

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 9 NOVEMBER 2016
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON WEDNESDAY, 9 NOVEMBER 2016 AT 0930 HOURS, IN COMMITTEE ROOM 1, COUNCIL HOUSE, BIRMINGHAM

PRESENT: - Councillor Buchanan in the Chair;

Councillors Dring and Eustace

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Victoria Williams – Committee Services

NOTICE OF RECORDING

1/091116

The Chairman advised the meeting, and the Sub-Committee noted, that members of the press/public may record and take photographs except where there were confidential or exempt items.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

2/091116

Apologies were submitted on behalf of Councillor Leddy. It was noted that Councillor Dring was the nominated Member.

PLAYERS, 240 BROAD STREET, BIRMINGHAM, B1 2HG – LICENSING ACT 2003 - PREMISES LICENCE REVIEW

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

(See document No 1)

Presenting the Application for the Review

Councillor Gareth Moore.

On Behalf of the Premises Under Review

Mr C Grunert – John Gaunt and Partners, Solicitors.

Mr J Cadona – Premises Licence Holder/Director – Players.

Making Representations

Mr M Croxford – Head of Environmental Health

Mr R Davey – Environmental Health Officer

Following introductions by the Chairman, the main points of the report were outlined by David Kennedy, Licensing Section.

Councillor Gareth Moore indicated that, although he was a Councillor, he was attending the meeting as a member of the public. However, it was noted that he had submitted the application for review in his capacity as a Councillor.

He stated the grounds for review and highlighted the information in support of the application, including photographs of fly posters in various locations, statistics provided by Amey regarding the number of placards that had been removed as detailed in appendix 1 and street cleansing data as set out in appendix 2 of the review application now submitted.

He expressed concern that some of the posters shown in the photographs had advertised cheap alcohol. Others had specifically targeted A Level students.

Councillor Gareth Moore considered that Players were in breach of the Licensing Policy. He requested that, in order to promote the licensing objectives, the premises licence be revoked on the grounds of public safety and the prevention of public nuisance or that, at the very least, some form of additional conditions could be agreed. However, he had been unable to speak with Players prior to the meeting and understood that they did not consider it appropriate to add extra conditions to their licence.

In response to questions from Members of the Sub-Committee, Councillor Moore made the following points:-

1. He recognised that there was a procedure to be followed regarding the removal of fly posters, the fact that not all illegal fly posters were erected by/on behalf of licenced premises and that conditions could not be imposed on those organisations in the same manner. However, he hoped that if licenced premises raised the profile by removing their illegal fly posters that other organisations might follow suit.
2. He expressed concern that illegal fly posters had been put up in the first place. Preventative measures needed to be implemented to address the problem. Ultimate responsibility lay with the Premises Licence Holder.
3. The information detailed in appendices 1 and 2 was general in nature and did not solely relate to licenced premises.
4. All photographs had been taken in the vicinity of Six Ways, Erdington.

5. With regard to fly posting, he considered that licence holders should act more responsibly than other organisations and companies such as kitchen suppliers.
6. Licence holders had a duty to abide by the Licensing Act 2003. It was not unreasonable to impose extra conditions relating to fly posting.

Messrs Croxford and Davey, Environmental Health, made representations highlighting the salient points set out in the report including the history of flyposting associated with Players and drew Members' attention to the slightly amended recommended conditions, compared to those set out on page 8 of the agenda papers, that they considered should be added to the licence and a copy of which was tabled at the meeting:-

(See document No 2)

In response to a question Messrs Croxford and Davey briefly explained the procedure and costs involved regarding the removal of fly posters.

The following agreement, between the promoter CP90 Events Limited and Inspired Leisure Limited, operators of Players, was submitted:-

(See document No 3)

Messrs Cadona and Grunert, on behalf of the premises under review, made the following points:-

1. There was no evidence to suggest that Players were aware that the illegal fly posting had occurred. No-one had contacted Players prior to today's meeting regarding the matter. It was unfortunate that there had not been more partnership working beforehand.
2. Illegal fly posting created an adverse image, was counter-productive and anti-social.
3. This was the first time that Players had been the subject of a review.
4. The modification of the conditions was unnecessary.
5. With regard to illegal flyposting, Players should not be held responsible for what had happened or might occur in the future. Concern was expressed that a breach of conditions could incur a heavy fine.
6. Players Bar was a successful family run business.

Licensing Sub-Committee C – 9 November 2016

In response to questions from Members of the Sub-Committee, Messrs Cadona and Grunert made the following points:-

1. Mr Cadona advised that staff held weekly meetings and acknowledged that the matter of fly posting could be brought to their attention. Staff could be asked to be more vigilant and flag up with management any instances of fly posting of which they became aware in the future.
2. Players should not be held responsible for the actions of the promoter. There was no evidence to suggest that Players were aware that the illegal fly posting had occurred.
3. Players were aware that the events were being promoted but did not know that it was being done in an illegal manner.
4. Players would have addressed the issue if they had been aware that fly posting was taking place.
5. Environmental Health had not contacted Players regarding illegal fly posting.
6. If an incident of fly posting occurred in the future, Players would make every effort to deal with the matter within 48 hours. Additional conditions were unnecessary.
7. Players gave clear instructions to promoters of what was expected and if they had been aware of the illegal fly posting appropriate action would have been taken.

All parties summed up and made final submissions and at 1129 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, Committee Lawyer and Committee Manager, withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1157 hours and a summary of the decision of the Sub-Committee was announced. All parties were advised that the full decision would be forwarded to them within five working days. The full decision is set out as follows:-

3/091116 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Inspired Leisure Limited, in respect of Players, 240 Broad Street, Birmingham, B1 2HG upon the application of Councillor Gareth Moore, this Sub-Committee hereby determines to modify the conditions attached to the Premises Licence,

through the inclusion of the following additional conditions:-

Additional Permanent Conditions

1. The premises licence holder shall, as far as is reasonably practicable, ensure that events held at the premises are not in any way promoted by the use of illegal fly-posting or unauthorised advertisements attached to street furniture.
2. The premises licence holder shall ensure that agreements/contracts with promoters for the use of their premises or for events to be held at their premises prohibit the use of illegal fly-posting and/or advertisements attached to street furniture, and shall take all steps reasonable to enforce such agreement/contract terms. The premises licence holder shall maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority on request.
3. The premises licence holder shall take all reasonable precautions and exercise all due diligence to ensure that no person/company promoting or providing entertainment on the premises, nor any person acting on behalf of any promoters, shall display in an unlawful manner advertisements promoting the entertainment or the premises, in particular:
 - a) no display of advertisements should take place on street furniture;
 - b) no display of advertisements should take place on premises or structures placed on, over, in or adjacent to the highway, unless the licensee has first obtained the written consent of the owner of the premises or structure. Such consent shall be shown to a responsible authority on request.
4. The premises licence holder shall remove any unlawful advertisements of events at their premises where they become aware of them or they are advised by Birmingham City Council, its agent(s) or West Midlands Police of an illegal advertisement being displayed. Such removal shall take place within 48 hrs of receiving the said notice.

The Sub-Committee's reasons for imposing these additional conditions on a **permanent basis** on to the Premises Licence, are due to concerns raised by Councillor Gareth Moore within his review application dated 20 September 2016, as supported by Environmental Health, Birmingham City Council, as a Responsible Authority, in relation to the promotion of the prevention of public nuisance licensing objective, through unlawful fly posting around the City of Birmingham.

Furthermore, the Sub-Committee noted that the premises were either engaged in, or had failed to take reasonable measures to prohibit the use of fly posting around the City of Birmingham as evidenced within the review application, contrary to the Licensing Authority's own Statement of Licensing Policy, specifically:-

"20.7 Fly posting and Promotional Material

20.7.1 As a leading entertainment centre Birmingham often faces the widespread problem of illegal or nuisance fly posting, and littering from promotional material. This

can have an impact on the prevention of public nuisance objective and the prevention of crime and disorder objective within the Licensing Act 2003.

20.7.2 Existing legislation seeks to address this problem, however, it often proves ineffective in preventing this type of nuisance advertising. The Council is also concerned that some licence holders leave the advertising of regulated entertainment to events promoters and then use this to argue that they are not responsible for any illegal fly posting which occurs.

20.7.3 The Council expects responsible licence holders to ensure the licensing objectives are properly promoted when advertising regulated entertainment at their premises. For this reason it considers licence holders should outline in their operating schedules the steps to be taken to make sure that advertising of licensable activities does not cause nuisance or result in criminal offences give rise to crime and disorder.

20.7.4 Where they are engaged, Premises Licence Holders are encouraged to have explicit agreements or contracts with named individuals or companies used to promote events to address the issue of fly posting and littering from promotional material: and to maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority or Authorised Officer on request. Where appropriate and where consistent with the applicant's operating schedule the Council will impose conditions to this effect when its discretion to do so has been engaged."

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

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will continue to form part of the licence issued.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by the other persons.

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 determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.

**AMUSEMENT 13, 16 KENT STREET, DIGBETH, BIRMINGHAM, B5 6RD –
LICENSING ACT 2003 - PREMISES LICENCE REVIEW**

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

(See document No 4)

David Kennedy, Licensing Section, advised that all parties had agreed to the conditions being modified. Therefore, no-one was present.

The Sub-Committee was advised that if it disagreed with that course of action and did not accept the proposed modified conditions, it would be necessary to arrange another meeting to consider the application when all parties would have the opportunity to attend and put forward their case.

Members agreed to accept the proposed modified conditions and the decision of the Sub-Committee is set out as follows:-

4/091116 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Empire Star Limited, in respect of Amusement 13, 16 Kent Street, Digbeth, Birmingham, B5 6RD upon the application of Councillor Gareth Moore, this Sub-Committee hereby determines to modify the conditions attached to the Premises Licence, through the inclusion of the following additional conditions:-

Additional Permanent Conditions

1. The premises licence holder shall, as far as is reasonably practicable, ensure that their premises are not in any way promoted by the use of illegal fly-posting or unauthorised advertisements attached to street furniture.
2. The premises licence holder shall ensure that agreements/contracts with promoters for the use of their premises or for events to be held at their premises prohibit the use of illegal fly-posting and/or advertisements attached to street furniture, and shall take all steps reasonable to enforce such agreement/contract terms. The premises licence holder shall maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority on request.
3. The premises licence holder shall take all reasonable precautions and exercise all due diligence to ensure that no person/company promoting or providing entertainment on the premises, nor any person acting on behalf of any promoters, shall display in an unlawful manner advertisements promoting the entertainment or the premises, in particular:
 - a) no display of advertisements should take place on street furniture;
 - b) no display of advertisements should take place on premises or structures placed on, over, in or adjacent to the highway, unless the licensee has

first obtained the written consent of the owner of the premises or structure. Such consent shall be shown to a responsible authority on request.

4. The premises licence holder shall remove any unlawful advertisements of events at their premises where they become aware of them or they are advised by a responsible authority of an illegal advertisement being displayed. Such removal shall take place within 48 hrs of receiving the said notice either to the venue address and the registered office by way of registered post, or by direct contact between the responsible authority and the Designated Premises Supervisor in person or by telephone.

The Sub-Committee's reasons for imposing these additional conditions on a **permanent basis** on to the Premises Licence, are due to concerns raised by Councillor Gareth Moore within his review application dated 15 September 2016, as supported by Environmental Health, Birmingham City Council, as a Responsible Authority, in relation to the promotion of the prevention of public nuisance licensing objective, through unlawful fly posting around the City of Birmingham.

Furthermore, the Sub-Committee noted that the premises were either engaged in, or had failed to take reasonable measures to prohibit the use of fly posting around the City of Birmingham as evidenced within the review application, contrary to the Licensing Authority's own Statement of Licensing Policy, specifically:-

"20.7 Fly posting and Promotional Material

20.7.1 As a leading entertainment centre Birmingham often faces the widespread problem of illegal or nuisance fly posting, and littering from promotional material. This can have an impact on the prevention of public nuisance objective and the prevention of crime and disorder objective within the Licensing Act 2003.

20.7.2 Existing legislation seeks to address this problem, however, it often proves ineffective in preventing this type of nuisance advertising. The Council is also concerned that some licence holders leave the advertising of regulated entertainment to events promoters and then use this to argue that they are not responsible for any illegal fly posting which occurs.

20.7.3 The Council expects responsible licence holders to ensure the licensing objectives are properly promoted when advertising regulated entertainment at their premises. For this reason it considers licence holders should outline in their operating schedules the steps to be taken to make sure that advertising of licensable activities does not cause nuisance or result in criminal offences give rise to crime and disorder.

20.7.4 Where they are engaged, Premises Licence Holders are encouraged to have explicit agreements or contracts with named individuals or companies used to promote events to address the issue of fly posting and littering from promotional material: and to maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority or Authorised Officer on request. Where appropriate and where consistent with the applicant's operating schedule the Council will impose conditions to this effect when its discretion to do so has been engaged."

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

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will continue to form part of the licence issued.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by the other persons.

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 determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.

**THE RAINBOW LIVE MUSIC VENUE, 29 LOWER TRINITY STREET,
DIGBETH, BIRMINGHAM, B9 4AG – LICENSING ACT 2003 - PREMISES
LICENCE REVIEW**

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

(See document No 5)

Additional information, regarding the control of fly posting, submitted by the Premises Licence Holder was tabled at the meeting:-

(See document No 6)

Presenting the Application for the Review

Councillor Gareth Moore.

On Behalf of the Premises Under Review

Mr L Coppage, Security/Agent – Rainbow Group.

Mr R McGee, Executive – Rainbow Group.

Mr A Potts, Wright Hassall, Solicitors.

Making Representations

Mr M Croxford – Head of Environmental Health
Mr R Davey – Environmental Health Officer

Following introductions by the Chairman, the main points of the report were outlined by David Kennedy, Licensing Section.

David Kennedy, Licensing Section, informed the Sub-Committee that he understood that all parties had agreed to the conditions being modified.

All parties present confirmed that they accepted the modification to the conditions.

Mr Potts, Wright Hassall, Solicitors, advised that all Rainbow staff would be charged with being vigilant about illegal fly posting and assurance was given that, if any promoter was found guilty, immediate action would be taken. Rainbow would do everything it could to deal with any matter in the future.

At 1318 hours the Sub-Committee adjourned and the Chairman requested, with the exception of the Members, Committee Lawyer and Committee Manager, that all present withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1320 hours and a summary of the decision of the Sub-Committee was announced. All parties were advised that the full decision would be forwarded to them within five working days. The full decision is set out as follows:-

5/091116 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Bow Leasehold Limited, in respect of The Rainbow Live Music Venue, 29 Lower Trinity Street, Digbeth, Birmingham, B9 4AG upon the application of Councillor Gareth Moore, this Sub-Committee hereby determines to modify the Conditions attached to the Premises Licence, through the inclusion of the following additional conditions:-

Additional Permanent Conditions

1. The premises licence holder shall, as far as is reasonably practicable, ensure that events held at the premises are not in any way promoted by the use of illegal fly-posting or unauthorised advertisements attached to street furniture.
2. The premises licence holder shall ensure that agreements/contracts with promoters for the use of their premises or for events to be held at their premises prohibit the use of illegal fly-posting and/or advertisements attached to street furniture, and shall take all steps reasonable to enforce such agreement/contract terms. The premises licence holder shall maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority on request.

3. The premises licence holder shall take all reasonable precautions and exercise all due diligence to ensure that no person/company promoting or providing entertainment on the premises, nor any person acting on behalf of any promoters, shall display in an unlawful manner advertisements promoting the entertainment or the premises, in particular:
 - a) no display of advertisements should take place on street furniture;
 - b) no display of advertisements should take place on premises or structures placed on, over, in or adjacent to the highway, unless the licensee has first obtained the written consent of the owner of the premises or structure. Such consent shall be shown to a responsible authority on request.
4. The premises licence holder shall remove any unlawful advertisements of events at their premises where they become aware of them or they are advised by Birmingham City Council, its agent(s) or West Midlands Police of an illegal advertisement being displayed. Such removal shall take place within 48 hrs of receiving the said notice.

The Sub-Committee's reasons for imposing these additional conditions on a **permanent basis** on to the Premises Licence, are due to concerns raised by Councillor Gareth Moore within his review application dated 15 September 2016, as supported by Environmental Health, Birmingham City Council, as a Responsible Authority, in relation to the promotion of the prevention of public nuisance licensing objective, through unlawful fly posting around the City of Birmingham.

Furthermore, the Sub-Committee noted that the premises were either engaged in, or had failed to take reasonable measures to prohibit the use of fly posting around the City of Birmingham as evidenced within the review application, contrary to the Licensing Authority's own Statement of Licensing Policy, specifically:-

“20.7 Fly posting and Promotional Material

20.7.1 As a leading entertainment centre Birmingham often faces the widespread problem of illegal or nuisance fly posting, and littering from promotional material. This can have an impact on the prevention of public nuisance objective and the prevention of crime and disorder objective within the Licensing Act 2003.

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

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will continue to form part of the licence issued.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by the other persons.

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 determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.

OTHER URGENT BUSINESS

6/091116 No items of other urgent business were submitted.

The meeting ended at 1322 hours.

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CHAIRMAN