

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B 17 JULY 2018

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 17 JULY 2018
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Barbara Dring and Adam Higgs

ALSO PRESENT

Bhapinder Nandra, Licensing Section
Joanne Swampillai, Committee Lawyer
David Smith, Committee Manager

NOTICE OF RECORDING

- 1/170718 The Chairperson advised and the meeting noted that members of the press/public may record and take photographs, except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

- 2/170718 Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/170718 Councillor Brennan submitted apologies and Councillor Dring was the nominee Member.

MINUTES – PUBLIC

- 4/170718 The public part of the Minutes of the meeting held on 29 May 2018 were noted.
-

LICENSING ACT 2003 PREMISES LICENCE (VARIATION) – FIGHTING COCKS, 1 ST MARY'S ROW, MOSELEY, BIRMINGHAM B13 8HW

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

James Clarke – Mitchells and Butlers (Designated Premises Supervisor)
Steven Gollins – Mitchells and Butlers (Area Manager)
Jonathan Smith – Poppleston Allen Solicitors

Those making representations

Those making representations did not attend the meeting.

* * *

Following introductions by the Chairperson, Bhapinder Nandra, Licensing Section, made introductory comments relating to the report.

An additional email with a letter to residents and a list of Temporary Event Notices (TENS) for the Fighting Cocks was tabled by Mr Jonathan Smith as follows:-

(See document No. 2)

Mr Jonathan Smith made the following points in support of the application:-

- a) The intention of the application to vary the licence was to bring forward the opening time by 2 hours and to close 1 hour later. Also, it would remove the requirement for a break on Sunday afternoons.
- b) The licence was for 24 hours, but the licensee had sought to restrict the hours following consultation with West Midlands Police. The licensee was seeking also to apply a condition of closing the beer garden at 2300 hours following discussions with local residents.
- c) The premises had been licensed for a very long time and had operated as a music venue, with Morrissey being among the performers there. The public house was now more food focussed and operated as a 'gastro pub'.
- d) West Midlands Police had not stated any objections to the application. There had been 2 calls in the last year for minor incidents only and the only request had been to restrict the 24-hour licence.

Licensing Sub Committee B – 17 July 2018

- e) Residents had been invited to attend a meeting on 14 May 2018 and 4 people had attended. The person making representations had not attended. The resident at No. 2 King Edwards Road had attended and his property was served by the alleyway where people had urinated. The residents at Nos. 1, 3 and 31 King Edwards Road had attended as well.
- f) No objections had been raised by the residents at the meeting, but they had requested that the beer garden be closed at 2300 hours. Discussions had been held with the Moseley Society as well and they had not raised an objection to the application.
- g) In the local area, 3 public houses/bars sold alcohol until 0200 hours and 2 more sold alcohol until midnight.
- h) He referred to the tabled documents and advised that the Fighting Cocks had been issued 37 days of TENS in the previous 2 years. 5 days of the TENS had been up to 0100 hours. No complaints or objections had been received from residents, the Police or Environmental Health.
- i) The resident making representations had been invited to the meeting on 14 May 2018, but had not attended. However, in response to residents who did attend the beer garden use had been restricted.
- j) The licensee had acknowledged concerns regarding noise. One incident had related to a gate closing. Another incident was on a hot night, when an amplifier had been used outside and had to be moved back inside the building.
- k) The alleyway was not controlled by Mitchells and Butlers and was a 'dead end'.

In response to questions from Members of the Sub-Committee, the representatives on behalf of the applicant made the following points:-

- a) There had not been any previous complaints in the past about a public nuisance caused by noise from the beer garden. The beer garden was not used for music and would be closed at 2300 hours following discussions with local residents.
- b) The Fighting Cocks would not be opening for 24 hours each day and, therefore, they could confirm that there would not be recorded music played on the premises for 24 hours. No amplified music was played in the beer garden. The TENS were for music inside the building only and not for music outside.
- c) An apology had been made to residents for a one-off incident of music played outside, to which reference had been made earlier, but that was not during late hours. The music inside was 'easy listening/acoustic' music.
- d) The smoking area was situated in the beer garden until 2300 hours and then moved to the front of the building until the premises closed.

Licensing Sub Committee B – 17 July 2018

- e) Taxis came to the front of the building and normally did not stop in King Edwards Road. If customers caused a disturbance when they left, the Designated Premises Supervisor or other staff members would take action to stop that. No representations or objections had been made regarding customers causing a disturbance as they left.
- f) No refusals had been made of the TENS applications. The public house operated an Under-25s ID policy to ensure no underage drinking. Children were not allowed in the beer garden from 1000 hours onwards and were not allowed in the building after 2000 hours.
- g) In King Edwards Road, restrictions applied allowing residents only to park there after 1600 hours.

In summary, Mr Jonathan Smith highlighted that he understood that there was a 'cumulative impact' policy in place in Moseley and that each case had to be considered on merit, based on the evidence presented at the meeting. Members would need to consider whether the application would create problems. He suggested that it was unlikely to add to the 'cumulative impact'. The national guidance, at paragraphs 9.12 to 9.16 referred to the Police and Environmental Health, but neither body had submitted representations. Discussions had been held with the Police and it had been agreed to restrict the opening hours, which was included in the conditions offered. Also, the licence holder was agreeing to a request from local residents to close the beer garden at 2300 hours. A meeting had been held with residents, discussions had been held with the Moseley society and a series of TENS had been obtained to test whether problems would occur. No complaints had been made as a result of the events held. Therefore, he believed that the balance of probability was that the application would not lead to an increase in problems in the area.

At 1015 hours, the meeting was adjourned. All parties with the exception of Members, the Committee Lawyer and the Committee Manager left the meeting.

At 1101 hours, the meeting was reconvened, all parties were invited back into the meeting room and the representatives on behalf of the client were advised that Members were minded to request that the closing time of the beer garden be brought forward to 2200 hours. However, Mr Jonathan Smith advised that it would create a problem for the licence holder.

At 1110 hours, the meeting was adjourned again. All parties with the exception of Members, the Committee Lawyer and the Committee Manager left the meeting. On seeking further legal advice, Members were advised that they could only accept the volunteered condition of closing the beer garden at 2300 hours, as this was a variation application.

Therefore, at 1118 hours, the meeting was reconvened and all parties were invited back into the meeting room.

The decision was as follows:-

5/170718 **RESOLVED:-**

That the application by Mitchells & Butlers Leisure Retail Limited to vary the premises licence in respect of Fighting Cocks, 1 St Mary's Row, Moseley, Birmingham, B13 8HW under section 34 of the Licensing Act 2003, be granted subject to the volunteered condition that the external beer garden shall close by 2300 hours.

The Sub-Committee noted in particular that no representations had been made by the Responsible Authorities.

The Sub-Committee was impressed that efforts had been made by the premises, in advance of the meeting, to speak to local residents to address their concerns. The premises also volunteered a condition, namely that the beer garden should close at 2300 hours, which the Sub-Committee accepted.

The Sub-Committee noted that a Cumulative Impact Policy is in force for the Moseley area, and that the premises are located within the area covered by the policy. However the Sub-Committee noted that other premises in the vicinity operated to a far later hour – some of them even to 0200 hours. The Fighting Cocks premises had also operated under numerous Temporary Event Notices from time to time across two years, without problems. The Sub-Committee therefore concluded that any adverse impact on the licensing objectives from these premises, particularly the likelihood of public nuisance, was not likely to arise, even within the Cumulative Impact Zone.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy (including the Cumulative Impact Policy in force for the Moseley area), the Guidance issued under Section 182 of the Licensing Act 2003 by the Home Office, the application for variation, the written representations received and the submissions made at the hearing by the applicant and their legal adviser.

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.

OTHER URGENT BUSINESS

6/170718 There was no urgent business.
