

BIRMINGHAM CITY COUNCIL

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| LICENSING SUB-COMMITTEE C, WEDNESDAY, 31 MAY 2017 |
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**MINUTES OF A MEETING OF THE LICENSING
SUB-COMMITTEE C, HELD ON WEDNESDAY, 31
MAY, 2017 AT 0930 HOURS, IN COMMITTEE ROOM
1, COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Alex Buchanan in the Chair

Councillors Barbara Dring and Bob Beauchamp

ALSO PRESENT

David Kennedy, Licensing Section
Joanne Swampillai, Committee Lawyer
Tayyibah Daud, Committee Manager

NOTICE OF RECORDING

01/310517 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.

APOLOGIES

02/310517 Apologies were submitted on behalf of Councillor Leddy. It was noted that Councillor Dring was the nominated member. Councillor Cruise observed the meeting.

MINUTES

03/310517 The public part of the Minutes of the meeting held on 26 April 2017 were noted.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT SIMMER DOWN
CIC EVENT ON SUNDAY 23RD JULY 2017 AT HANDSWORTH PARK,
HOLLY ROAD, BIRMINGHAM, B20 2BY**

The following persons attended the meeting:-

On behalf of the applicant

Jesse Gerald – Chair of Simmer Down CIC
Jan Kimber – Vice Chair
Alex William – Producer
Mushtar Dar- Festival Director
John Duffy - Leon Security Services
Jonathan Leon –Director of Leon Security Services

On behalf of West Midlands Police

PC Ben Reader

The following report of the Acting Director of Regulation and Enforcement were submitted:-

(See Documents No. 1)

Following introductions by the Chairman, the main points of the report were outlined by David Kennedy, Licensing Section. Supporting evidence had been submitted by the applicant (See Documents No.2) and by West Midlands Police. (See Documents No.3)

Ms Kimber in presenting the case for Simmer Down CIC and in response to questions from Members, made the following points:

1. Simmer Down is a family festival which has been operating since 2009 and is a non-profit organisation.
2. The event has operated in conjunction with Perry Barr Arts Forum; providing a lot of activities and is not a pop concert.
3. Ms Kimber stated that the organisers had been liaising with Supt. Mat Shaer and have decided to take a different approach on proposals such as traffic management.
4. Parking would be available at Hinstock Road- it had been initially proposed to close this road; however upon advice from the Highways Dept of the City Council it appeared that the closure could result in significant traffic issues. It is now proposed that Holly Road will be closed.

5. Ms Kimber stated that as opposed to the event held in 2015 which only had 2 Enforcement Officers; this year's event would have 4 Enforcement officers. The Officers will be working solely on Hinstock Road from 11:00 hours till 2000 hours; residents would be given a letter and passes notifying them of the parking arrangements and allowing them to gain access via their allocated passes.
6. Residents would also be given a 'hotline' number which will allow them to communicate with the organisers directly if any issues arose.
7. In regards to the written representation received; Ms Kimber stated that the noise complaint did not apply to Simmer Down but to an event which was held last year called Jamfest.
8. Ms Kimber stated that the speakers at the Jamfest event were facing towards Hinstock Road; this was not the proposed method for Simmer Down as the speakers at this event would be facing towards the allotments and the railway.
9. Ms Kimber stressed that, the previous event held by Simmer Down in 2015, did not receive any noise complaints.
10. Ms Kimber referred to Section 10 of the proposed Event Manual; staff would be equipped with hand held noise monitors; the noise levels would be regularly checked to ensure there is no public nuisance and that impact is kept minimal.
11. Ms Kimber stated that there had been numerous discussions that had been taken with West Midlands Police and upon recommendations and suggestions certain amendments had been made. Supt Shaer had suggested that a more robust exit strategy was required.
12. Ms Kimber stressed that it is impossible for fine detail to be included in the Event Manual and that also incidents such as the attack in Manchester may mean additional security measures may be required to by the Police.
13. Ms Kimber stated that the organisers had had a good working relationship with Inspector Henderson. They were now working with Inspector Murrin. Inspector Murrin has arranged to visit the site on Friday 2nd June 2017 and if any recommendations are suggested the organisers are willing to accept this.
14. At the end of the festival all readings obtained from the noise monitors will be reported to Birmingham City Council.
15. Ms Kimber stated that the nature of the music that will be played at the festival will not be "solid bassline" and thus will not cause noise that would disturb residents.

16. There was an issue regarding the delivery and installation of barriers at the last event in 2015 however once the organisers noticed this they were very quick to act and rectify this.
17. Ms Kimber stated this would not happen again as following the advice of the Council and taking extra measures another road closure at Phillip Victor Rd is proposed. This will allow the follow of traffic and avoid any parking issues.
18. Ms Kimber stressed that eight Enforcement Officers would be sufficient to avoid any parking issues that may arise.
19. Ms Kimber stated that the organisers do not believe that there will be 15,000 people attending the event due to the nature of artists that will be performing. However West Midlands Police had advised them to allow headroom.
20. The Artists/music finish a long time before the proposed licensable activity times; which will mean crowds would disperse as soon as the music finishes.
21. Similarity to the event in 2015 event a clicker system will be used.
22. Ms Kimber stated that it is a family event which is similar to the clientele at Lord Mayor's show apart from the ethnicity; which is largely African Caribbean. She stated that people attending the Lord Mayor's Show would not be searched.
23. The event in 2015 had only 2 crimes reported throughout the whole event; a robbery and indecent exposure; no one was seen acting disorderly or dealing drugs.
24. Mr Duffy stated that extra security measures following the attack in Manchester will be imposed such as bag searches, random searches and hand held detectors.
25. There will be communication between the Enforcement Officers and the event control team allowing the team to be aware of any issues or the requirement of more officers.
26. The theme of the event is to celebrate family festivals and celebrate the history of reggae and its influence on music and culture; there will be activities provided for children,
27. The event has been marketed as a 'family fun day'.
28. There will be a leaflet delivered to all the local residents including information in regards to the parking arrangements and a hotline number will be included so that residents are able to contact organisers if they are experiencing any issues.

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29. Majority of people attending the event are expected to travel on foot. However, there are 3 car parks which are available.
30. The same evacuation policy is in place as the last event.

PC Reader in presenting the case for West Midlands Police and in response to questions from Members, made the following points:

1. PC Reader, who was maintaining the objection on behalf of West Midlands Police, stated that it was not the Police whose job it was to grant the Licence. That was the job of the Sub-Committee.
2. PC Reader stated that there has been significant communication between the applicant and PC Rohomon; the event manual has been thoroughly looked at due to the number of anticipated attendees at the event
3. PC Reader referred to the memorandum dated 25th May 2017; issues 1-4 have been dealt appropriately with the Police's standard.
4. In regards to the monitoring the number of festival goers; PC Reader stated the Police are not present to have any control at the event but present in a community engaging view. The Police were not to be in control of things as it was not a Public Order Command Event like the Pride Festival.
5. In regards to security teams; PC reader stated he was confident in the Security provider for the event.
6. In regards to the planning permission PC Reader stated this required updating including the mechanism to contact and deploy Officers.
7. PC Reader stated that a SAG meeting has been arranged with the applicant tomorrow; the outcome of the SAG meeting will need to be binding and updated on the event manual.
8. PC Reader stated he agreed that there will be changes but the Police will need the final event manual including all the security arrangements.
9. PC Reader referred to the 'Pride' event and stated as this was a large event similar security measures in regards to counterterrorism, a site inspection on the day of the event and a formalised debrief after the event would be required.
10. PC Reader stated that the Licence could be granted following the attendance of the SAG meeting, the production of the final event manual and final security spec. However he then stated that he had referred the matter to the Commander in view of recent events in Manchester.

11. When asked by the Chair if West Midlands Police would have been happier with a delay, PC Reader stated that he was not saying it should not be granted, but that it was a moving process.

Mr Kennedy stated that a Licence can be granted to include a condition which will require there to be documentation (i.e. finalised event manual) to be produced to the satisfaction of the Responsible Authority.

PC Reader stated that there are written arrangements/ proposed conditions which need to be organised and presented in a final document.

Ms Kimber stated that she was in agreement to have a condition to require a site inspection and a formal debrief after the event.

Ms Kimber stated the event manual is a work in progress and amendments will keep being made; the organisers propose to have the final event manual to be completed 3 weeks prior to the event.

Mr Duffy stated that in 2015 safety officers had provided the security company with training in regards to counterterrorism.

Mr Kennedy stated that as the applicant and the Police had stated during their presentations proposed conditions; he felt that a brief adjournment should follow to allow both parties to discuss outside the meeting the proposed conditions.

At 1033 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1051 hours, after an adjournment, all parties were recalled to the meeting.

Mr Kennedy presented the Sub-Committee with proposed conditions agreed both by the Police and applicant. (See Document No.3)

In summing up, PC Reader stated that he was viewing the application from a 'process' point of view and wished to make sure that all issues had been dealt with.

In summing up, Ms Kimber stated that the event organisers were willing to co-operate and add in extra measures and conditions if requested by the Police.

At 1054 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1132 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

04/310517 **RESOLVED:-**

The Sub Committee, having heard carefully the submissions from the applicant and from West Midlands Police in the matter of the grant of a premises licence for the Simmer Down CIC Event on Sunday 23rd July 2017 at Handsworth Park, Holly Road, Birmingham, B20 2BY, and having reviewed the four draft Conditions (which were drafted by hand following very brief discussions held during a short adjournment in this morning's hearing), have decided that the hearing shall be adjourned to a further specified date, as follows:

Wednesday 14th June 2017
in Committee Room 1
at The Council House, Victoria Square, Birmingham
at 0930 hours

The Sub Committee were advised by the Committee Lawyer of their discretionary powers to adjourn the matter in accordance with Regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005.

The decision to adjourn to a future date will give both parties the chance to attend the scheduled SAG meeting, to incorporate the Conditions, and to finalise discussions, in order that both the applicant and West Midlands Police should have clarity on the arrangements. Once this has been done, the Sub-Committee will be able to properly and fully consider the application.

Members considered this necessary in the public interest, as they (as decision-makers) had a duty to conduct a proper examination of the full submissions, arguments and evidence adduced by both parties, whether on matters of dispute or agreement, in order to reach a proper determination and to ensure that the licensing objectives were promoted.

For this reason, the adjournment is expected to provide ample opportunity for a meaningful dialogue between the applicant and West Midlands Police, for example at the scheduled SAG meeting, in order to address the matters of concern, and by the time of the next hearing it is to be hoped that there will be clarity and certainty regarding the arrangements.

LICENSING ACT 2003 PREMISES LICENCE – GRANT THE ARENA, 18 – 19 HACK STREET, DIGBETH, BIRMINGHAM, B9 4AH

The following persons attended the meeting:-

On behalf of the applicant

Andrew Potts – Solicitor
Callum Sharman – Proposed DPS
Lennard Coppage – Freedom Security
Marc Blanchette – Consultant on Recreational Drug Use

On behalf of West Midlands Police

PC Ben Reader

The following report of the Acting Director of Regulation and Enforcement were submitted:-

(See Documents No. 1)

Following introductions by the Chairman, the main points of the report were outlined by David Kennedy, Licensing Section.

Mr Potts in presenting the case for the applicant and in response to questions from Members, made the following points:

1. Mr Potts stated that legally the premises were able to apply for a grant; there is no intention of undermining the decision made by the Sub-Committee on 30th January 2017.
2. Mr Potts stated the representation received by West Midlands Police stated the new application was similar to what is on the current licence however this was incorrect.
3. Conditions agreed by Environmental Health Officer have been proposed to be added onto the licence.
4. Mr Potts referred to three proposed conditions which he intended to include in the operating schedule. (See Documents No.2)
5. The proposed DPS is Callum Sharman.
6. Mr Potts stated that there have been 3 events undertaken at the premises and referred to an email from Police Sgt Martin Williams which stated that there had been no issues in regards to the Police.
7. Mr Potts stated that previous comments made by the Sub-Committee in regards to the operation of the premises have been taken on board.
8. Referring to the incident which occurred on 19th November 2016; Mr Potts stated the premises took measures such as keeping extra security staff and drugs dog until the premises closed.
9. Mr Potts stated that the premises were not opened for financial gain but in fact opening the premises incurred further costs; it was 'sensible' to open the premises and there were problems in the area.

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10. Mr Potts stressed that the 'dynamic approach' had been criticised by West Midlands Police however the premises had the best intention to safeguard the large crowd outside the premises.
11. Mr Potts stated that there were no serious incidents that night.
12. Mr Potts stated he accepted that there is now a Cumulative impact zone policy in the area and stated that the premises are precisely the same as they were the premises are not expanding the size of the premises or increasing the number of attendees.
13. Mr Potts stated the new application has tight conditions which will allow the premises to promote licensing objectives and that the existing licence will be surrendered.
14. A representation has been only received by West Midlands Police; Birmingham City Council have not objected to the application.
15. The objection by West Midlands Police is based around an event which took place 6 months ago; the Sub-Committee should judge the merits of this application moving forward and not backwards.
16. Mr Coppage stated the conditions relating to drugs that were put forward to the Sub-Committee in February 2016 were drafted by him.
17. Before any event at the premises a full briefing session is undertaken.
18. A new management structure and CCTV is in place at the premises.
19. Mr Potts stated that events have taken place at the premises were all Responsible Authorities have not objected or complained.
20. Mr Potts stated that the premises have worked closely with Councillor Moore in regards to flyposting and have volunteered a condition in regards to flyposting. There has been an loss of £40,000 suffered since cancelling contracts that have used flyposting to promote their event.
21. A new medical area has been leased which the Police are happy with.
22. Mr Coppage stated that a full briefing is carried out on the day of any event and is documented and available to be viewed for anyone who requests to see it.
23. Mr Coppage stated that there have been discussions with the Police to remedy the failings of the previous event. An extra layer of management team has been implemented.
24. Referring to the previous event Mr Coppage stated that he contacted the DPS at the times and advised him to open the premises without the adequate security measures.

25. The Police are objecting on the grounds of Public Safety and Crime and Disorder however the premises have been operating for 5 months and no incidents have taken place at the premises.
26. Mr Coppage stated that this showed that the premises are able to operate after discussing and implement measures advised by the Police.
27. The applicants for the premises are Bowlease Hold Ltd which are the same licence holders on the current licence.

Members were concerned that the applicant is the same as the current licence holder; the Chair stated it was of concern that if this licence was granted today by the Sub-Committee; there could be potentially two licences in operation at the same premises within a Cumulative Impact Zone Area.

Mr Potts stated that the premises did not intend to do this.

28. Mr Blanchette stated that as a drug practitioner the most important aspect is the safety of people therefore if he would need to challenge the management of the venue in case where he feels the customers are at harm he would have no hesitation in doing so.

PC Reader in presenting the case for West Midlands Police and in response to questions from Members, made the following points:

29. PC Reader stated that he was concerned that the applicant, management and operation of the premises was identical as to the current licence and that it is the same people that were previously involved with the premises.
30. PC Reader that there was concern for West Midlands Police as the premises is quite large and can hold up to the capacity of 4000 people.
31. PC Reader referred to previous Decision Notices and stated that conditions that were volunteered in February 2016 were not adhere to which resulted the premises returning before the sub-committee in January 2017. (See Documents No.3)
32. PC Reader stated he did not see this as an appropriate forum to disagree with the decision made previously and that the justification from the premises that an appeal is costly is not valid.
33. PC Reader stated it is a concern for West Midlands Police that the premises can be transferred or that two premises licence could potentially be deemed granted on one premises.
34. It is not clear whether conditions in regards to flyposting have been volunteered as an proactive or reactive measure.

35. PC Reader stressed that granting this application would mean that the decision made by the Sub-Committee in January 2017 was incorrect and that it is of huge concern that there could be in fact two licences for the same premises operating in a cumulative impact area.

In summing up, Mr Potts stated that appeals are an costly and lengthy process; the premises have co-operated with West Midlands Police and operated without undermining any of the Licencing Objectives; the managerial structure at the premises has changed; it has remedied the concerns that were placed before the Sub-Committee at previous Hearings; the proposed conditions do not allow there to be an 'dynamic approach' to be carried out again in any circumstance therefore the licence should be granted.

At 1406 hours the Chairman requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1525 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

05/310517 **RESOLVED:-**

That the application by Bow Leasehold Ltd for a premises licence in respect of the premises:

The Arena, 18-19 Hack Street, Digbeth, Birmingham, B9 4AH

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 crime and disorder, public safety and the prevention of public nuisance.

The Sub-Committee's reasons for refusing this application for a premises licence are due principally to the fact that the premises is located within a Cumulative Impact Zone, namely Digbeth. In addition, the Sub-Committee took note of the objection raised to the application by West Midlands Police.

The Sub-Committee heard that the applicant has an existing licence for The Arena, being an "event venue" which only opens for specific events and that 11 events were currently scheduled to take place during 2017.

The Sub Committee carefully considered the Operating Schedule put forward by the applicant, and the likely impact of the application, but were not persuaded that the granting of a second licence would not add to the cumulative impact within Digbeth . Indeed Members observed that there was in fact a potential risk that if a situation were to arise where two Premises Licences were in existence for the same premises, there could in theory be an increase in the number of events

being held at the venue thereby adding to the cumulative impact as a result of a second licence being granted.

The Sub-Committee noted the assurances of the applicant's legal representative that it was not the intention of the applicant that that should happen, and moreover that if such a situation were ever to arise, various agencies would act to put a stop to it. However, given the designation of Digbeth as a Cumulative Impact Zone, it was the view of the Sub-Committee that such a potential risk could not be contemplated, as to do so would directly contravene policy (namely to refuse applications unless it can be shown that the premises concerned will not add to the cumulative impact on the licensing objectives).

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 West Midlands Police.

The Sub-Committee listened carefully to the submissions made by the applicant's legal representative, who reminded them that the Premises Licence Holder had had their existing Premises Licence suspended following a decision of the Licensing Sub-Committee in January 2017, but had not in fact served any period of suspension. Instead, a Notice of Appeal to the Magistrates' Court had been lodged, which had kept the Licence in force, such that the premises had been able to operate three events during the past five months.

The applicant's legal representative urged that the new application (made by the same Premises Licence Holder) should be granted, in order to save the costs of an Appeal hearing. Lengthy submissions were made regarding what was described to Members as the successful operating which had been going on during the past six months - namely three events which had been held without any problems arising in terms of crime or disorder.

Two members of staff (a security consultant, and a recreational drugs consultant) addressed the Sub-Committee regarding the events of the night of 19th November 2016, which had led to the previous Committee decision to suspend the Premises Licence for three months.

Both of the consultants, via the applicant's legal representative, explained that:

- the events on the night of 19th November 2016 had been unfortunate, and difficult decisions had had to be taken on that night
- however since the last Sub-Committee hearing in January 2017, there had been full cooperation with the Police by the premises
- the premises had been operating without problems since January 2017
- the application for a grant of a fresh Premises Licence should therefore be granted

- thereafter the Appeal to the Magistrates' Court relating to the existing Premises Licence would be abandoned

However, Members did not consider this to be the correct course. An Appeal hearing had been set down, and the proper forum for testing the previous decision was the Magistrates' Court. As for the instant application, the correct course was to refuse, in the interests of upholding policy regarding the Cumulative Impact Zone. Nor did the Licensing Sub-Committee consider it proper either to interfere in an Appeal process which had been started by the applicant, or to grant a fresh Licence to that applicant where an Appeal hearing was pending.

West Midlands Police also observed that the submissions made to the Sub-Committee by the two consultants were more a matter for the Appeal hearing at the Magistrates' Court than for a committee meeting to consider the grant of a new Premises Licence.

All in all, the considerations relating to the Cumulative Impact aspect meant that the correct course was refusal.

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 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.
