

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE C 8 MAY 2019

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD
ON WEDNESDAY 8 MAY 2019, AT 0930 HOURS, IN COUNCIL CHAMBER
(FORMERLY TO BE HELD IN ELLEN PINSENT ROOM), COUNCIL HOUSE,
VICTORIA SQUARE, BIRMINGHAM, B1 1BB**

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Nicky Brennan and Neil Eustace.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Parminder Bhomra – Legal Services
Katy Townshend – Committee Services

NOTICE OF RECORDING

1/080519 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

2/080519 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.

No declarations were declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/080519 No apologies were submitted.

MINUTES

4/080519 That the Minutes of meeting held on 20 March 2019 were noted.

**LICENSING ACT 2003 PREMISES LICENCE (GRANT) – PURE GOLD, 359-361
OLTON BOULEVARD EAST, ACOCKS GREEN, BIRMINGHAM, B27 7DP**

Report of the Acting Director of Regulation and Enforcement.

(See document No. 1)

The following persons attended the meeting.

On behalf of the Applicant

Mr Vladi – Applicant
Richard Chisnell – Manager
Rob Edge – Agent

Those making Representations

PC Abdool Rohomon – West Midlands Police (WMP)
Paul Samms – Environmental Health (EH)

Local Ward Councillors –

Cllr John O'Shea
Cllr Roger Harmer
Cllr Bob Grinsell

Local Residents

Joe Baker – resident
Fran Lee – Acocks Green Village in Bloom
Angela Faithful – resident
Jacque Wells – resident

Due to the large volume of attendees, the meeting was later convened at 0954 and moved to the Council Chamber in order to accommodate all parties.

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The Chair made introductions and outlined the procedure to be followed.

Bhapinder Nandhra, Licensing Section, made introductory comments relating to the documents submitted.

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

1. That Mr Vladi the applicant was supported by Mr Chisnell who was the general manager at the other premises and was presented a good character, and was a reliable person.

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2. That Mr Vladi's intention was to open the premises if it was granted and run the premises as Mr Chisnell ran the other premises – this was simply an expansion.
3. That Mr Vladi had a SIA badge and was also a personal licence holder.
4. That the premises was previous operated as a restaurant. Mr Vladi wanted to invest some £100,000 to refurbish the premises internally and externally.
5. That the venue would provide jobs in the local area.
6. That they had policies and procedures in place to ensure the premises would run well.
7. That noise and nuisance would not be an issue.
8. That the venue was not at all about blasting loud music.
9. That they had reduced the hours.
10. The premises was low key.
11. That only 3 of 9 responsible authorities had objected, they had attempted mediation with them.
12. That they had provided a map of other licensed premises within the local area with their opening hours.
13. That the premises in the long term would offer a mix for those in the local area.
14. That there were lots of car parks in the local area.
15. That they would not be having bands, and people would not be leaving in big groups.
16. That the frontage would operate much as it always had.
17. That these types of venues tended to be well operated and well supported and actually offered a higher level of control.
18. That the smoking area was a shelter outside, near the main entrance.
19. That the main entrance was located at the point furthest away from residents.
20. That the premises previously had live music and it had never been an issue previously.

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21. That deliveries and collections would only take place between 0800 hours and 2000 hours. Further, it would minimise the risk of disturbance to residents with bottles and glass.
22. That the purpose of the Sexual Entertainment Venue (SEV) licence was for the intended purpose, it would not be a venue for people to be heavily drinking. People would mainly arrive in taxi's in small groups.
23. That people would be arriving and departing throughout the evening, and there would not be particular times.
24. That the premises would be monitored well. There would be stewards monitoring taxi arrival and departures.
25. That for the most part staff and performers would use the rear car park, in order not to disturb residents.
26. That taxis using the front car park would be monitored.
27. That they had a contract with a local taxi company and they had set out rules for them to follow.
28. That they would ensure noise was monitored in entry and egress.
29. That the appropriate signage would be in place reminding patrons to be mindful of the local neighbours.
30. That staff would be fully trained in dealing with issues.
31. That the provision of music would be in the background, just to provide a backdrop.
32. The music would be controlled and managed by the management staff.
33. That the premises had previously had regulated entertainment; so backdrop music would not be an issue. The music could be retested to ensure the level of sound was sufficient. That the applicant was willing to work with EH to achieve that.
34. That the smoking shelter was accessed from the main entrance and could be an area of weakness, so potentially they could put a lobby area there – it was being explored and seemed very possible.
35. That people smoking outside venues was not uncommon.
36. That they were considering measures to consider limiting the number of people using the area, to keep noise to a minimum. They would prevent people from taking drinks outside.
37. They would not provide heating, lighting or music, in order to discourage people from staying out there longer than needed.

38. That they would limit the times and spaces available in the smoking area.
39. That it was not likely to impact residents significantly.
40. That they would minimise risks by working with local authorities.

In answer to Members questions Mr Rob Edge made the following points:-

1. That the premises previously operated as a Greek restaurant and patrons used to stand in the car park in order to smoke.
2. That they had the idea of having a proper smoking shelter and the addition measures mentioned above; restricting numbers, and times.
3. That chartered surveyors had come up with a model that met the smoking act and that would form changes to the planning application.
4. That the large building plot near the premises was more of a planning issue. They were consciously aware from the noise consultant that the noise management plan was indicative that the noise from premises would be minimal and that there would be more noise from the cross junction and main road noise.
5. That there was other premises open late, one until midnight, the Texaco garage had a 24 hours licence, McDonalds was open until midnight.
6. That they would be quite happy to have no smoking in the shelter after a certain time.
7. That it was not in the applicants interests to have lots of complaints and have problems down the line, when they wanted to apply for an SEV licence in the future.
8. That if the premises failed to promote the licensing objectives they would be brought before the Committee.
9. That the other premises was run well; zero tolerance to patron's behaviour, smoking area, inside and outside the premises. The fact Mr Vladi was SIA registered meant he was fully aware of conflict resolution methods to ensure that it was not in patron's interests to cause problems.

On behalf of the West Midlands Police (WMP), PC Rohomon made the following points:-

1. That the application was not for an SEV licence, it was a premises licence.
2. That the application showed what the premises wanted – alcohol, late night refreshments and entertainment.

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3. That at the back of the application; section K it stated the premises was a SEV, all the comments were about SEV licence. Yet the venue was nothing, as it had neither a SEV nor an alcohol licence.
4. That he was unsure what they were actually applying for.
5. That there had been other issues before with SEV licences being revoked and then the premises opened as a nightclub days after, there was nothing to stop them.
6. That this was a premises applying to be a nightclub, the music was ancillary to primary function.
7. That if the Committee granted the application they were not granting the SEV, they were granting a nightclub until 4am in the morning.
8. That there were lots of “maybes” and it was for them to put in control measures to mitigate concerns.
9. That they had put in noise consultant information and the other like for like venues licensed in the local area. However, that was not the case, the 24 hour license was a petrol station and that was not a like for like venue and that worried PC Rohomon.
10. That they had stated things they might do, but none of it was in the application.
11. That what the applicant had submitted did not show all the residential areas in the area; the premises was surrounded by residential units.
12. That the car park actually backed onto gardens of residential properties. They were very, very close to the venue.
13. That the pictures also showed the premises did not have a large car park like they said, there was only 9 spaces at the front.
14. That the premises was currently a derelict building that wanted licensable activities until 0400 hours and 0600 hours in a highly residential area.
15. That he had never seen so many residential complaints, not just petitions, but also the multiple written representations.
16. That premises like the applicant's should be in recognized night time areas. The premises was not located in a recognized night time area.
17. That WMP requested that Councillors took into consideration what the licence allowed them to do in their determination.
18. That if the Committee granted the application, even if the licence was reviewed the applicant could appeal it and carry on trading.

19. That if they wanted to have a SEV why had they gone around it the wrong way; why didn't they apply for the SEV first? That it just allowed them to do what they wanted.

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

1. That the application site could be seen on page 222 in the document pack and Casey Jones premises had a licence until 2am, yet when he spoke to the manager they very rarely go beyond 1am. The first floor had permission for flats.
2. That there were residential units at the rear of the premise, the premises was surrounded by residential units.
3. That the concerns were noise coming from the building and noise in the external areas; people leaving, taxis and patrons in the smoking area.
4. That his view was that the premises could operate similarly to Casey Jones and have a lobby area, 2 front doors and 2 doors that closed behind patrons, to try and limit noise break outs.
5. That the premises could have hours like Casey Jones. However, going past that they would need lobby areas to avoid noise break out.
6. That there was no mention of a noise limiter.
7. That they needed to consider the noise of patrons dispersing at the end of the night.
8. That the applicant wanted more than midnight. However, he felt they should withdraw their application and show they could contain the noise. Then the applicant could make a determination whether it was even viable.
9. That he disagreed with the noise report in that they suggested the premises could operate unnoticed.
10. That if music was not needed why had they applied for it.
11. That the premises was not "low key".
12. That they couldn't compare a garage to an entertainment venue.
13. That they both had entirely different noise break outs.
14. That the previous premises did have complaints back in 2010 and 2014.
15. That he was worried the back of the club and the side of the club could be problematic in terms of noise control.

16. That the later the premises operated the less background noise there would be, therefore, the more prominent the noise from the venue would become.
17. That the premises had talked about doing lobby areas, but there was no certainty.
18. That if they did put in a reasonable size lobby area, Mr Samm's couldn't be sure they would have enough space for the club.
19. That he couldn't see how the premises would control people leaving in groups. Where were they going to escort them, how were they going to do it? It didn't seem a viable option.
20. That the history of the premises was that there was still complaints when it had a good lobby area.
21. That he couldn't see how the offered conditions would ensure the premises could operate unnoticed. He was not happy with the conditions offered.
22. That possibly the premises operating with pub hours in its current form could be considered, otherwise the application needed withdrawing and they needed to show how they could resolve the issues and concerns.
23. That even with a "strong team" they would not be able to control people leaving.
24. That the reason there had been no complaints since 2014 could have been because the premises had been closed.

Cllr O'Shea made the following points:-

1. That thousands of residents signed the petition he submitted, and he had witnessed lots of residential complaints.
2. That the premises was situated in a long established town centre, with pubs and restaurants however, it was not a night time entertainment area.
3. That the venue was not in the centre of Acocks Green.
4. That the McDonalds only operated as a drive through 24 hours.
5. That the garage was not an entertainment venue.
6. That the premises sat within a residential area within metres of people's homes. That Appendix 4 showed the properties around the area.
7. That the premises was close to some 48 homes.

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8. That the planned changes in the area would bring about challenges to the operation of the venue.
9. That the applicant had also submitted a planning application. The venue only had 9 spaces; it was not surrounded by car parking.
10. That given the size of the club and the submission over 40 staff, the car park was not sufficient.
11. That it was going to bring pressures of street parking down residential roads.
12. That there would be noise when staff left after 0400 hours and then 0600 hours. There were houses immediately behind the staff car park. It was not appropriate for residents.
13. That he welcomed the submission from WMP and EH.
14. That the area had never had hours approved for this long before.
15. That the area was becoming more and more residential, yet this venue was proposing to be an adult entertainment venue.
16. That he was asking the Committee to refuse the application.
17. That if it was not possible to refuse the application, then add strict conditions.

Cllr Harman made the following points:-

1. That he was concerned about public nuisance.
2. That the proposed hours would bring significant nuisance to residents and therefore, it should not be approved.
3. That a huge number of residents had signed the petition which was also backed by local Councillors and local MPs.
4. That WMP, responsible authorities, and residents had a weighted position, the applicant's presentation was poor.
5. That he endorsed the comments raised by Cllr O'Shea regarding the area.
6. That it was not logical to compare a garage to the premises, there was always a surge of noise at the end of the evening, and the risk was very real.
7. That if the applicant was successful the venue would be busy, and that would generate a lot of noise. That public transport did not operate in the early morning/late evening hours. The venue had such a small customer

car park that the nearby streets would be a target for parking. Patrons would go down Gospel Lane and park on residential streets.

8. That there was nothing the applicant could do to reduce the nuisance to residents.
9. That the premises suggested signage and rules to stop patrons from causing a nuisance, but did the committee really think that would work.

Cllr Grinsell, representing other ward Cllrs and local residents, made the following points:-

1. That he was totally against the application and had been inundated with complaints.
2. That the application did not comply with the licensing objectives; all four.
3. That it was a small residential area with local shops, food establishments, local Tesco's and a garage. There was only 2 licensed premises with alcohol and entertainment but they were severely restricted and had much more limited hours than the premises.
4. That there was a nursery only 50 metres away.
5. That there were elderly care homes within a 250 metre radius.
6. That the application was inappropriate with the extensive hours.
7. That it would be an area for anti-social behaviour, criminal disorder and noise nuisance.
8. That a cigarette butt would take 100 years to disappear.
9. That the premises would have an effect on protecting children from harm, how would parents explain what went on in the premises.
10. That if the premises was 50 yards further in Solihull he was confident the application would be refused.

The local residents, Angela Faithful, Fran Lee and Joe Baker made the following points:-

Angela Faithful

1. She expressed that she was a grandmother, with a young family. She did not feel it was appropriate for residents to have to bare the consequences of the venue.
2. That her daughters were going round in hi-vis jackets, litter picking, trying to improve the area.

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3. That when people were drinking they got louder and they would be slamming taxi doors and engines would be running in the early hours of the morning – it was not good.
4. That she had considered what she would tell her grandson when he asked what the venue was.
5. She pleaded with the Committee to deny the application. She appealed to them as a mother and a grandmother, for her grandson.

Fran Lee

1. That the restaurant was there previously and that did have problems.
2. That her garden was only a few feet away.
3. There had been issues with people fighting previously.
4. She had nursed people and seen bodies in the rear car park.
5. She had people block her driveway.
6. There had been noise nuisance from Casey Jones and other venues that she could hear from her bedroom.
7. That the person who owned one of the nightclubs threatened her husband.
8. That she couldn't imagine how anyone could consider those licence hours, it was ridiculous.
9. That the Coliseum was horrendous, it had music playing until the early hours, side door slamming, and they could hear everything that was going on.
10. That she appealed to the Committee to refuse the application.
11. That no hours at the venue would be appropriate.
12. That they had to move bedrooms because of the noise.

Joe Baker

1. That he was speaking on behalf of someone who put an objection in at Appendix 89.
2. That it was so difficult to get to the hearings in the middle of the day.
3. That the Committee should really think about the Alden residents.
4. That he had lived in Alden for years and brought his children up there.
5. That he lived in one of the 33 flats and was not precious about noise.

6. He chose to live in a flat behind the Texaco garage and near McDonalds.
7. That he understood the issues and expected that the cut off would be around midnight to 0600 hours in the morning.
8. That it was not a night time economy.
9. That he regularly litter picked and it was important to the residents to make the area a nice place.
10. That they were trying to make improvements successfully.
11. That there were schools, old people's homes, restaurants, nursery and houses all locally to the venue.
12. That it was the first application he had felt so strongly about.
13. That it was not the character of the area.

In summing up the residents made the following points:-

- That it was the wrong location.
- That they had nothing more to say.

In summing up, the local Councillor Grinsell, Harman and O'Shea made the following points:-

- That they wanted their comments taken on board.
- That it was a huge residential area and it was important to recognise the locality of the premises to the residents.
- That they had never seen a petition go at that pace; the application was opposed by a wide range of people.
- That they urged the Committee to reject the application.

In summing up, Paul Samms, on behalf of Environmental Health, made the following points:-

- That the premises was close to a residential unit, it was not in the centre of Birmingham.
- That he disputed that the premises could operate unnoticed.
- That he couldn't see how it would work.
- That he was concerned in respect of public nuisance.

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In summing up, PC Rohomon, on behalf of West Midlands Police, made the following points:-

- That it was not so much about what they wanted to do, but more about what the licence would allow them to do.
- That it was unusual to have local residents, local Councillors; first hand witnesses telling the Committee about first hand problems.
- That there were too many maybes.
- That there was a substantial amount of objections.
- That the residents weren't paid to attend the hearing like WMP representatives were, so their representations needed to be taken into account.
- That the application should be rejected.

In summing up, Rob Edge, on behalf of the applicant, made the following points:-

- That he had discussed with the applicant.
- The statement from those in attendance was moving.
- That they had attempted mediation, however, the police had talked about what the premises wanted to do and what they were allowed to do. The intention was to go for a SEV, so they were happy to remove regulated entertainment from the application.
- That it showed they would operate as an SEV and it was not a way of gaining a licence and turning the premises into a nightclub.
- That he wanted to correct a few things, Mr Samm's mentioned that there was no mention of noise limiting devices, however, the bottom line was that a noise limiter would be fitted if it was required.
- That the main entrance was a lobby area.
- That "Helen" did a risk assessment and recommended a lobby with smoking area and the main area to be fitted to specification.
- That they were hopeful that what the Committee had heard today, reassured them that the premises would strongly uphold the licensing objectives and not add any disturbance in the area.
- That the operating schedule was strong.
- That they had already been running successfully at a similar venue.
- That they had a highly reputable door team on standby.

- That they would monitor taxis and vehicles using the premises.
- That it should be noted that there were 9 responsible authorities and none had raised issues of safeguarding children. The Section 182 Guidance suggested that each Responsible Authority would be considered experts in their own field.
- That responsible authorities made representations to any licensing objectives if they had evidence to support such representations.
- That it was a strong application with robust conditions.
- That they believed they had answered concerns.
- That the SEV application would follow should the licence be granted today.
- That there was no evidence of noise nuisance as they premises was not operating.
- That the licence could always be reviewed, however, they don't believe that would be necessary as they would be operating in accordance with the licensing objectives.

At 1130 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 1316 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/080519 **RESOLVED:-**

That the application by Romans Leisure Ltd for a premises licence in respect of Pure Gold, 359-361 Olton Boulevard East, Acocks Green, Birmingham, B27 7DP **BE REFUSED.**

The Sub Committee heard representations from the applicant's agent about the amended application and how the premises was intending to operate with proposed measures to mitigate the wide spread concerns of public and noise nuisance occurring beyond midnight, and above the existing background noise levels.

The agent explained only ancillary music would be played through small distributed speakers at a low level to the main activity. Further, that a lobby system was under consideration to address any noise breakout from patrons entering and leaving the premises to smoke outside, in order to minimise any disturbance to local residents.

Members were also informed how patrons would be managed when arriving and leaving the premises under the watchful eye of security stewards as another form

of measure to control public nuisance especially from the usage of taxis's and cars in the parking area of the premises.

The agent submitted that their application with the proposed measures would not contravene the licensing objectives on the basis it was similar to the other late night licences operating in the locality.

However, members raised a concern regarding the possibility that patrons could leave the premises in the early hours of the morning to go down the road for a smoke and re-enter the premises potentially causing disturbance to residents immediately surrounding the venue even after the agent proposed that they could restrict the hours of the smoking shelter used by it's patrons which the members felt did not address or overcome their concerns sufficiently.

Members carefully considered the various submissions and first-hand experience of local residents in respect of the premises previous business history, and found them to be persuasive. The Sub Committee observed, with interest there had been previous complaints in the locality of the premises which the Environmental Health officer revealed in response to the noise consultant's written report that contended the nature of the premises' operation is 'low key' and unlikely to have any significant impact on residential amenity.

Members took into account WMP pertinent point about the scope of the application, the net effect being that the premises would effectively operate as a nightclub in a residential area. Members therefore, determined the venue could not be 'low key' as alluded to by the agent and in the noise consultant's report as the style and nature of the venue differed to that of the restaurant which previously existed or to that of nearby licensed premises such as McDonalds and Texaco garage with a 24hr licence.

The Sub Committee also heard submissions from the various councillors in attendance regarding the character of the area which included: local shops, food establishments, a nursery, and elderly care homes and residential properties and proposed housing developments all within metres of the premises. This was at the forefront of their minds when considering the application that was further amended to exclude all regulated entertainment by the agent during the hearing.

Members considered the likely impact of the grant of the premises licence in it's amended form would affect residents living nearby after midnight, seven days a week despite the agent presenting some proposed measures to promote the prevention of public nuisance licensing objective, and concluded the application was wholly inappropriate for the location it was situated.

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, or refusing the proposed Designated Premises Supervisor from the scope of the licence would mitigate the concerns raised by those making representations.

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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 agent 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.

6/080519

OTHER URGENT BUSINESS

There were no matters of urgent business.

EXCLUSION OF THE PUBLIC

7/080519

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)

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CHAIRMAN