

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 6 MARCH 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 6 MARCH 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Adam Higgs.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

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

1/060323 **NOTICE OF RECORDING/WEBCAST**

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.

2/060323 **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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/060323 Apologies were submitted on behalf of Councillor Morrall and Councillor Higgs was the nominated substitute Member.

MINUTES

4/060323 The Minutes of the meeting held on 16 January 2023 at 1200 hours were confirmed and signed by the Chair.

The public part of the minutes of the meetings held on 16th January 2023 at 1000 hours and 23 January 2023 at 1000 hours were noted and the Minutes as a whole were confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – GRANT – U WISH LOUNGE, 81 EYRE STREET, LADYWOOD, BIRMINGHAM, B18 7AD.

On Behalf of the Applicant

Rob Edge – Agent
Mr Ali - Applicant

On Behalf of those Making Representations

Duncan Craig – Barrister representing Urban Work Space
Louisa Morrey and Steve Poppit – Immediate Care Medical

* * *

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 Bhapinder Nandhra to present his report. David Kennedy, Licensing Section, outlined the report.

Then the Chair invited the applicant to make their submission and Rob Edge, on behalf of the applicant made the following statements: -

- a) That they had given full regard to the representations against the application, the Licensing Objectives, the Licensing Act 2003 and the City Councils Statement of Licensing Policy.
- b) None of the 8 responsible authorities had made objections demonstrating that it is a good application with a robust operating schedule.

- c) They fully understood the objectors concerns, with the main one being in relation to parking which isn't within the licensing remit.
- d) The applicant has leased the car park across the road from the premises. He had refurbished it, including new fencing and clearing debris. He had spent over £4000 on the car park.
- e) There are policies in place promoting the licensing objectives and the management team will ensure they are up to the mark.
- f) The applicant intended to run the premises in a professional manner.
- g) Alcohol has not been applied for.

The Members asked questions and Mr Edge responded that they would be employing a waste collection company, collections would take place in work hours. The premises had no plans to operate a Shisha Lounge. The applicant had experience running premises previously.

Duncan Craig on behalf of Urban Work Space made the following statements: -

- a) He knew the area well and it is a problem area. Police resources mean that it isn't actively policed.
- b) The issues his client faces haven't been addressed in the application.
- c) The application made reference to the sale of alcohol, but they haven't applied for alcohol.
- d) The premises is supposedly a coffee lounge, so wasn't sure what the alcohol related conditions related to.
- e) Everything they had heard suggested it is going to be a Shisha Lounge, yet Mr Edge stated it isn't.
- f) The plan didn't identify fire fighting equipment, alarms, fire extinguishers etc.
- g) Although parking matters were not licensable activity they were an issue of public nuisance.
- h) Most cars are dumped on a Sunday and not picked up until later in the week.
- i) There is a noise management plan but no dispersal policy.
- j) There are issues regarding refuse and rubbish, his client has huge issues with clearing empty bottles on a Monday morning.
- k) People are urinating and leaving debris on his client's premises.
- l) His clients principle concerns were debris and rubbish and the attitude of the applicant in relation to their neighbours.

Members asked questions and Duncan Craig explained that there is nothing in the operating schedule that covers rubbish or refuse, there are issues with cars blocking entrances and his client was genuinely concerned. The applicant hasn't demonstrated a robust approach to the issues raised. The applicant hasn't considered the issues properly.

Steve Poppit was then invited to make his case on behalf of Immediate Care Medical and he made the following statements: -

- a) They operate a 24/7 ambulance service which requires access at all times.
- b) It is a busy area and there are often abandoned vehicles there.
- c) The car park has been fenced but the surface remains poor and there is limited street lighting in the car park.
- d) He spoke to Mr Ali about a month ago and until the objection was raised it sounded like he didn't realise what the business is and that they operated ambulances.
- e) Mr Ali indicated that the premises would be a coffee and shisha lounge and that most clients would be of higher/upper class therefore the vehicles would be expensive such as a Ferrari. This raised concerns as people would not want to use a car park with uneven surface and no street lighting and instead would abandon them in the street potentially causing obstructions.
- f) There are issues with litter and debris. The refuse collection needed to be at times which didn't impact other businesses.
- g) The capacity of the car park is 40 spaces, yet the venue looks larger than a 40 capacity venue.
- h) They were going to have to employ more staff to monitor parking to ensure the premises isn't obstructed if this application is granted.

Duncan Craig was then invited to make a closing submission: -

1. The Licensing Act 2003 is a balancing act and it is a matter for the Committee whether they felt that the applicant has taken sufficient steps to ensure the licensing objectives are properly promoted.
2. Refusing the application won't stop the premises opening, it would just limit the last hour of trading.
3. The applicant hadn't taken the objections seriously.

Steve Poppit was then invited to make his closing statements but had nothing further to add

Rob Edge, on behalf of the applicant was invited to make his closing submissions: -

1. That staff will ensure that the frontage of the premises is checked for rubbish every day.
2. No bottles will be outside.
3. The car park is an ongoing project, they would be resurfacing it.
4. His client was fully aware of the ambulance service and would employ a steward to ensure that the frontage of the premises is not blocked.
5. The plans were drawn up prior to the fire officer's visit. The fire equipment is located according to the fire officer's recommendations.
6. That a condition about a dispersal plan can be added which will involve traffic management.
7. Shisha was discussed but due to planning issues it is not intended to be used for Shisha.

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

5/060323

RESOLVED:-

That the application by Shvan Abbas Ali for a premises licence in respect of U Wish Lounge, 81 Eyre Street, Ladywood, Birmingham B18 7AD be granted together with the following conditions, which the Sub-Committee determined were necessary to promote the licensing objectives in the Act:

1. The premises shall appoint a steward to supervise the frontage of the premises during the hours of operation, namely from 18.00 hours to 00.00 hours daily, in order to:
 - monitor the parking of patrons' vehicles and to escort patrons' vehicles to ensure that they park properly within the car park, and
 - ensure that the frontage of the Immediate Care Medical premises is left free of patrons' vehicles
2. The premises shall put a dispersal plan in place, including traffic management, to ensure that nuisance to neighbours is minimised

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will also form part of the licence issued.

The applicant was represented at the meeting by a licensing agent, who addressed the Sub-Committee. The applicant had given full regard to the representations made against the application, but noted that none of the responsible authorities, who were the experts in assessing applications, had objected. The applicant considered that he had submitted a good application with a robust operating schedule, which had not given any of the responsible authorities any cause for concern. His previous experience was predominantly in convenience stores; he had a chain of four such premises, and had also been a

personal licence holder for a number of years.

The applicant noted that the main concern of the objectors related to parking issues; to address this, the applicant felt he had “gone beyond demonstrating due diligence” by leasing the car park opposite the premises for his patrons to use. The car park had originally been in a very bad state, and he had commenced works to bring it up to a better standard - namely by replacing the old chainmail fence to the front with a proper steel fence, and by clearing debris. He had invested £4,500 in refurbishing and replacing the fence and carrying out work within the site. The car park had capacity for approximately 40 to 45 cars.

Additionally, policies and procedures were being put in place to ensure that the U Wish Lounge would fully uphold the licensing objectives. The applicant strongly believed that his venue would be an asset to the area, with a strong management team behind it and robust policies in place to promote the licensing objectives. The waste collection arrangements for the premises were that collections would be made during working hours.

The applicant had noted the importance of diversification of offer in the night time economy within the Ladywood area, and felt that it was essential to ensure that there was an offer for all ages and all tastes. The premises was to be a coffee lounge, and the applicant had invested “time, money and passion” to make it a success without compromising on the licensing objectives; he intended to run the venue in a professional manner. He asked the Sub-Committee to note that alcohol was not requested within the licensable activities.

Members asked about the business model, and the main activity. The application was for regulated entertainment and late night refreshment, and Members queried whether the plan was for the premises to be a shisha lounge. The applicant confirmed that this was “not presently planned”; the U Wish Lounge was a coffee bar with a relatively large kitchen at the rear. It was “a place for people to congregate, sit, eat and drink coffee or soft drinks”.

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 of an undermining of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact undermine the licensing objectives, by hearing the submissions of those making representations.

The Sub-Committee heard from a local business, Urbanworkspace, first. This organisation was represented by counsel, who remarked that the Eyre Street area had “a lot of problems that you would not necessarily expect”; whilst these were not the fault of the applicant, he drew the attention of the Sub-Committee to the low level of police activity in Ladywood at weekends, and remarked that, given the limited

resources, it was difficult to expect them to police the area. However, regardless of that, there were issues in and around Eyre Street which the persons making representations felt had not been properly addressed in the proposed operating schedule.

Counsel noted that the applicant had described the venue as a coffee lounge, and had confirmed to the Members that it was not a shisha lounge. Counsel remarked that if this were to change, the building itself would need to be compliant with the relevant regulations governing shisha lounges. Counsel also took issue with the Plan submitted as part of the application, and queried whether the premises was compliant with the requirements for fire safety.

The problem with parking in the area was described by counsel as “a huge issue”. He pointed to the photographs submitted in the Committee Report, and observed that Eyre Street was quiet until around 02.00 hours, when cars would descend on the local area and would not necessarily be collected the next day. Counsel accepted that parking was not a licensable activity, but said that it could be a matter of public nuisance, and observed that the more licensed premises there were in an area, the more potential there would be for such issues to impact on public nuisance.

Regarding the applicant’s references to the car park for patrons, Urbanworkspace did not see that it looked any different than it had a few months ago, or at least not in terms of the surfacing. The application had included a noise management plan, but not a dispersal policy, which counsel would ordinarily have expected in any large licensed premises such as the U Wish Lounge, and particularly where issues relating to parking, people leaving premises and public nuisance had been raised.

Counsel therefore found it “a little disappointing” that no consideration appeared to have been given to dispersal. He had also not been reassured by the answers given about waste arrangements, given the “huge problems of clearing empty bottles on a Monday morning” experienced by Urbanworkspace. He remarked that he would have expected perhaps more in the application to deal with waste.

Those at Urbanworkspace had significant concerns with the proposed operation, and those worries had been exacerbated by what they saw as the inconsiderate behaviour of the applicant during the period where the works were been carried out. Counsel directed the attention of the Members to a further photograph in the Committee Report, showing debris which had been left by the applicant leaning against a wall owned by Urbanworkspace.

Counsel acknowledged that the decision related to regulated entertainment and late night refreshment, with the terminal hour to be 00:00, but told the Sub-Committee that Urbanworkspace had genuine concerns that the existing problems in the area would get worse if the

application were granted; citing paragraph 14.42 in the Guidance issued under s182 of the Act, he observed that the absence of a designated cumulative impact zone did not prevent an objector making representations on the grounds that the premises would give rise to a negative cumulative impact on one or more of the licensing objectives. He also urged the Sub-Committee to take into account the steps to promote the licensing objectives recommended in the Guidance in terms of whether the application had dealt with the concerns that had been raised, and in determining the steps required to ensure that the licensing objectives were adequately promoted.

Counsel confirmed that Urbanworkspace had two principal concerns – first that the nuisance created by debris/rubbish, and from cars, was going to get even worse as consequence of a grant of a licence to U Wish Lounge, and that those at the premises had not applied their minds sufficiently to those issues. Secondly, there was a further concern about the level of consideration that those at the premises would give to their neighbours once the premises was open.

Counsel asked the Sub-Committee to note that the venue could still open without a licence. He remarked that the attitude of the applicant throughout the course of the last few months had given Urban Workspace “genuine concerns” about the suitability of the applicant to engage with the licensing objectives in an appropriate way.

Members asked what the impact of activity late at night would be, as Eyre Street was not a residential area. Counsel replied that it would be twofold - the debris in the area from people leaving rubbish such as empty bottles, especially as there was nothing in the operating schedule to deal with the removal and clearing of rubbish. Secondly, there was the issue of abandonment of cars, some of them blocking entrances.

Counsel considered that there was a problem with a lack of management responsibility, and whilst he accepted that no licence holder would be able to completely manage the activities of his patrons at all times, those applicants who demonstrated a more robust approach would tend to experience fewer problems. The concern in the instant application was that insufficient attention had been paid to these particular issues.

A lady from Urbanworkspace then addressed the Sub-Committee directly to confirm that abandoned cars created difficulties in getting in and out of their premises. Motorists parked wherever they wanted to park, and would leave their car, but then not come back for it for “a few days”. The secondary issue was rubbish, which those at Urbanworkspace had been clearing up for other businesses; there was an additional problem of persons urinating and vomiting in the vicinity. The lady remarked that she was “not happy” with the situation.

On hearing this, the Chair of the Sub-Committee observed that the

situation described was obviously not anything to do with U Wish Lounge. The lady accepted that, but said that it was a serious issue in surrounding streets, and her concern was that the grant of a licence to U Wish Lounge would exacerbate the problem. She did not feel that the applicant had taken those concerns seriously in respect of the operating schedule, and the steps that he could have taken regarding dispersals and the clearing of rubbish. Her concerns had been heightened by the behaviour of the applicant during the schedule of the works.

The Sub-Committee then heard from another neighbouring business - Immediate Care Medical. This business was situated adjacent to the car park, which itself was directly opposite the U Wish Lounge premises. The company operated a 24/7 ambulance service, which required access round the clock - not only for the ambulance vehicles, but also for the staff who parked in Eyre Street during the day.

The representative who addressed the Sub-Committee explained that the business was a medical company which supplied additional resources to NHS facilities and ambulance trusts, and was therefore a frontline ambulance facility. The primary function of the business was events management - providing medical resources to events, and also passenger transport. Whilst it was not an Ambulance Station as such, the shift times and the responsibilities and commitments to other areas (not only the West Midlands, but the wider Midlands area) meant that it had staff coming and going, and ambulances arriving and leaving, spread throughout the 24 hour clock.

The representative of Immediate Care Medical observed that the street was busy with vehicles due to the various business premises that operated there, but drew attention to the problem of abandoned vehicles which had been raised by the first objector. He asked the Sub-Committee to consider access to premises, and the ability of staff to park at the location. Regarding the car park, he agreed that in recent weeks there had been “a number of man hours” adding the new fencing; however, the surface remained “pretty poor”, and also there was no street lighting around the car park itself.

After speaking to the applicant, he had got the impression that the applicant had not realised that Immediate Care Medical was a 24/7 operating business or that it involved ambulances. The applicant had indicated to him that the U Wish Lounge premises would be a coffee lounge offering soft drinks and light refreshments; there had also been a general conversation about shisha. In conversation the applicant had described his prospective patrons as “high end”, and had said that his patrons’ vehicles would be of a similar standard.

The concern of Immediate Care Medical was whether those driving high-end vehicles would be inclined to park on “a very uneven car park surface and particularly one with low level lighting”. It was more likely that the inclination would be to park as close as possible to the venue,

where there would be CCTV coverage. The applicant had said that the parking space along Eyre Street, outside business premises, would be empty in the evening and at late hours. However, Immediate Care Medical felt that any vehicles left beyond that period would have significant impact and potentially block access.

The representative of Immediate Care Medical observed that he did not feel satisfied that the concerns he had raised had been addressed, although he accepted that the applicant had spent a significant sum on the refurbishment of the car park.

The representative stated that another concern that his business would have was that the street would be subject to litter and debris. He had not found the arrangements for waste collection described by the applicant to be sufficiently clear, and asked whether “normal operating hours” meant the normal operating hours of the venue, or the normal operating hours of the waste collection management company. He observed that other businesses had waste collected at times that had little or no impact on other businesses in the area.

Regarding the forty parking spaces in the car park, the representative remarked that the U Wish Lounge was quite extensive, and he felt that the capacity could be more than the occupants of forty vehicles; he was therefore worried about the overspill and the potential for the blocking of access and egress to the Immediate Care Medical building. He observed that if the application were to be approved then Immediate Care Medical would be considering hiring additional security or staff to ensure that the access was not obstructed. He said that this would be an additional precaution that Immediate Care Medical would have to take, through no fault of its own, just to maintain business as usual.

Counsel for Urbanworkspace made closing submissions about the balancing exercise to be conducted by the Sub-Committee between the legitimate business interests of neighbours, and the applicant. The people who would be more impacted by the U Wish Lounge activities would be those that were closest. The neighbouring businesses did not accept or believe that the applicant had considered their concerns; this was why matters had not been resolved between the parties in advance of the meeting.

Counsel remarked that it was a matter for the Sub-Committee to evaluate whether it felt that sufficient steps had been taken, and thereafter to either impose the appropriate steps, or if the concerns raised by more than one party in the local area were sufficiently serious, to reject the application. He reminded the Sub-Committee that such a decision would not mean the business would not be able to open at all, and urged the Members to take into account the concerns that had been raised in the objections.

The applicant, via his agent, then addressed the points that had been

raised. He noted that within the application, under the prevention of public nuisance objective in the operating schedule, he had said that the premises' staff would ensure that the frontage of the restaurant was checked regularly for litter and rubbish, clearing any debris away. Additionally, there was a provision that no rubbish, including bottles, would be moved, removed or placed in outside areas between 23.00 and 08.00 hours.

Regarding the car park, which was an "ongoing piece of work", to date the applicant had spent £4,500 replacing the fencing and removing rubbish, and was now in the process of appointing a contractor to resurface the car park. The applicant was fully aware of the ambulance service and had "allocated a steward to the frontage of the premises to monitor the parking of vehicles, particularly to escort vehicles in to make sure that they park properly within the car park and don't block each other."

The applicant added that having spoken to Immediate Care Medical, U Wish Lounge would now add to the steward's role, such that the steward would ensure that Immediate Care Medical's frontage "was permanently left free so that vehicles would not cause any disturbance and block the ambulances in".

Regarding the concerns raised over the Plan and the fire equipment, the Plan had been drawn up prior to the fire officer's visit. Since then, the applicant had set up firefighting equipment within the premises according to the recommendations of the fire officer. Thereafter, the fire officer had found all fire safety aspects to be satisfactory, such that he had not made any representations against the grant of the licence.

The applicant fully took on board the point about a dispersal plan, and was willing to "volunteer as a condition that a dispersal plan will be in place that would involve traffic management". He intended to continue to engage with both of the objectors, and with other neighbours, to ensure that all could operate harmoniously together, and to ensure that the U Wish Lounge premises would not give cause for concern - particularly regarding noise, public nuisance or traffic management.

The management team were drawing up policies and procedures to ensure that the venue would run effectively and efficiently, and that appropriate measures would be in place. The premises did not open until 18.00, and would close at 00.00 hours. In that sense, it was very much unlike other licensed premises within the area. The agent reiterated that there was no intention to offer shisha, as the applicant was aware that he would need to have gone through the Planning process for the correct extraction arrangements.

Upon hearing this, counsel for Urbanworkspace asked for clarification that from 18.00 until 00.00, seven days a week, there would be a permanent steward outside the front of the premises. The agent confirmed that this was correct, and stated that it had not been in the

original operating schedule as it had been something that “came out in conversation with the applicant after the visit to the premises by Immediate Care Medical”. The applicant wanted to demonstrate “a higher level of due diligence”, and to allay concerns that the objectors had about patrons parking in front of the ambulance bays. Counsel for Urbanworkspace observed that this offer had not been mentioned in the applicant’s presentation.

When deliberating, the Members carefully considered the representations made by those who had objected to the application, and considered that the adoption of the measures volunteered by the applicant would be sufficient to cover any potential negative effect on the licensing objectives, particularly the issues of public nuisance which had been raised.

The Members did not find all of the representations to be wholly persuasive, as many of the points made about waste/rubbish problems related to pre-existing issues which were being caused by other premises; the Members considered that it was rather speculative for the objectors to feel that the “coffee lounge” style operation which had been proposed by the U Wish Lounge would contribute to any significant degree to these pre-existing issues. The premises would be offering regulated entertainment and late night refreshment only – alcohol was not part of the offer - and the terminal hour was to be 00.00 daily.

The Sub-Committee noted that counsel for Urbanworkspace had drawn its attention to paragraph 14.42 of the Guidance issued under s182 of the Act. The Sub-Committee accepted that the absence of a cumulative impact zone did not prevent any responsible authority, or other person, making representations against an application on the grounds that the premises would give rise to a negative cumulative impact on one or more of the licensing objectives. The Sub-Committee was aware that cumulative impact considerations could apply to the impact of a concentration of any licensed premises, including those licensed to provide late night refreshment.

However, the Sub-Committee noted that the Guidance issued under s182 was that in each case it would be incumbent on the person making the representation to provide relevant evidence of cumulative impact; given that the U Wish Lounge was a coffee lounge, the Members were not persuaded that there would in fact be any such risk of a ‘cumulative impact’ on the licensing objectives. The conditions offered by the applicant during the meeting were suitable to cover the potential for an exacerbation of existing issues.

The Sub-Committee noted that the applicant was an experienced person who operated a chain of convenience stores. Certainly the concerns about the potential for risks to the upholding of the licensing objectives were not shared by any of the responsible authorities. The Members felt the conditions offered by the applicant (via his agent)

during the meeting to be more than sufficient in terms of ensuring the upholding of the licensing objectives.

The Members therefore concluded that by granting this application, together with the conditions offered by the applicant in the meeting, the licensing objectives contained in the Act would be properly promoted. The Sub-Committee was satisfied that trading would be safe, and also noted that the applicant was an experienced person who had managed other licensed premises with no issues.

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 a premises licence, the written representations received and the submissions made at the hearing by the applicant via his agent and by persons 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

5/060323

RESOLVED:-

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

CHAIR.....