

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE A 25 SEPTEMBER 2017

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE A
HELD ON MONDAY 25 SEPTEMBER 2017
AT 0930 HOURS IN COMMITTEE
ROOM 1, COUNCIL HOUSE,
BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair

Councillors Nagina Kauser and Bob Beauchamp

ALSO PRESENT

Shaid Yasser, Licensing Section
Joanne Swampillai, Committee Lawyer
Gwin Pountney, Committee Manager

NOTICE OF RECORDING

- 01/250917 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there were confidential or exempt items.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 02/250917 There were no apologies or nominated members.

MINUTES

- 03/250917 The public part of the Minutes of the meeting held on 4 September was noted

**LICENSING ACT 2003 PREMISES LICENCE – GRANT THE BELLE VIEW,
289 ICKNIELD PORT ROAD, BIRMINGHAM, B16 0AG**

The following persons attended the meeting.

On behalf of the Applicant:

Andrea Murray – Applicant
Mike Nickson – Licensing Agent, Inn Confidence

On behalf of Those making Representations:

Sanjay Patel – Local Resident
Leon Sinclair – Local Resident
Cathy Kingham – Local Resident

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

(See Document No. 1)

Mr Nickson in presenting the case on behalf of the applicant and Ms Murray in response to questions from Members, made the following points: -

1. That the conditions in the licence had been modified regarding the beer garden on the premises with regard to children and families in that no smoking would be allowed in the garden and this would be controlled when children were on and off the premises.
2. The only issue of contention at this stage was the prevention of public nuisance and it was Mr Nickson's understanding that this meeting was only being held to address any contentious issues.

The Chair advised Mr Nickson that the application and the presentation of the case needed to show that all 4 licensing objectives were met. At this point the chair adjourned the meeting to consult with the Committee Lawyer.

Upon returning to the meeting a few minutes later Mr Nickson was re-advised by the Chair that he needed to address all 4 of the licensing objectives in his presentation.

Mr Nickson continued:-

3. That in the original application for the licence Ms Murray had asked for licensing hours until 23:30 as these had been the licensed hours of the previous premises owner who had surrendered their licence in 2013.
4. That Ms Murray had had nothing to do with the previous business and the premises had been closed for several years prior to her taking over the premises.
5. That modified conditions had been agreed with West Midlands Police (WMP) and Birmingham Environmental Health (EH) regarding:-
 - No licensable activity after 23:00 hours.
 - The removal of regulated entertainment and late night refreshment.
 - The premises to be primarily a restaurant with music to be

background music only.

- The sale of alcohol from 12:00 hours to 23:00 hours.
 - The sale of breakfast and food from 09:00 to 23:00 hours.
 - Opening hours to be from 09:00 hours to 23:30 hours, Monday to Sunday.
 - CCTV installation, hours of recording and period of storage of images.
 - A Noise Limiting Device, if deemed necessary by Environmental Protection.
6. That Ms Murray had agreed the conditions requested by WMP and Environmental Heath unequivocally.
 7. The premises had previously been a late night drinking establishment – this had changed considerably the premises was now primarily a restaurant.
 8. That he had been in contact with Mr Patel and Mr Sinclair and their concerns had been fully taken on board and Ms Murray would remain in close contact with them to address any future concerns.
 9. That Ms Kingham had raised a petition regarding the sale of alcohol until midnight – this was no longer the case so this issue had been addressed.
 10. That he had attempted to contact Ms Kingham by text but had been unable to get hold of her.
 11. That the conditions imposed by WMP and EH were rigorous and enforceable and EH would do their part in protecting residents from public nuisance in the form of noise from the premises.
 12. That with regard to door supervisors the original application had included late night drinking and late opening hours, this was no longer the case the premises would effectively be a restaurant and therefore door supervisors would no longer be required.
 13. That Ms Murray would ensure that the smoking area did not cause any nuisance to neighbours in that it was located away from residents' houses.
 14. In terms of litter clearance the premises had responsibility for the frontage, the car park at the rear of the premises and the side of the premises.
 15. That Ms Murray was a Chef by trade and when she had taken up the property she had originally thought that she would apply for everything on the licence including late night opening, entertainment and late night refreshment like the previous owner.
 16. Following the objections from residents she had reverted to her original plan of restaurant i.e. primarily a food-led establishment in a congenial environment with relaxing background music.
 17. That she would put in a noise limiting device if requested to by EH.

18. That she had already approached some taxi firms who would pick up customers from the premises without causing noise disturbance to neighbours.
19. That the designated smoking area had been suggested by Environmental Health.
20. That only smokers would be allowed into the beer garden after certain hours.
21. That the windows at the front of the premises were sealed and the only door opened to the beer garden and was self-closing.
22. That the CCTV had been inspected by WMP and Ms Murray had agreed to cover all the areas required and keep recordings for 28 days.
23. That Ms Murray and her staff would advise parents not to allow their children out into the beer garden to play.
24. That the beer garden would not be used as such but might be used for a barbeque or a marquee for a special event which would be applied for via a Temporary Event Notice.
25. That Ms Murray was asking for the whole of the area in her site plan including the garden to be covered for licensable activity, however should the beer garden be used she was happy to accept conditions that it would not be used after 21:00 hours.
26. That Ms Murray did not wish to upset anyone she was trying to bring jobs into the area and make friends with her neighbours.
27. That she would employ a chef and 2 bar staff to work there as well as herself.
28. The capacity for the premises was 42 people and it had 4 dining tables.
29. That customers would be asked to wait inside for taxis and that she would put up signage asking customers to leave quietly.
30. That music would be background music only, no garage or dance music.
31. That the garden area would be well lit.
32. That the lobby at the front had 2 doors – the entrance and an inner door which was self-closing.
33. That the food provided would be Caribbean, Chinese, English and pizza.

Mr Sinclair and Mr Patel in presenting their case and in response to questions from Members, made the following points: -

1. That they were tenants who lived above the premises and had been concerned about the level of noise levels and public nuisance. However, the changes and amendments made to the licensing hours and regulated entertainment made them feel happier – although it had not been made clear how the noise levels would be monitored.
2. They had spoken to Mr Nickson about the type of music, the level of noise and what would be appropriate/inappropriate but at that time he had made no comments or any guarantees about it.
3. That under the original application there had been some concerns on their part regarding anti-social behaviour.
4. That the beer garden was very open and the smoking and drinking outside would impact on the upper floors of the property.
5. That at present there were only 2 residents in the rooms above the premise but there would soon be 7 as there were 7 rooms.
6. That they had been at the property for 6 months and had seen the licence application but at the time had thought this would primarily be for a restaurant with alcohol sales. They had put their objections in when it had turned out to be a late night licence.
7. That having seen the new conditions that all of their concerns were allayed provided that Ms Murray stuck to her conditions regarding background music only.
8. That they now understood that they could make a complaint about the noise at any time and also raise objections to any TENs should they wish.
9. That they still had concerns about people drinking from 09:00 hours.

Ms Kingham in presenting her case and in response to questions from Members, made the following points: -

1. That she had lived at her property since 2001 and had known the premises prior to 2014 when it was a pub.
2. That she had concerns that neither the applicant nor her representative had attempted to contact her prior to the meeting.
3. That she had started a petition when she the notice regarding the licence application as she had had grave concerns about noise, environmental issues emitting from the premises, which had been shared by those who signed the petition.
4. That her house was the first house nearest to the beer garden and when the premises had been a pub the noise could be heard 6 houses away.

5. That she felt ambiguous that the music played would be background music only.
6. That the premises was very small inside and it was difficult to see how 42 customers could be fitted in there – the beer garden would have to be used to accommodate them.
7. That if barbeques were held outside the music from them would be very loud at 11 o'clock at night.
8. That she had concerns regarding the children from the nearby school walking past drug paraphernalia, broken bottles and the smell of drugs which had happened in the past.
9. That she would be happy to accept the premises if it was indeed a quiet restaurant with background music, with the beer garden only used for smokers and no drinks allowed outside but this would be very difficult for the owner and 2 staff to monitor.
10. That she accepted that should a TENs or an event get out of hand that she could contact EH or WMP at any time.
11. That the noise and the usage of the beer garden were her main concerns.
12. That she would be happy to give Miss Murray a chance to operate this business and liaise with her regarding any problems.

In summing up, Mr Sinclair and Mr Patel stated that their main concerns were around noise levels from the premises – they had no objections to Miss Murray running a business just the impact of the noise and alcohol on residents above the property. They also requested that alcohol not be served at the premises from 9am in the morning.

In summing up, Ms Kingham stressed that even background music only in the beer garden would disturb residents and if people were drinking late outside this could generate a lot of noise even without music or regulated events. Therefore no drinking should be allowed outside after 9pm.

In summing up, Ms Murray stated that previous events on the premises had not been her responsibility and she had taken on board the objections raised by the residents. She 'definitely guaranteed' that there would be no noise pollution at night from the premises – this would be run as a restaurant not a pub.

In summing up for the appellant Mr Nickson stressed that there would be no alcohol sales from 9am – just breakfasts and coffee. Alcohol would be on sale from 12pm onwards and the sale of alcohol would be dependent on the purchase of food. Furthermore there could be included a condition of no speakers outside, that CCTV conditions had been agreed with WMP and the application had been changed to consist of modest hours. The whole application was a changed model with conditions agreed with EH and WMP and should meet all the licensing objectives. It was therefore respectfully requested that the licence be granted.

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.

After an adjournment, all parties were recalled to the meeting at 1230 hours and the decision of the Sub-Committee was announced as follows:-

04/250917 **RESOLVED:-**

That the application by Andrea Murray for a premises licence in respect of The Belle View, 289 Icknield Port Road, Birmingham, B16 0AG **BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS**, to promote the prevention of public nuisance objective in the Act:

- The hours for the sale of alcohol shall be from 1200 noon to 2300 hours daily
- The alcohol sales shall be “On Sales” only – not Off Sales
- The opening and closing hours of the premises shall be no earlier than 0900 hours, and no later than 2330 hours, daily.
- After 2100 hours daily, no consumption of alcohol is permitted in the beer garden area (the area to be used only for smoking after 2100 hours, and use of the area for smoking to cease at 2300 hours daily)
- All those conditions agreed in advance with West Midlands Police shall apply, namely:
 - a) The premises to run primarily as a restaurant with the sale of alcohol to be ancillary to the food. Music to be background music only.
 - b) CCTV to be installed to the recommendations and specification as agreed with West Midlands Police (Birmingham Licensing department).
 - c) CCTV to be working at all times the premises is open and conducting licensable activity
 - d) CCTV images to be held for a minimum of 28 days, and to be made immediately available and downloadable (on written request) by any Police Officer/Police Staff or Local Authority Officer
 - e) Door supervisors will not routinely be deployed, however, for specific events they may be deployed, the numbers and times to be based upon a risk assessment by the premises licence holder
- All those conditions agreed in advance with the Environmental Health Department of Birmingham City Council shall apply, namely:
 - a) If BCC Environmental Protection Unit deem necessary a Noise Limiting Device (NLD) of a type approved by the Environmental Protection Unit of Birmingham City Council shall be fitted to the amplification system and set at a pre-set volume level agreed with the Environmental Protection Section, to ensure the volume of music is pre-set so as not to cause a noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall be notified to the

Environmental Protection Section at least 14 days before its' initial operation and shall fulfil the following criteria:

- The device shall be fitted in an approved position by a competent person and once fitted shall not be moved from the approved position unless prior approval is given.
 - The device shall be capable of cutting off the mains power to the amplification system if the volume exceeds the pre-set level determined by the Environmental Protection Unit or shall be capable of maintaining the volume of the music at the pre-set level determined by the Environmental Protection Unit and shall not restore power to the sound system until the NLD is reset by the licensee or their nominated person.
 - The amplification system shall only be operated through the sockets/power points linked to and controlled by the NLD at all times.
 - The NLD shall be maintained in full working order and at the approved pre-set volume whilst the amplification system is operational.
 - Any damage or malfunction to the NLD shall be reported to the Environmental Protection Unit as soon as possible and within 24 working hours of the damage occurring or malfunction being noted. The NLD shall not be used in this damaged or malfunctioning state until approval has been given by the Environmental Protection Unit.
- b) The Licensee shall ensure that a written agreement is made with reputable taxi companies to ensure that when taxi's pick up and drop off customers from the licensed premises noise from these vehicles does not cause a nuisance to local residents.
- c) Customers who require a taxi from the site shall be advised by staff to use taxi companies specified by the Licensee.
- d) Notices shall be displayed within the licensed premises for customers to view giving details of taxi companies to use.
- e) The Licensee shall ensure notices shall be displayed near the entrance and exits of the premises advising customers to have respect for the nearby residents and keep noise levels to a minimum.
- f) The Designated Premises Supervisor shall be responsible for ensuring that the smoking areas do not create a nuisance to neighbours at the premises and if necessary restrict the number of people utilising the smoking areas at any one time.
- g) All external doors and windows to be closed during regulated entertainment except for access and egress.
- h) There shall be no speakers in the external areas at any time.
- Those matters detailed in the proposed operating schedule, and the relevant mandatory conditions under the Licensing Act 2003, will also form part of the licence issued

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application but did not accept that there was evidence of a significant risk of public nuisance arising from the proposed operation of the premises. West Midlands Police and Environmental Health had advised the applicant in advance of the meeting and as a result of this, the applicant had amended the proposed operation – reducing the opening times and the hours for the sale of alcohol.

The Sub-Committee heard from the applicant that she was a chef by trade; her plan was to operate as a restaurant with 42 covers, rather than as a pub or bar premises. Sale of alcohol would therefore be ancillary to the provision of substantial table meals, and would be for “on sales” only. The applicant assured the Sub-Committee that the type of music, and volume level of music, played at the premises would be the background music that one would expect at restaurant premises, rather than the loud volume that would be expected in a pub or bar. The applicant confirmed to the Sub-Committee that it was not her intention to play music at loud volume, nor would she be having a DJ or live music, as the premises was to be a restaurant rather than a late-night drinking venue.

In addition, further conditions had been suggested by the Police and Environmental Health, and these were put before the Sub-Committee. The concerns of other persons (local residents, who attended the meeting) were taken into account by imposing the further conditions, as the Sub-Committee considered these sufficient to allay residents’ apprehensions about the potential for disturbance – particularly regarding the use of the beer garden area. The Sub-Committee’s decision to not permit consumption of alcohol in the beer garden after 2100 hours meant that, from 2100 hours until 2300, the beer garden area would only be used as a smoking area, and for the final half hour of the operating time (i.e. until 2330), the beer garden area would not be in use at all. This would greatly reduce the potential for late-night noise nuisance to be caused to local residents.

The Sub-Committee considers the conditions imposed to be appropriate, reasonable and proportionate to address concerns raised.

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

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 information in the application, the written representations received and the submissions made at the hearing by the applicant, her adviser, 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.

OTHER URGENT BUSINESS

05/250917 There were no matters of urgent business

EXCLUSION OF THE PUBLIC

06/250917 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:-

Minutes – Exempt Paragraphs 3 and 4

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CHAIRMAN