

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE C 25 JULY 2018

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE C
HELD ON WEDNESDAY 25 JULY 2018
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Mike Leddy in the Chair

Councillors Olly Armstrong and Neil Eustace.

ALSO PRESENT

Shaid Yasser, Licensing Section
Joanne Swampillai, Committee Lawyer
Katy Poole, Committee Manager

NOTICE OF RECORDING

- 1/250718 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.
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DECLARATIONS OF INTERESTS

- 2/250718 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.
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APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/250718 There were no Nominee members.
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MINUTES – PUBLIC

- 4/250718 That the public section of the Minutes of meeting held on 13 June 2018 were noted.

That the Minutes of meeting held on 4 July 2018 were circulated and confirmed and signed by the Chairman.

LICENSING ACT 2003 PREMISES LICENCE – MEL’S GLASSHOUSE, 563-565 WARWICK ROAD, BIRMINGHAM, B11 2EX

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

Latoya Anderson – Applicant – Mel’s Glasshouse Ltd.
Mijanur Rahman – Agent – Optimised Training Centre.

Those making representations

No one making representations attended the meeting.

The chairman advised that the meeting would start at 0945 to allow those making representations adequate time to attend.

* * *

Following introductions by the Chairman, Shaid Yasser, Licensing Section, made introductory comments relating to the report.

In response to questions from Members of the Sub-Committee, Mr Mijanur Rahman, on behalf of the applicant, made the following points:-

- a) That the premises was taken over in March and was ran as a restaurant.
- b) An application was made on 4th June 2018, and since then the premises has been in discussions with West Midlands Police and Environmental Health and come up with some suitable conditions.
- c) That the business would be looking to cater for parties, hence the late opening hours for Friday, Saturday and Sunday.
- d) They were aware that they could apply for TENs, but they may want more than 15 events per year and that’s why the police had suggested a number of conditions.

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- e) That everything had been going well, until the tenants upstairs made objections.
- f) That they were unaware that upstairs was occupied.
- g) That they had read through the objections, but had not had any events so there were no reasons for concerns regarding music.
- h) That his client did celebrate her graduation at the premises with her family.
- i) That they had not had any contact with the tenants above the premises. They had tried as they wanted to resolve any issues.
- j) That his client had made changes to the premises and had put in a lot of work.
- k) That his client was doing everything she could to make the business work.
- l) That the premises had always been used as a restaurant.
- m) That they didn't anticipate any problems securing a licence.
- n) That they couldn't understand why vulnerable people would be housed above restaurants and in a busy area.
- o) That the manager of the organization had approach the tenants requesting that they object. They found this information out from the tenants that did not object.
- p) That they would be willing to accept any further conditions as they were aware the business would not be sustainable without a licence.
- q) That there were 7 tenants living upstairs, but they were unaware that they were vulnerable persons.
- r) That his client had tried to speak to the management team but was unable to get hold of them.
- s) That the premises was only selling food currently and therefore, was not open any later than 2100 hours.
- t) That they had agreed all the police's conditions.
- u) His client had graduated from University of Wolverhampton.
- v) That his client had invested £15,000 into the business and given up her job.
- w) She had a 5 year lease.

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- x) That she would have 3 additional members of staff.
- y) That the restaurant would have occasional late nights.
- z) That the alcohol element of the licence was what concerned the tenants most.
- aa) That they would prefer to have the option of as many late nights as possible, but they would also accept 24.
- bb) That generally the late nights would be to accommodate birthday parties.
- cc) That his client would arrive at the premises at 0900 hours in order to cook, and the restaurant would open at 12noon for lunchtime trade.
- dd) That she had a personal licence, and was experienced at running premises and serving alcohol.
- ee) That no promoters would be involved with the late night events.
- ff) That they would make sure the music was kept at an acceptable level.

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

- a) They thanked the Members for listening to them and continued to explain that they had put everything in place and wanted to make the business a success.
- b) That they didn't want to upset anyone and wanted to try build bridges with the tenants upstairs.

At 1015 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1108 the meeting was reconvened and all parties were invited to rejoin the meeting. The decision of the licensing sub-committee was announced as follows:-

5/250718

RESOLVED:-

That the application by Mel's Glasshouse Ltd for a premises licence in respect of

MEL'S GLASSHOUSE, 563-565 WARWICK ROAD, BIRMINGHAM
B11 2EX, **BE GRANTED SUBJECT TO THE FOLLOWING
CONDITIONS** to promote the licensing objectives in the Act:

- The normal licensable hours for all licensable activity, except late night refreshment, on Fridays Saturdays and Sundays will

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terminate at 01.00hrs.

- The premises may carry out licensable activity until 02.00hrs on Friday, Saturday & Sunday for pre-booked private events only.
- The premises may carry out licensable activity until 02.00hrs a maximum of 24 times per calendar year.
- If carrying out licensable activity past 01.00hrs (except late night refreshment) the premises will inform West Midlands Police (Birmingham Licensing Department) a minimum of 7 days prior to the event with the exception of funerals / wakes where a minimum of 5 days is required.
- On Friday and Saturday night the premises may continue to trade late night refreshment until 01.00hrs for telephone/ on line orders only. No walk-in orders.
- PREMISES TO REMAIN OPEN TO THE PUBLIC:
From 12:00 until 00:00 Monday to Thursday, and 12:00 to 02:00 Friday to Sunday, subject to the foregoing conditions relating to pre-booked private events
- SALE OF ALCOHOL FOR CONSUMPTION ON THE PREMISES:
From 12:00 to 01:00 Friday to Sunday, and from 12:00 to 00:00 Monday to Thursday
- REGULATED ENTERTAINMENT CONSISTING OF LIVE MUSIC AND RECORDED MUSIC, TO OPERATE INDOORS ONLY:
From 12:00 to 01:00 Friday to Sunday
- THE PROVISION OF LATE NIGHT REFRESHMENT:
From 23:00 to 01:00 Friday to Sunday
- The premises shall arrange for two door staff to be on duty on Friday and Saturday night - one for the main door, one for the smoking area. Qualified door supervisors shall be employed to control persons queuing to enter and exit the venue, from 23:00 onwards whilst regulated entertainment is taking place.
- There shall be no entry for patrons after 23:00
- There shall be no events arranged by external promoters at any time
- All staff training regarding the Licensing Act 2003 and premises

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operating conditions will be documented and made immediately available to any of the responsible authorities on request. The training will be signed by both the trainer and trainee.

- The premises licence holder shall ensure that a written agreement is made with a reputable taxi company/ companies requiring that when taxis pick up and drop off customers from the licensed premise's, that noise from these vehicles does not cause a nuisance to local residents.
- Customers who require a taxi from the site shall be advised by staff to use taxi companies specified by the licensee.
- Doors and windows will be kept closed after 22.00hrs except for access and egress.
- Prior to any regulated entertainment involving amplified music taking place, a Noise Limiting Device (NLD) of a type approved by the Environmental Protection Unit of Birmingham City Council shall be fitted to the serve any area of the premises used for amplified music or sound. The NLD shall be set at a level agreed with the Environmental Protection Section to ensure that the volume of music is controlled to avoid noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall be notified to the Environmental Protection Section prior to use and shall meet the following criteria:
 - a) The device shall be fitted in an approved position by a competent person and once fitted shall not be moved from the approved position or tampered with in any manner unless prior approval is given,
 - b) The device shall be capable of either:
 - i) cutting off the mains power to the amplification equipment if the volume exceeds the pre-set level determined by the Environmental Protection Unit and shall not restore power to the amplification equipment until the NLD is reset by the DPS or their nominated person, or
 - ii) otherwise maintaining the volume of the music at the pre-set level determined by the Environmental Protection Unit,
 - c) where the NLD operates by cutting off the mains power to the amplification equipment, amplification equipment shall be operated through the sockets/power points linked to and controlled by the NLD at all times,
 - d) The NLD shall be maintained in full working order and at the approved pre-set volume whilst the amplification equipment is operational,
 - e) 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.

- Within the designated external smoking area numbers shall be controlled to a maximum of 6 at any one time. After 11pm the smoking area shall be supervised by qualified staff.
- No drinks to be consumed outside of the premises.

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.

The Sub-Committee's reasons for imposing these conditions are due to the written submissions made by West Midlands Police, Environmental Health and by other persons living nearby, regarding the impact of the proposed operation

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 to the licensing objectives arising from the proposed operation of the premises.

However the concerns of those who had made representations - the other persons living nearby, and both of the responsible authorities - were taken into account by imposing suitable conditions that would allay their apprehension about the potential for disturbance from arising in connection with the proposed operation of the premises. In particular a curtailing of the proposed hours (04:00 had originally been requested) was considered to be an appropriate measure to reduce the likelihood of noise nuisance.

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

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 and their 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.

LICENSING ACT 2003 PREMISES LICENCE – THE DELI IN BOLDMERE, 60B-60C BOLDMERE ROAD, SUTTON COLDFIELD, B73 5JT

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

Philippa Goode – Director
Matthew Goode – Director

Those making representations

Peter Hall – Resident
Mervyn Ricketts – Resident
Jeff Turner – Resident

* * *

Following introductions by the Chairman, Shaid Yasser, Licensing Section, made introductory comments relating to the report.

In response to questions from Members of the Sub-Committee, Mrs Philippa Goode, on behalf of the premises, made the following points:-

- a) That she had started the Deli 7 years ago. It was a Delicatessen shop with a café. That it soon became established and they applied for A3 planning in 2012, with the intention of running it as a restaurant. The back garden was included and granted permission to trade.
- b) The Deli moved and they decided that they needed to make some changes in order to help finances. Therefore, they decided to renovate the back garden and in doing so they had to do a pre-planning application which was approved with no concerns.
- c) That they had been running for 6 years with no problems.
- d) That they were responsible persons and had ensured they had followed the restrictions on the planning application, including the 20 meter perimeter fencing around the garden.
- e) The garden was 120 foot long, so therefore, they were unable to use 60

foot of it.

- f) That one of the objector's gardens backs onto the premises.
- g) That they had used acoustic fencing to stop sound travelling, which had cost them nearly £3000.
- h) That the council were happy with the fencing, which was taller than it needed to be.
- i) That the positioning of the acoustic fencing was 15 meters at the recommendation of Environmental Health.
- j) That they were unable to have amplified sound in back garden.
- k) The garden was open until 2100 hours.
- l) That they would move people at 2045 hours into the front of the premises.
- m) That the premises was not alcohol driven, and was primarily a family orientated food service/café.
- n) That the tables and chairs outside were at a distance of 20 meters from the boundary.
- o) That they were completely committed to fulfilling both the licensing and planning objectives.
- p) That the back garden would improve their operation.
- q) That they had given their numbers to those who had made objections so they can notify them when they have concerns.
- r) They were being sensitive and trying to keep everyone happy.
- s) The Deli had seating inside for 30, out on the terrace 30 and the rear patio 40-50. Therefore, 110 across the whole premises.
- t) That the lease had been renewed for 9 years.
- u) That the garden area would get busy in nice weather.
- v) That they do street food Fridays.
- w) They had 10 employees but that would increase to 15-20 should the application be granted.
- x) That they wanted to have a licence until 2200 hours in the back garden and 2300 hours at the front.

- y) That they would get CCTV.

In answer to Members questions Mr Peter Hall, made the following points:-

- a) That the premises had changed from a small deli to a shop that advertises cocktails and Gin bars till late. The premises was also advertising a rear beer garden on social media.
- b) That the noise was travelling and causing him nuisance in his garden.
- c) He was concerned that an increase in patrons to 110 would cause further noise concerns.
- d) That centrally it was a change of use; yet another bar in Boldmere.
- e) That they received a formal notice back in 2012 and the premises approached him at his home. He told them back then that he was not happy.
- f) That he had been over to the premises on two separate occasions to tell them the noise levels were too loud and causing him issues.
- g) That he had spoken to the planning advisor and they told him that there was no planning for the rear garden.
- h) That the noise was a concern, due to his home being so close.
- i) That he had lived there for 30 years and had seen the increase in restaurants and pubs in the area. Crime and disorder and anti-social behaviour had all increased and gangs of young people were causing a nuisance.
- j) That the premises could become a disco or “whatever”.
- k) That the fence was moved to being 15 meters away from his property, when it was supposed to be 20 meters away.
- l) That the application was for music and drinking both inside and outside.
- m) That the operating times needed certifying, rather than being left to interpretation. The application stated 2300 hours, yet the premises had said today that it would be 2200 hours closing.
- n) That another group of neighbours were unable to make it, but they were making representations on their behalf.
- o) That he would prefer this development not to happen and they wanted to do their best to make sure that it was as least disruptive as possible.

In answer to Members questions, Mr Mervyn Ricketts made the following points:-

- a) That he could only reiterate what had been said.
- b) That the acoustic fencing had been put in place and it was 9 feet tall.
- c) That sound travelled.
- d) They had recorded a Mexican Restaurant further up the road as they could hear everything from their bedrooms, and it was being investigated.
- e) That the licenses that are granted get abused.
- f) That alcohol fuels problems.
- g) That they would have liked the opportunity to speak with the premises before today.
- h) That they had experiences noise nuisance even with the fencing.
- i) That when he had a marque up in his garden he went and told the neighbours, the premises should have come and spoken to the residents.
- j) That the only meeting they have had with the premises was back in 2012.

In answer to Members questions, Mr Jeff Turner made the following points:-

- a) That he was not aware of the 2012 application, so was unable to object.
- b) That when they had spoken with Philippa she had advised the residents that nothing would go beyond 2100 hours, however, now the application said 2300 hours. Therefore, there are contradictions.
- c) That he lived at number 3.

At this juncture, Mr Turner requested that the Sub Committee view some photographs of the acoustic fencing.

The Chairman approved the request and the photographs were shown to all parties.

In summing up, the residents, made the following points:-

- a) That they were worried about noise levels.
- b) That they had big concerns due to the local Mexican Restaurant.
- c) They were worried about noise interrupting sleep.
- d) Concerned about the noise extending into the house.
- e) That there was a patron in the garden the other day who had a

horrendous “cackle” and it was awful.

- f) That they didn’t want to spend their evenings complaining.

In summing up, Mr Matthew Goode, on behalf of the premises, made the following points:-

- a) That they felt the application should be approved to help their operation.
- b) There had been no issues for 6 years.
- c) That the comparison to the Mexican restaurant was unfair, as they had much later opening hours.
- d) That they had complied with planning and felt that if they could satisfy planning, they could satisfy licensing.
- e) That they had a long history of no issues.

At 1237 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1315 the meeting was reconvened and all parties were invited to rejoin the meeting. The decision of the licensing sub-committee was announced as follows:-

6/250718

RESOLVED:-

That the application by Philippa Goode for a premises licence in respect of THE DELI IN BOLDMERE, 60B-60C BOLDMERE ROAD, SUTTON COLDFIELD B73 5TJ, **BE GRANTED** subject to the following conditions, to promote the licensing objectives in the Act:

- CCTV shall be installed to cover the whole of the licensable area, to the satisfaction of West Midlands Police.
- The premises shall arrange for door staff to be employed at the premises.
- There shall be no regulated entertainment involving live or recorded music, sound or speech in the outdoor area to the front of the building on the Boldmere Road façade.
- There shall be no regulated entertainment involving recorded music, sound or speech in the outdoor area to the rear of the building.
- There shall be no live amplified music, sound or speech in the outdoor area to the rear of the building .
- Live music in the outdoor area to the rear of the building shall not be provided between the hours of 21.00 and 10.00.
- There shall be no speakers used for amplified music, speech

- or sound outside the building.
- The outside area to the rear of the building shall only be used between the hours of 09.00 and 21.00 hrs and the DPS or other nominated person/staff, shall monitor the external areas and ensure that all patrons vacate the area by 21.00.
- The bar in the outside area to the rear of the building shall only be used for the sale of alcohol between the 09.00 and 20.30.
- All external doors and windows shall be kept closed after 22.00 during regulated entertainment except as necessary for safe and effective access and egress.
- No drinks shall be removed from the premises (as defined by the plan delineating the licensed area) in open containers.
- No waste or recyclable material, including bottles, shall be moved, removed or placed in areas outside the premises building between the hours of 22.00 and 08.00.
- There shall be no tables, chairs or customer access within 20 metres of the boundary with 1 Redacre Road.

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.

The Sub-Committee's reasons for imposing these conditions are due to the submissions made by local residents and by Environmental Health regarding the location and impact of the proposed operation, in particular the likelihood of public nuisance.

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 public nuisance, or risk to the other licensing objectives, arising from the proposed operation of the premises. They had sold alcohol by retail for six years without problems. The majority of the clientele were families, and in any event the premises was certainly not frequented by patrons interested in the 'lad culture' of heavy drinking. They trained their staff carefully, and the owner's adult son had recently become a personal licence holder himself, in order to take on more responsibility. They had followed all the advice given to them by the City Council's Planning and Environmental Health departments. Noise attenuation measures, such as extremely high fencing and a bund, were already in place, to the satisfaction of Environmental Health. The owner and her adult son had been in contact with the objectors and had endeavoured to cooperate with them, for example by giving them their personal telephone numbers.

Three local residents attended to make objections. However it became apparent during the course of the meeting that the cause of much of the annoyance expressed by the objectors appeared to be the operation of an entirely separate restaurant premises in the vicinity, unconnected to The Deli in Boldmere. After hearing the

submissions of the three local residents, it was clear to the Sub-Committee that the other premises, which offered a DJ and music beyond 00:00, was responsible for the noise disturbance and lack of sleep about which the objectors were complaining. The instant premises was a 'deli' style restaurant; the owner and her son wanted to expand their business into the garden. They had displayed a responsible attitude to alcohol sales and a good track record of cooperation with Environmental Health.

The concerns of the persons making objections were taken into account by imposing suitable conditions, including some approved by Environmental Health, which would allay residents' apprehension about the potential for disturbance from arising in connection with the proposed operation of the premises. The Sub-Committee considers the conditions imposed to be appropriate, reasonable and proportionate to address concerns raised.

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 and the objectors.

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

7/250718 There was no urgent business.

EXCLUSION OF THE PUBLIC

8/250718 **RESOLVED:**

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:-
(Paragraphs 3 & 4)
