

BIRMINGHAM CITY COUNCIL

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| LICENSING SUB-COMMITTEE B 17 JANUARY 2017 |
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY, 17 JANUARY 2017 AT 1130 HOURS IN COMMITTEE ROOM 1, COUNCIL HOUSE, BIRMINGHAM

PRESENT: - Councillor Dring in the Chair;

Councillors N Ali and Moore

ALSO PRESENT

David Kennedy – Licensing Section
Bhupinder Nandra – Licensing Section
Tayyibah Daud – Licensing Section (Observer)
Joanne Swampillai – Legal Services
Victoria Williams – Committee Services

MEETING START TIME

- 1/170117 As the first case had been withdrawn (Minute No 4/170117 refers), although the meeting had originally been scheduled to start at 1000 hours, it commenced at 1130 hours.
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NOTICE OF RECORDING

- 2/170117 The Chairman advised the meeting, and the Sub-Committee noted, that members of the press/public may record and take photographs except where there were confidential or exempt items.
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APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/170117 Apologies were submitted on behalf of Councillor Clinton. It was noted that Councillor Dring was the nominated Member.
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MINI EXPRESS CONVENIENCE STORE, 1162 STRATFORD ROAD, HALL GREEN, BIRMINGHAM, B28 8AF – LICENSING ACT 2003 - PREMISES LICENCE GRANT

- 4/170117 Members were advised that representations had been withdrawn and therefore there would be no hearing in respect of Mini Express Convenience Store.

**SD NEWS, 23 QUINTON ROAD WEST, QUINTON, BIRMINGHAM, B32 2QA –
LICENSING ACT 2003 - PREMISES LICENCE GRANT**

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

(See document No 1)

On behalf of the Applicant

Mr S S Athwal – Applicant
Mr P Burke – PMB Licensing

The Sub-Committee was advised that Councillor Gregson (Quinton Ward), who had made a written representation objecting to the proposal, was not present.

The Chairman introduced the Members and officers present and explained the hearing procedure.

The main points of the report were outlined by Bhapinder Nandra, Licensing Section.

Mr Burke, on behalf of the applicant, and Mr Athwal, the applicant, made the following points:-

1. Mr Athwal's family had run the shop for many years. He had been running the business for the last eight years.
2. There had been no objection received from the police or any other responsible authority. Permission for a licence was only being sought for the current operating hours of the shop.
3. Local residents had signed a petition in support of the proposal.
4. Mr Athwal was an active participant in the local community.
5. The objection by Councillor Gregson, a local ward councillor was based on speculation rather than evidence. There was no history of anti-social behaviour.

In response to questions from Members of the Sub-Committee, those attending on behalf of the applicant made the following points:-

1. There was a church opposite the shop and a laundrette next door.
2. The clientele was changing and footfall had dropped. Mr Athwal hoped that permitting the sale of alcohol would increase the number of customers visiting his shop.

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3. Mr Athwal had worked in his brother's shop in Wolverhampton where he had gained experience in selling alcohol.
4. Mr and Mrs Athwal and one other assistant worked in the shop. There were always two people on duty in the shop.
5. Mr Athwal would be responsible for purchasing alcohol and stressed that he would only use reputable cash and carry outlets.
6. Spirits would be kept behind the counter.
7. Mr Athwal was unable to provide any information regarding how much alcohol he expected to sell.
8. Mr Athwal assured Members that he did not intend to sell cheap alcohol at a giveaway price. He would sell alcohol at the recommended price.
9. Mr Athwal sold travel cards. Some customers, first thing in the morning and also after school, were children. However, he sold cigarettes and therefore already adopted an 'over 25 policy'.
10. A CCTV system which had eight channels was installed within the shop.
11. Mr Athwal had set up the petition and a copy had been available in the shop for customers to sign if they wished.
12. Mr Kennedy, Licensing Section, advised that some petitioners had only provided a postcode for their address.
13. Mr Burke had tried but had been unable to speak with Councillor Gregson prior to today's meeting concerning his objection to the application.
14. Mr Athwal agreed that, if a licence was granted, a condition be included regarding the advertising and sale of cheap alcohol.

Mr Burke, on behalf of the applicant, made a closing submission pointing out that Mr Athwal was only requesting a licence for the current operating hours of the shop.

At 1155 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:-

5/170117 **RESOLVED:-**

That the application by Mr Satinder Singh Athwal for a premises licence in respect of SD News, 23 Quinton Road West, Quinton, Birmingham B32 2QA be granted subject to the following conditions to promote the prevention of crime and

disorder, public safety, the prevention of public nuisance and the protection of children from harm objectives in the Act:

1. All the operating conditions as per the application received on 18 November 2016.
2. No advertising of special offers of alcohol, or promotions of cheap alcohol, to be displayed such that they are visible outside the premises.

The Sub-Committee took into account the written representations made by a Ward Councillor objecting to the application. They also noted that a petition in support of the application had attracted many signatures from customers of the shop.

The Sub-Committee also took into account that there had been no application to extend the operating hours. The premises are already trading from 0600 hours to 2100 hours. In addition the applicant confirmed that there has been no anti-social behaviour associated with the premises, and no Police involvement.

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, risk of crime and disorder, risk to public safety or risk to children arising from the proposed operation of the premises.

However any concerns about the proposed operation were taken into account by imposing suitable conditions that would allay apprehension/fear about the potential for nuisance.

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

In addition to the conditions shown above, 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 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.

**BEORMA, 5 FLEET STREET, BIRMINGHAM, B3 1JP – LICENSING ACT 2003
– TEMPORARY EVENT NOTICES**

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

(See document Nos 2-5)

On behalf of the Applicant

Mr S Bonnington – Applicant
Mr R Cowley – Barrister, No8 Chambers
Mr T Rashid – Witness

Making Representations

PC Rohomon – West Midlands Police
Mr P Samms – Environmental Protection Officer, Birmingham City Council

The Sub-Committee was advised that the applicant and those making representations had agreed that the four temporary event notices (TENs) in respect of events scheduled to take place on 21, 28 January, 4 and 11 February 2017 at Beorma, 5 Fleet Street, Birmingham, B3 1JP be considered together.

The Chairman introduced the Members and officers present and explained the hearing procedure.

The main points of the reports were outlined by David Kennedy, Licensing Section.

Mr R Cowley made the following points:-

1. He referred to an incident that had taken place on 13 March 2016 which had resulted in the premises licence in respect of Beorma being revoked. Zafran Rashid was the Premises Licence Holder at the time of the incident. Beorma had subsequently been operating under a number of TENs as a premises licence was not currently in force.
2. The previous Premises Licence Holder, Zafran Rashid, would not be involved in the running of the temporary events.
3. Tariq Rashid, Zafran's Father, had taken over the running of the club and Mr Bonnington would be appointed to deal with promotion and management etc.

Mr Cowley wished to submit new evidence to prove that Tariq Rashid was now responsible for running Beorma. However, PC Rohomon considered that the information should have been made available prior to today's meeting.

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At 1346 hours the Sub-Committee adjourned to seek legal advice and consider whether the new evidence should be permitted. 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 1350 hours. The Chairman advised that the Sub-Committee had agreed to accept the new evidence a copy of which was made available to PC Rohomon and Mr P Samms.

Mr Cowley, on behalf of the applicant, continued with his presentation and the following were amongst the points made:-

4. Nozomi, the business run by Zafran, Mr Rashid's Son, although next door to Beorma was completely separate.
5. Tariq Rashid was a solicitor who had no knowledge or experience in how to run a club or bar. Mr Bonnington would be responsible for the management of the temporary events.
6. Mr Bonnington had experience in the licensing trade including working as a general manager and designated premises supervisor.
7. All customers would be searched, scanned and required to provide ID to confirm their age ie over 18 before being admitted to the events.
8. Customers would be required to book in advance and a guest list would be available.
9. There would be no more than 10 VIP tables with a maximum of 10 people per table.
10. Bottles would be allowed on the tables.
11. Every table would have a security guard.
12. A maximum of 10 people at any one time would be allowed in the smoking area.
13. No alcohol would be allowed in the smoking area.
14. The downstairs bar would be used as a 'holding area' for people wishing to leave the event and taxi marshalls would be employed. Customers would be encouraged to leave the premises quietly and without disturbing local residents.

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Those present on behalf of the applicant, in response to questions from Members of the Sub-Committee, made the following points:-

1. Beorma and Nozomi were two completely separate businesses. However, they were financially linked and there was one lease.
2. The lease was still in Zafran's name. However, Tariq explained that steps were being taken to amend the name on the lease to his own.
3. Zafran would have no authority and no reason to be involved in the temporary events. Mr Bonnington would run the temporary events and would therefore be responsible for ensuring Zafran did not enter the premises.
4. Beorma and Nozomi were adjacent premises but had separate doors.
5. Tariq understood the importance of complying with the Licensing Act 2003 if the temporary events went ahead.
6. There had been discussions with appropriate officers regarding noise control and the use of limiters.
7. Mr Bonnington resigned from working at the Vaults Restaurant and Bar in April 2016 as he was ambitious and wished to progress in a different direction. Initially, he was not fully aware of the incident that had occurred at Beorma in March 2016 and the fact that the premises licence had been revoked.
8. There was a shared smoking area for Beorma and Nozomi.
9. Polycarbonate glasses would be used at the events.
10. Fifteen security staff would be employed for the events.
11. Mr Bonnington expanded on the details of the proposed events.
12. On-street parking was available. There were no parking spaces at the premises. Mr Bonnington suggested that on-street parking should be restricted during the events.
13. The events would be advertised via social media.
14. Customers would be admitted at the discretion of the door supervisor and Mr Bonnington. Customers should not be queuing outside the premises awaiting admittance.
15. Freedom Security would handle the security of the building. Eight waitresses and four bar tenders would also be employed.
16. There would be no food available on the premises.

17. The capacity of the premises was 230.

PC Rohomon and Mr P Samms, making representations, made the following points:-

1. The applicant had advised that the business was under new ownership. However, Companies House still had Zafran Rashid registered as the owner. There was no evidence to prove that the ownership had changed.
2. Although four temporary event notices were being considered today, a fifth which had been proposed to take place on 14 January 2017 had been considered as late and, therefore, had not proceeded to a hearing. However, a counter notice had been served and the event had not been held.
3. The Sub-Committee heard details of the incident which had led to the premises licence in respect of Beorma being revoked.
4. Beorma was next door to Nozomi, which was run by Zafran Rashid.
5. The premises had a shared smoking area.
6. The applicant had rushed into trying to re-open Beorma via temporary events.
7. There was concern that, if the events went ahead, Beorma would fail to comply with the licensing objectives.
8. Mr Samms was concerned that the granting of a temporary event notice would undermine the licensing objectives for the prevention of public nuisance.
9. There were residential buildings nearby and there was concern that if an event was held at Beorma that there could be noise nuisance from patrons using the outside smoking area and also when entering and leaving the premises.
10. There was concern that music would be heard outside the premises. It was important to contain the noise within the building.
11. Environmental officers would prefer the windows of the building to be completely blocked to prevent noise escaping from the premises. However, planning officers were concerned that blocking the windows would have a detrimental effect on the appearance of the building which was in a conservation area.
12. The lobby area needed to be completely enclosed and rear door security was essential in order to prevent noise from escaping.

13. Environmental officers had not been given the opportunity to carry out an inspection and, therefore, there was no way of knowing whether the noise limiter was compliant or had been installed properly. It was too short notice and would be difficult to check the equipment prior to when the events were scheduled to take place.
14. The premises were in the wrong location, too near to residential properties.

In response to questions from Members, those making representations made the following points:-

1. PC Rohomon was not confident that anything had changed or improved since the premises licence was revoked and he was concerned that if the temporary events went ahead they would fail to comply with the licensing objectives.
2. Only on-street parking was available.
3. There had been one other objection received regarding the temporary event notices.
4. There had been seven objections received regarding the premises licence.

All parties were given the opportunity to sum up and at 1510 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 1605 hours and a summary of the decision of the Sub-Committee was announced. All parties were advised that the full decisions/counter notices, one for each date, would be forwarded to them within five working days.

Although a separate decision/counter notice would be sent to the proposed premises user/organiser for each date, in order to save repetition, it has been set out once as follows with all the dates highlighted in bold:-

6/170117 **RESOLVED:-**

That, having considered the objection notices from West Midlands Police and Environmental Health in respect of the Temporary Event Notice as submitted by Mr Steven Bonnington, the proposed premises user/'Organiser' for the events to be held on: **21 January 2017, 28 January 2017, 4 February 2017 and 11 February 2017 at Beorma, 5 Fleet Street, Birmingham, B3 1JP**, this Sub-Committee determines that a Counter Notice be issued for this Temporary Event Notice under Section 105 of the Licensing Act 2003.

The Sub-Committee's reason for issuing the Counter Notice is to prevent the event from taking place to promote the prevention of crime and disorder, and the prevention of public nuisance, licensing objectives in the Act.

The Sub-Committee were greatly concerned that to allow the event would run a high risk of the premises being a focal point for crime and disorder in connection with the proposed event. They heard a very strong objection from West Midlands Police which was made on the basis that the proposed management arrangements remained too similar to those which had applied before, and which had resulted in a firearms incident taking place in the vicinity of the premises.

West Midlands Police also reported that there had been inadequate engagement between the premises and the Police. Given the previous history it would be expected that the premises would seek advice from the Police in advance of submitting any Temporary Event Notice. The Sub-Committee determined that the event was not capable of promoting the crime and disorder objective.

In addition the Sub-Committee were of the opinion that allowing the event to proceed at the premises would cause unnecessary disturbance to neighbouring residents, particularly due to the close proximity of residential properties.

On hearing the representations from Environmental Health, the Sub-Committee considered that there was a high risk of noise nuisance arising in the early hours of the morning - as a result of noise breakout from the premises, and the noise of patrons leaving the premises. The Sub-Committee accepted the Environmental Health Officer's view that the premises had rushed into serving the Temporary Event Notice without consulting Environmental Health. Given the previous history it would be expected that the premises would seek advice from Environmental Health in advance of submitting any Temporary Event Notice. The Sub-Committee determined that the event was not capable of promoting the prevention of nuisance objective.

Although due regard was given to the applicant's representations, the Sub-Committee were not at all confident that the proposed event could run well, or that the applicant could overcome the strong objections raised by both West Midlands Police and Environmental Health.

The Sub-Committee were satisfied that, on the balance of probabilities, both crime and disorder and public nuisance would arise in connection with the proposed event at the premises, due to its history of very poor management and problem clientele.

Members were not persuaded that there was sufficient separation between the proposed management arrangement and the previous management. They heard from the current Director, who had arranged for an Organiser to run the proposed event. Members were very concerned that the Director was the father of the previous Manager (who had been in charge at the time of the firearms incident). They heard submissions from the Director that, notwithstanding that they were

father and son, the previous Manager had no current involvement with Beorma. The Director explained the arrangements to Members, namely:

- A Lease had been taken for the whole unit, which comprised Beorma (a nightclub premises) and Nozomi (a restaurant premises).
- The father had a financial interest in the Lease – as the sole Director and sole shareholder of TMR Ltd – although he had no involvement in management for either of these premises.
- The son had been the owner and Manager of both of these premises, with responsibility for the day-to-day running of both premises.
- Following the firearms incident and subsequent revocation of the Premises Licence for Beorma, the son had had no involvement with Beorma, and instead was responsible only for the Nozomi Restaurant.
- As the son was now entirely removed from any management responsibility for Beorma, an experienced Organiser had been appointed to run Beorma. This person was no relation to the Director or his son, and he had been appointed because he had several years' worth of previous experience in the licensed trade, in Birmingham and also Manchester, including as a Designated Premises Supervisor.
- The only connection between Nozomi and Beorma was the Lease, and the father's financial interest in both businesses. Attempts were under way by the Director to separate the Lease, such that only Nozomi would be retained. He had instructed solicitors to negotiate this with the head Landlord.
- A lesson had been learnt from the revocation, and the Director understood that protection of the public is important.

Whilst the Sub-Committee considered these submissions carefully, they were not convinced that there was a true separation between the previous and current management arrangements. The Director admitted that there was and always will be a financial connection, due to the Lease and the investment, and this did not unduly concern Members. However Members were mindful of the family relationship of father and son, and were therefore not persuaded that there could be complete separation.

In addition, and far more seriously, the two premises are connected by doors which can be opened, there was a shared smoking area for patrons of both premises, shared Security Guard arrangements for both premises, and so on. Despite the assurances given to Members by the Organiser, namely that he would ensure that there would be no involvement by the son in the event, Members felt that there was a significant risk that this could happen, and given the previous history, they felt that such a risk was unacceptable.

Members heard from the proposed premises user/Organiser, who had submitted the Temporary Event Notice. Given his previous experience, Members were surprised at the inadequate standard of the Notice, which had not included a map or plan, and observed that the Notice even included several blank spaces where

no detail was given. They found this worrying. On the Notice, the event was called a 'discotheque' in one box, but a 'late lounge/cocktail bar' in another box, and Members had to seek clarification from the Organiser in the hearing.

When the Organiser addressed the Members he admitted that he had not discussed the security arrangements with Police, which Members considered extraordinary in the light of the fact that the premises has previously attracted patrons with firearms.

On other issues, the Organiser seemed to Members to be unprepared. Regarding the issue of parking, the Organiser stated that "if he were advised to" barricade off the on-street parking area, he would be prepared to do so; however Members felt that he should have sought such advice well in advance of submitting the Notice, especially given that previously a firearm had been discharged in the street outside the premises.

West Midlands Police observed that, in the light of the premises' troubled history, in their view "the first person they should have asked" before submitting the Notice was the Police. Members agreed that this should have been the correct course.

West Midlands Police also made other observations – namely that there had been no plan to isolate the two business premises to make them truly separate from each other (Beorma was still connected to Nozomi by means of doors that could easily be opened, which the Sub-Committee considered quite unsatisfactory). The Police also made representations about the Organiser's previous conduct - namely that an event at other premises, where the Organiser was the DPS, involving an appearance by a controversial rap artiste from America, was not notified to the Police by the DPS, even though such an event had an obvious and significant risk element due to the likelihood of crime and disorder.

This failure to notify had given the Police little confidence that the Organiser understood the importance of engaging with the Police in advance where trouble was a possibility. Police drew a parallel with the past failures of the Beorma management (regarding their clientele and use of firearms) which had resulted in the revocation of the Premises Licence. Members agreed with the Police views.

The Sub-Committee also heard from the Environmental Health Officer who stated that he would have expected the Organiser to make arrangements to deal with noise issues in advance of submitting the Notice. These arrangements should have included the appointment of a Noise Consultant, implementation of a Noise Limiter system, the blocking off of the windows, and the use of a DAT Recorder. No such arrangements had been made by the Organiser, and accordingly Environmental Health did not feel at all confident that he had taken such issues seriously. Members agreed with the Environmental Health Officer's views.

The Sub-Committee therefore determined that it would be appropriate to reject the Temporary Event Notice, for the promotion of the prevention of crime and disorder & prevention of public nuisance licensing objectives in the Act.

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The Sub-Committee gave regard to the evidence, argument and submissions placed before it, in addition to the report, and also the Section 182 Home Office Guidance, and the Council's own Statement of Licensing Policy.

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. No appeal may be brought later than five working days before the day on which the event period specified in the Temporary Event Notice begins.

The meeting ended at 1610 hours.

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CHAIRMAN