

BIRMINGHAM CITY COUNCIL

HEARING, 12:00, 11th August 2021

ZARA'S BAR, 80 BROAD STREET, BIRMINGHAM

TEN APPLICATIONS SUPPORTING DOCUMENTS

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Duncan Craig

From: Christopher Jones
Sent: 06 August 2021 14:44
To: Duncan Craig
Subject: RE: [External]: [Possible SPAM] RE: Licence conditions - Zara Bar - Broad Street

Duncan,

Yes, agreed.

I just wanted to be as transparent with the venue as possible.

Vicky has already phoned and assured me they are not opening, as you state.

Regards

Chris Jones 55410
Birmingham Central Licensing Team West Midlands Police

Preventing crime, protecting the public and helping those in need.

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From: Duncan Craig
Sent: 06 August 2021 13:52
To: Christopher Jones; vicky zara's
Subject: [External]: [Possible SPAM] RE: Licence conditions - Zara Bar - Broad Street

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Hi Chris

Intel comes in various different forms, and is of varying quality, some of it malicious, and my clear instructions are that on this occasion it is wholly wrong as the premises is not opening this weekend because they are unable to comply with that SIA ACS condition.

Kind regards,

Duncan Craig
Barrister



DUNCAN CRAIG



Citadel Chambers | 190 Corporation Street | Birmingham | B4 6QD

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From: Christopher Jones

Sent: 06 August 2021 12:13

To: vicky zara's ; Duncan Craig

<

Subject: Licence conditions - Zara Bar - Broad Street

Good morning,

West Midlands Police have received intelligence that Zaras Bar on Broad Street will be carrying out licensable activity this weekend.

While we are not saying this is true and you may have also appointed a new ACS approved company, it is incumbent on West Midlands Police to be open and transparent with licenced premises.

To this end West Midlands Police would like to remind the premises of their licence operating condition that when carrying out licensable activity the premises must use a SIA ACS approved company (full wording can be found on the premises licence)

If have appointed a new security provider that meets this licensing condition please let us know.

If the premises do carry out licensable activity in breach of the above condition there are several courses of action open to West Midlands Police including

- Premises licence review
- Prosecution
- Consideration on the evening of a ASB closure.

****Please forward to the premises licence holder as we do not hold a current email for them****

Regards

Chris Jones 55410

Birmingham Central Licensing Team West Midlands Police

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Duncan Craig

From: Duncan Craig
Sent: 06 August 2021 11:44
To: Birmingham City Council
Subject: RE: Freedom of Information Request from Duncan Craig

Hello

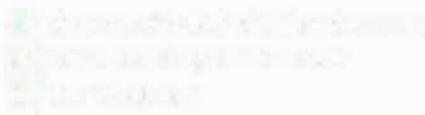
Ok, thanks for getting back to me so promptly after my request yesterday. The two FOI requests combined are as follows:

1. Could you please inform me of the number of premises licenses issued under the Licensing Act 2003 by Birmingham City Council that have a condition or conditions that require the licence holder to engage door staff from contractors approved by the Securities Industry Authority Approved Contractor Scheme (SIA (ACS)) and could you provide a list of those licence number(s) please. Could you please also inform me of the number of those conditions that were imposed after 5th September 2019 and which licence number(s) that applies to.
2. Could you please inform me of the number of premises licences that have been granted under the Licensing Act 2003 since 5th September 2019.

I would respectfully suggest these would be matters for your licensing authority to deal with.

Kind regards,

Duncan Craig
Barrister



DUNCAN CRAIG



Citadel Chambers | 190 Corporation Street | Birmingham | B4 6QD

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From: Birmingham City Council
Sent: 06 August 2021 10:29
To: Duncan Craig
Subject: Freedom of Information Request from Duncan Craig

Dear Mr Craig

I am writing further to your email below. We have checked on our system and cannot locate a request from you dated 2 August 2021. Can you please submit your requests to this email address.

Regards

Corporate Information Governance Team

Dear Sirs

Earlier this week, on Monday 2nd August, I made a Freedom of Information request. I have not had an acknowledgement to this and would appreciate confirmation it has been received. After sending it, I realised that I had omitted from it a request for information that would (I expect) form part of the workload for your colleague in the original request, namely to list the premises licences to which the request was made, rather than simply to number them. This was an oversight on my part for which I apologise. I know how tedious these requests can be, and I certainly don't want to make it any more difficult than necessary for you or your colleagues.

I have just made a second FOI request in those terms and would be grateful if you could also acknowledge receipt of this, as well whether you can confirm that both FOI requests will be dealt with together in order to save your colleagues any unnecessary work.

For the avoidance of doubt the second request was as follows:

'Further to the freedom of information request I made two days ago, could you please list the premises licences issued by Birmingham City Council that have the requirement as conditions on their premises licences to engage door staff from the Securities Industry Authority Approved Contractor Scheme (SIA (ACS)) in addition to the matters already requested.'

Please let me know if there is anything I can do to assist you in dealing with this request.

Many thanks.

Kind regards,

Duncan Craig

Barrister



Citadel Chambers | 190 Corporation Street | Birmingham | B4 6QD

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IN THE BIRMINGHAM MAGISTRATES' COURT

HEARING ON 5th MARCH 2019 10am to 7.40pm

ON APPEAL FROM BIRMINGHAM CITY COUNCIL LICENSING COMMITTEE

BETWEEN:

FIVE RIVERS 2 UK LIMITED

(ZARA'S BAR)

Appellant

-and-

BIRMINGHAM CITY COUNCIL

Respondent

APPROVED NOTE OF JUDGMENT

Appellant's Counsel: Duncan Craig

Respondent's Counsel: Andrew Evans

District Judge Qureshi:

1. I will start with some general observations. PC Rohomon was a good and persuasive witness. He clearly spent lot of time on this case and presented his evidence in a clear simple manner. In terms of interpreting the events shown on the various videos, the Court appreciates his efforts in explaining exactly what went on when the Court could not have reached that interpretation without his assistance. He is professional in the way he carries out his duties. I can understand how the Licensing Sub-Committee would have been persuaded by his opinions. The court wishes to commend him and asks the Respondent to pass this observation to his senior officer.

2. Mr Sangha does not present himself well in the witness box. He talks too much and comes out with quasi-conspiracy theories which undermine the importance of what he is trying to put across to the Court. I consider he has good points to make but they seem to be lost when he has an outburst about his adverse opinions about the police, the Licensing Authority and everybody else. The court acknowledges the devastating effect of a series of family losses that he has suffered in recent years. No one expects him to forget and move on, but if he is running a business, he must now keep his focus on his business if he is to cope successfully. He will have to demonstrate very quickly that he has learnt from this setback. He cannot delegate as much as he has in the past. He must be in the midst of all the decisions being made during the opening hours of the licensed premises for he can no longer pass the blame to employees and dismiss them. I have managed to take on board the serious points he wanted to make. He does lack some understanding of the bigger picture when it was presented to him by the police. He acknowledged kicking the gate in anger was something he ought not to have done. He explained his reason for it, namely the racial abuse he suffered from the bearded man. Whilst that explanation was rightly criticised as being new to this case, not having been mentioned to the Licensing Sub-Committee, I did consider it to be genuine. I saw new video evidence prepared by his legal team which cannot be fabricated as it was contemporaneous filming of the event on a bodycam. Vicky Sherwin was wrong to write inaccurate titles on these digital files as there was no admission by the bearded man that he used this behaviour. However, the contemporaneous remarks by the black doorman wearing a balaclava repeatedly telling the bearded man he had made racist comments lends credence to what Mr Sangha now says. This is an example of Mr Sangha trying to make good point. Only when assisted by direct evidence can his credibility be assessed as being truthful whereas his general comments about the police were simply surplus to requirements and of little value to the Court.

3. Vicky Sherwin was a good witness who dealt with all the issues to best of her ability, except for the poor choice of words for the title of the video clip. The Police relied on some inconsistency to her version of events related to PC Rohomon soon after the January incident. In my view, that is explained by the fact she was guided by Keiron's interpretation of events (later proved to be false) and she accepted it in same way as the Court was accepted PC Rohomon's interpretation of video. One can be over-critical of her but she had little information at that time. It was suggested she was complicit with Kieran in covering things up, but in my view she was not deliberately acting dishonestly but was misled by her staff. Those are my general comments about the three witnesses who gave evidence.
4. I make a general observation to the Licensing Sub-Committee. It appears odd to the Court that the same panel comprising of same members should sit on each occasion to hear representations by the Appellant trying to persuade them to change their minds about their earlier decision. The fact they did not change minds is not criticised by me. Our legal system could never envisage a situation where a judge, with all their legal training, is asked to reconsider a decision a second, third or fourth time because, in reality, human beings find it a difficult process to admit they are wrong and change their minds. I heard from Mr Craig that in other areas licensing panels are differently constituted and if such an option is available, perhaps the LSC might consider this to be an objectively fairer way to conduct their reviews, subject to any limitations they have as to panel members being available. As a minimum, perhaps changing at least one of the panel members on each occasion might give a greater impression of fairness. I emphasise that it is entirely a matter for the committee to decide how to conduct its own affairs.
5. In respect of the incident on 7th October 2019, staff were dealing with a complaint that a male had been assaulted. The staff called the police. The SIA doorman Chris Watson took the phone away and was looking at it. This is shown on CCTV. Video clips on the phone were deleted by Chris or someone else. Deputy Manager Jason was wrongly

accused as the person who took the phone. The criticism of staff is twofold. First, it was unprofessional for Chris to take a phone from a member of the public as that would potentially be unlawful. Secondly, he deleted footage and lied about it, hence such tampering with evidence can be considered as an attempt to pervert the course of justice. Fortunately, the deleted footage was recovered from the recycle bin of the phone by police. The matter concluded without charges against Chris Watson even though he was suspected of committing a robbery and perverting course of justice. It was, in my view correctly, accepted by the Respondent that this event alone would not have led to review before a Licensing Sub-Committee. This behaviour by Chris, who was SIA trained, does raise an interesting issue that the police might wish to raise with the SIA whether their training includes how to cope with members of the public filming them with mobile phones.

6. The second incident was on 15th December 2018. CCTV footage inside the premises shows a male being ejected for good reason. The staff did their job properly without using force or excessive force. The male was properly ushered out of the premises. That male returned with metal baton and made various threats to kill with a gun and he claimed to be a member of the Johnson gang, a notorious Birmingham criminal group. The Court accepts PC Rohomon's observation that the door supervisors were not intimidated by these threats or even when he pulled out a baton. The situation only escalated when one doorman lost his temper and goaded the male into a fight. Just prior to that Pete Sangha was present and made a gesture to his staff to go around the back of the male. In my view there was nothing wrong with that gesture. It would be better to surround the aggressive male, front and back, in the event that things got out of hand. What then happened cannot be imputed to the mind of Mr Sangha. The aggressive male entered into the fray, and Keiron, the Liaison Manager, placed him into a choke-hold. I accept PC Rohomon's opinion this was not an approved technique and not necessary. A number of staff members grabbed the male, carried him onto the premises and dropped him head first onto the ground. Mr Sangha now agreed in evidence that Keiron should not have dropped him to the ground in the way that

happened. No instructions were given to Keiron to do that. The man lay still on floor for a period of time. Mr Sangha had his attention drawn to a second bearded male. This bearded male was trying to make a video film and he was ejected. Mr Sangha was subjected to racist comments and kicked the fence several times. Staff ran after the bearded man who made off. Mr Sangha apologised for losing his temper, due to racism by that man. The Court accepts that explanation. Mr Sangha says he took out his anger on his own fence, not on a person or public property. The Court also accepts his comment about that.

7. The aggressive seems to have suffered a double fracture to his eye socket. Mr Sangha still refuses to accept this, and will not do so until he sees a medical report. He does not believe the male. Neither do the police because the male made a witness statement which has falsehoods in it. It is not important to make a finding about that injury. On the night in question the Court accepts Mr Sangha's comment that this man who was rendered unconscious for a short time was then able to sit on a bench for 40 minutes and talk to the Police. The Police did not take him straight to hospital as they did not suspect him to be injured. He was taken to a police station and on assessment by healthcare staff he was taken to hospital. That subsequent information cannot be imputed to Mr Sangha or staff present at the scene.
8. My observation is that the staff were dealing with a particularly difficult male, who was earlier ejected for good reason and returned with a weapon hoping for some sort of retaliation or revenge with the man from the toilets earlier on. Security staff cannot be criticised for the behaviour of someone ejected for good reason returning to seek revenge. Keiron can be criticised for his behaviour in the choke hold and dropping the male on his head. Mr Sangha cannot be criticised for kicking the fence in the difficult circumstances that he faced. In my view this event also should not be one that leads to a review or a suspension.

9. The third event was on 12th January 2019 and it is of greater concern. The same person Keiron was involved again, alongside some others - Tyson the Promoter, Marcus the Meet and Greet person, Jason the Deputy Manager. There is also Lammin, a doorman who picked up a stick (which was claimed to be a broom handle and was conveniently without the brush which therefore became an offensive weapon) and took it to the incident from inside the premises. What is clear from the video footage is that the so-called "victim" was refused entry and became the aggressor. He tried to kick Tyson who reacted proportionately in my opinion by only grabbing his foot and upending him so that he fell down. Tyson did not react any further such as punching him. The person who then punched him is Marcus Daniel, who was employed by premises as the Meet and Greet person. Marcus' behaviour was unacceptable since the male did not present any further threat when he was punched. The male lay on the floor for about 4 minutes. The door staff who were present did nothing to help him or render first aid. Clearly no street pastors were in attendance. Any suggestion by the staff that they were present has been proved to be a lie. Keiron's dismissive and arrogant attitude is demonstrated by his masturbating gesticulation, which tends to show the unsavoury type of person that he is. He is fortunate not to be registered with the SIA for the Court would ask this Judgment to be sent to them to reconsider his licence. As an aside, Mr Sangha is his friend and whilst the court does not consider it appropriate to impose a condition preventing Keiron being employed at the premises, Mr Sangha should be on notice that if Keiron is ever seen by police at the premises appearing to help the staff, Mr Sangha will have to take full responsibility for him.
10. The male on the floor eventually gets up and goes off. If nothing further had happened, I do wonder whether the premises licence would be suspended because the culprit is really the so-called victim himself, along with Marcus and Keiron. Both men have been dismissed by Mr Sangha. He has also dismissed Lammin the security guard who took the broom handle. Mr Sangha has not had further dealings with promoting events with Tyson. What we seem to have up to this point in time is there are a number of rogue employees (Chris, Keiron, Marcus, Lammin) who exceed their

duties. Keiron fabricated a story which was taken at face value and believed by Mr Sangha and Miss Sherwin. The excellent investigatory work by Pc Rohomon proved beyond doubt that Keiron's story was a web of deceit which bore little relation to real events. He claimed two groups were involved in a racially charged incident when there was no such thing. Mr Sangha could be validly criticised for not dealing with the whole situation of his employees in a better way, but I accept the full picture did not come out until all the footage was obtained and he has slowly become aware of the events of that night. Mr Sangha honestly explained that Keiron was his friend and he had believed him.

11. Just over an hour later, at 0020 hrs on 13th January 2019 a car arrived outside the licensed premises and stopped in the further carriageway. An incendiary device was thrown by its occupant; it may or may not be a petrol bomb but it was flammable. Reading the words in statements does not give the true flavour of what happened. Only on CCTV video can the Court see a busy street, with cars travelling in both directions, and members of public walking in the area. It was pure luck that no one was injured as a result of this event. A taxi driving in the inside lane narrowly missed being hit by the incendiary device.
12. The Police made checks about the car from which the incendiary device was thrown but it bore false nameplates. Mr Sangha struggles to find any connection between the two events. The Court is allowed to make inferences but should not speculate. The so-called petrol bomb was a serious reaction to something that happened. It is not a response to nothing or cannot surely be ascribed to any personality clash with an individual doorman with whom the perpetrator had an axe to grind. The clear and only inference to be drawn is that this was retaliation by the male who had been knocked out earlier in the evening. The court concludes this link between the two events despite Mr Sangha's protestations. However, in the court's view the bombing reaction was disproportionate and could not have been in the contemplation of any premises licence holder or DPS, and even the Police. It was such an odd thing to do. A rejected

customer returning with a metal baton or weapon may be foreseeable, but a petrol bomb is not. Mr Sangha referred to the boxer Floyd Mayweather and the bombing of his car outside the Park Regis Hotel but that was a targeted incident against the boxer and is nothing to do with licensed premises generally dealing with members of public. What Mr Sangha could have said but did not, because he loses his thread of thought, is that Mr Mayweather was in a licensed club whose manager collaborated in allowing certain behaviour (granting entry only to pretty females but not their boyfriends in order to pamper the boxer's ego, which could only be described as overtly sexist and repugnant behaviour, and which directly led to the revenge bombing incident). In that way, Mr Sangha could have validly compared the lack of any sanction of those premises to the sanction against him.

13. The person responsible for this incendiary device in Broad St has not been caught by police. I agree with Mr Sangha that this person should be locked up for many years if found guilty. The offence is extremely serious and is equivalent to a terrorist type offence. It would be covered under the Explosive Substances Act 1883, the charge is so serious it requires the Attorney General's consent to prosecute. To what extent can it be put onto the shoulders of Mr Sangha that this serious incident was foreseeable as a response to his staff's behaviour earlier on? The answer is it was obviously unforeseeable because it was beyond anyone's imagination that if ill-treated by a doorman who knocks him out, that person will come back and throw a petrol bomb towards the premises.

14. Mr Sangha said, and there is no evidence to the contrary, that he has highest standard of security in Broad Street. He has 105 CCTV cameras. 4 body cameras, a security arch, and a fence within a fence. He rightly claims these are far more than minimum security requirements. He says the Police cannot tell him to install any more than he has already because the security is so high. It is noteworthy that a lot of evidence against him originates from his own CCTV and bodycam film clips. If he was a dubious character, he could easily have lowered the level of surveillance and a lot of evidence would not appear. Despite this, no reasonable security measures can cater for a petrol

bomb. It is akin to a terrorist incident. The only way to deal with those threats are extreme measures (for example closing streets with barriers which some cities have done including Birmingham) to keep terrorists out of the area. If the police and the local authority felt another incident might take place, then their response could be to close Broad Street but they have not done that. In reality no one expects such an incident to occur.

15. I am left with the following conclusion about this case. Mr Sangha is trying to take serious responsibility to run a successful business and to promote the licensing objectives, but he is too quick to place responsibility on other members of staff. As he says, he employs staff to do the job. He relies on them without proper supervision by him. That is the main criticism that I would make against Mr Sangha. He must learn to accept that he carries an overall supervisory responsibility as PLH, whether he is present or not, and by being more involved perhaps his staff members might have ingrained into them a culture of honesty rather than feeling can they tell lies and get away with it.
16. The law requires a proportionate response to a problem that exists. Mr Sangha has dismissed staff. He retained Jason but demoted him and taken away his former responsibilities. The problems that have occurred arise from the refusal of entry to unsuitable people to a large club. If the doormen did not do their job properly, they would allow anyone inside and there would not have been these particular problems. The purpose of the proceedings is not to close a licensed premises in an area of Birmingham where all the premises are licensed, unless it is proportionate to do so. I accept it is appropriate to sanction Mr Sangha in some way but the suspension of his licence is disproportionate. Mr Sangha puts forward proposals to impose certain conditions on the licence and subject to some modifications I am minded to modify the interim steps by adding conditions (pending the final appeal in June) as being the proportionate disposal of this appeal.

17. The appeal is allowed, and therefore the suspension is rescinded with the following modification of licence conditions as interim steps to be imposed pending the resolution of the full appeal, and before the premises can commence licensed activity.

THE COURT ORDERS that the following conditions should be added:

- The PLH shall prepare a written risk assessment for the provision and deployment of door supervisors at the premises. A copy is to be served on West Midlands Police for their approval as an adequate risk assessment (such approval not to be unreasonably withheld) before the premises recommences any licensable activities.
- The premises shall provide at least one dedicated trained first aider, not within the door security staff, whenever licensable activities are being carried on.
- Save for the premises licence holder or its controlling mind, only SIA registered door staff will be deployed by the premises at the first point of entry.
- All door staff shall wear bodycams that will be fully operational whenever licensable activities are being carried on from the premises.
- Whenever licensable activities are being carried on from the premises, there shall be at the entrance
 - (a) at least one SIA registered door staff present from 19:00;
 - (b) at least two SIA registered door staff present from 20:00;
 - (c) at least three SIA registered door staff present from 21:00; and
 - (d) at least four SIA registered door staff present from 22:00.

Costs

Each party is to pay its own costs of the interim steps appeal.