

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE C 29 MARCH 2019
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 29 MARCH 2019, AT 0930 HOURS, IN ELLEN PINSENT, COUNCIL HOUSE, VICTORIA SQUARE, BIRMINGHAM, B1 1BB

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Nicky Brennan and Mike Sharpe.

ALSO PRESENT

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

NOTICE OF RECORDING

- 1/290319 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

- 2/290319 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/290319 No apologies were submitted.

ETIQUETTE NIGHTCLUB, UNIT B202-204, ARCADIAN CENTRE, HURST STREET, BIRMINGHAM, B5 4TD – LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 – CONSIDERATION OF REPRESENTATIONS IN RESPECT OF THE INTERIM STEPS IMPOSED ON MARCH 2019.

The Premises Licence Holder made representations in respect of the interim steps imposed on 22nd March 2019 following the application of expedited review of the

premises licence in respect of Etiquette Nightclub, Unit B202-204, Arcadian Centre, Hurst Street, Birmingham, B5 4TD. A certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003, an application for Review of Licence, a copy of Premises Licence, Decisions of the meeting held on 22nd March 2019, representations made by the premises licence holder and Location maps were submitted:-

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 Licence Holder

Wayne Tracey – Proposed New Designated Premises Supervisor (DPS)
Pourian Azarian – Previous Designated Premises Supervisor (DPS)
Sarah Clover – Barrister - Kings Chambers
Carl Moore – Agent

On Behalf of West Midlands Police

PC Ben Reader – West Midlands Police (WMP)
PC Greenfield - WMP

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Following introductions by the Chairman all parties were asked if they had any preliminary matters.

At this stage PC Ben Reader advised that they would be asking for the CCTV/video footage to be heard in private due to the following:-

- There was an ongoing investigation
- There was still an injured party in hospital
- Arrests were yet to be made
- That not screening the CCTV in private could hinder the investigation.

At this juncture Mrs Sarah Clover asked for clarity regarding what PC Reader meant – who he wanted excluded.

The Chairman advised that the press and/or public would be excluded. The other parties would remain in the meeting, whilst the private CCTV footage was screened.

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

Mrs Sarah Clover, on behalf of the Premises Licence Holder, made the following points:-

- a) That Mr Tracey was the licence holder of Snobs and had been for 40 years.
- b) That Mr Tracey was in the process of buying Living Leisure. So Bar and Etiquette ran as two separate venues.
- c) Mr Tracey was in negotiations to take over the lease of the building and then the incident occurred, which had nothing to do with him, and did not involve any of his team.
- d) That what happened, happened and Mr Tracey had put in an application to transfer the licence with immediate effect.
- e) That Mr Tracey was currently the licensee pending any reaction from WMP as to whether they wished to react to the transfer.
- f) Mr Tracey had been liaising with police and therefore, did not anticipate an objection.
- g) That Mr Tracey was exemplary.
- h) That the door company had been at Snobs some 20 years.
- i) That similarly Mr Tracey had taken on the role of DPS, which was an unusual role for him but in the circumstances Mr Tracey felt it appropriate.
- j) That they weren't able to attend the previous hearing as the email that went to Mr Azarian went to an old email address that was no longer in use. This was "confusing" because Mr Azarian had received emails to his current email address. The other email was a very old one. Therefore, they were making representations for the first time.
- k) That Mr Tracey was asking the Committee to allow him to take control of the premises, as he was already operating So Bar.
- l) That as far as the fight was concerned – the ins and outs of that particular fight was nothing to do with Mr Tracey and therefore they had no issues with how the police were describing it – the fight sounded horrendous. However, they did not know anything about it and couldn't say anymore.
- m) That the fight appeared to have something to do with the door security company, or connections of the door company.
- n) That the fight was effectively a slice of history.
- o) They asked the Committee to look at any conditions going forward and to look at the new set up. Additionally, not to penalise Mr Tracey for things that occurred previously; with the previous people.
- p) That Mr Tracey wanted firm and complete control of both premises with immediate effect.

- q) That there was nothing defective on the licence, So Bar and Etiquette share conditions.
- r) That if the Committee wished to have reassurances between now and the review hearing they could put steps in place by confirming the change of DPS to Mr Tracey and could ensure the installment of Snobs security team.
- s) That further reassurances could be considered.
- t) That what WMP were about to show was disconnected from the man in front of the Committee (Mr Tracey).
- u) That they were happy to answer any questions. That Carl Moore was a consultant who worked closely with Mr Tracey on policies and procedures and was in attendance to show his commitment.

In response to Members questions Mr Tracey made the following points:-

- a) That he started purchase proceedings in February and So Bar was completed but Etiquette was still outstanding. He would be DPS and the licence holder, but the licence would be held in the company name.
- b) That PRP was a Wolverhampton based company that had been working with Snobs for about 30 years. He was not sure what other doors they worked on but they would be working at So Bar and Etiquette.

Cllr Leddy asked what sort of Club the premises was, Mr Tracey advised it was for Mr Azarian to explain.

Mr Azarian explained that it was mainly used for private events. So Bar was running downstairs and then Etiquette was upstairs and held exclusive private events for footballers, celebrities, and outside DJs from Essex. Etiquette had a completely different crowd to So Bar.

Mr Tracey advised that his vision was that So Bar would operate with two rooms and it would not be operating as VIP/exclusive. That the business before was a failed business – it was not working. This was how Mr Tracey came to buy it.

Mrs Sarah Clover, Barrister representing the premises advised that the fight was not a result of the style of the venue in fact it was a particular group of men from London who had been drinking in the city all day and then was allowed into Etiquette. There was a connection with the door staff and it all exploded. There was nothing to say it was a direct result of the style of the venue and nevertheless, the venue was changing its style and it should never happen again.

Mr Tracey continued to answer Members questions:-

- a) That he had not been DPS at Snobs, but he worked with DPS's and was always in attendance when the premises was operating which he intended to do at Etiquette.

- b) That the incident that occurred was extremely serious from what he had seen in the Evening Mail.
- c) That So Bar downstairs would be open during the day and then upstairs would be open Friday and Saturday evenings. That it would be exactly the same as downstairs – just another room.
- d) That he didn't do things without looking into it properly. Negotiations had been ongoing for 6 months.
- e) That it was a very lively area and he would be taking on new door staff, bar staff and a cleaner.

At this stage PC Reader was invited to make his representation. He advised that he would like to screen the CCTV first in private.

At this juncture, the Chairman advised that the public would now be excluded from the meeting.

EXCLUSION OF THE PUBLIC

4/290319

RESOLVED:

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

At this stage in the meeting having viewed the CCTV footage in private the public were readmitted to the meeting.

PC Reader continued to make the following points, in answer to Members questions:-

- a) That it was a brutal attack; the injured party had a brain scan and had been transferred to a London hospital in order to be closer to his home.
- b) That it was not believe he had been doing drugs.
- c) That Mr Azarian had lost control of the venue and allowed people into the venue who were intoxicated, violent, using balloons containing Nitrous Oxide and subsequently a serious incident occurred.
- d) That he could not understand why Mr Azarian was at the hearing.

Mrs Sarah Clover explained to PC Reader that she thought she had made it clear but she was happy to do it again.

PC Reader stated that they were attending due to the challenge to the suspension, however, there was no detail – he asked “when would the venue open - Tonight?”

Mr Tracey responded by informing PC Reader that it was only So Bar that would be opening tonight as he was already running that premises.

PC Reader stated he was still confused and wanted to know when PRP (security company) were going to be involved. He further added that he felt they had rushed to challenge the suspension, but with little detail on how the premises would be operated. Furthermore, he raised his concerns over Mr Azarian attending the hearing and felt he should be excluded from all operation moving forwards.

In response to Cllr Beauchamp, PC Reader explained that they had not challenged to change of DPS and were confident that Mr Tracey was a good operator; however, they “needed to be able to work out how that operation was going to plan out”. He added that he didn’t think it needed working out before the full review, especially if they were going to do a refurbishment.

Mrs Clover advised she would like to address those concerns raised at which point Cllr Leddy informed her that she may address them in her summing up.

Cllr Leddy asked PC Reader about their prior dealings with Mr Tracey and for any background information.

PC Reader confirmed that both Mr Tracey and the PRP door company were good operators, however, he wanted clarification on how the premises would operate.

In Summing up PC Reader on behalf of WMP made the following points:-

- That they believed suspension should remain. However if the Committee were minded to lift the suspension then the premises needed to operate as a “completely clean broom”.

In summing up Mrs Sarah Clover, on behalf of the premises made the following points:-

- That PC Reader saying there was a lack of clarity was incorrect. Mr Tracey had been discussing the matters in length with PC Rohomon and they had explained in detail at the hearing today.
- That for PC Reader to say it was rushed meant that he did not really know what was going on.
- That discussions had already taken place with PC Rohomon over the details regarding the operation of the venue. Clearly that had not been relayed to PC Reader.

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- That they were grateful to Mr Azarian for attending the hearing in order to comment on CCTV and answer Members questions. He received flack for doing so. He would not be running the company or be involved with the management.
- Mr Tracey was unable to assist with the CCTV; Mr Azarian had insight and awareness that he was available to assist the Committee with.
- That there was nothing to stop So Bar trading.
- That WMP could have reviewed So Bar as they were associated, but they chose not to.
- That PC Reader suggested that they were hazy with what was going on, but Mr Tracey had made it clear.
- The security company was operating at So Bar and there was nothing to stop So Bar operating.
- If WMP wanted clarity, what on? Now was the time and the place to go through issues.
- That it would be wrong to say “no rush, review is not far away, so let’s be on the safe side”.
- That a review was used to protect the public from risk, to use the review process in order not to rush things was wrong. If Mr Tracey could not reassure the Committee today, he would not be able to assure them at the review as nothing would change.
- That the same application would be before the Committee at the full review.
- That there was nothing to stop the suspension being lifted.
- That if the Committee wanted reassurances on Mr Azarian they could do that, if they wanted reassurances in relation to PRP (security company) they could do that also.
- That Mr Tracey was DPS as no objection had been made yet.
- They asked the Committee to allow Mr Tracey to operate Etiquette in line with So Bar.

At 1106 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1217 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/290319

RESOLVED:-

That, having considered the representations made on behalf of Snobs Management Limited the premises licence holder for Etiquette, Unit B 202 – B204, Arcadian Centre, Hurst Street, B5 4TD in respect of the interim steps imposed on the 22 March 2019, this Sub-Committee hereby determines that the licence will remain suspended until the following conditions are complied with by Wayne Tracey.

1. Mr Azarian has no involvement with the management and operation of the business owned by Wayne Tracey
2. An operating manual of the proposed business for Etiquette is submitted to WMP subject to their approval.

The Sub-Committee carefully considered the representations made by the police and on behalf of the new proposed DPS and premises licence holder, Mr Wayne Tracey.

In relation to the incident on 18 March 2019, the members identified that the blame lay with the security company hired by Mr Azarian, who attended the hearing in order to assist the Member's queries and concerns. It became clear to the Member's that Mr Azarian was fully responsible for the lack of control over the unfolding events of that night which led to the expedited review application by WMP.

Members carefully considered the new business proposal put forward by Mr Tracey and his barrister in respect of Etiquette, and accepted there was a clear separation in the legal ownership and management of the business between Mr Azarian to Mr Tracey which was seen as a positive step in overhauling the nature and style of Etiquette.

The Sub Committee also carefully considered WMP submissions regarding the lack of clarity around the proposed operation of the business and the need for the suspension to remain in place until the review hearing date. However, members took account of Mr Tracey's extensive track record of running a successful and well established licensed venue in the city, and that he had submitted a DPS transfer application with immediate effect that as yet not had been objected to by WMP.

In view of the above, members considered it would be appropriate to lift the suspension provided that Mr Tracey did not have Mr Azarian involved in any way with the business going forward, and that Mr Tracey supply a copy of his operation manual to the satisfaction of WMP as evidence of a new fresh start.

The Sub-Committee therefore considered that lifting the suspension of the premises licence in light of the new material changes in respect of Etiquette was an appropriate and proportionate measure subject to the two conditions being complied with for the promotion of the licensing objectives.

In reaching this decision, the Sub-Committee has given due consideration to the guidance issued by the Home Office in relation to expedited and summary licence reviews, the certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 and the application for review.

All parties are advised that there is no right of appeal to a magistrates' court against the decision of the Licensing Authority at this stage.

6/290319

OTHER URGENT BUSINESS

There were no matters of urgent business.

The meeting ended at 1225 hours.

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CHAIRMAN