

BIRMINGHAM CITY COUNCIL

LICENSING AND PUBLIC PROTECTION COMMITTEE 15 NOVEMBER 2017

**MINUTES OF A MEETING OF THE LICENSING
AND PUBLIC PROTECTION COMMITTEE HELD
ON WEDNESDAY 15 NOVEMBER 2017 AT 1000
HOURS IN COMMITTEE ROOMS 3 AND 4
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair;

Councillors Alex Buchanan, Bob Beauchamp, Ian Cruise, Liz Clements, Lynda Clinton, Basharat Dad, Des Flood, Carol Griffiths, Nagina Kauser, Chaman Lal and Mike Leddy.

NOTICE OF RECORDING/WEBCAST

- 929 The Chair advised that the meeting would be webcast for live and subsequent broadcast via the Council's internet site (www.birminghamnewsroom.com) and that members of the press/public may record and take photographs except where there were confidential or exempt items.

APOLOGIES

- 930 Apologies were received from Councillors Nawaz Ali, Changese Khan and Rob Sealey.

MINUTES

- 931 The Minutes of the meeting held on 23 October 2017, having been previously circulated were confirmed as a correct record and signed by the Chairman.
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**BIRMINGHAM CITY COUNCIL ACT 1990 ESTABLISHMENTS FOR
MASSAGE AND/OR SPECIAL TREATMENTS HARMONY 88, 1ST FLOOR,
LADYWELL HOUSE, 20 HURST STREET, BIRMINGHAM, B5 4BN**

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

(See Document No. 1)

The following people were in attendance for the hearing:

On behalf of the Applicant

Mr Xialong Zhang – Co-owner
Mr Chingway Zhang – Co-owner

Those making Representations

Ms Sarah Hemsall – Licensing Enforcement Officer

David Kennedy, Senior Licensing Officer made introductory comments relating to the report

Mr Xialong Chang and Mr Chingway Zhang made the comments in support of the application and in response to questions from Councillors;-

1. That they were new directors of the company since October 2016.
2. With regard to the daily register they kept customer records as in previous years recording the name, age and name for each customer.
3. The therapists' names had been recorded with their Chinese surnames but had been changed to English following the visit of the Licensing Enforcement officer on 15 August 2017.
4. Some clients' names had been put as 'XXX' because they refused to provide their details and got offended if these were insisted upon.
5. That with regard to the history of the premises – the previous owners had been family friends who had moved to Scotland – they had then taken the business and employees.
6. Regarding the search by the Licensing Enforcement on ukpunting – they were confused and shocked by this and it had nothing to do with their business. Furthermore, they did not have an employee called Julia.
7. There were notices in each treatment room stating 'no sex services'.
8. There was a new business upstairs in the premises which could be the cause of the confusion.

9. This was a professional massage business with lots of Chinese customers and was famous within the Chinese community throughout the West Midlands.
10. That they were both present most of the time taking calls for appointments and always refused any calls regarding sexual services – both on the phone and at the front door.
11. That the premises were only used for ‘proper massages’ and nothing else.
12. That all therapists’ names had been recorded in English since the visit by the Licensing Enforcement Officer.
13. That they employed 1 full time and 2 part-time staff.
14. That they had seen the pictures and review on the ukpunting site but they were not from their premises or their website. They had not asked for these to be removed.
15. That when they had received the letter from licensing regarding the review they had questioned all the staff and double checked their appointment information.
16. They understood that prostitution was illegal.
17. Those customers who requested sexual services would be refused and removed from the premises.
18. That their website was 88.harmony.co.uk.
19. That some customers, usually Muslim women refused to provide their details and they could not force them to provide the information.
20. That under Condition 24 of their licence they had to keep a daily register of all staff administering treatments with their start and finish times and the appointments allocated to them – there was not need to keep customer times.
21. The premises were part of a 3 floor building with only the 1st and 2nd floors occupied – their business was on the 1st floor, with a new business on the 2nd Floor which they thought offered massage but were unsure.
22. That the men who had turned up at the premises while the licensing enforcement officer was there had come to the wrong business – they wanted the business on the 2nd floor.
23. That in addition to the appointments book they had kept a diary customer name, type of treatment and name of therapist so they could pay employees correctly.

24. That they were not selling sex services at the premises.

Mr Sarah Hempsall made the following comments on behalf of licensing enforcement and in response to questions from Councillors:-

1. Following receipt of an application to renew the applicants' licence she had visited Harmony 88 to conduct an inspection to check for compliance with the licence conditions attached to a massage and special treatment licence.
2. On arrival at the premises she had met Mr Xialong Zhang – this was the first application received from him – the previous licence had been issued to Zhenwei Huang.
3. The following issues were identified:
 - a. The daily register was not being completed fully, in that therapists names were not being recorded as detailed within the application form, they were using “nick names”;
 - b. A large number of clients were male and there was an “XXX” in place of names, no contact details and appointments not booked in advance;
 - c. It was evident from CCTV that a number of men had come to the door of the premises and were turned away by the therapist who was present, apparently as a result of her (the Licensing Enforcement's) presence;
4. In her opinion, as an Enforcement Officer of many years, the operation of the business did not appear to be what was expected of a legitimate massage establishment;
5. On return to the office, following the inspection she had searched the internet and found a review from an Adult Website which was specifically designed to be a prostitute review forum and included a review relating to the premises.
6. That she objected to the renewal of the licence as she believed that the licence holder would be unable to comply with Condition 12 of the Massage and Special Treatments licence regarding the premises not being used for illegal or immoral purposes.
7. That the issue of the therapists' names not being completed correctly flagged up concerns that the business was not being conducted properly.
8. That the fact that the internet search had brought up links with Harmony 88 on a prostitution review forum made her think that as well as genuine massage services the premises also offered other extra services.
9. That there were 2 businesses on the premises Harmony 88 and 1 other business upstairs – which was not registered. She was unaware any links between the 2 businesses.

10. That she had been unable to hear what had been said to the men who were turned away while she was at the premises.

11. That Harmony 88 had a genuine website offering massage services.

In summing up, Ms Hempsall stressed that while she believed the premises offered a genuine massage service the owners' conduct regarding record keeping and the possibility that the business offered extras had led her to bring the case before Licensing and Public Protection Committee for review.

In summing up, Mr Xialong Zhang emphasised that the premises had no links with the business upstairs but it had caused them many problems with customers turning up wrongly at their premises wanting the business upstairs – especially as there was only one entrance to both premises. He stressed strongly that they did not provide extra services and would refuse customers who asked for them.

At 1117 hours the Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer, the Committee Manager and Camera Operator withdraw from the meeting.

After an adjournment, all parties were recalled to the meeting at 1147 hours and the decision of the Committee to refuse the application was announced with the everyone being advised that they would receive the full decision and reasons as set out below in due course:-

932

RESOLVED:-

That the application by Harmony 88 Limited for the renewal of a licence to use the premises as an Establishment for Massage and/or Special Treatments pursuant to the Birmingham City Council Act 1990, in respect of:

Harmony 88, 1st Floor, Ladywell House, 20 Hurst Street, Birmingham, B5 4BN

BE REFUSED on the grounds that the Committee are satisfied on the balance of probabilities that the establishment has been or is being improperly conducted pursuant to Section 4(2) (d) of the Birmingham City Council Act 1990, based on the representations made by Licensing Enforcement, Birmingham City Council and after carefully considering the representations made by both the representatives of the Applicant company.

The Committee were presented with evidence at Appendix 2 of the Report from the Licensing Enforcement Officer of Birmingham City Council setting out her concerns about the way the premises currently operate following an inspection of the premises to check for compliance with the Conditions attached to a massage and special treatment licence. As a result of the inspection the following matters were identified:

- 1) The daily register was not being completed fully, in that therapists names were not being recorded as detailed within the application form, they were using "nick names";

- 2) A large number of clients were male and there was an “XXX” in place of names, no contact details and appointments not booked in advance;
- 3) It was evident from CCTV a number of men come to the door of the premises and were turned away by the therapist who was present, apparently as a result of their [Licensing Enforcement’s] presence;
- 4) In the opinion of the Licensing Enforcement Officer, the operation of the business did not appear to be what is expected of a legitimate massage establishment;
- 5) Finally, the Committee were presented with evidence in the form of from an Adult Website which was specifically designed to be a prostitute review forum.

The Review in question referenced what the Applicant’s representatives accepted was their current genuine website address (<http://www.harmony88.co.uk/>) and according the description of the premises, the applicants business address for example the reviewer states “*Rang the bell, buzzed in immediately, **up one flight of stairs,***” which suggests he only visited the first floor. This was not accepted by the Applicant’s representatives who were convinced that the actual premises to which the Review referred was another business which was located within the same building.

The Committee carefully considered the Applicants response and representations to the matters raised in the Enforcement Officer’s Report. This was set out in writing and formed part of the Committee Report at Appendix 3. In addition to this, the Applicant’s representatives also stated that another business located within the same building, was in fact the business to which the Adult Website Forum review related and not their own business.

The Committee were reassured by most of what the applicants had stated, particularly that they would frequently decline approaches by patrons who wished to pay for sexual services, when mistaking their business for the other business which was run from the same building.

However, the Committee were unable to depart from the view expressed by the Enforcement Officer that although it was her belief that you could get a genuine massage at the premises, it would also appear that some patrons were able to pay for sex acts, based on the Review posted on the Adult Website.

Furthermore, when asked if the applicants had taken any action to disassociate themselves from the Adult Website in question, or ask for the Review to be removed, (particularly bearing in mind this referenced their legitimate business website address and its physical location within the building) the response provided was that no such action had been requested or taken, which countered what the Applicant’s representatives had asserted during the course of their representations.

The Committee were not provided with any explanation as to why this was the case, and were of the view that any properly conducted establishment would have taken strenuous action against the Website in question. The Applicant's inaction in this regard, was a matter of serious concern, and damaged their credibility in claiming to run a legitimate business which did not engage in the sale of sexual services. This weighed heavily on the minds of many of the Members of the Committee when deciding whether to renew the Licence or not.

In reaching this decision, the Committee has given due consideration to the provisions of the Birmingham City Council Act 1990, the application, the written representations received and the submissions made at the hearing by the Applicant company's representatives, and those making representations.

All parties are reminded that under the provisions contained within Section 7 of the Birmingham City Council Act 1990, 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 in writing.

**LICENSING AND PUBLIC PROTECTION COMMITTEE BUDGET
MONITORING 2017/18 (MONTH 06)**

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

(See Document No. 2)

Parmjeet Jassal, Head of City Finance, made introductory comments relating to the report stating that 51% of the net budget had been spent at the end of Month 6 and the Savings programme for 2017/18 was on target.

She advised Members that income related pressures on Pest Control had been managed by part funding by Environmental Health.

Mark Croxford, Head of Environmental Health responded to concerns from the Chair regarding possible job losses and redundancies in Environ Health due to covering the pest control pressures, advising her that savings had been made through vacancies being unfilled.

The Chair put the recommendations to the meeting and it was unanimously agreed:-

933

RESOLVED:-

- i) To note the latest Revenue budget position at the end of September 2017 (Month 6) and Forecast Outturn as detailed in Appendix 1 of the report.

- ii) To note the position with regard to the Savings Programme for 2017/18 as detailed in Appendix 2 of the report.
- iii) To note the expenditure on grant funded programmes in Appendix 3 of the report.
- iv) To note the position on reserves and balances as detailed in appendix 5 of the report.

PROPOSED STRATEGY FOR VENUES OPERATING AS SHISHA PREMISES IN BIRMINGHAM

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

(See Document No. 3)

Janet Bradley, Operations Manager Environmental Health, made introductory comments relating to the report and responded appropriately to comments and questions from Members of the Committee.

During the debate Members gave consideration to the need for educating and engaging with the public regarding the dangers of shisha smoking, engaging with community health professionals and the health service to spread the message.

Members were advised by Ms Bradley that the public consultation process would be undertaken following the committee meeting through BeHeard.

The Chair put the recommendations to the meeting and it was unanimously agreed:-

934

RESOLVED:-

- i) That subject to any proposed amendments made by members of the Committee; officers are instructed to undertake a wider consultation with key stakeholders on the adoption of the attached draft Strategy. A public consultation will be then undertaken for a period of not less than 8 weeks.
- ii) That officers present the outcome of the consultation at a future meeting of Committee, with their recommendations on a finalised Strategy for this Committee's approval.
- iii) That the Chair of Licensing and Public Protection Committee, writes to the Parliamentary Under Secretary of state for Public Health and Primary Care urging the Government to bring in a licensing regime for Shisha premises.

UPDATE REPORT ON UNAUTHORISED ENCAMPMENTS

Licensing and Public Protection Committee – 15 November 2017

The following report of Acting Director of Regulation and Enforcement and Interim Chief Financial Officer was submitted:-

(See Document No. 4)

Mark Croxford, Head of Environmental Health made introductory comments relating to the report and responded appropriately to comments and questions from Members of the Committee relating to: the number of people illegally camped on or living on City Council land, the members of the working group, the need for a bigger transit site than those proposed in the Birmingham Development Plan (BDP); the update of the BDP in line with the needs assessment; the need to provide a transit site for the GRT community, the management of the proposed sites; the need for a regional rather than local solution and the safeguarding of children living on transit sites.

The Chair put the recommendations to the meeting and it was unanimously agreed:-

935

RESOLVED:-

- i) That the report be noted and Outstanding Minute No. 882 (ii) be discharged.
- ii) That Committee agree to a further report being brought in 3 months to update on the various work items contained within this report.

ENFORCEMENT POLICY REVIEW REGULATION AND ENFORCEMENT

The following report of Acting Director of Regulation and Enforcement and Interim Chief Financial Officer was submitted:-

(See Document No. 5)

Tony Quigley, Head of Illegal Money Lending Team, made introductory comments relating to the report and advised members of the changes that had been made to the policy to ensure that any offenders were clear about the implications of non-compliance with any enforcement action.

The Chair put the recommendation to the meeting and it was unanimously agreed:-

936

RESOLVED:-

That Committee agree the Enforcement Policy which is attached at Appendix 1 of the report.

OUTCOME OF APPEALS AGAINST SUB COMMITTEE DECISIONS TAKEN DURING SEPTEMBER 2017

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

(See Document No. 6)

Chris Neville, Head of Licensing, made introductory comments relating to the report and highlighted some of the cases therein.

937

RESOLVED:-

That the report be noted

FIXED PENALTY NOTICES ISSUED SEPTEMBER 2017

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

(See Document No. 7)

Mark Croxford, Head of Environmental Health made introductory comments relating to the report and highlighted some of the cases therein.

938

RESOLVED:-

That the report be noted

PROSECUTIONS AND CAUTIONS – SEPTEMBER 2017

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

(See Document No. 8)

Alison Harwood, the Acting Director of Regulation and Enforcement made introductory comments relating to the report and made reference to some of the prosecutions and cautions therein.

Councillor Flood requested an update on the concerns he had raised at the October LPPC meeting relating to littering offences in the City centre due to promotion companies giving out freebies and similarly with flyers. Cllr Flood was advised that Ms Harwood had contacted the City Centre manager and would provide Councillor Flood with a written report. Similarly, Chris Neville stated that he would provide the Councillor with a full written explanation report regarding the distribution of flyers across the City Centre.

939

RESOLVED:-

That the report be noted

ACTION TAKEN BY THE CHAIR OF THE LICENSING AND PUBLIC PROTECTION COMMITTEE: OCTOBER 2017

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

(See Document No. 9)

Chris Neville, Head of Licensing, made introductory comments relating to the report and informed the Committee of:

- i) The chair's authority sought for immediate revocation of a hackney carriage driver's licence, alleged to have touched a female passenger in an inappropriate manner.
- ii) Work currently being undertaken across issues arising from cross border working and discussions surrounding streamlining the different sets of driver conditions across the authorities and driver application processes. This had resulted in a letter by the Chair to the minister of State for Transport legislation and Maritime highlighting concerns about the Deregulation Act 2015 on the ability of local authorities to ensure public safety.

940

RESOLVED:-

That the report be noted

SCHEDULE OF OUTSTANDING MINUTES

The following schedule of Outstanding Minutes was submitted:-

(See Document No. 9)

The Acting Director of Regulation and Enforcement updated the dates for which reports would be forthcoming in relation to various Outstanding Minutes and it was -

941

RESOLVED:-

That Outstanding Minute No.882 (ii) be discharged and all other Outstanding Minutes be continued.

OTHER URGENT BUSINESS

942

i) Hybrid Vehicles Engine Size

Councillor Clinton requested that applications from drivers with Hybrid Vehicles be deferred from appearing before Sub-Committees until a decision had been made by the working party regarding acceptable Hybrid engine sizes and be advised of any exceptions to the rule.

ii) **Birmingham Act 1990**

Councillor Flood queried whether there were intentions to review the Birmingham 1990 Act for Massage and Special Treatments and was advised by Mr Neville that he had asked a licensing manager to review this act to determine whether there was a need for it or whether it now duplicate legislation which had not been in place when it was implemented. Additionally, it may be decided by the LPPC Committee to delegate this to Sub-Committee rather than cases being brought forward to the main committee. A report would be brought to committee regarding the options available.

iii) **References from Councillors and Members of Parliament for Taxi Drivers**

Councillor Flood advised the Committee that at his last Sub-Committee meeting they had received a reference for a driver from an MP. Cllr Flood asked if the Committee could agree, as they had regarding Councillors, that no references would be accepted for drivers from either Councillors or MPs – particularly if the applicant later proved to have a criminal record.

The Councillor further requested information from licensing regarding taxi driver applicants who had received references from Councillors or MPs over the previous 2 years.

Chris Neville advised Councillor Flood that the request to not accept references from MPs could be agreed as a recommendation within a report to Committee. The previous report to Committee had recommended no references from any member of the LPPC for driver applicants with a further recommendation that **no Councillors** would provide a reference for drivers – however this was still waiting for approval from full Council – and he agreed to chase this up.

With regard to the number of references provided to driver applicants by Councillors and MPs this could potentially be done but would be a difficult process as it would need to be done manually, but could be carried out if necessary. Councillor Flood asked for this to be done and Mr Neville agreed to provide the required information.

AUTHORITY TO CHAIR AND OFFICERS

943

RESOLVED:-

In an urgent situation between meetings, the Chair jointly with the relevant Chief Officer has authority to act on behalf of the Committee.

The meeting ended at 1335 hours.

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CHAIRMAN