

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A,
MONDAY 16 SEPTEMBER,
2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 16 SEPTEMBER, 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Diane Donaldson and Maureen Cornish.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Louisa Nisbett - Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/160924 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/160924 **DECLARATION OF INTERESTS**

Members were reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

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If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/160924 An apology was submitted on behalf of Councillor Ziaul Islam. Councillor Diane Donaldson was the nominee Member.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – SERENITY
COCKTAIL BAR AND CAFÉ, 118 BOLDMERE ROAD, BOLDMERE, SUTTON
COLDFIELD, B73 5UB**

4/160924 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On behalf of the Applicant

Jowayne Taylor – Applicant
Kerry Cox – Agent for Applicant
Scott Winters - DPS

Those Making Representations

Helen Powell
Sarah and Steven Say
(It was noted that Diane Anthill had withdrawn her representation this morning and would not take part in the meeting)

* * *

The Chairman introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

The Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present the report. David Kennedy, Licensing Section, outlined the report.

The Chair then invited the applicant to make their submission. Kerry Cox, Agent for the Applicant made the following points on their behalf: -

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- a) Kerry Cox, Agent for the Applicant introduced Mr Taylor, Applicant and Mr Winters, the proposed Designated Premises Supervisor (DPS) who were present.
- b) Mr Taylor was already a Premises Licence Holder and had experience of managing the same type of café/lounge venue.
- c) The proposed DPS had extensive experience in the trade. He had held a personal licence for eight years and had run his own hospitality company for the last 15 years. He also had experience of working for Environmental Services and had run a number of corporate, business and private events on a weekly basis.
- d) They had worked with Environmental Health to consider the representations made by themselves and residents. The Applicant had agreed to a condition suggested by Environmental Health prior to the meeting to remove the provision of regulated entertainment (both indoors & outdoors) from the scope of the application and this condition had been agreed between themselves and Environmental Health.
- e) Kerry Cox reminded the Sub-Committee of paragraph 9.12 of the Guidance issued under section 182 of the Act, which advised that the responsible authorities should be the main source of advice as they were the experts in their respective fields. Environmental Health had now withdrawn their representations. There was now therefore no representation made from any responsible authority in relation to the grant.
- f) Kerry Cox made reference to antisocial behaviour, noise pollution and the protection of children in relation to the representations made. She spoke about the Temporary Event held on 21-22 June, 2024 whereby the road had been closed off to hold a Festival in agreement with the local authority. There had been around 60 vendors operating on the street and also a brass band playing music, however only this premises had been targeted to make representations against in terms of responsibility for the issues. There had been no objection to any other temporary events held during the summer.
- g) Prior to the application being submitted the applicant and the proposed DPS had attempted to engage with local residents and offered to replace the fencing with a particular type of fencing that would limit the noise, making it slightly higher and planting foliage to reduce travel of the noise, but those suggestions had not been taken up.
- h) The premises had been called Serenity for a reason and this was reference to a state of being calm, peaceful and untroubled, which was the intention of this café/lounge.
- i) In response to a question Kerry Cox, Agent confirmed that the entrance would be at the front of the property and the exit at the rear. The rear entrance would only be used for emergencies. There was a car park at the rear of the premises which the applicant did not have control over, but in terms of the applicant's

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premises specifically, the rear would be an emergency exit only, and no members of the public would have general access to use the exit.

- j) It could be confirmed that the applicant did not intend to install a new kitchen.
- k) They planned to fit a security gate at the end of the wall and fence at the back as it had been identified as a security issue. Tesco had replaced the fencing and wall and there was no other access point. Access via the gate will be for staff only.

The Chair then invited Helen Powell, local resident to make her presentation. During her presentation she made the following points:-

- a) She was pleased to hear about the security gate. She lived over the road and at the back of the premises.
- b) She was concerned about the arrangements for litter/waste collection. Following the festival in June the rubbish had been left for 2 weeks. She hoped that there would be bins for the premises. There was rubbish left at the back of the premises this morning.

The Chair then invited Sarah and Steven Say to make their representations. During their presentation they made the following points: -

- a) They had listened to the proposed DPS about his experience which they did not think was apparent owing to the issues. They had made a complaint on 21 and 22 June 2024 when there had been significant noise after 1800 hours when the festival had finished and they also had a video showing this.
- b) In relation to the number of complaints, they had complained to Environmental Services a number of times. They had referenced the worst occasions. On some occasions they were away from their property. If this is permanent they live there and will be affected. As soon as there were customers at the back of the premises this led to noise.
- c) The vendors had not had any engagement with them about any noise measures or replacing the fence.
- d) The name Serenity was irrelevant. There would still be noise and there was evidence that there had been extreme noise and antisocial behaviour.
- e) With regard to the kitchen, they would like to know what the people on site in a horse type vehicle were doing. They needed a guarantee that no food would be served onsite. The space at the back was not wide enough for vehicles and for a car park and vendors. The use of vendors would result in noise and pollution,
- f) The rear of the property was close to two junctions. They were concerned there would be an accident in the future. Quite thick fencing would be needed also was there any planning permission for the gate proposal.

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- g) They lived at the neighbouring property to the back of the property separated by a small fence. They had 3 small children and she spoke on their behalf. They were not sure what measures were being put in place to manage the noise. They were affected because of their proximity to the premises.
- h) They hear the noise from other properties operating outside until 2100 hours such as the Lounge, however they were 20 metres away with trees or woodland separating the outdoor seating from neighbouring gardens.
- i) Any noise will affect them when there were customers in the outside space. The June events were unbearable and unpleasant for them and their wellbeing. Even when the doors were closed they could hear the noise as soon as they were opened.
- j) There was litter from the premises who have inadequate waste arrangements. The trust between them and the premises had been broken down and other people in the community felt the same. They did not believe there should be any business at the back at all and the doors should be kept closed.
- k) Even with the windows closed the children could not get to sleep as they could hear the noise.
- l) They urged the Sub-Committee to reject the application on the grounds of the protection of children, public nuisance, crime and disorder and their safety.

The Chair invited Helen Powell to make a closing submission however she said she had nothing more to add.

The Chair then invited Sarah and Steven Say to make a closing submission. They also had nothing more to add.

The Chair then invited the applicant to make a closing submission. Kerry Cox made the following closing statements on behalf of the applicant:-

- They had taken onboard everything that had been said and wanted to address all the concerns working with residents going forward.
- There had been some WhatsApp messages sent regarding working with residents.
- The application had been scaled back. Environmental Services had visited the premises and additional conditions had been agreed with them. There had been 14 other TENS where no complaints had been made. No conditions were required for a TENS but for this licence if granted there would be been a lot of conditions agreed. .
- The licence for the Lounge premises included regulated entertainment until 0200 hours and the provision of regulated entertainment (both indoors & outdoors) this element had been removed from the scope of this application.

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- The Sub-Committee was invited to grant the application as they had addressed the concerns and representations that had been made.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session. A full written decision was sent to all parties within 5 working days as follows;

5/160924

RESOLVED:-

That the application by JSTN449 LTD for a premises licence in respect of Serenity Cocktail Bar and Café, 118 Boldmere Road, Boldmere, Sutton Coldfield B73 5UB, be granted as follows:

1. The use of the rear external area shall be prohibited until such time as:
 - the external area is clearly delineated, and
 - the installation of a gate, as offered during the meeting, is completed
2. Both of the conditions agreed between the applicant and the Environmental Health department of the City Council in advance of the meeting shall be adopted, namely:
 - the external seating areas shall only be used between 10.00 hours and 21.00 hours daily
 - there shall be a noise management plan produced by the applicant and agreed by Environmental Health for controlling noise in the external areas

The Sub-Committee noted that the request regarding the provision of regulated entertainment (both indoors & outdoors) had been removed from the scope of the application. 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 applicant attended the meeting in person, together with the proposed designated premises supervisor. They were represented by a licensing agent. The written representation submitted by the Environmental Health Department of the City Council (in the Committee Report) had been withdrawn, because the provision of regulated entertainment had been removed from the scope of the application and the two conditions suggested by Environmental Health had been agreed by the applicant before the meeting.

Further written representations were in the Committee Report at Appendices 2 to 10 of the report; of these, the representation at Appendix 6 had also been withdrawn since conditions had been agreed with Environmental Health. The person who had made a representation at Appendix 3, and the two persons who had made a joint representation at Appendix 7, attended the meeting in person to address the Sub-Committee.

The agent explained that the applicant was already a licence holder for another premises and therefore had experience of managing a café/lounge type venue. The proposed designated premises supervisor had extensive experience in the trade,

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as he had been a personal licence holder for eight years and had also run his own hospitality company for the last 15 years. His company ran a number of events across the year, including corporate events for businesses, private events for private individuals, festival bars and VIP areas. He was accustomed to dealing with different environments for events.

The agent explained that regulated entertainment had been removed from the scope of the application, after the applicant considered the representations that were received from local residents and Environmental Health. The conditions agreed with Environmental Health were in line with other premises in the vicinity.

The agent reminded the Sub-Committee of paragraph 9.12 of the Guidance issued under section 182 of the Act, which advised that the responsible authorities should be the main source of advice as they were the experts in their respective fields. She noted that Environmental Health had suggested conditions which they considered appropriate, and thereafter had withdrawn their representation. The Sub-Committee accepted this.

Moreover, regarding the representations received raising concerns about antisocial behaviour, noise pollution and the protection of children from harm, she observed that no representations had been made from any responsible authority. The Sub-Committee noted this.

She further observed that the applicant had held a number of temporary events; of these, only one had been mentioned within the representations received from the local residents. It was one which had been held from the 21st to the 22nd of June, and on that particular weekend the street had been closed off to hold a festival, in agreement with the local authority. There had been around 60 vendors operating on the street, and a brass band playing throughout the day and into the evening.

She felt that those making representations had not considered the fact that the event had been a street festival, and the issues mentioned had been caused collectively by all the other premises, and others who were invited for the day. It had been a local council event organised by the local people – yet those making representations were targeting one premises in terms of responsibility for the issues. There had been no objection to the temporary event, or indeed to any of the other temporary events in the summer.

Before the application had been submitted, the applicant and the proposed designated premises supervisor had tried to engage with local residents because they were aware of the history and the issues that had surrounded other local businesses in the area. They had offered to replace the fencing with a particular type of fencing that would limit the noise, making it slightly higher and planting foliage to reduce travel of the noise, but those suggestions “were never taken up and went no further”, said the agent.

The agent observed that the applicant had worked closely with the responsible authorities and had come to an agreement with Environmental Health. She also

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remarked that the premises had been “called Serenity for a reason”; she said that this was a reference to “a state of being calm, peaceful and untroubled”, which was “the intention of this café/lounge”.

The Members asked about egress and/or ingress at the rear of the premises. The agent confirmed that the entrance would be at the front of the property and the exit at the rear would only be used for emergencies. There was a car park at the rear of the premises which the applicant did not have control over, but in terms of the applicant’s premises specifically, the rear would be an emergency exit only, and no members of the public would have general access to come in that way. The agent also confirmed that the applicant did not intend to install a new kitchen.

The Chairman asked about the rear of the premises, where a rear alleyway led out on to the street, and asked whether there was anything to delineate the premises from that alleyway - any physical barrier or such. Those from the premises confirmed that the neighbouring property was Tesco. A new fence and partial wall had replaced a wall that had been falling down. The premises would be installing security gating once Tesco had finished their works. It would be “a six foot high gate”, and access via the gate at the rear would only be for staff, not patrons.

The Sub-Committee was aware that, under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk to the promotion of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact have an adverse effect on the licensing objectives when hearing from those who had made representations.

The local resident at Appendix 3 addressed the Sub-Committee. She was pleased to hear that there was to be a security gate between her road and the back of the Serenity premises. The other thing she was concerned about was the litter/waste after the festival in June. She hoped that there would be bins for the premises. She had seen that other premises in the area were a branch of Tesco, an Indian restaurant and lounge; she noted that all their waste went to the back.

The persons who had made the joint representation at Appendix 7 then addressed the Sub-Committee. They had heard the agent describe those from the premises as experienced operators, but did not feel that the experience was apparent, as there had been noise issues at the recent Boldmere Festival after 18.00 hours, which was when the event finished.

They had noted the agent’s remark about there not being any other objections to the temporary events, but said that they had only referenced the worst of the occasions.

They had also complained to Environmental Health “on many occasions”. They had not received written communication referencing the replacement of the fence or any other noise measures. Their principal concern was the potential for noise nuisance.

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They had noted a horse box type vehicle at the rear, and assumed that this might be used for food service; they were concerned that this could create noise nuisance. Regarding the confirmation that the rear would be for emergency use only, they felt that it was “simply not wide enough for significant vehicles to get down” and were concerned about tailbacks of traffic if anyone were to try to access it. They were also worried about general safety issues regarding their small children and the use of the alley by van drivers.

Their property was the immediate neighbour of the Serenity premises, and their house and garden backed onto the outside rear space of the premises, separated by a small fence. They understood that some adjustments had been made to the application, including measures to manage the noise. However, they remarked that they were “not sure there are any measures that could be put in place that would actually prevent us from being affected by the noise, purely because of the proximity of our house to this premises”. The Sub-Committee noted this.

They had noted that if the back door of another (separate) nearby premises was left open, they could hear noise and music emanating from inside that premises. They considered that an acoustic fence would not be sufficient, even though one had not been offered. Music was not the only issue; they felt that people outside drinking would be enough to disturb them. They further remarked that it would not matter if use of the outdoor space were to stop at 21.00 hours, as their children’s bedtime was earlier than this. Their other concerns were litter/waste, and the storage of new tables, chairs and other equipment.

They asked that the application be rejected in order to uphold the licensing objectives of the protection of children from harm, the prevention of public nuisance and the prevention of crime and disorder. They also considered that public safety was an issue.

When summing up, the applicant’s agent said that those from the premises had taken on board everything that the residents had said, and wanted to address their concerns and work with them moving forward. WhatsApp messages had been sent during the month of June to the residents, and those at the premises were keen for communications to continue.

The agent reminded the Members that the application had been scaled back considerably. There had been no representation from the Fire Service. Environmental Health had been satisfied by the adoption of some additional conditions onto the licence. The majority of the temporary events had not given rise to complaints. The Members noted this.

The agent further reminded the Members that if the licence were to be granted there would be conditions on it, unlike the temporary events in the summer. Regulated entertainment to 23.00 hours daily (00.00 hours on Bank Holidays) was no longer part of the proposal; this would have a significant effect on the anticipated noise levels.

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The agent assured the Members that the application addressed the concerns and the representations that had been received; she again reminded them to bear in mind the Home Office Guidance at paragraph 9.12 – namely that the responsible authorities were the experts with regards to any issues. The Sub-Committee accepted this.

When deliberating, the Sub-Committee noted that the issue that had most worried both Environmental Health and local residents was the potential for noise nuisance. This had been dealt with by the removal of the regulated entertainment proposal, and the adoption of the two noise measures suggested by the Environmental Health department.

Issues such as waste were less of a concern. The area was not solely residential, as it was apparent that various commercial businesses, such as retail operations and hospitality venues, were trading in the area. Those at the premises were experienced and had assured the Members that they were keen to work with neighbours. The Sub-Committee therefore considered that the applicant and his staff would not create issues with waste. Other aspects, such as traffic problems from van drivers' use of the alley, were beyond the remit of the Sub-Committee.

Two of the local residents had made it clear that there was nothing that could satisfy them in terms of the prevention of noise nuisance. The Members, however, were satisfied that the potential for the creation of public nuisance issues described by all the objectors (including those who had submitted written representations but had not attended the meeting) had been sufficiently addressed by the proposed conditions. The operating schedule was focused on the promotion of the licensing objectives – as was the responsible style of trading proposed.

The agent had reassured the Sub-Committee that the applicant intended to uphold the licensing objectives. There were no reasons to suppose that the crime and disorder objective was at risk, as the Police had not made a representation. All in all, the Members were satisfied that trading would be safe, and noted that all areas of concern had been satisfactorily addressed. The request for regulated entertainment had been removed; after careful consideration, the Sub-Committee determined that the application could safely be granted with measures regarding the use of the rear area, and the agreed conditions adopted.

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 application for a premises licence, the written representations received, and the submissions made at the hearing by the agent for the applicant, those from the premises, and the persons making representations.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

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The meeting ended at 1106 hours.

Chair.....