

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE C 7 AUGUST 2019
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 7 AUGUST 2019, AT 0930 HOURS, IN ELLEN PINSENT, COUNCIL HOUSE, VICTORIA SQUARE, BIRMINGHAM, B1 1BB

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Eustace and Straker-Welds.

ALSO PRESENT

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

NOTICE OF RECORDING

1/070819 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

2/070819 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/070819 No apologies were submitted.

MINUTES

4/070819 That the public section of the Minutes of meeting held on 29 May 2019 were noted.

**LICENSING ACT 2003 PREMISES LICENCE – TEMPORARY EVENT NOTICE –
35 BIRCHFIELD ROAD, ASTON, BIRMINGHAM, B19 1SU**

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

(See document No. 1)

The following persons attended the meeting.

On behalf of the Applicant

Kadian Mowatt – Applicant

Half way through the meeting a “security man” attended, however, his name was not disclosed.

Those Making Representations

PC Deano Walker – West Midlands Police (WMP)

Paul Samms – Environmental Health (EH)

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Following introductions by the Chairman, Bhapinder Nandhra, Licensing Section, made introductory comments relating to the report.

Mrs Kadian Mowatt made the following points:-

- a) That she had completed the application.
- b) That it was her birthday on Wednesday and she was putting together a shop open day. She had changed the times to 12noon – 2300 hours.
- c) That she was “getting security”.
- d) That the event would be safe, she had done as much as she could.
- e) That she was under the impression that she didn’t need a licence to hold the event within the hours of 8-11pm.
- f) That she was trying to advertise her restaurant.
- g) The roof had caved in on the restaurant and then she reopened and then went on holiday so she needed to “bring up her franchise for her boys”.
- h) That it was a little shop for the community, it brought people together.
- i) That she would have about 200 people at the event and if it went over that they would have to stop selling the stickers and armbands.
- j) That at first she wanted the event to happen on the street, but that was objected to. However, there had now been objections to it in the garden or the house.

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- k) That she couldn't remember the name of the security company but a representative was on their way.
- l) That the company would allocate the amount of security they needed.
- m) That she wanted to use the garden area and take it off the road.
- n) That traffic needed to keep flowing.
- o) That her brother owned the Barber shop so there would be entrances from the Tea shop and the Barber shop.
- p) That there would be 4 exits; including the paint shop and the furniture shop.
- q) That they hopefully wouldn't have any incidents, but she couldn't say they would or wouldn't.
- r) That she had ordered a marque for outside in order to help minimize the noise.
- s) That there were houses at the back of the premises and she had informed the occupants and they were invited to event.
- t) That it was her birthday party.
- u) That because it was her birthday she didn't really have to ask permission from the Council but she had.
- v) That her brother owned the Barber shop and there were other shops too.
- w) That her brother was a Christian so wouldn't be attending the party but would probably give her a present.

In answer to Members questions, Mrs Mowatt made the following points:-

- a) That there were 3 toilets and she would rent another one.
- b) That she would have people to do first aid, but she was a nurse so could also do first aid.
- c) That she had cancelled the bouncy castle.
- d) That there would be at least 200 adults, and some children – she didn't invite many kids.
- e) That she had been having a difficult time with the shop.
- f) That she had advertised the event on social media, it was a public event.
- g) That she had cancelled the sound system, so she would just be using a normal speaker box that she usually used inside the shop.

- h) That security would be searching people.
- i) That the shop was a takeaway shop.
- j) That the fire Marshall was a friend, but she questioned why she would need a fire Marshall.
- k) That the fire Marshall and first aider was the same person.
- l) That some people would walk, but there was no parking space so she would rent some cones to stop double parking.
- m) That the big event held there last year that caused issues was not held by her.
- n) That she was trying to make it as safe as possible.
- o) That the tint shop had an extension so they had extra space.
- p) That all 4 shops had access to the garden.

PC Deano Walker, on behalf of WMP, made the following points:-

- a) That WMP got the application on 26th July, when they checked the application there was little information for the police to carry out risk assessments; no information for them to risk assess the event.
- b) That they requested a full risk assessment from the applicant.
- c) That whilst waiting for the risk assessments they carried out google searches and the premises was called Jerk and Grill and it was advertised on Facebook opening from 0600 - midnight 6 days a week. This gave them cause for concern as the premises did not have a late night refreshment licence. Therefore, there was a potential breach of the licensing act there.

At this stage the Licensing Officer advised that the security man was outside.

The security man joined the meeting.

PC Walker continued:-

- a) That the google searches also revealed other Jerk and Grill's across Birmingham – were they part of the Franchise?
- b) That the phone number for the applicant was matching an advertisement for the Aston and Erdington branches of Jerk and Grill. Those premises was also linked to Handsworth.
- c) That an event took place at Jerk and Grill in Erdington which caused large scale ASB (Anti-Social Behaviour). The event was held outside of a TEN's

and over one hundred people attended. The hours permitted were until 2300 hours, yet the police were dealing with the incidents past midnight. The DJ outside the venue was playing music very loudly.

- d) That WMP received risk assessments from Jerk and Grill and they were unsatisfactory (included in WMP's evidence bundle). The risk assessments didn't include a map, control of numbers and fire safety risk assessments. The TEN application stated there was capacity for 450 people. There were no details about the door staff company, what the arrangements for the security were. There was no entry policy, rejection policy, drugs, searching and then the applicant stated in risk assessment that there was only 1 toilet. This was different to what was heard at the meeting, so WMP were not sure what to believe.
- e) That there was no information about the fire Marshall's or first aiders – no indication of the level of qualifications they would have or any other information.
- f) That WMP asked about vulnerable people, but the response from the applicant was that the security company would address that.
- g) That the applicant had not thought about it fully and could not demonstrate that they would control the event.
- h) That the noise plan just said music to be taken inside, but did not state what time.
- i) That the responsible authorities only had 3 days to make representations so they had to act fast and they could only make an assessment on what they were given. WMP were not satisfied it would be safe.

In answer to Members questions PC Walker made the following points:-

- a) That he couldn't really say how many door staff it would take to control the venue. They needed to control traffic, dispersal, roaming, the garden and marque. The marque was not in the application. All these areas needed controlling with SIA door staff.
- b) That in Mrs Mowatt's words "anything could happen".
- c) That WMP just wanted to make sure that the licensing objectives were promoted.
- d) That the incident in the Erdington premises resulted in an ASB closure order and went to court.
- e) That it was not going to be a safe event with 450 people and an applicant who had never held an event before.
- f) That the event had already been on social media, the damage was already done.

- g) That the road the premises was situated on was a red route for a reason.
- h) That some of the paving belonged to the shops, the rest was council responsibility.

Mrs Mowatt interjected to explain to the Members that her premises was no longer called Jerk and Grill.

The security man who attended the meeting answered some questions from Members:-

- a) That maybe the applicant had spoken out of turn, one security staff would never work. There would need to be access and street control. He had been in security a long time.
- b) That the Barber shop had BBQs which they had monitored to make sure traffic kept flowing, there had never been any problems.
- c) That to his knowledge there would not be space for 450 people.
- d) That people would be coming from all over the country and therefore, that could be a risk but they would monitor it as best they could.
- e) That he apologised for being late.
- f) That the Jerk and Grill was not the same place, and they didn't want to be painted with the same brush.
- g) That 1 security would not manage the event. There would need to be at least 5 security staff; 4 at the access points and 1 roaming.
- h) That because they were "black" they always "had to be on top of things" and there was no way of getting away from that.
- i) That it was easier to have the police on call if anything happened.
- j) That having police present at the event would be a deterrent.
- k) That they could put signs up saying "police present" as a deterrent.

Mr Paul Samms, on behalf of Environmental Health (EH) made the following points:-

- a) That he was presenting on behalf of Martin Keys who was on annual leave.
- b) That there were a number of concerns, but primarily the proximity of the premises to residential properties.
- c) That the hours of use were still a noise sensitive time even with the reduction in hours.

- d) That Mr Keys had listed a series of things he wanted clarity on via email. However, it was not responded to in the detail that they needed.
- e) That they needed the applicant to fully understand what they were getting themselves into, EH needed paperwork to evidence how they were mitigating impact. Then if problems occurred they could see the paperwork to see what should have been in place.
- f) That they asked for the layout as they needed to know where the speakers were so they could evaluate the noise levels.
- g) That they would have wanted to see a full assessment linked to the security firm so they could fully understand how people would be entering and exiting and how they would be searched.
- h) They also needed to know about the BBQs – how many would there be? What would the entertainment be?
- i) They were concerned how the SIA security staff would control people, control the numbers and move people on.
- j) Where was the general responsibility?
- k) That they weren't sure how they would ensure that residents weren't disturbed.
- l) That in terms of general information the applicant had not been forthcoming.
- m) That generally he was concerned and from what he could see and had heard they needed more on paper to ensure they could mitigate concerns and therefore make a decision.
- n) That there was limited information.

In summing up Mr Samms, on behalf of EH, made the following points:-

- That he appreciated the heart of the application but he was not comfortable as they didn't have enough information or paperwork so he didn't think it should go ahead.

In summing up, PC Walker, on behalf of WMP, made the following points:-

- That he understood what the applicant was trying to do for the community however, WMP were not satisfied due to lack of detail.
- That they were concerned over the lack of thought that had gone into the event.
- That they were concerned by the lack of risk assessment.

- They also still had concerns over the link to the franchise.
- That they didn't feel that the applicant had shed anymore light on the event at the meeting.
- That WMP requested that it didn't go ahead.

In summing up Mrs Mowatt and the security man made the following points:-

- That she didn't like having to keep explaining that Jerk and Grill was the name of the shop before she took it over, it was called something different now.
- That they had heard what had been said but they could only do so much; if a group of people turned up they could only stop them entering the venue.
- That they couldn't stop people gathering outside the venue, as long as they weren't causing trouble, there was nothing much they could do.
- That it wasn't a closed event where they could monitor everything, it was a bit of both.
- That they couldn't take away all the risk.
- That they may not have assessed everything or given the right responses but they had tried.
- That they were lost for words, there had been BBQs at the Barber shop over 4 years with no issues. This event was "more inside so easier to monitor".
- That maybe they needed to put a bit more information in that the authorities wanted but they could only go off the experiences that they had.

At 1047 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1124 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/070819 **RESOLVED:-**

That, having considered the objection notices from West Midlands Police and Environmental Health in respect of the temporary event notice, as submitted by Kadian Mowatt, the premises user, for an event to be held on 17th and 18th August 2019, this Sub-Committee determines that a Counter Notice be issued under Section 105 of the Licensing Act 2003.

The Sub-Committee's reason for issuing a Counter Notice is to prevent the temporary event from taking place, to promote the public safety and prevention of public nuisance licensing objectives in the Act. The Sub-Committee was of the opinion that to allow the event to proceed would involve an unacceptable level of risk.

West Midlands Police addressed the Sub-Committee and stated that the lack of risk assessment from the premises user was unsatisfactory. The Police would have expected comprehensive details of her plans, particularly in terms of the search/ entry policy, fire marshal, first aid, door staff, traffic management and lavatories.

Environmental Health also addressed the Sub-Committee, and reiterated that no management plan had been forthcoming, particularly in relation to noise nuisance; therefore the concern was that the premises user “might not be aware of what she was getting herself into” in hosting an outdoor event with amplified music, for hundreds of people, across the daytime and into the late evening, from a takeaway shop in a residential area.

Although due regard was given to the premises user’s representation, the Sub-Committee was not confident that the proposed event could run well, or that the premises user could overcome the concerns raised by the two Responsible Authorities. The view of the Responsible Authorities was that the event would not be managed safely, and could cause nuisance, particularly due to the close proximity of residential properties.

The Sub-Committee has had regard to the evidence, argument and submissions placed before it, in addition to the Report, the Home Office Guidance issued under Section 182, and its own licensing policy.

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. No appeal may be brought later than five working days before the day on which the event period specified in the Temporary Event Notice begins.

6/070819 **OTHER URGENT BUSINESS**

There were no matters of urgent business.

EXCLUSION OF THE PUBLIC

7/070819 **RESOLVED:**

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That in view of the nature of the business to be transacted, which includes exempt information of the category indicated, the public be now excluded from the meeting:-
(Paragraphs 3 & 4)

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CHAIRMAN