

BIRMINGHAM CITY COUNCIL

LICENSING SUB - COMMITTEE C - 22 JANUARY 2020
--

**MINUTES OF A MEETING OF
LICENSING SUB-COMMITTEE C HELD
ON WEDNESDAY 22 JANUARY 2020
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Neil Eustace

ALSO PRESENT:

Shaid Yasser – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services.

NOTICE OF RECORDING

01/220120 The Chairman advised the meeting that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

02/220120 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 are 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

03/220120 Apologies were submitted on behalf of Councillor Martin Straker-Welds and Councillor Mary Locke was the nominee Member.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – BBQ VILLAGE
CHINESE RESTAURANT T/A TASTY RESTAURANT, 55 STATION STREET,
BIRMINGHAM, B5 4DY**

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

Gary Callaghan – Birmingham City Council - Licensing Enforcement Officer (LEO)

On behalf of the Premises

No one attended.

Those making representations

PC Ben Reader – West Midlands Police (WMP)

* * *

The Chairman outlined the procedure to be followed during the meeting and enquired as to whether there were any preliminary points. None of the parties had any preliminary points to make.

Shaïd Yasser, Licensing Section, outlined the report.

Mr Gary Callaghan, LEO, made the following points: -

- a) That they had identified illegal workers at the premises which seriously undermined the Licensing Objectives, especially the prevention of crime and disorder objective.
- b) As a result of intelligence from Home Office Immigration a joint visit was carried out between WMP and Licensing Enforcement (LE) on the 6th November. They spoke to several individuals and made various checks, 3 males and 2 females were detained for possible Visa offences. All of them were “over-stayers” in the UK and should not have been working in the premises.
- c) The Guidance Issued Under Section 182 of the Licensing Act 2003 indicated the seriousness of illegal workers being found in licensed premises.
- d) That during the visit he tried to speak to various individuals but none of the 5 persons detained would talk. Therefore, Home Office Immigration had to

do all the ID checks, fingerprints and other checks to find out who they were.

- e) He spoke to a gentleman who appeared to oversee the premises and called himself Mr Chung Cheng, however, he did not know anything about the premises licence or the conditions on the licence. Moreover, he had no idea where Mr Yang Cheng (PLH) was or when he would be back.
- f) Another visit was carried out on 18th November with PC Reader and again they spoke to the same man. It became apparent that the CCTV had not been working for a number of years. Mr Yang Cheng was again, uncontactable and not present at the premises during the visit.
- g) Employing illegal workers was a serious offence and undermined the Licensing Objectives, particularly crime and disorder. Additionally, there were further serious implication, such as the implications of the workers being paid “cash in hand”, lack of employment rights and workers lack of wellbeing.
- h) They had serious concerns over the management style of the premises given that illegal workers were found there and therefore, Licensing Enforcement requested that the licence be revoked.

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

- a) That all “over-stayers” had Visa’s, but they had expired.
- b) Another premises in Bath had been raided and 6 illegal workers were found there, so there was potential that it could be a much bigger operation.
- c) Other information was received that suggested drugs and firearms were found at the premises.
- d) Mr Yang Cheng’s home address was detailed as another Chinese restaurant, Licensing Enforcement (LE) went to hand deliver him notification of the review and no one knew of him at the restaurant. He was a personal licence holder, so they contacted Warwick Council who had an address for him in Leamington Spa, however, Mr Callaghan didn’t know if he was living there.
- e) There was also information received which came from another council department that indicated Mr Cheng owed business rates in excess of £150,000.
- f) That the visit he undertook was the worst he had witnessed.

Mr Callaghan read out the Home Office Immigration report (as detailed in the report).

PC Reader, on behalf of WMP, made the following points: -

- a) That “unusually” he “didn’t submit any evidence” for this case, as it was simply “black and white”.

- b) That WMP Licensing Team did not attend the first visit, however they did attend the second one on the 18 November and it was “a wall of silence”, no one would talk to them.
- c) The gentleman who they spoke to on that visit said that the licence holder had not been there for a few years and he had no contact information for him.
- d) During the visit PC Reader asked questions regarding how the business operated, however no one would talk to him.
- e) He went back the following day and served a Trader Notice on the premises. Whether they understood what was happening or the implications he didn't know, but they would not cooperate.

In answer to Members questions PC Reader made the following points: -

- a) That Home Office Immigration were a Responsible Authority in their own right, and although WMP liaised with them regularly, they could have made separate representations before the Committee.

Mr Gary Callaghan explained that Home Office Immigration did want to make a representation but due to them being located in Manchester it just “didn't happen” and they apologised.

PC Reader advised that he had nothing further to add and had no closing submissions.

In summing up Mr Gary Callaghan, LEO, made the following points: -

- ❖ That the premises had illegal workers at the restaurant.
- ❖ The premises had not undertaken any right to work checks.
- ❖ It was extremely serious and therefore, the licence should be revoked.

At 0953 the meeting was adjourned and all parties with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

At 1039 the meeting was reconvened and all parties were invited to re-join the meeting and decision of the Sub-Committee was announced as follows:-

04/220120

RESOLVED:-

That having reviewed the premises licence held under the Licensing Act 2003 by Yang Cheng in respect of BBQ Village Chinese Restaurant T/A Tasty Restaurant, 55 Station Street, Birmingham, B5 4DY upon the application of the Licensing Enforcement department of the City Council, this Sub-Committee hereby determines that:

- the Licence be revoked, and that
- Mr Yang Cheng be removed as Designated Premises Supervisor

in order to promote the prevention of crime and disorder objective in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns expressed by Licensing Enforcement. An inspection had been carried out at the premises by Licensing Enforcement together with Home Office immigration officials. Undocumented workers were found on duty in the restaurant. There was no sign of Mr Yang Cheng, who is both the Designated Premises Supervisor and the Premises Licence Holder.

Despite extensive enquiries, Mr Yang Cheng had been untraceable ever since the visit; nor did he attend the meeting to address the Sub-Committee in person. Payment of business rates also was significantly in arrear. There was even confusion about the home address he had given – investigation had discovered that the 'home address' was in fact a Chinese restaurant premises; when contacted, that premises stated that they had never heard of any Mr Yang Cheng. The local authority in Warwickshire which had issued his personal licence had also confirmed that they did not know his whereabouts. It was noted that the home address which Mr Yang Cheng had given to the Warwickshire local authority was a property in Leamington Spa.

The person on duty in the premises as manager was entirely uncooperative beyond simply stating that Mr Yang Cheng was out of the country – yet the requirement of the role of designated premises supervisor was that if Mr Yang Cheng were not on duty, he should be easily contactable. The premises was operating in a chaotic manner; the manager was even unable to locate the premises licence when asked to produce it. The restaurant was staffed by undocumented workers who appeared to be persons who had entered the UK under visitors' visas (not workers' visas), and who had then overstayed. It was therefore apparent that no checks had been done by the premises as to whether the workers were legally entitled to remain, or to work.

It was the recommendation of Birmingham City Council Licensing Enforcement that the licence should be revoked as the premises was incapable of upholding the prevention of crime and disorder objective.

West Midlands Police made representations supporting this proposed course. The Police could not trace Mr Yang Cheng, and had also been unable to get answers as to his whereabouts from the undocumented workers. When they visited the restaurant, the person on duty as manager had again been unable to produce the premises licence. The workers would not answer questions, refusing even to confirm who opened and closed the restaurant each day; the Police described the situation as a 'wall of silence'. As a result the Police had no confidence that the premises could uphold the licensing objectives.

The Sub-Committee had grave concerns about the manner in which this premises had been operating. The Sub-Committee agreed with Licensing Enforcement that the operation had been managed in a way that was not merely irresponsible, but also illegal. The Sub-Committee was satisfied that

the correct notifications of the hearing had been made (via letters, and the display of notices) such that Mr Yang Cheng had been made aware of the hearing properly, and had chosen not to attend. Given the serious risks to the prevention of crime and disorder objective, it was entirely proper to make the decision in his absence.

After hearing all the evidence, Members of the Sub-Committee determined that the management of the operation was seriously undermining the crime and disorder objective, and therefore resolved to revoke the licence as recommended by the responsible authorities. A determination to revoke would follow the Guidance issued by the Secretary of State under Section 182 of the Licensing Act 2003. There were no compelling reasons to depart from the Guidance on this occasion. The removal of Mr Yang Cheng as DPS was a sensible measure given that he had seemingly taken no part in the business.

The Members of the Sub-Committee gave consideration as to whether they could modify the conditions of the licence, or suspend the licence for a specified period, but were not satisfied given the evidence submitted that the licensing objectives would be properly promoted following any such determination, for the reasons set out above.

In reaching this decision, 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 application for review, the written representations received and the submissions made at the hearing by the Licensing Enforcement department and by West Midlands Police.

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.

The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the determination of the appeal.

LICENSING ACT 2003 PREMISES LICENCE – GRANT - CHANNEL COFFE & RESTAURANT, 145A STRATFORD ROAD, SPARKBROOK, BIRMINGHAM, B11 1RD

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

Betty Bayu – Applicant
Kebrom Gebremariam – Husband of the applicant
Mijanur Rahman – Agent

Those making representations

No one attended.

* * *

The Chairman outlined the procedure to be followed during the meeting and then invited Shaid Yasser, Licensing Section, to outline the report. Mr Yasser also advised that the Birmingham City Council Licensing Enforcement Officer had withdrawn his representations prior to the meeting.

Mr Mijanur Rahman, on behalf of applicant made the following points: -

- a) That the objections had been due to Betty previously working at a café down the road for around 6 weeks, when she decided to open her own café, the owner of the café she previously worked at was not at all happy.
- b) Moreover, Betty had been made aware that the owner of the café had been going around the local area telling people that Betty was opening a pub so that's why people objected.
- c) The LEO objection had been withdrawn but there were concerns about food safety and fire safety. A health officer had visited the premises three times and was now satisfied that all the concerns had been addressed.

The Chairman asked the agent to explain the email from Sarah Lavender which talked about concerns from Environmental Health regarding cockroaches and shisha smoking but also a suspicion that alcohol was already been sold from the premises.

The agent explained that none of that was happening anymore and the cockroaches had been dealt with straight away. The premises was previously managed by Betty's husband and therefore it was going to be taken over by Betty. Her husband was managing the premises when the problems occurred.

In answer to members questions, Mrs Betty Bayu made the following points: -

- a) That the Prohibition Notice was no longer in place.
- b) The premises had a back shutter which needed fixing as they couldn't open it, but it had been fixed.
- c) The alcohol at the premises was only for a private party last year and was not for sale.
- d) That most of the allegations of drugs, prostitutes, alcohol issues in the area was made by the owner of the café she previously worked at.

- e) There were also signatures which were not correct, people came to Betty and said the signatures were not theirs. The café owner had written fake signatures.
- f) That they didn't believe the area had problems with drugs, alcohol or prostitution.
- g) The premises would close at 2am on Friday and Saturday.
- h) The CCTV was already installed – 8 cameras.
- i) That she had spoken with the local people.
- j) There would be 3 employees.
- k) That she would take over the premises in March 2020.
- l) The objection in relation to loud music was from a friend of the Café owner and Betty had visited him and gave him her number, so if he had issues with loud music, he could call her, and she would be able to tell him if it was her premises or not.
- m) The business had only been running for 1 year and 6 months.
- n) That the area was well known and had lots of licensed premises.
- o) That the alcohol was for a private party and after numerous visits from the Responsible Authorities they were satisfied that the alcohol was not being sold.

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

- ❖ That Betty would take over the premises in March 2020.
- ❖ She was a qualified DPS and she would be DPS of the premises.
- ❖ She was keen to make the business a success as it was their “bread and butter”.

At 1138 the meeting was adjourned and all parties with the exception of the Members, Committee Lawyer and Committee Manager withdrew from the meeting.

At 1208 the meeting was reconvened and all parties were invited to re-join the meeting and having taken into consideration the legal consequences of the withdrawal of the representations the Committee announced as follows:-

That the application by Betty Bayu for a premises licence in respect of Channel Coffe & Restaurant, 145A Stratford Road, Sparkbrook, Birmingham, B11 1RD be granted, subject to the following conditions:

1. All those conditions agreed in advance with West Midlands Police, namely:
 - Alcohol will only be sold to customers who are seated by waiting staff, with the exception of those customers seated on the 5 bar stools shown on the original premises plan dated December 2019. There will be no vertical drinking within the premises
 - When trading past 23.00hrs the last entry to the premises will be at 00.45hrs. Signage to be displayed on the entrance door to inform customers of this
 - CCTV will be installed / updated to the recommendations and specifications of West Midlands Police
 - If for any reason the CCTV hard drive needs to be replaced the old/previous hard drive will be held on the premises for a minimum of 28 days and made immediately available to any of the responsible authorities on request
 - No children under the aged of 16 will be allowed on the premises after 20.00hrs unless accompanied by an appropriate adult. Staff are not to be left in sole charge of any child under 16
 - The premises fire risk assessment will be made available immediately on request of any of the responsible authorities
 - All staff will be trained in their responsibility under the Licensing Act 2003, Challenge 25 policy and premises operating conditions. This training will be documented and signed by both the trainer and trainee. No staff to work at the premises while it is carrying out licensable activity without this documented training (with the exception of personal licence holders). All training records to be made immediately available to any of the responsible authorities on request
 - The premises will risk assess the need to deploy SIA registered door staff
 - If SIA door staff are deployed at the premises then they will sign on & off duty. A profile of all door staff will be held by the premises which will include a copy of their SIA badge and photographic ID. If photographic is not available then a utility bill no older than 3 months may be accepted. Signing in books and profiles will be held at the premises for a minimum of 3 months and made immediately available to any of the responsible authorities on request.
2. All those conditions agreed in advance with Licensing Enforcement, namely:

- The Designated Premises Supervisor will arrange to monitor noise levels from both inside and outside the premises, all checks will be documented and remedial action will be taken and recorded as appropriate
 - All windows and doors will be closed after 21:00 hours
3. No sale of alcohol to be made unless the Designated Premises Supervisor is on duty within the premises

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will also form part of the licence issued.

Members carefully considered the operating schedule put forward by the applicant and the likely impact of the application, including the agreed conditions, and concluded that by granting this application, the four licensing objectives contained in the Act will be properly promoted. The agreements made with the responsible authorities in advance gave confidence that the applicant and operation were both suitable.

In reaching this decision, 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 application for a premises licence, the written representations received, and the submissions made at the hearing by the applicant and her adviser.

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.

06/220120

ANY OTHER URGENT BUSINESS

No urgent business.

..... Chairman