

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE C 5 DECEMBER 2018
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**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE C
HELD ON WEDNESDAY 5 DECEMBER 2018
AT 0930 HOURS IN ELLEN PINSENT ROOM,
COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Mike Leddy in the Chair

Councillors Nicky Brennan and Neil Eustace

ALSO PRESENT

Bhapinder Nandhra, Licensing Section
Joanne Swampillai, Committee Lawyer
Katy Poole, Committee Manager

NOTICE OF RECORDING

- 1/051218 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.
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DECLARATIONS OF INTERESTS

- 2/051218 Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of meeting.
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APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/051218 There were no Nominee members.
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MINUTES

- 4/051218 That the public part of the Minutes of meeting held on 14 November 2018 were

noted.

**LICENSING ACT 2003 PREMISES LICENCE (VARIATION) – THE BOTANIST,
CHELTENHAM HOUSE, 14-16 TEMPLE STREET, BIRMINGHAM, B2 5BG**

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

Matt Bamber – Operations Director
Rebecca Ingram – Solicitor

Those making representations

PC Abdool Rohomon – West Midlands Police
Paul Samms – Environmental Health

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Following introductions by the Chairman, Bhapinder Nandhra, Licensing Section, made introductory comments relating to the report.

Mrs Rebecca Ingram, on behalf of the applicant made the following points:-

- a) That the premises had been trading since 2015. In that time the premises had been successful. They had put in the variation application and there were two representations made.
- b) That the issues from Environmental Health were in relation to one residential complaint. However, the additional evidence referred to the history of the complaint, but the complaint regarding bin noise could not be attached to The Botanist. Moving forward they were happy to attach a condition to the licence, that bins should not be emptied between the hours of 2300 – 0800.
- c) That there was references made to a music complaint, however, Environmental Health had visited the premises and checked the noise levels, and had always been satisfied.
- d) That there had only been one complaint in two years and upon investigation from Environmental Health all levels were satisfactory.
- e) That no residents had opposed the application and no residents had attended the hearing. This was further supported by West Midlands Police

representation who had received no complaints from residents regarding the premises.

- f) That there were residents close to the premises, however, they could not believe, that from the evidence, the premises was causing any nuisance, or that the variation application would cause further nuisance.
- g) That the final statement made by Environmental Health requested that the other premises in the area close between 0030 – 0130 hours, they disagreed entirely.
- h) That within the police representation they stated that the premises do not cause any problems at present. They believe that the style of the operation and management was the reason why the premises was no concern for WMP. The premises was of high quality, with quality seating, nice food and positive overall experience. They also felt the price range of the premises made a difference. All of those things dictated the premises and its operation.
- i) The premises track record showed it promoted the licensing objectives.
- j) That the type of premises dictated the style of customer it attracted and opening for an additional 1 hour would not change that.
- k) That PC Rohomon stated that terminal hours in the area were 0130 hours. However, San Carlo, The Alchemist and Gusto all have later opening hours and were licensed premises.
- l) That they were happy the premises did not cause any issues.
- m) That the local area did not cause any issues currently; was that because of the hours or the style of operation – they would say the latter.
- n) That the traders in the area were all similar. They had mature customers who behaved in a mature way.
- o) That a new licence was granted in March for Gino De Campo's new premises and that has a terminal hour of 0300 hours Thursday-Saturday. That application received no objections.
- p) The statement from WMP suggested they were trying to cap hours at 0130, however, that was not written in Birmingham City Councils statement of Licensing Policy.
- q) That the merits of the premises were set out by the police themselves whom stated that the premises caused no issues and each application was to be judged on its own merits.

Mrs Ingram referred to Birmingham City Councils statement of Licensing Policy from 6.8 – 8.10 where she outlined that the Council “will not apply core hours to any area in the city”. She also suggested that variations beyond a certain core

hour should be a special policy; however, there was no special policy in the area.

Mrs Ingram continued:-

- a) That her client wanted to work with the police as much as possible and they had looked at how they could guarantee that the premises would not become troublesome.
- b) That the current licence had no conditions regarding door staff, however, they would be willing to offer a condition requiring a minimum of 2 SIA registered door staff from 2100 hours until closing.
- c) That the police representation mentioned concerns about the later hours attracting different clientele, so they would be willing to provide a further condition that no additional entry after the current hours, in order not to attract any “new” patrons for the additional hour. The condition would also address Mr Paul Samm’s concerns regarding dispersal.
- d) That there was negative impact on the Licensing Objectives.

In response to questions from Members of the Sub-Committee, Mr Matt Bamber made the following points:-

- a) That it was mainly Friday and Saturday nights when people would like to have a few more drinks and was more from the customer’s viewpoints than for retaining guests to make money.
- b) That the typical customer was working class 25 years old +. With 30% of sales being food trade. That the premises attracted local residents and they had a loyalty scheme for frequent customers.
- c) That from Monday-Friday it was mainly business clients and young professionals on a weekend. They also had special occasions such as birthdays, parties, christenings, weddings (in the basement).
- d) That the premises attracted mixed clientele.
- e) That the style of food, high price points and no discounts encouraged good clientele.
- f) It was not a bar where you would pop in when you were passing; it was a place to go for the night with friends.
- g) That the cheapest beer was £4.00; they didn’t have a “happy hour”.
- h) That they arrived in April 2015 and started a trend.
- i) That the basement was approved.
- j) They catered for 30 covers downstairs, 85 upstairs and 150 standing in the bar area.

Mrs Ingram explained that the area was mixed, with premises operating earlier and later than The Botanist. Broad Street was more of a “party destination” and Temple Street was more relaxed. People wouldn’t necessarily be looking to dance in the area.

PC Abdool Rohomon, on behalf of West Midlands Police made the following points:

- a) That it was an unusual rejection from West Midlands Police, as it was a future prediction.
- b) That he had lots of experience in how areas developed and the area was at tipping point. They didn’t want that. The area already worked well and didn’t cause them any problems. They had no issues with The Botanist currently, in “no way, shape or form”
- c) That the area was upcoming and vibrant.
- d) He had done a plan on google maps of all the licensed areas. He had missed Las Iguanas off, but they had a licence until 2300 hours.

At this stage PC Abdool Rohomon outlined the licensed premises on the map and the hours they were operating. He explained that the demand on the city centre for licensing was huge and this was an upcoming area compared to Broad Street. Furthermore, they wanted a nice area and did not want to change the dynamics of the night time economy in that area. Areas such as Broad Street took a lot of policing. That the reason the area and premises caused no issues was due to the earlier terminal hours, people go home earlier.

PC Abdool Rohomon made the following points:-

- a) That it was a strange objection from West Midlands Police.
- b) That they were looking at it in a more dynamic way.

PC Abdool Rohomon also made comments in relation to the Government guidance “Alcohol Licensing: Using Case Law” at page 54 of the report in order to further support his case. In addition, he explained that if it was just The Botanist it would not be such an issue, but the expansion of the Colmore Row area and Temple Row meant that there were an increasing number of licensed premises.

PC Rohomon continued:-

- a) That the purpose of the “act” was to be based on stopping events from happening, stopping problems in the first place.
- b) That to start changing hours past 0100 hours changed the dynamics of people that go to the premises. It was his knowledge to know these things, and he could say comfortably that the dynamics would change.

He had been employed by the police for 27 years and his entire career had been in Birmingham.

- c) That they had got to limit the hours.
- d) That Mrs Ingram rang him up and he said no straight away, WMP objected on day one of the 28 days.
- e) That the premises were not economically dependent on the variation. The premises were already doing well and worked well so why would they change it.
- f) That the Alchemist did operate until 2am. Gusto had longer operating hours, but was just a restaurant with a very small bar.
- g) That many of the premises in the area had applied for TENs but the Police had made objections to all of them, to which the premises had later withdrawn them.
- h) That there was a residential operation that sat above Tesco's, but they had not received any complaints from the residents.
- i) That it was recognised that the later the operational hours the more increased the risk. That "youngsters" stay out later, and they are more problematic.
- j) That The Botanist was not an issue. They were trying to "future proof" the area.
- k) That the premises in the area had the following closing times:-
 - a. Fumo – 2am
 - b. San Carlos – 4am (Restaurant that had a licence, but was a grandfather conversion)
 - c. Las Iguanas – 11pm
 - d. Republic De Cuba – 1am
 - e. Lost & Found – 2am

Mrs Rebecca Ingram interjected stating that she thought Las Iguanas had a licence until 2am. Cllr Brennan also agreed that Las Iguanas website said different to PC Rohomon's submission.

PC Rohomon concluded that the public register he had said 11pm, but Mrs Ingram's version said 1am.

PC Rohomon continued:-

- a) That Brindley Place was like "never never land" in its "own bubble". It goes on until 2/3am but did not attract the same level of problems as Broad Street itself.

- b) That he was concerned regarding ASB.
- c) That they had an imaginary line, past 1am in their eyes was night time economy. So 2am onwards was when the threat risk increased.
- d) That moving The Botanist's hours would increase the risk, even with conditions about entry, people realise they open later and it attracts different clientele.
- e) That currently most people in the area went home, they didn't want to go to Broad Street.
- f) That if they granted the application, it would have a "snowball" affect.
- g) That WMP were not aware Environmental Health was objecting. Although they do talk to each other, they had not discussed capping the hours.
- h) That if the demographics of the area changed, they would have to police it.
- i) That it was a new concept and a usual objection from the Police. That they had not had any discussions about a policy but it's the thought line they were going down.
- j) That it was fair to say if they came to the Committee requesting a Cumulative Impact Zone, they would have no evidence of crime and disorder.
- k) That the act allowed future proofing against unforeseen problems.
- l) That is it was not for the expansion in the area, they would not be objecting.

Cllr Brennan asked questions relating to the clientele in Brindley Place and this premises being similar. PC Rohomon responded that Brindley place had mainly restaurants and some bars.

Mr Paul Samms, on behalf of Environmental Health made the following points:-

- a) That he had read through the statement that had been submitted and the reason the resident had not made representations was because they had left it too late.
- b) That there was a residential block opposite, with a history of complaints. Mainly complaints about noise nuisance; bin emptying and loud music.
- c) That there were a few bedrooms overlooking premises; 4-8 bedrooms that overlook.
- d) That not many people owned the units, they tended to be rentals; that come and go.

- e) That one of the residential blocks was a listed building and they had looked at enhanced glazing, but with conservation issues they couldn't do it easily.
- f) That although Mrs Ingram had said there had been no issues when they had bands playing; sometimes they controlled the noise levels, and others times they didn't.
- g) That what he was trying to point out that there was only residents were local to the premises.
- h) That Brindley Place had no local residents so in terms of public nuisance, it was rarely an issue.
- i) That essentially what he was most concerned about was that it was the most sensitive time of night 0100-0200 hours.
- j) That future nuisance was his concern, and preventing that from happening.
- k) That time of night was more and more sensitive.
- l) That if members were minded to grant, he had some conditions, but he felt uncomfortable with it.
- m) That there hadn't been any complaints since 2015; but that didn't mean there wasn't a problem.
- n) That he was concerned other premises would try and apply for the same hours if this one was granted.

In summing up, Mr Paul Samms, on behalf of Environmental Health, made the following points:-

- That it was for the prevention of public nuisance.

In summing up PC Rohomon, on behalf of West Midlands Police made the following points:-

- That on the basis of knowledge, experience and personally as a force, the hours would increase the risk.
- That the Licensing Act supported looking beyond and into the future.
- That the demographic of the area was changing rapidly.
- That West Midlands Police can support and say that by granting the variation it would increase the crime and disorder in the area.

In summing up, Mrs Rebecca Ingram, on behalf of the applicant, made the

following points:-

- That the Committee had to take the views of the responsible authorities on board.
- That there were differences between the authorities voicing concerns about new premises and new operators, but this premises was not new. The authorities should not outweigh the evidence showing no issues.
- That there was no evidence of any harm to the licensing objectives currently or in the future.
- That there was only one unsubstantiated complaint, other than that there was no complaints.
- That the evidence, and lack of residential complaints suggested there were no problems with the premises.
- That the evidence from police was that there were no problems currently, and it was wrong to submit an objection based on assumptions.
- That there should not be any issues.
- That Brindley Place caused no issues because of the clientele which was the same as The Botanist.
- That there was nothing in Council Policy to suggest it should be refused.
- That the Council would not apply core hours in any area.
- That 2am was not out of line with other premises in the local area.
- That to not grant the application would suggest that there were a core hours policy here.
- The premises had an exemplary record, with additional conditions volunteers, who could achieve a variation if this premises couldn't?
- That the evidence was clear, the objectives would not be undermined by the application.

Mr Paull Samms explained he had something to add.

The Chairman advised that all parties had the opportunity to outline their points.

At 1117, the meeting was adjourned. All parties with the exception of Members, the Committee Lawyer and Committee Manager left the meeting.

At 1200 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

5/051218

RESOLVED:-

That the application by New World Trading Company UK Limited to vary the premises licence in respect of THE BOTANIST, CHELTENHAM HOUSE, 14-16 TEMPLE STREET, BIRMINGHAM B2 5BG, under section 34 of the Licensing Act 2003, **BE GRANTED SUBJECT TO THE FOLLOWING FOUR CONDITIONS:**

1. The hours for late night refreshment shall be the same as the hours for the sale of alcohol
2. From Thursday to Saturday, two SIA-accredited door staff shall be on duty from at least 21.00 hours until closing time
3. There shall be no entry for patrons after the following times:
 - 00.00 midnight from Sunday to Wednesday, and
 - 01.00 hours from Thursday to Saturday
4. The bins at the premises shall not be emptied between the hours of 23.00 and 08.00 in order to reduce the likelihood of noise nuisance

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 addressed the Sub-Committee at the start of the meeting, and explained that they had been trading without problems since 2015 and now wished to extend their operating hours later into the evenings. The variation had been requested purely in order to improve their offer to patrons who might want to have a few more drinks into the late evening; it had not been motivated by financial necessity, as the business was trading successfully.

They did not accept that their proposed variation would undermine the licensing objectives and observed that all parties attending the meeting had agreed that The Botanist was not considered in any way to be a nuisance premises. They had taken note of the concerns of the responsible authorities, and in response were happy to offer suitable conditions, relating to the use of door staff for security, the adoption of a 'last entry' time for patrons to create a more gradual dispersal, and also arrangements for the emptying of the bins to reduce the likelihood of nuisance.

They were confident that their management and style of operation was such that they could trade safely for an extra hour into the late evening. They felt that the ambience and overall experience that they offered was of a high standard, with a significant food element to the business. They showed the Sub-Committee photographs of the interior design, and also a copy of the menu, to support this. Their offer and the style of the interior dictated the clientele, who were professional and also included local residents. Their patrons were not passers-by, they were people who would spend the evening there and have cocktails; it was quite unlike the type of licensed premises seen at the Broad Street and Digbeth areas. Those at the Botanist considered themselves to be a smart 'destination venue', accustomed to hosting birthday parties, weddings and christenings. They did not sell cheap alcohol; nor did they offer reduced-price drink promotions of the 'happy hour' variety. They offered a variety of cocktails and their pricing was

relatively high. All in all they considered themselves capable of promoting the licensing objectives during the extra hour of operation.

The Sub-Committee then heard representations from West Midlands Police who agreed that the Temple Street area only needed light policing, and that this was therefore an unusual objection, particularly as it was accepted that there were no issues at all with The Botanist and their operation. The Police agreed that Temple Street was nothing like Broad Street in terms of crime and disorder risks.

However it was the Police's view that, on the basis that the licensing objectives were being upheld in the area, the Sub-Committee should take the opportunity to 'future-proof' the Temple Street area by maintaining the current closing time at The Botanist; the caselaw allowed for this.

The Police were keen that Temple Street should not become part of the night time economy, as per Broad Street and Digbeth, both of which had numerous licensed premises operating to 02.00, 03.00 and 04.00 hours, and which demanded huge resources in terms of policing. Temple Street was a vibrant area, and expanding rapidly. The police urged the Sub-Committee to look beyond the instant premises and to consider the effect that extending the hours could have – namely the effect of changing the dynamic of people visiting the area. The current hours attracted the 'right' kind of clientele; to allow operation to a later hour meant that a change in demographic was likely to occur, and that would put the licensing objectives at risk. The current hours were working well and therefore the police wanted them to remain as they were, such that no premises in Temple Street traded to the hours seen in Broad Street and Digbeth.

The Sub-Committee observed that this sounded like an attempt at zoning the area. The applicant agreed and reminded the Members that the City Council's own Statement of Licensing Policy did not support the principle of 'core hours' in any area. It was the applicant's position that the police objections amounted to an attempt to establish core hours without any policy basis for doing so.

The Sub-Committee also observed that it appeared that the lack of crime and disorder was attributable to the clientele frequenting The Botanist. Accordingly they doubted that an extension of the terminal hour would necessarily lead to a sudden change in clientele at a well-managed premises with effective door security, high pricing of alcohol and a substantial food element.

The Environmental Health Officer of the City Council then made representations regarding the public nuisance objective. The main concern was noise, from music and the emptying of the bins. He accepted that there had only been a very few complaints thus far, but his worry was that if trading were to be permitted to a later hour of the night, when background noise was reduced, the nuisance risk would increase, particularly because people in the area would be more sensitive to noise occurring at a very late hour. It also seemed to the officer that whilst The Botanist was not a nuisance at the moment, the likelihood was that extending the hours would mean that it would become so.

The Environmental Health Officer observed that the purpose of the licensing regime was to prevent public nuisance – in other words, to ensure in advance that

the licensing objectives were upheld, not simply to clear up problems afterwards. The Environmental Health Officer and West Midlands Police agreed that to grant the variation for The Botanist would increase late operation generally, at all licensed premises in the area.

The Sub-Committee deliberated the proposed operating schedule. This was a variation application, not a grant application for a brand new licence. All parties, even the responsible authorities who had attended to object, had agreed that The Botanist was well-managed and attracted a respectable clientele. Whilst it was of course understandable that West Midlands Police should be considering the future policing issues for central Birmingham, the instant meeting was not the proper forum to introduce zoning or core hours for the Temple Street area.

Equally, whilst the Environmental Health Officer had raised concerns about noise, the low number of previous complaints suggested that this was not an issue that particularly troubled local residents, many of whom perhaps accepted that life in the very centre of Birmingham would involve some degree of noise. There was no evidence that the licensing objectives were at risk now or in the future at The Botanist, due to the standard of operation, careful management, style of offer, and type of clientele. Therefore variation of the Licence, with modified conditions, was proportionate.

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 for a variation, the written representations received and the submissions made at the hearing by the applicant (via their legal representative), and by the responsible authorities.

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

6/051218 There was no urgent business.

EXCLUSION OF THE PUBLIC

7/051218 **RESOLVED:**

That in view of the nature of the business to be transacted, which includes exempt information of the category indicated, the public be now excluded from the meeting:-
(Paragraphs 3 & 4)
