was no evidence that the applicant would encourage such parties and as he has made an application for a licence through the appropriate channels indicate his willingness to abide by the law.

Mr Mukulu noted that no evidence had been put forward to substantiate the concerns of the Birchfield Neighbourhood Forum. However professional Council Officers from Environmental Health had looked at the application and proposed conditions which were agreeable to the applicant.

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The applicant, in his statement to the Sub-Committee, had addressed the issues raised by Councillor Zaffar, particularly parking, which was anecdotal. He confirmed that when he visited the premises, he had been able to park a couple of minutes walk away which suggested parking was available. The applicant was putting up appropriate signs highlighting where parking was available including the parking he had arranged with a third party.

There was no evidence linking the situation at the Public House up the road which had had its licence revoked, which was a drinking establishment and the application premises which was a restaurant serving alcohol and any suggestion that it was going to be anything different was misleading.

In conclusion Mr Mukulu invited the Sub-Committee to grant the licence bearing in mind that the Police who would be concerned with anti-social behaviour had not made representations and Environmental Health Officers had sought and agreed with the applicant some concessions in the form of conditions.

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 private and the decision of the Sub-Committee was sent out to all parties as follows: -

4/260820

RESOLVED:-

That the application by Simeon Aguh for a premises licence in respect of African Village, 2 Barker Street, Lozells, Birmingham B19 1EL, **BE REFUSED**. In reaching this decision, the Sub-Committee was mindful of the promotion of the licensing objectives in the Act, particularly the prevention of public nuisance.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns expressed by the local Ward Councillor regarding the impact of the proposed operation on the particular locality of the premises, near to residential properties. The Ward Councillor made detailed representations relating to the Barker Street area, and the likely effect on people living in the vicinity.

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application, but was not persuaded that that the proposed operation of the premises adequately took into account the needs of local residents.

The application had stated that the premises was to be a restaurant. The applicant's legal representative addressed the Sub-Committee and confirmed that "this is a restaurant where alcohol will be served". Security guards would be on duty – four on Friday and Saturday nights, two/three on other nights.

The main issues raised by the Ward Councillor were parking and antisocial behaviour. Whilst the applicant had arranged for 12 parking spaces in a car park which was "two to three minutes away", it was observed by the Ward Councillor that the capacity of the premises was 85 persons; even allowing for the reduction in numbers required by the ongoing Covid-19 pandemic, the applicant expected to

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be able to seat around 22 persons. Twelve parking spaces would therefore not be sufficient for customers, staff and the security personnel.

Regarding the risk of antisocial behaviour, the Ward Councillor stated that the sale of alcohol would lead to the same problems which had been experienced in the past in the Barker Street vicinity. Local residents had also made their views on this aspect plain to the Ward Councillor – that the risk of antisocial behaviour was a great worry to them. The Ward Councillor’s fears were not speculative, but were based on his direct knowledge of problems created by alcohol-licensed premises which had operated in the area in the past. The Ward Councillor noted in particular that the applicant had arranged for four security guards to be on duty at weekends; the Sub-Committee agreed that this seemed unusual for a premises describing itself as a restaurant.

The Sub-Committee observed that the Ward Councillor was supportive of local businesses; he remarked that a restaurant would expand the food offer available in Barker Street, create jobs and contribute to the local economy. However, the issue was the sale of alcohol, which had been found to create problems in the area in the past, and to adversely affect the lives of residents as a result. The Sub-Committee therefore determined that the correct course was to refuse the application; the premises would be able to operate as a restaurant, but without the alcohol licence which would put the licensing objectives at risk.

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, Members considered that neither modifying conditions of the licence, refusing the proposed Designated Premises Supervisor nor excluding any of the licensable activities from the scope of the licence would mitigate the concerns raised by those making representations. The terminal hour had already been brought forward, and regulated entertainment (recorded music) removed, from the scope of 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 via his legal adviser, and by the Ward Councillor 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.

The meeting ended at 1147 hours.

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CHAIRMAN