



BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C

23 NOVEMBER 2016

Zara's Bar, 80 Broad Street, Birmingham, B15 1AU

That, having reviewed the premises licence held under the Licensing Act 2003 by Five Rivers 2 UK Limited, in respect of Zara's Bar, 80 Broad Street, Birmingham, B15 1AU upon the application of Councillor Gareth Moore, this Sub-Committee hereby determines to:

Modify the Conditions attached to the Premises Licence, through the inclusion of the following additional conditions, as agreed by the Premises Licence Holder, Councillor Gareth Moore and Environmental Health, Birmingham City Council.

Additional Permanent Conditions

1.

The premises licence holder shall, as far as is reasonably practicable, ensure that events held at the premises are not in any way promoted by the use of illegal fly-posting or unauthorised advertisements attached to street furniture.

2.

The premises licence holder shall ensure that agreements/contracts with promoters for the use of their premises or for events to be held at their premises prohibit the use of illegal fly-posting and/or advertisements attached to street furniture, and shall take all steps reasonable to enforce such agreement/contract terms. The Premises Licence Holder shall maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority on request.

3.

The premises licence holder shall take all reasonable precautions and exercise all due diligence to ensure that no person/company promoting or providing entertainment on the premises, nor any person acting on behalf of any promoters, shall display in an unlawful manner advertisements promoting the entertainment or the premises, in particular:

a) no display of advertisements should take place on street furniture;

b) no display of advertisements should take place on premises or structures placed on, over, in or adjacent to the highway, unless the licensee has first obtained the written consent of the owner of the premises or structure. Such consent shall be shown to a responsible authority on request.

4.

The premises licence holder shall remove any unlawful advertisements of events at their premises where they become aware of them or they are advised by Birmingham City Council, its agent(s) or West Midlands Police of an illegal advertisement being displayed. Such removal shall take place within 48 hours of receiving the said notice.

The Sub-Committee's reasons for imposing these additional conditions on a **Permanent basis** on to the Premises Licence, are due to concerns raised by Councillor Gareth Moore within his Review Application dated the 29th September 2016, as supported by Environmental Health, Birmingham City Council, as a Responsible Authority, in relation to a breach of the promotion of the prevention of Public Nuisance and the prevention of crime and disorder Licensing Objectives, through unlawful fly posting around the City of Birmingham.

Furthermore, the Sub Committee noted that the premises were either engaged in, or had failed to take reasonable measures to prohibit use of fly posting around the City of Birmingham as evidenced within the Review Application, contrary to the Licensing Authority's own Statement of Licensing Policy, specifically:

"20.7 Fly posting and Promotional Material

20.7.1 As a leading entertainment centre Birmingham often faces the widespread problem of illegal or nuisance fly posting, and littering from promotional material. This can have an impact on the prevention of public nuisance objective and the prevention of crime and disorder objective within the Licensing Act 2003.

20.7.2 Existing legislation seeks to address this problem, however, it often proves ineffective in preventing this type of nuisance advertising. The Council is also concerned that some licence holders leave the advertising of regulated entertainment to events promoters and then use this to argue that they are not responsible for any illegal fly posting which occurs.

20.7.3 The Council expects responsible licence holders to ensure the licensing objectives are properly promoted when advertising regulated entertainment at their premises. For this reason it considers licence holders should outline in their operating schedules the steps to be taken to make sure that advertising of licensable activities does not cause nuisance or result in criminal offences give rise to crime and disorder.

20.7.4 Where they are engaged, Premises Licence Holders are encouraged to have explicit agreements or contracts with named individuals or companies used to promote events to address the issue of fly posting and littering from promotional material: and to maintain a register of individuals and companies contracted with, for inspection by any Responsible Authority or Authorised Officer on request. Where appropriate and where consistent with the applicant's operating schedule the Council will impose conditions to this effect when its discretion to do so has been engaged."

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

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will continue to

form part of the licence issued. This includes the installation and calibration of a Noise Limiter at paragraph “3d” on page 6 of 7 of the Premises Licence, namely:

“Noise Limiter: The applicant shall install a noise limiter at the premises to be calibrated at a level set **by Environmental Health**.”

Environmental Health submitted a late representation in advance of the Hearing in response to proposed conditions submitted by the solicitors acting on behalf of Cumberland House Hotel Birmingham Limited, following their own representations around the prevention of public nuisance, the promotion of public safety and the prevention of crime and disorder.

The Sub Committee accept that Environmental Health, Birmingham City Council may not have made representations in support of the imposition of a Noise Limiter when a Sub Committee of this Licensing Authority sought to impose the same when the Licence was granted. It also noted that Environmental Health ***normally*** set noise limiting devices at premises which are complaining of statutory nuisance.

However, in the context of the disputed evidence the Sub Committee considered, the Committee were persuaded on the balance of probabilities that those making representations on behalf of a neighbouring building were experiencing some form of public nuisance from the operation of the licensed premises. They specifically had regard to the S182 Guidance at paragraph 2.15 which states:

“Public nuisance is given a statutory meaning in many pieces of legislation. It is however not narrowly defined in the 2003 Act and retains its broad common law meaning. It may also include in appropriate circumstances the reduction of the living and working amenity and environment of other persons living and working amenity and environment of other persons living and working in the area of the licensed premises....”

On that basis, the Sub Committee noted that although there were legitimate reasons for the non-compliance of the above condition at the time, in the context of the representations made during the course of the Hearing, felt that it was nevertheless appropriate for the Premises Licence Holder in conjunction with Environmental Health to re-visit this condition, and ensure it was complied with as soon as reasonably practicable.

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 review, the written representations received and the submissions made at the hearing by all parties present.

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.

The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the appeal is disposed of.