

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE B 16 JULY 2019

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 16 JULY 2019, AT 0930 HOURS, IN ELLEN PINSENT, COUNCIL HOUSE, VICTORIA SQUARE, BIRMINGHAM, B1 1BB

PRESENT: - Councillor Nagina Kauser in the Chair;

Councillors Nicky Brennan and Neil Eustace.

ALSO PRESENT

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

NOTICE OF RECORDING

- 1/160719 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

- 2/160719 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

- 3/160719 Apologies were submitted on behalf of Councillor Mary Locke and Councillor Nicky Brennan was the Nominee Member respectively.
-

MINUTES

- 4/160719 That the Minutes of meeting held on the 21 June 2019 were confirmed and signed by the Chairman.
-

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – MOONSHINE INN, 84
BOLDMERE ROAD, SUTTON COLDFIELD, B73 5TJ**

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 Premises

Rob Edge – Agent
Mr Kiely – Applicant

Those Making Representations

Martin Keys – Environmental Health (EH)
Mervyn Ricketts – Resident
Mr Hall – Representing Mr Ricketts.
Richard Cotterill – Resident
Mr Cartwright – Representing Mr Cotterill

* * *

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

Mr Kiely made the following points:-

- a) That he had over 20 years' experience in the industry.
- b) That he graduated from Birmingham City University and had ran businesses for the last 12 years, over 2 sites one of which was in Sutton Coldfield.
- c) That he lived with his young family and the business was walking distance of their home.
- d) That the premises they were opening would not harm children.
- e) That the business was not a vertical drinking establishment they only sold very small quantities of locally sourced craft beer.
- f) That they had invested heavily in the premises and most sales were for people to consume the beer at home.
- g) That they sold "paddles of beer".

- h) That they encouraged discussions about beer, and encouraged people to drink it slowly.
- i) That the price of the beers meant they were not really attractive for people who just wanted to get “drunk”.
- j) That they had a similar premises in Sutton Coldfield which had been going 15 months with no issues.
- k) That this premises would be more upmarket than the one in Sutton.

Mr Rob Edge, on behalf of the applicant, made the following points:-

- a) That the application proposed minimal hours for a licensed premises.
- b) That they “looked up” the residents who had made objections and had given them serious consideration.
- c) That some residents had now withdrawn their representations as they had directly addressed their concerns.
- d) That the beer garden would only be used until 2100 hours and would not have a servery.
- e) That it was a seated establishment and would not be a vertical drinking premises.
- f) That management intended to strongly promote the licensing objectives and would have strict management controls and due diligence, including the monitoring of the beer garden and seating areas.
- g) That all but one responsible authority had not objected to the application.
- h) That West Midlands Police carried out site visits and felt it was a strong application which gave them no cause for concern.
- i) That in respect of noise levels, the music would be low level background music similar to that of a restaurant. The music would be unregulated in the live music act.
- j) That they had yet to appoint a DPS and wanted a strong, robust person. They were intending to carry out a strict recruitment process to ensure they employed the right person.
- k) That licensable activity would end at 2330 hours and the beer garden would close 2100 hours. Regulated entertainment would not take place in the beer garden.
- l) That tables and chairs would be removed from the highway at 2100 hours each day.

- m) That the PLH and DPS would monitor the external areas to ensure that nuisance was limited.
- n) That the conditions offered by Environmental Health (EH) were a standard package of conditions which were generic. There were 2 in particular that they didn't feel were necessary; the assessment of building design and structure and the scheme of noise insulation. They didn't agree as the music they were to play would be unregulated and the Section 182 Guidance indicated that indirect costs should be avoided, unless they were specifically required. Those conditions were for a live music venue or a venue with a DJ.
- o) That the DPS would attend pub watch and they would have a strong management team.

Mr Rob Edge answered questions from Members:-

- a) That they originally asked for live music because the original hours went beyond the unregulated time frame. However, once they understood the response from residents was negative Mr Kiely instructed Mr Edge to cut the hours back and remove the regulated entertainment. Mr Kiely wanted to get on with the neighbours.
- b) That the building was substantial with no lobby, so when the doors opened and closed there could be some noise break out. However, the noise "really [was] the same as a restaurant" and was just "background music".
- c) The duty manager and DPS would be managing all the areas on an hourly basis and would be able to assess the noise levels.
- d) That the other venue had air conditioning fitted to reduce noise break out through doors and windows, the intention would be to do the same at this premises.
- e) That the venue had no windows, it was a fully glassed frontage.
- f) That the guidance told them that noise monitoring devices were more appropriate for late night venues beyond 2300 hours.
- g) That the beer paddle consisted of a board with 3 small glasses of beer and a forth glass of water – it was a tasting room. Then after tasting you could buy the beer you wanted to take home.
- h) The beer garden was also a smoking area.
- i) That the seating in the venue was fixed.
- j) That the beer garden had a capacity of 60 and had a fence two thirds of the way down then a boundary fence another 10 meters down.
- k) That they would be allowing glassware inside and outside.

- l) That the premises was previously a card shop.
- m) That there was a butchers and hairdressers next to the premises.
- n) There were 2 flats above the premises and they were tenanted.

Mr Martin Keys, on behalf of EH, made the following points:-

- a) That he felt it was a confused application, with the majority of sales to be taken off the premises yet they were applying for a huge licensable area.
- b) That the original application was seeking 0100 hours finish, late night refreshment and entertainment.
- c) That they had not yet employed a DPS yet they are saying they would be a strong robust individual.
- d) That nothing really addressed the concerns of public nuisance and the only thing in the application was that the frontage would be monitored for litter and that they would put a sign up to address noise.
- e) That the plans didn't seem to have red lines to indicated areas.
- f) That the outside beer garden was a huge external area yet there was no mention to public nuisance or the minimization of public nuisance.
- g) That the road was full of retail premises, and was an out of town shopping area backed by residential. There were also residential units above.
- h) That there was residential units at the back, it was a busy road and as part of the management of the area EH had worked carefully with local developers to reduce late night refreshment in the area and the majority of establishments did not have late night licenses.
- i) That the premises used to be a card shop (retail) and therefore didn't have planning permission to be a drinking establishment.
- j) That there was a flat upstairs and either side.
- k) That he had not carried out a structural assessment but he had visited and 60-70 people would be quite loud and he had concerns for the flat above. There would need to be noise installation for the flat upstairs.
- l) That the beer garden would see significant noise from people using it in hot weather.
- m) There would also be problems with the extraction from the kitchen and air conditioning.

- n) That in terms of the access and egress from the premises, the applicant had offered no mitigation.
- o) That he objected to the application due to the premises being out of character with the local area, and the impact on local residents. He met with the agent and applicant and offered guidance and advice. He also made it clear he would not accept anything after 2300 hours, as well as the frontage to be used for smokers and not after 2100 hours. Additionally, he articulated that he did not want regulated entertainment and he wanted the beer garden reduced significantly as it was a larger footprint than the actual building. So Mr Keys sent them conditions via email however, he did not put them forward at the hearing as the applicant had not accepted them.
- p) That he did not feel the premises could operate without causing nuisance.
- q) That the beer garden was too large for the type of establishment it was. That he could provide copies of the conditions if the Members wanted them.
- r) That they were not “off the shelf conditions”.
- s) That condition 8 was not asking for lots of money to be spent it was simply asking for someone to tell him what the building was made out of so he could figure out what the noise break out would be.
- t) That for other applications in the area they had requested acoustic fences so he had not taken an “off the shelf approach”.
- u) That it was a confused application and the beer garden was too big.

Mr Mervin Ricketts, local resident, made the following points:-

- a) That the main Boldmere road had changed dramatically; the number of pubs and restaurants had increased.
- b) He was concerned that it would be another premises blasting music.
- c) That he had already been able to hear music when sat in the conservatory.
- d) He already had complaints with the Lounge.
- e) He was concerned about the accumulation of noise.
- f) That car parking was another issue.
- g) That it was dragging the area down rather than improving it.
- h) That his wife was particularly stressed as she wanted to enjoy their garden but couldn't.
- i) That if he went out at 6 there would be cars parked all down the road.

- j) That he wasn't a kill joy, but these premises were holding events and competing with one another and always doing more.

Mr Cotterill made the following points:-

- a) That getting on and off his drive was a challenge as there was no designated parking.
- b) That other people who had made representations would not be fortunate enough to attend due to work commitments.
- c) That he lived in a property at the back of the premises so would be directly impacted. He found out about the application from a neighbour and it was only by chance that it came to his attention. His position remained resolute. The company had not been upfront and honest and they had been misled.
- d) That they submitted an application of extremes in order to make it look like they were considering residents when then reduced the hours.
- e) That the premises said they would have a positive impact on the area; but how? And how would they measure it?
- f) That the site operation manual mentioned "Edge Coffee".
- g) That the questionnaire had no impossible answers to the multiple choice questions.
- h) That the application was not acceptable and didn't represent the local interests of the community.
- i) That there were 20 outlets to get alcohol, 1 every 5 minutes – if that didn't represent over saturation then he would question his faith in the licensing authority.
- j) That the offices for the business were based in London and the owner of the business was Greek so he therefore questioned their interest in the local community.
- k) That with them not being local they didn't have to witness all the drug bags, canisters and other things that little 4yos liked to pick up.
- l) That the representation at Appendix 4 had not been withdrawn – it was a strong representation. The premises would have an impact on children in the local area; lack of sleep, smoking, adult conversation.
- m) That the Committee should not be misled by the application.
- n) The application should be rejected as it did not have the interest of the local community at its heart.

When invited to make a closing submission, Mr Cotterill advised that he had nothing further to add.

In summing up Mr Ricketts made the following points:-

- a) That he very much confirmed everything that had been said. There were schools nearby with children walking up and down the road.

Mr Hall added that the volume of people talking was very disruptive to local residents.

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

- a) That he still had concerns over the clarity of the application.
- b) That the application supporting documents did not address public nuisance.
- c) That he had offered a good set of conditions to address his concerns, yet they were not accepted therefore he requested that the Committee refused the application.

In summing up Mr Kieley made the following comments:-

- a) That he had listened to all the representations and wanted to add that he himself was from Sutton. Additionally they were adding to the area because they had taken over a premises which had been closed, paying business rates, buying local beverages and employing local people. The Sutton New Road local brewery was being showcased by them and the reason they wanted the sites so close to one another was because Mr Kieley lived in Sutton himself.
- b) That the reason he created these premises was because he enjoyed craft beers; discussing it and drinking it in small quantities. He wanted to have a positive impact.
- c) They would employ local people and buy local produce as well as buying some produce from Canada and America.
- d) That he had children and wouldn't want to create a negative impact in the area to which he also lived.

In summing up Mr Edge made the following points:-

- a) That they had reduced the hours, removed regulated entertainment and agreed that the beer garden would not be in use after 2100 hours.
- b) That they didn't need a red line to indicate the area outside as there was no servery.
- c) That the premises was not a vertical drinking establishment, it was predominantly for people to sample the beers in the tasting room.

- d) That there would be air conditioning in the premises to avoid noise break out.
- e) That there was no intention to have bands, DJs or live music.
- f) That the late night refreshment was an oversight on his behalf and he would remove it.
- g) That the 2 conditions they didn't agree with were the ones which needed EH to approve them, which could take 3-6 months (from his experience) and therefore the business would be "dead before it was even alive".
- h) That they had ensured there was a fence so that the top end of the garden would not be used.
- i) That it was a high class premises with expensive craft beers.
- j) That they understood the concerns regarding parking, however, only Highway's could deal with parking.
- k) That any breaches of conditions could result in a review of the licence and they would be held accountable.
- l) That the applicant had invested £100,000 into the business including full time staff.
- m) That they received a letter from planning to confirm they could use the venue as a tasting room.

At 1049 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 1144 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/160719

RESOLVED:-

That the application by CMSK Ltd for a premises licence in respect of Moonshine Inn, 84 Boldmere Road, Sutton Coldfield, B73 5TJ **BE REFUSED**.

In reaching this decision, the Sub-Committee was mindful of the promotion of the Licensing Objectives in the Act, particularly the prevention of public nuisance and the protection of children from harm.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns raised by Environmental Health regarding the impact of the proposed operation on the particular locality of the premises, in an area with many residents living in close proximity, and also local schools nearby. Residents also attended to address the Sub-Committee.

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application, but was not persuaded that the proposed operation of the premises was satisfactory. The Sub-Committee agreed with Environmental Health that the application was “confused and confusing”.

The applicant stated to the Sub-Committee at the start of the meeting that the majority of sales would be “takeaways”, ie off-licence sales of alcohol. However the Environmental Health Officer observed that the site was large, with considerable capacity both inside and outside; he described the size of the beer garden as ‘huge’. This was surprising for any premises which supposedly would be mainly conducting ‘off’ sales, rather than operating as a pub or bar with an ‘on’ licence. The applicant later stated that the Planning Department had given permission for the change of use on the basis that the premises was a ‘tasting room’.

No Designated Premises Supervisor had been appointed yet, which was a concern to Environmental Health. Residential property was situated directly on top of the premises; the occupant(s) would thus far have been accustomed to the noise level generated by a greetings card shop, not a public house/ bar venue with sizeable beer garden. The Environmental Health Officer opposed the application on the basis that not only did the application offer nothing to address the high potential for noise nuisance, but the applicant would not even agree all of the conditions proposed by Environmental Health, and in particular was resisting the conditions which would address noise nuisance.

The Sub-Committee also had regard to the observations made by the local residents who attended the meeting to address them. The local residents felt strongly that the application did not have the interests of the local community at heart, in terms of either public nuisance or the protection of children from harm. The volume of noise generated would be considerable, even just from patrons talking in the garden, due to the size of the venue. Pupils attending the two schools nearby would be affected; one resident remarked that without the measures to address nuisance which had been recommended by Environmental Health (but rejected by the applicant’s adviser), local children’s mental health and education could be affected by noise generated by a premises of that size. The Sub-Committee considered the views of local residents to be persuasive.

The applicant’s adviser said that he had redrafted the application to reflect the concerns of those making representations. One resident who addressed the Sub-Committee gave his opinion that the application had perhaps been originally drafted as such in order to “put on a show of cooperating with residents” by later reducing the hours. Whether this had been a deliberate intention or not, the Sub-Committee found it unsatisfactory for so many amendments to the original application to have been made during the process. A well thought out application should from the outset have taken into account the likely views of those living nearby, particularly in relation to the potential for noise nuisance. In that sense, the application was indeed ‘confused and confusing’, as the Environmental Health Officer had stated.

The Sub-Committee also looked askance at the adviser's opinion that two of the conditions proposed by Environmental Health were not necessary. The location, in a residential area, and the large capacity of the venue and beer garden, meant that the potential for noise nuisance was high. Moreover, Members were frankly surprised that any applicant should be unwilling to accept advice from Environmental Health relating to the potential for noise nuisance.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the four licensing objectives were adequately promoted and that therefore the licence be granted; however Members noted that the application had already been amended by the applicant's adviser and was still not acceptable to those making representations.

One resident also observed that documents served by the applicant's adviser appeared to relate to a separate premises named 'Edge Coffee'. The Sub-Committee had also noted this, and felt that this perhaps reflected the confusion in the application.

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 information contained in the application, the written representations received and the submissions made at the hearing by the person representing the applicant, and by the applicant's adviser, by Environmental Health, and by those 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.

5/160719

OTHER URGENT BUSINESS

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

.....
CHAIRMAN