

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B 27 NOVEMBER 2018

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 27 NOVEMBER 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
Katy Poole, Committee Manager

NOTICE OF RECORDING

1/271118 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

2/271118 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

3/271118 Apologies were submitted on behalf of Councillor Sharpe, Councillor Dring was the nominee Member.

MINUTES – PUBLIC

4/271118 That the public part of the Minutes of meetings held on 9th October 2018 were

noted.

That the Minutes of meeting held on 16th October 2018 were circulated, confirmed and signed by the Chairman.

**LICENSING ACT 2003 (TEMPORARY EVENT NOTICE) - ARCH 7,
LOWER TRINITY STREET, BIRMINGHAM, B9 4AG**

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

Hitesh (Billy) Chauhan – Applicant
Patrick Burke – Agent
Mr Mitesh Chauhan - Brother

Those making representations

PC Abdool Rohomon – West Midlands Police
PC Deano Walker – West Midlands Police

* * *

Following introductions by the Chairman, Bhupinder Nandra, Licensing Section, made introductory comments relating to the report.

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

- a) That Arch 7 was not a licensed premises. The premises had been used by “Billy” several times, to hold similar events, with similar operating times. Those events went ahead with no issues.
- b) The police were not satisfied that the premises were a suitable venue, and were concerned regarding public safety. However, they had not raised any issues for previous events. There were no changes to the venue since the last event, which they did not object to.
- c) That all the risk assessments had been submitted.
- d) That The Monastery was a completely different building.

At this stage, Mr Burke related to chapter 8 of the House of Lords Report: “*Select*

Committee on the Licensing Act 2003 - The Licensing Act 2003: post-legislative scrutiny - Report of Session 2016-17 - published 4 April 2017 - HL Paper 146”). In particular, paragraphs 330-331.

- “Temporary Event Notices (TENs) are a ‘light touch’ system for regulating temporary events with fewer than 500 people (including staff) held by individuals, organisations or businesses where alcohol will be sold.”
- “Community versus commercial”
- “Many local councils and local residents’ associations shared this view that the system was being abused by licensees.”
- “A common, but misplaced, assumption is that TENs were originally devised for community purposes, but are now being abused by commercial operators. Those who hold this view believe TENs are functioning as legal loopholes to evade the terms imposed on commercial operators through premises licences, particularly with respect to later opening hours, allowing businesses to evade proper scrutiny and effectively acting as a second, much laxer, shadow licensing regime alongside the main provisions of the Act.”

Mr Burke continued:-

- a) That the event would be for around 300 people, and was going to be held in a separate building to The Monastery.
- b) That “Billy” was told by Environmental Health to do TENs to assess the impact, in order to prepare for a grant application for Arch 7.

Mr Hitesh (Billy) Chauhan made additional points:-

- a) That they were preparing to submit a grant application, which was why they were holding TENs, in order to aid their application.
- b) That they had no previous issues with the others TENs they had already held.
- c) They had held 10 TENs already.
- d) No one had objected to the previous TENs, which were more or less identical in terms of operating times and the actual events.
- e) PC Walker had a site visit on a number of occasions to demonstrate there had been no changes to the building.
- f) That they wanted to liaise with PC Walker but he had failed to turn up on 2 separate occasions. In the end they had a telephone conversation with PC Walker.

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- g) They had tried to do as much as they could over the phone.
- h) That in the evidence bundle there was a certificate from a structural engineer confirming the building was safe.
- i) That if anyone was excessively drunk they had a duty of care and had policies and procedures in place.
- j) That they had carried out full risk assessments and issued them to West Midlands Police.
- k) That they would like to know what the concerns for public safety are. The police have not given specific concerns. They felt frustrated as they had tried to find out, but unsuccessfully.
- l) That the fact WMP had not objected previous, meant there was no structure to their argument.
- m) That the Arch 7 had no licence and The Monastery was a separate venue.
- n) They have demonstrated they can operate until 1030am.

In response to Members questions, PC Walker, on behalf of West Midlands Police, made the following points:-

- a) That the police licensing team had experience with this venue already.
- b) That they usually get risk assessments prior to the application for TENs.
- c) In this case they had received 2 risk assessments; first one was called Techno Disco, with the address as the Monastery and Arches.
- d) They found a few discrepancies with the risk assessment.
- e) The number of people attending would be 250, but then it was 250. Another issue was the age groups; it said 18-30 then 18-40years.
- f) The one risk assessment said that door staff would be situated on the stairs, yet Arch 7 had no stairs. So why would door staff be on the stairs?
- g) The second Risk assessment was for Master of Old School Rock, which was 9pm until 5am with the Monastery address. This risk assessment stated 200 people would be attending; however, they have applied for 300.
- h) The age range on the risk assessment was 22-55, then 22-30.
- i) Both risk assessments were received, but no TENs attached to them.
- j) First TENs was 15th November Techno Disco, at the Arch, but no number, so couldn't say whether it was 7 or one of the other Arches.

- k) The TENs application did not match risk assessment the operating hours were midnight- 1030am. The name of the event was different; the event address was also different to the TENs. Police made representations.
- l) There were concerns that the risk assessments do not match, leading them to believe that The Monastery was being used instead of Arch 7.
- m) By holding the event at The Monastery they would be circumventing the conditions set upon the licensing, by the Licensing Committee.
- n) Again Techno disco did not match either. Different name event again and different event locations.
- o) They had a telephone discussion on 19th November with the applicant and their agent, whom said they would withdraw the TENs which were to run until 1030am.
- p) PC Walker did admit that he had missed the appointment.
- q) Then he received an email from BCC Licensing advising them that a TENs application had been received for an event to finish at 1030am, contravening what was said on the phone.
- r) That the event they had applied for was not Arch 7 and they were concerned about that.

At this stage PC Walker referred to the police evidence bundle at pages 21-22 in order to show Members the discrepancies and the issues they were concerned about. He made comments relating to the sale of tickets for the event on social media. Furthermore, he then pointed Members to page 29 of the evidence bundle to show that “9 artists” had been confirmed when the risk assessment only stated 4, with others to be confirmed; yet they had not received any confirmation of any further artists.

Moreover, PC Walker referred to page 30 which also showed that the event was being held at The Monastery, giving the name of the venue as such, along with the address; that of The Monastery. There was further information about the event, stating it to be held in 4 rooms, yet Arch 7 was only one room. All of these factors led the police into believing that the event was going to be held at The Monastery, and not at Arch 7.

PC Walker then referred Members to the map at the back in order to demonstrate to Members exactly where the venue was and where The Monastery was.

PC Walker explained that when he submitted the objection he had little information, but things had since developed.

PC Abdool Rohomon explained that the House of Lords Report had not been adopted by the Home Officer and they had objected to much off it. Therefore, it

should have no bearing on decision making.

At this stage in the meeting PC Walker, on behalf of West Midlands Police, summed up:-

- That there was much confusion over the risk assessments, social media, application and the TENs.
- There had been 2 applications for the same day, which had different ending times and venues.
- They had no faith in the applicant to promote the licensing objectives due to the risk assessments and general admin.
- Risk assessments were unclear and poor.
- That he had attempted to work with the premises.
- They knew the venue well.
- The applicant had not evidenced that they could promote the licensing objectives.
- Social Media advertising led them to believe it was being held at The Monastery.
- Would the Committee have confidence in the risk assessments to grant the TENs application? As police they would say no.

In summing up Mr Burke, on behalf of the applicant, made the following points:-

- That there had been many events, with no issues.
- That the telephone conversation was an error on “Billy’s” part. He did not realise you could amend a TENs application. So therefore, they withdrew the second one simply because the hearing was already booked for today and he was happy to reduce the hours to 5am.

Mr Hitesh Chauhan interjected asking if he could respond to PC Walker evidence.

PC Rohomon advised that the applicant and his agent were served the police evidence bundle, and chose not to make comments on it.

The Chairman advised that the meeting would be adjourned to seek legal advice. At this stage (1038 hours) all parties, with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

At 1047 the meeting was reconvened and all parties were invited back into the meeting room.

The Chairman advised that they would allow Mr Chauhan to clarify the one point and then he would be invited to continue summing up his evidence.

Mr Chauhan explained that the event at The Monastery advertised on social media was an entirely different event. They had an event Friday and Saturday at The Monastery and one on Saturday at Arch 7.

PC Rohomon advised that a risk assessment had not been submitted for the event.

Mr Burke continued to sum up, on behalf of the applicant:-

- That he could see why it was confusing which event was which, but events at The Monastery did not need TENs applications.
- There had been numerous events at Arch 7 which had not caused any issues.

At 1050 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1134 the meeting was reconvened and all parties were invited back into the meeting. The decision of the Licensing Sub Committee B was announced as follows:-

5/271118

RESOLVED:-

That, having considered the objection notice from West Midlands Police in respect of the temporary event notice as submitted by Mr Hitesh Chauhan, the premises user, for an event to be held on 1st December 2018 at Arch 7, Lower Trinity Street, Birmingham B9 4AG, 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 and to promote the licensing objectives, particularly that of public safety, in the Act.

After hearing objections from West Midlands Police, the Sub-Committee was of the opinion that allowing the event to proceed at the premises would be likely to undermine the licensing objectives. The Police's main concern was that the Risk Assessments were unsatisfactory and did not accurately reflect the temporary event. It was the Police's recommendation that the event should not be permitted.

Although due regard was given to the premises user's representation, the Sub-Committee was not confident that the premises user could overcome the concerns raised by the Police. The Sub-Committee felt unable to permit any risk to public safety whatsoever at a very late-night event. The Sub-Committee therefore determined that it would be appropriate to issue a Counter Notice, to ensure the promotion of the licensing objectives in the Act.

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 s182, and its own Statement of 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.

OTHER URGENT BUSINESS

6/271118 There was no urgent business.

EXCLUSION OF THE PUBLIC

7/271118 **RESOLVED:**

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)
