

BIRMINGHAM CITY COUNCIL

LICENSING SUB- COMMITTEE MONDAY, 5 MARCH, 2018

**MINUTES OF A MEETING OF THE LICENSING
SUB-COMMITTEE A HELD ON, 5 MARCH, 2018 AT
0930 HOURS, IN COMMITTEE ROOM 1, COUNCIL
HOUSE, BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair.

Councillors Bob Beauchamp and Nagina Kauser.

ALSO PRESENT

David Kennedy, Licensing Section
Joanne Swampillai, Committee Lawyer
Errol Wilson, Committee Manager

NOTICE OF RECORDING

1/05032018 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 AND NOTIFICATION OF NOMINEE MEMBERS

2/05032018 No apologies were received.

MINUTES

3/05032018 The public section of the Minutes of the meeting held on 12 February 2018, having been previously circulated were confirmed and signed by the Chairman.

**LICENSING ACT 2003 PREMISES LICENCE – VARIATION, THE DISTILLERY,
4 SHEEPCOTE STREET, BIRMINGHAM, B16 8AE**

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

(See document no. 1)

The following persons attended the meeting.

On behalf of the Applicant

Niall McCann – Joelson Wilson Solicitors
Birke Bassen
Matt Copell – General Manager

Those Making Representations

Martin Key – Environmental Health, BCC
John McDermott - Objector

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

Niall McCann, Legal Representative for the premises addressed the Sub-Committee at the start of the meeting, and explained that the nature of the venue had changed now that it was under new management. Previously it had been a live music venue which had attracted complaints regarding noise levels; it was now a food-led public house, which played recorded music only (not live music). The General Manager of The Distillery had met the concierge of the nearby residential development, and discussed the proposed operation, in order to foster good relations with those living in close proximity.

They had proffer and agreed a number of conditions. Martin Key, Environmental Health, BCC led the discussion regarding the number of conditions.

Niall McCann made the following points with regard to the application and in response to questions from Members:-

- a. The client acquired the premises in 2016 – Pictures of the premises and background information was presented to the Committee. The nature of the venue had changed as previously it was a live music venue. Now a food outlet venue – wet/dry split 60/40 – alcohol 60 food 40. There was no intention to change the nature of the premises in anyway whether the variation was granted or not.
- b. Matt Copell, General Manager stated that they had been in operation for two months and had printed discount cards for every resident, free meeting room all year round was offered to the resident's group and he had *showed his face* to make them aware of what was happening.
- c. Niall McCann stated that residents meetings were held and a further meeting was to be held on the 27 March 2018. The application was extended to 1:00am Fridays to Saturdays for alcohol. Firstly, some of their clients were leaving early and it was hoped that the application would be granted.
- d. Secondly, was the film for the garden area for film night weather permitting, but they were looking predominantly at Wimbledon and the World Cup. They did not have Sky and the nature of the films were to attract couples –

glass of wine rumcom movies and were not films that would be concerning. They were discussing these with the Environmental Health Officer apart from the time. They had agreed today that if the films carried on until 1900 hours, they would be silent or people would wear earphones.

- e. In terms of the location of the TV screen, they had proposed to position it on the right hand side of the garden. The TV would be angled towards some residential properties which were some distance away.
- f. With regards to the application, there was some site meeting with Mr Key, but he (Mr McCann) was not in attendance for these meetings. He drew the attention of the Committee to the Conditions in Martin Key's email dated 2 March 2018, that his client was proffering.
- g. If the application was granted, they would work closely with Mr Key concerning the site. The smoking area was in the courtyard at the back of the premises. Some people also go to the front of the property to smoke.
- h. The condition was strong enough, but not many people went out late at night for smoking and this was not an issue at the moment, but this would be agreed as a condition. People could exit onto Sheepcote Street or by the Towpath, but they did not want people leaving by the Towpath late at night. There was two ways to access the premises – one at the front, the other in the courtyard.
- i. In response to an enquiry by the Chair concerning insulation, Mr McCann stated that a number of the conditions that were already included in the licence were agreed. There was a further condition that all doors will be on automatic stoppers. They had proffered that they could not cause any noise nuisance to any of their neighbours.
- j. If noise was affecting their neighbours the music had to be turned down. The building was well insulated and there was no issues raised concerning noise nuisance as far as he was aware. The music being played was not heavy music and any resident experiencing noise from the music could contact Mr Key.
- k. Mr Key stated that the building was not double glazed as it was a listed building and the issue was what could and could not be done – RNB style music and more condition to put restriction on the building.
- l. The building was not built for live music, but should be able to operate with light music. It was proposed that further discussion be had with Mr Key to see if there was something else that could be done. After 1900 hours all would be silent and for the patrons to use ear phones.
- m. He had four observations – that there were a number of criticisms about the premises when it was a different venue; fear of causing nuisance with music – no complaints – noise abatement. Doors being shut; recalibrate the noise ohmmeter.

- n. There were no concerns being raised in respect of the films and they had given thought to their trading responsibilities. The General Manager of The Distillery had met the concierge of the nearby residential development, and discussed the proposed operation, in order to foster good relations with those living in close proximity.
- o. They did not think that they would have any impact on the local residents and requested that they be given a chance with the variation. The residents meetings will continue.
- p. The 60/40 split was based on revenue and they had been operating since April 2017. Mr Copell stated that he had only been the general manager for two and one half months, during which time there was one single complaint as a cleaner had accidentally left one of the windows open.
- q. They had air conditioning in the building to take the heat out of the premises in the summer. Headphones were tried for the previous premises he had managed, but not for the current premises. It was a difficult time of the year to give an accurate figure as to how many people access the building by the Towpath. It was a destination venue.
- r. Mr Copell noted Councillor Beauchamp's concerns regarding RNB music and stated that soul music would be provided and that only from 2000 hours in the evenings would there be loud music.
- s. The capacity of the courtyard was 220 – 260. Food was served upstairs and outside. The use of the garden would cease at 2300 hours. Bluetooth and headphones would be used which had not been tried at this venue, but at the previous venue.
- t. The types of clients were families with children during the day and the evenings were for young professionals. They manage a shift with two members of staff in the bar upstairs and two downstairs 2000 hours to 2300 hours and they had staff floaters.
- u. The capacity of the building inside was 100 people in the courtyard for drinking and eating. There was no application to change this area and the smoking area will be in full use. After 2300 hours people would be allowed to go out and smoke and return.

At this juncture David Kennedy, Licensing Section commented that some tables were for smoking and some were not. As they were outside the building there was no smoking restriction. In terms of capacity, they will have to consider the fire risk element. There were hoardings for people who wanted to smoke if it was raining.

Martin Key made the following points in response to questions from Members:-

1. The original request was around two issues – the removal of the condition for external speakers and to show film in the external area. The conditions proffered were headphones and silent films.

2. He sets the context to the premises and stated that in 2013 there was a change of use from a public house that was originally operated as Fiddle and Bones.
3. The whole complex was a heritage building and was surrounded by a large amount of residential properties. Large external area used for eating and drinking during the day. A large function room was let out at one end of the building. It was a busy street.
4. Figures 4 and 5 green hatched area was the outside space close to the residential properties. Exposed and visible to the residential properties nearby. Single glazed and well-built extractor system.
5. Subsequent to this operator taking over, they have not had any report of any noise nuisance. The external windows were to be kept closed after 2300 hours.
6. The complaints in 2015/16 were as a result of a noise breakout from the building and were not related to a band noise. Recent complaint related to people accessing and egressing the building, also light impact and amplification of music.
7. The large LED boards were intrusive and they would ensure that they minimise any light escape from the building. Film management, suitability of films and age classification ensuring that children could not see what was on the screens.
8. TV shows were not licensable under the Act, but where people got involved could increase the ambient level of noise in the outside area.
9. The letter of the 27 February 2018 was one they had not picked up when they had the conversation
10. Section 3(d) prohibited use of external speakers. The last condition was about drinks not to be removed from the premises. The conditions were in the licence but were not strong enough.
11. There were concerns about the terminal hour and the use of headphones, but given the submissions that had been made in relation to the films and the use of headphones; this mitigated the concerns he had.
12. It was agreed for the applicant to undertake a noise management plan during normal opening hours so that people do not cause any nuisance to the neighbours. There was a licence condition that requires quarterly residents meeting.
13. In response to an enquiry from the Chair, Mr Key advised that he had no contact with the residents, but that a resident liaison meeting will be held in March 2018.

14. Mr McCann stated that they had written to the residents regarding the issue and that he had received two responses.
15. It was noted that they had not seen a specification regarding the TV screen as it was more of a TV output rather than the large LED screen. LED was not appropriate for the location. The terminal hour at 1900 hours would have less impact. The hours requested had a lighting path which they need to consider. P8 was the number of pixel – high definition screen, ultra-high output on LED.
16. The Chair enquired whether a check was made as to how many children were involved in the properties as there were likely to be adult films. Mr Key stated that the point was considered and this needed to ... not responsible for protecting people from arm.
17. David Kennedy stated that there was a mandatory condition relating to classification of films and that the operators in their presentation stated that they were only looking to show family friendly films. The licence enforcement team was responsible for enforcement and safeguarding.
18. Any extensive glare from a distance, the screen will prevent the overspill of light and he would ask the applicant to submit this. There would be the opportunity for a dimmer on this, but they had to ensure that it could be predicted. There was low level light in the yard to light the area, but there was no complaint.
19. No lobbying on the doors directly if there was any significant live music they would have concerns if it was significant live entertainment music, they would have concerns.
20. The observation that was made the music was audible outside the building, but not at a level that would cause nuisance. If they found that the music was a nuisance they would go back and set a noise ohmmeter.
21. The building did not have any noise insulation treatment, but there were options to treat the windows i.e. secondary glazing on the inside. There was no music on the ground floor, only background music.
22. In response to an enquiry from the Chair, Mr Key stated that he was not aware of any planning issues concerning the building.

The objector made the following points in response to questions from Members:-

- a. The residents in the block had regular meetings with the previous operators. With regard to the use of the TV during the day, the residents did not have any objections, but it was later in the evening. The juxta position was the Towpath etc.
- b. There were 4-5 people talking around the table in the courtyard after mid-night which was fairly loud as he could join in - he did not hear any voice after 2300 hours the arrangement was working well. There were occasions

when they had breached the rules and it was slightly disingenuous that they had stated that they had no complaint. People who had drinks late in the evening will make noise.

- c. As residents they had arrangements in place that people do not have noise after 0000 hours, but the operators wanted to do so which was unreasonable. They needed to look at their Business Plan if they needed an extra hour to do things.
- d. There were 243 residents in the Block, but 60 – 70 were overlooking the venue. There were some children in the properties and on that side there were five families with children.
- e. During the day this was not an issue, it was the very late evening that would be an issue. In fairness, there had been some miscommunication. A gentleman had advised him that something was on the window in the Public House. The residents had a website and the Public House knows this.
- f. The issues regarding the Distillery were not mentioned whether it was discussed at the previous meeting he was not aware. The extra hours were the key issue and the smoking area after 2300 hours was the other issue. The nature of the thing amplifies that, but apart from that they had good neighbours. The last thing they wanted was to close the business down.
- g. In relation to the smoking area, there was an issue when it gets late when the traffic quiets and a group of people were having a drink was the point when it could be a nuisance at 2300 hours when the residents were trying to go to bed. They had managed the area, but after 2300 hours was the problem.
- h. As a resident the lease he had signed as a leaseholder stated after 0000 hours. They did not have any problem with that as the finish was up to 2300 hours. The last 2 – 3 weekends they did not have any problem.
- i. They could hear the noise and the issue was about the limit after which it was not acceptable. He was living on the third floor and could hear the noise slightly.

During the summing up the objector stated that 0000 hours would be the preferred time, but 0100 hours was not suitable.

During the summing up Martin Key stated that the objection was the showing of films externally, but few things that mitigated this fact – 1900 hours would mitigate the risk and the lighting needed to be looked at as well and if the conditions were accepted it would balance the impact. A noise level had been set but it was uncertain that that limit was set by the Environmental Health Department.

During the summing up in support of the variation of the licence Niall McCann stated that in relation to the smoking, smoking in the courtyard would be until

2300 hours. They were happy for people to smoke in Sheepcote Street after 2300 hours regardless of whether the application was granted or not. There had been some miscommunication as they had been communicating with certain people. In terms of the films, they had proffered a number of conditions with Mr Key. With regard to the lateness of the hours, it sounded as though a noise limit had been set and they needed to meet with Mr Key regarding that issue. There will be no more recorded music after 2100 hours, the conditions on the original licence was *wishy washy*, but they had proffered some better conditions as they wanted to work with the local residents.

At 1152 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

After an adjournment and at 1238 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

4/05032018

RESOLVED:-

That the application by The Pioneer (City) Pub Company Limited to vary the premises licence in respect of The Distillery, 4 Sheepcote Street, Birmingham B16 8AE under section 34 of the Licensing Act 2003

BE GRANTED SUBJECT TO

- 1) The modifications made to the scope of the application by the applicant's legal representative at the hearing being removal of the request to permit:
 - the provision of recorded music externally;
 - film exhibition in the Courtyard until 02:00am on New Year's Eve / Day;
 - the use of external speakers other than those associated with the showing of films.
- 2) All the conditions agreed with Environmental Health in advance of the hearing being:
 - All external doors shall be fitted with effective self-closing devices;
 - No noise generated on or outside the premises, or by its associated plant or equipment, shall emanate from the premises or vibration be transmitted through the structure of the premises which gives rise to nuisance;
 - A specification of the equipment proposed to be used for showing of films (including any associated sound amplification equipment) and assessment of the potential impact and possible nuisance on neighbouring properties from noise and light shall be submitted in writing to the Environmental Protection Unit of Birmingham City Council and no films shall be shown in the external area of the

premises until the mitigation and/or management measures that have been approved in writing by the Environmental Protection Unit of Birmingham City Council have been implemented. The mitigation and/or management measures shall be thereafter maintained.

- To avoid nuisance being caused to neighbours the DPS, or other nominated person/staff, shall monitor the external areas of the Premises after 23:00 hours, including the smoking area and frontage onto Sheepcote Street. If necessary, they shall remind customers to be respectful of neighbours and where necessary they shall limit the number of customers going outside to use the smoking area and take appropriate steps to avoid customers egressing the premises causing a nuisance.
- The gates providing access to the canal from the external area shall be closed and locked between the hours of 23.00 and 08.00.
- The DPS shall, within 3 months of the date of issue of this variation to the licence, submit in writing a noise management plan to the Environmental Protection Unit of Birmingham City Council. The noise management plan shall outline the measures to be adopted to reduce the noise impact of activities associated with the premises including music, deliveries, recycling and refuse collections, external areas for showing film, smoking areas and customers. The noise management plan shall be updated regularly and all staff shall be adequately trained in their role in implementing the plan.
- All alcohol sold for consumption off the premises shall be in closed containers.
- No drinks shall be removed from the premises (as delineated by the plans defining the licensed area for alcohol sale and showing of films) in open containers.

3) AND ALSO THE FOLLOWING CONDITIONS:

- The extended hour, to 0100 hours on Friday & Saturday, shall only apply to those licensable activities offered inside the building, and shall not include the courtyard;
- The use of the smoking area in the rear courtyard shall cease at 2300 hours daily; after 2300 hours those patrons wishing to smoke shall be directed to use the front smoking area on Sheepcote Street;
- The premises shall consult Environmental Health on the use of a noise limiter; should the use of a noise limiter be unsatisfactory to Environmental Health, the premises to implement whatever alternative noise limitation methods are required by Environmental Health;

- The premises shall consult Environmental Health on the positioning of the LED screen, and shall angle it in a manner acceptable to Environmental Health;
- The premises shall comply with film classification recommendations, to ensure that films shown are suitable for a family audience, and to ensure the upholding of the protection of children from harm objective;
- The premises shall erect suitable signage in and around the premises:
 - o reminding patrons to keep noise to a minimum when leaving the premises due to the close proximity of residents
 - o reminding patrons that the use of the courtyard for smoking ceases at 2300 hours
 - o reminding patrons that the gate access to the canal ceases at 2300 hours
- The premises shall maintain communications with local residents, such that any issues may be dealt with as they arise.

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.

The premises' legal representative addressed the Sub-Committee at the start of the meeting, and explained that the nature of the venue had changed now that it was under new management. Previously it had been a live music venue which had attracted complaints regarding noise levels; it was now a food-led public house, which played recorded music only (not live music). The General Manager of The Distillery had met the concierge of the nearby residential development, and discussed the proposed operation, in order to foster good relations with those living in close proximity. It was hoped by those at The Distillery that the extension of hours on Friday & Saturday nights, and the screening of films in the Courtyard, would help to attract and retain patrons without causing nuisance to local residents. Efforts would be made to reduce the potential for noise nuisance by carefully following the advice given by Environmental Health. Other measures would also be put in place, for example regarding dispersal.

In general the premises was keen to follow all recommendations from Environmental Health. The premises also intended to hold regular meetings with residents.

The Environmental Health Officer attended the meeting and confirmed that the agreed conditions addressed his concerns regarding the impact of light emanating from the LED screen, the noise from people using the courtyard, and intensification of use in general.

Another person, living in close proximity to the premises, attended the meeting. He described the effect created by the positioning of the canal, bridge, premises and residents, which he felt was akin to a 'natural

amphitheatre' as it caused a noticeable increase in the volume of noise in the area, especially at night. Accordingly this person felt that to permit licensable activities to continue to 01.00 hours was too late an hour.

However the Sub-Committee determined that these concerns could be taken into account via the modifications to the scope of the application and the suggested conditions, which would allay apprehensions about a potential impact on the licensing objectives. The premises had shown willingness to adopt every recommendation suggested by Environmental Health, and a desire to cooperate with local residents. The Sub-Committee considered that in these circumstances, the operation was capable of upholding the licensing objectives, and variation in the terms agreed was proportionate.

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 for a variation, the written representations received and the submissions made at the hearing by the applicant, their legal adviser, and by other persons and a responsible authority.

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.

Delineated Plan showing the extent of the external area for the provision of film exhibition only:

(See Document No.1)

OTHER URGENT BUSINESS

5/05032018 There was no other urgent business.

EXCLUSION OF THE PUBLIC

6/05032018 That in view of the nature of the business to be transacted which includes exempt information of the category indicated that the public be now excluded from the meeting:-

Minutes – Exempt Paragraphs 3 and 4.

PRIVATE

MINUTES

7/05032018 The private section of the Minutes of the meetings held on 12 February 2018 together with the public section noted earlier in the meeting, having been circulated, were confirmed and signed by the Chairman.

OTHER URGENT BUSINESS

8/05032018 There was no other urgent business.

The Meeting ended at 1243 hours.

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CHAIRMAN