



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B

22 March 2016

The Site Office Bar, The Basement, 32-34 Water Street, Birmingham B3 1HL

That the application by Andrew Charles Heath for a premises licence in respect of The Site Office Bar, The Basement, 32-34 Water Street, Birmingham B3 1HL

BE REFUSED

In reaching this decision, the Sub-Committee was mindful of promoting the prevention of public nuisance licensing objective.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns by other persons regarding the impact of the proposed operation on those living in the immediate vicinity, which is a residential area.

Members considered the Sound Report as submitted by the Applicant, and took into account comments made by other persons and the Applicant's legal representative, and found on balance that it was incomplete as it did not take into account the physical proximity of the apartment terraces and windows within the building in which the premises is situated, and the impact that noise from patrons smoking at street level would have on those living in the apartments above.

Furthermore it was noted that at the time of the noise assessment for the Sound Report the premises had not yet installed a sound system suitable for background music. In addition, the method of assessment was based in part on detailed measurements undertaken in another residential/ music venue building of unknown characteristics. It was not clear to Members whether the other residential/ music venue building was similar in comparison to the premises in question. The Sound Report therefore in their opinion gave an insufficient picture of the effect of the proposed operation.

Regarding the agreed Conditions, Members determined that these were impracticable as they were generic in comparison to the detailed operating procedure for the venue, which was described as 'high-end' by the Applicant, and were also unenforceable since the Designated Premises Supervisor has no powers under the Licensing Act 2003 to control patrons outside the premises in the manner described.

Furthermore the Members considered that the proposed operation, located in a densely residential area, and the outside noise associated with patrons entering, leaving and smoking by the main entrance in the early hours of the morning, would have an impact on those residents living directly above the premises and also on those living opposite. This was demonstrated by the comments of local

residents who established the causal link between the previous operation of the premises under TENs and the noise nuisance caused by the patrons to neighbouring residents. Moreover, this position was further supported by paragraph 2.20 in the section 182 Guidance regarding the prevention of public nuisance, namely that if patrons wished to smoke outside they should do so at designated places on the premises instead of outside, and to respect the rights of people living nearby to a peaceful night. In the present circumstances, it was not practical to have a designated smoking area within the premises due to the smoking ban, and the presence of overhanging balconies directly above the main entrance made a designated smoking area outside undesirable and contrary to the licensing objective in question.

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 considered that neither modifying conditions of the licence, refusing the proposed Designated Premises Supervisor nor excluding any of the licensable activities from the scope of the licence would mitigate the concerns raised by those making representations.

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 applicant, their legal adviser and 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.