

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B 22 AUGUST 2017

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 22 AUGUST 2017
AT 1000 HOURS IN COMMITTEE
ROOM 1, COUNCIL HOUSE,
BIRMINGHAM**

PRESENT: - Councillor Alex Buchanan in the Chair

Councillors Mike Leddy and Bob Beauchamp

ALSO PRESENT

David Kennedy, Licensing Section
Joanne Swampillai, Committee Lawyer
Phil Wright, Committee Manager

NOTICE OF RECORDING

1/220817

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.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

2/220817

Apologies were received from Councillors Lynda Clinton, Nawaz Ali and Des Flood and it was noted that Councillors Alex Buchanan, Mike Leddy and Bob Beauchamp were the Nominee Members respectively.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT SOIREE LOUNGE,
UNIT 2, 5-11 FLEET STREET, BIRMINGHAM, B3 1JP**

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

Ms S Clover – Barrister representing the Applicant
Mr I Rashid – Owner's son
Mr C Moore – C.N.A. Risk Management Ltd
Mr S Krueter – Designated Premises Supervisor

Those making representations

PC A Rohomon – West Midlands Police
Mr R May – Husband of the person making representations at Appendix 2
Mr P Davis – Chair of Islington Gates Management Company

The Chair noted that the 3 Members knew Mr Davis in his capacity of being a Councillor on the Authority but had not discussed the matter before the Sub-Committee with him.

Following introductions by the Chairman, David Kennedy, Licensing Section, made introductory comments relating to the report.

Ms Clover in presenting the Applicant's case made the following points:-

- a) The premises had previously traded as Beorma by a company owned by Mr T Rashid with his son Mr Z Rashid as the Designated Premises Supervisor (DPS) and Manager.
- b) Following the suspension of the premises licence Mr Z Rashid had moved to run the family owned neighbouring Japanese restaurant. The premises had operated as the Soiree Lounge under a number Temporary Event Notices (TENs). Therefore the application before the Sub-Committee was a new one with no connection to the previous DPS.
- c) Discussions had taken place with both Environmental Health and West Midlands Police in relations to conditions. Conditions have been agreed with Environmental Health leading to them withdrawing their objections. However West Midlands Police had not withdrawn their objection to the application as the applicant could not agree to all the conditions proposed by West Midlands Police and an agreement could not be reached on rewording of them.
- d) The new DPS was Mr S Krueter who had a wealth of experience working in Birmingham in the licensing trade. A new security company was in place, More Secure Limited. Therefore there had been a change in both the DPS and security company which provided separation from the previous operation.
- e) The previous licence had been suspended following a serious identifiable incident and with the proposed conditions there would not be a repeat of a similar incident or any crime and disorder.
- f) With regard to the issue of noise raised by the objectors this had been

considered by a licensing consultant who had undertaken a noise assessment. There was no noise breakout from the premises. It was not correct for those making representation to say noise made by people in the street in the early morning was associated with the premises as there were a number of premises in the vicinity which opened to 0400 hours. It would be expected that, if there was an issue with noise, out of the 144 residential apartments more than 2 people would have made representations.

- g) The representations in respect of planning matters were not an issue for the Sub-Committee to consider as the planning and licensing processes should remain separate. It should be noted the Planning Authority had not made a representation. A change of use application had been submitted and no planning enforcement had taken place.

Ms Clover indicated that she now wished to refer to the proposed police conditions and, with the agreement of the Sub-Committee and other parties, circulated them around the table:-

(See document No. 2)

Ms Clover then made comments on the conditions as follows:-

Condition No. 4

CCTV images could not be “made immediately available and downloadable” as this would conflict with data protection. The premises data controller would not be in an immediate position of being able to release the footage required and to release it immediately would not be lawful. Ms Clover proposed that the condition be rewritten to read ‘CCTV all images to be made available and downloadable as soon as practicable to’

Condition No. 10

Condition unnecessary as it was unreasonable to have a guest invite list when an ID scanner was in use. There was no justification not to have names added on the day.

Condition No. 13

This condition was inappropriate as it did not take in to account what happens in the event of the scanner malfunctioning.

Condition No. 18

This condition was not required as it was similar to condition No. 5 proposed by Mr Samms, Environmental Protection Officer, on page 76 of 80 of the agenda documentation.

Condition No. 19

The condition could not name Zafran Rashid as this was not normal practice. Ms Clover emphasised that Zafran Rashid was no longer involved in the business although he was the manager at the family run Japanese restaurant next door.

In response to questions from Members of the Sub-Committee, Ms Clover and Mr S Krueter made the following points:-

- a) The Police were content that Zafran Rashid was no longer involved with the premises. It was acknowledged that there had been some poor decision making in the past. Mr C Moore – C.N.A. Risk Management Ltd had been brought in and he had identified areas that needed to improve.
- b) The representations made concerning noise were inaccurate as the premises had operated under a number of TENs. Mr Samms, Environmental Protection Officer, had received a complaint from a resident who had denied Mr Samms the opportunity to place monitoring equipment at their property. There was a wealth of material from the Mr Higgins the noise consultant and Mr Moore that suggested that the premises were not creating a noise nuisance and this had been seen by Mr Samms. Noise travelled over the roof tops from licenced premises in Sand Pitts Parade.
- c) The conditions were fairly standard but it was noted that additional conditions had been added to provide greater protection.
- d) There was no designated smoking area and smoking took place on the street in front of the premises. Also it was policy for patrons not to be allowed back in to the premises once they left so smoking should not be an issue.
- e) A listed building planning application been submitted and a change of use application would be submitted in due course.
- f) Mr S Krueter the DPS had been proactive and had attempted to meet with Mr Davis, Chair of Islington Gates Management Company, but had not received a reply from him. The DPS wanted to hear the views and opinions of the residents and wanted a dialogue with residents but request for meetings had been declined.
- g) Twelve TENs had been used to run events with between sixty to hundred and twenty people attending each. It was expected that the premises would operate with about two hundred guests.
- h) TMR 2016 Ltd had Mr Rashid the father as sole Director. It was recognised that Mr Z Rashid had been the wrong manager and going forward with a new DPS and strengthened conditions the premises could be run a different way. The TENs had proved the premises could be run correctly.

- i) With reference to the alleged noise nuisance referred by the residents it was emphasised that if there was any disturbance or noise in the street the premises' door staff, who wore high-vis armbands, were encouraged to call the police and not intervene as they would not understand the situation and their personal safety may be compromised.
- j) Mr S Krueter the DPS had a wealth of experience of working in licenced premises in Birmingham including Bamboo, Moon Lounge, Legs 11 (for 4½ years) and subway amongst others which gave him experience of running high profile and high turnover premises.

PC A Rohomon, West Midlands Police, in presenting the case for the Police indicated that the Police had made representations because they had not been able to agree with the applicant the wording of some of the conditions proposed. The Police felt the conditions proposed would ensure that the premises were run in an efficient and appropriate manner. He therefore spoke about individual conditions as follows:-

Condition No. 13

There needed to be a failsafe plan in case the ID scanner was not working, he therefore suggested the condition be replaced with the following:-

'The premises to immediately notify of any breakdown of the ID machine to West Midlands Police Licensing via email BW-licensing@west-midlands.pnn.police.uk. Premises to record such breakdown in an incident book and to continue to check ID for all patrons entering past 12 midnight. Ids to be in the form of a recognised ID type as per the 182 guidance.'

Condition No. 4

The argument put forward by the applicant was noted but there had not been issue with the wording before. It was questioned what the wording 'soon as practicable' meant in reality. This was in contradiction with the section 182 guidance which indicated conditions should be clear and unambiguous. Police would want to see CCTV footage immediately if a crime had been committed and could legally ask for such footage.

Condition No. 10

A guest list had been in place at the premises when operating under TENs so there was no justification to changing the condition.

Condition No. 19

It was normal practice for individuals to be named in conditions. The Police were concerned that Zafran Rashid would still be linked to the premises and the condition as proposed would prevent this. The condition would not have an effect on the way the premises were run by the father Mr Rashid. The way Zafran Rashid had run the premises previously had resulted in the suspension of the licence following a review and the condition was a proportionate response to that.

In response to questions from Members of the Sub-Committee, PC Rohomon made the following points:-

- a) It was important that CCTV footage was obtained in a timely manner particularly when investigating crime. He therefore did not agree that the condition should be amended and the process outlined by it was achievable.
- b) Whilst he was not aware that Zafran Rashid had been subsequently involved in the premises it was important that it was conditioned that he has no involvement in the premises by way of management or promotions. He noted that the applicant's representative had acknowledged the previous problems had been caused by poor management.
- c) Who the premises employed to provide security was up to them and whilst the Police did not endorse companies he was aware of C.N.A. Risk Management Ltd and Carl Moore.
- d) The TENs had had only 60 to 100 people attending which was not a true reflection of how the premises could operate.
- e) The police had not been aware of the reports of noise nuisance to Environmental Health.
- f) Whilst PC Rohomon knew of Mr S Krueter he could not comment on whether he had a reputation as a trouble-shooter.

Mr May made the following points in relation to his representations:-

- a) There had been a lot of problems at the premises and management had always indicated that they would do 'this and that' but the problems were never resolved satisfactory.
- b) It was a surprise that Planning had not made representations particularly as there were planning issues that were not resolved. It was emphasised that the area was a mixed use one with residential, a museum and a recruitment centre in the vicinity. There were clubs on Sand Pits but they faced away from the residential property in Fleet Street so noise could not be heard from those venues.
- c) The noise mainly came from people leaving the premises and those that had parked vehicles in Fleet Street. Other noise came from taxis picking up picking up patrons.
- d) Environmental Health had been informed but residents had no faith they would do anything.
- e) There were problems with the Japanese restaurant which owned by the company attracting vermin.

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- f) Residents were concerned that the venue's website indicated that entrance to the premises would be by invite only but in reality people walked in off the street. Residents did not believe that smokers would not be let back in to the premises and therefore the problem of people smoking outside the front of the premises would continue.
- g) Residents had seen door staff not dealing with people shouting in the street and had noted that they had not worn high vis jackets.

Mr Davis made the following points in relation to his representations:-

- a) He had lived at Islington Gates Management Company for 8 years and was familiar with the area. Although he no longer lived there he remained the Chair of Islington Gates Management Company which represented all residents in the 144 flats. The area was mainly residential. Whilst it had been commented that there had been only one complaint he suggested that there were 44 complaints.
- b) There were clubs nearby but these were around the corner. Before the premises had opened as Beorma there had never been any gun crime in the vicinity.
- c) Residents were concerned that the premises would operate in the same manner as previously. It was noted that the Police had objected to the previous manager being involved in the premises and had proposed valid conditions to overcome the problems which the applicant had not agreed with.
- d) Mr S Krueter the DPS had contacted Mr Davis who had replied but had not met with Mr Krueter. At the time the premises had given an undertaking to Planning Enforcement that they would not open until the planning issues had been resolved.
- e) The operation of the premises under the TENs had been different to the way the premises had operated as Beorma because of the clear reduction in the number of people attending. The premises could hold two hundred people. Even so on the night of 1 and 2 July 2017 there had been noise nuisance which had warranted a complaint to Environmental Health from a resident. In addition the operation of the TENs after the undertaking given to Planning Enforcement show the disregard that management had to legislation and authority.

Responding to questions from Members of the Sub-Committee Mr Davis made the following points:-

- a) The operation of the TENs when only 50 to 60 people attended did not fully reflect what would happen when the premises operated under a full licence.
- b) On the night of 1 and 2 July the doors to the premises were shut and there were no door staff to police the doors or the customers outside the

premises.

- c) Residents were concerned that although it had operated in the past the proposed operation suggested it would operate as a club in the future. Residents did not feel that this was appropriate in a residential area. The premises had been associated with crime and disorder in the past and the ownership had not changed. The change of use from restaurant to bar was still outstanding in planning terms.
- d) The residents did not have trust in the current owners and management would be able to operate the premises any differently than previously and it was not a fresh start.
- e) If the licence was granted then residents felt that there would be problems.

In summing up, PC Rohomon, West Midlands Police, highlight that if granted the premises could operate 7 days a week. The conditions as proposed by the police were enforceable and would ensure the premises were operated on a satisfactory basis. Whilst there was a new director he was from the same family who had operated the premises previously. West Midlands Police did not object to the TENS as they did not reflect the 7 day operation of the premises.

In summing up, Mr May indicated that it was unreasonable for a night club, able to operate 7 days a week, to set up in a residential area. The family who were the owners could not be trusted particularly in light of the outstanding planning issues.

In summing up, Mr Davis indicated that Islington Gates Management Company were seeking the refusal of the licence application as it was not appropriate for a 200 capacity night club to be in a residential area.

In summing up, Ms Clover indicated that the premises predominately wished to operate on Friday and Saturday nights and the 7 day licence application was to allow flexibility. The TENS had gone well and the fighting in the street had no relevance to the TENS. With reference to the wording in condition No. 4 this was common legal wording. The police's wording did not have clarity nor did it was it legally justifiable when considering the data protection issue. The guest list referred to Condition No. 10 was a cross reference list and possibly only referred to after the event if there was need. It was not unreasonable to allow guests to be added to it on the day of the event. What would happen if a guest on the list subsequently decided to bring their partner/friend it would be harsh to say no. With regard to condition No. 19 it was not right to name Zafran Rashid and the Sub-Committee could have faith that he was no longer involved in the operation of the premises. The representations on page 7 of 80 were not correct as the noise did not come from the premises and there were already revellers in the vicinity from other premises who could have been making a noise. In the same way smokers could have come from the entrance of other premises.

Ms Clover continued summing up by referring to the representations made by Mr Davis on behalf of the Islington Gates Management Company. She noted that there was no evidence on how the Company sought the views of the 144

residents or how many had made comments. What was clear only one and Mr Davis had put a representation direct to the Sub-Committee. It could be said that Mr Davis' representations had a historical view of the situation and not a current one. The TENs had been a test and whilst the capacity of the premises under the fire certificate was two hundred the premises did not have to operate to that. The Planning issue was not outstanding as an application had been submitted and the outcome awaited.

In conclusion Ms Clover indicated the premises were not at fault and there was no evidential basis on which to refuse the licence application. Mr Krueter added that the business was on a solid footing and wished to move forward. He was conscious of the previous incident but felt sufficient procedures etc had been put in place to mitigate the risk.

At 1229 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1345 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

3/220817

RESOLVED:-

That the application by TMR 2016 Limited for a premises licence in respect of Soiree Lounge, Unit 2, 5-11 Fleet Street, Birmingham, B3 1JP be refused.

In reaching this decision, the Sub-Committee was mindful of the promotion of the Licensing Objectives in the Act, particularly the prevention of crime and disorder, public safety and the prevention of public nuisance.

The Sub-Committee's reasons for refusing this application for a premises licence are due to concerns over the suitability of the management arrangements at the premises, highlighted during the recent use of Temporary Event Notices (TENs), given the previous troubled history of the premises.

The Designated Premises Supervisor described the operation of the TEN events, but the Sub-Committee observed that in many instances the Designated Premises Supervisor was not following the premises' own written policy documents, for example regarding security personnel. The Sub-Committee therefore considered that as the Designated Premises Supervisor had confirmed to them that he had not adhered to his own operating arrangements during the TENs, it followed that they could not have any confidence that he would adhere to the conditions of a Premises Licence.

In addition, the style of operation, type of venue, ownership and desired clientele of Soiree Lounge were the same or very similar to those seen when the premises were known as 'Beorma'. This was of concern to the Sub-Committee. A great many assurances were given during the meeting that the new Designated Premises Supervisor was entirely unconnected to the previous management, and had simply been brought in as a suitably experienced professional, to run the premises for the owner, in order that the previous manager (who had

demonstrated a lack of capability) should no longer be the responsible person. Whilst the Sub-Committee of course accepted the truth of this assertion, they considered that the premises continued to operate in a manner too similar to Beorma, especially in that it was marketed in a manner designed to attract similar clientele.

The Sub-Committee heard representations from West Midlands Police, who were of the view that the application could be granted provided the applicant agreed to the conditions suggested by West Midlands Police, all of which were designed to help the premises uphold the licensing objectives. The Sub-Committee was therefore surprised to hear the applicant's legal representative query the Police's suggested conditions, and in fact ask that some of them be redrafted to suit the premises' view of how things should be done. This did not inspire any confidence whatsoever that the premises was embarking on a proper 'fresh start', in which it would cooperate properly with West Midlands Police and accept advice. The Police also observed that the conditions had been drafted by the Police to be suitable to address all concerns relating to crime and disorder and public safety, whereas the redrafting requested by the applicant's legal representative was vague and/or unenforceable. Given the Designated Premises Supervisor's answers to questions about how the TEN management arrangements had departed from what was required in the premises' own policy documents, the approach taken by the premises towards West Midlands Police suggested that the premises were not fully focused on distancing themselves from previous problems – neither the poor styles of management, nor even the past failures to uphold the licensing objectives.

The Sub-Committee also heard representations from other persons, regarding the concerns of local residents. These persons expressed their worries that the recent use of Temporary Event Notices, for limited numbers of patrons (estimated by the Designated Premises Supervisor to be around 60 to 120 patrons per event, and by West Midlands Police to be 50 to 60 patrons per event), was not in any way an accurate predictor of how the premises would operate at full capacity, being a 200-capacity club.

One objector also observed that the advertising of the supposed 'Miami Nightlife Experience' on offer at Soiree Lounge was altogether too reminiscent of the Beorma marketing style, which had attracted the kind of patron who carried a firearm into the premises and then discharged it on the public highway directly outside the premises, an episode which consequently led to the revocation of the Beorma premises licence. Certainly the Sub-Committee had doubts about the Designated Premises Supervisor's description of the desired clientele as 'high spend per head' patrons, such as 'footballers'. This had been what had been heard in the Beorma Committee hearings - but it had been observed that that marketing strategy had succeeded only in attracting entirely the wrong element to Beorma.

All in all, given the previous history, the Sub-Committee had hoped that the new Designated Premises Supervisor would have used the TENs to establish a complete break with previous problem styles of management, and that the premises would have operated the TENs in a very tightly controlled manner, adhering strictly to every requirement of their own policy documents. This had not

happened. In addition, the attitude shown by the premises towards the help and advice offered by West Midlands Police was disappointing. Given the recent circumstances, namely a firearms incident under the previous management, the only acceptable way forward was complete cooperation with the Police on all aspects of the operation.

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 contained in the application, the written representations received and the submissions made at the hearing by the applicant, their legal adviser, West Midlands Police and others 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.

OTHER URGENT BUSINESS

3/220817 There was no urgent business.

The meeting ended at 1348 hours

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CHAIRMAN