

LICENSING SUB-COMMITTEE

Friday 25th November, 2016 at 10.30 a.m.

In a Conference Room at the Council House, Walsall

Present:

Councillor Rochelle (Chairman)
Councillor Sarohi
Councillor Sears

In attendance:

Brian Jones	- Team Leader – Trading Standards and Licensing
Paul Green	- Legal Services – Walsall MBC
Lee Bywater	- Applicant
Heath Thomas	- Solicitor representing Mr Bywater
P C Neil Gardener	- West Midlands Police
Sarah Jane Ashwin	- Observer

Appointment of Chairman

Resolved

That Councillor Rochelle be appointed Chairman of the Licensing Sub-Committee for this meeting only.

Councillor Rochelle in the chair

Welcome

The Chairman extended a welcome to all persons present at the Licensing Sub-Committee which had been established under the Licensing Act, 2003.

Apologies

There were no apologies.

Declarations of Interest

There were no declarations of interest.

1294/16

Licence Hearing

Application for a premises licence under Section 17 of the Licensing Act 2003 – 132 - 132A Lichfield Street, Walsall WS1 1SL.

The report of the Director of Public Health was submitted:-

(See annexed)

Councillor Rochelle explained the purpose of the meeting and requested the Team Leader – Trading Standards and Licensing (Mr Jones) to explain the application.

The Team Leader – Trading Standards and Licensing (Mr Jones) enlarged upon the report for the benefit of the Sub-Committee and indicated that the application for a premises licence in respect of 132-132A Lichfield Street, Walsall, WS1 1SL had been made by Lee Bywater and submitted on his behalf by Harrison Clark Rickerbys Solicitors. The application had been received by the Licensing Authority on 30th September 2016 (Appendix 1 refers) and could be granted as requested, granted with additional/modified conditions or rejected. Mr Jones drew the Sub-Committee's attention to paragraph 3.3 of the report which summarised the proposed activities and times including the supply of alcohol on the premises from 10.00 a.m. to 2.30 a.m. Monday to Sunday. The premises opening times were 10.00 a.m. to 3.00 a.m. Monday to Sunday.

A street map showing the location of the premises was given as Appendix 2 to the report and Mr Jones confirmed that the application had been submitted to the statutory "responsible authorities" and had been advertised by way of a blue site notice displayed at the premises and a licensing notice had been placed in a newspaper circulating in the area to comply with the requirements of the licensing act. West Midlands Police had agreed mediated conditions with the applicant on 24th October, 2016 and, if the application was granted, would be attached to the licence (paragraph 3.8 refers).

Mr Jones also referred to paragraph 3.9 of the report which indicated that a written representation had been received from another person on 14th October, 2016 (appendix 3 refers). No other representations had been received from responsible authorities or other persons.

Mr Jones then drew the Sub-Committee's attention to paragraph 4 of the report which explained the Cumulative Impact Policy introduced by the Council for Walsall Town Centre in September, 2008 (Appendix 4 refers). The Cumulative Impact Policy formed part of the statement of licensing policy (Appendix 5 refers) and the application should be refused unless the Cumulative Impact Policy could be overruled. Finally, Mr Jones drew the Sub-Committee's attention to paragraph 5.2 of the report which contained the legal position. Mr Thomas had no questions for Mr Jones on the report.

The legal representative (Mr Green) reported that information had been received from Mr Thomas claiming that the representations made by Mr Parkinson were frivolous or vexatious and therefore should be disregarded. He stated that the Licensing Authority felt that there was information in the representations that the Sub-Committee should consider and quoted case law to confirm this.

Councillor Sears asked if 132-132A Lichfield Street was the site of the former Chicago Rock nightclub. Mr Jones confirmed that it was.

Mr Thomas asked whether legal services had made any enquiries to Birmingham City Council concerning Mr Bywater. Mr Green replied "no".

Mr Thomas informed the meeting that Mr Bywater was applying for the premises licence for 132-132A Lichfield Street, Walsall which was a former nightclub and licensed premises. The proposed hours for the supply of alcohol were 10.00 a.m. to 2.30 a.m. on the following day and it was proposed to supply food until 9.00 p.m. Late night refreshment would be provided between 11.00 p.m. and 2.30 a.m. He indicated that the premises had an excellent outdoor smoking area at the front of the club which was separated from the footpath by secure fencing. Mr Bywater was aiming at a 21 plus clientele rather than students. Mr Bywater had met with West Midlands Police and discussed his application and they were satisfied with it subject to the additional conditions referred to in the report (paragraph 3.8 refers).

Mr Thomas referred to the representations made by Nick Parkinson of Utopia Clubs Ltd (Appendix 3 refers) and indicated that Mr Parkinson was a competitor with his own nightclubs in the town. Mr Thomas felt that Mr Parkinson had submitted his representations to delay Mr Bywater opening his premises and adding to the competition in Walsall town centre. Mr Thomas reported that Mr Parkinson's representations were not made in respect of 132-132A Lichfield Street, Walsall but regarding Mr Bywater's premises (Rumours) in Sutton Coldfield and were therefore largely irrelevant and should carry little weight with the Sub-Committee.

Mr Thomas continued that, in his opinion, Mr Parkinson was trying to confuse the panel by suggesting that the Police were reviewing the licence for Rumours nightclub at the present time when in fact the Police had undertaken a review approximately 3 years ago in 2013. The outcome of the review had been that Mr Bywater was allowed to retain his licence. The reference to the 1p drink offer all night was misleading as his client charged a £10.00 entry fee and the 1p drink offer was limited to a set number. The Police were aware of this.

Mr Thomas explained that Mr Parkinson had his own cut-price drink promotion. He charged a £5.00 entry fee which entitled the entrant to a £15.00 voucher which could be redeemed against drinks. Mr Parkinson had run a 'Black Friday' promotion charging £1.00 per drink. Mr Thomas concluded by stating that the violence referred to had not resulted from the drinks promotion but as a result of racial comments made outside the premises and stated that it was virtually impossible to find a licensed premises where there were no problems but it was how those problems were dealt with that was important.

Referring to the reporting of the nightclub attack involving two women, Mr Thomas stated that this resulted from one woman accusing another of sleeping with her boyfriend. The incident had occurred in a toilet in the nightclub and it was nightclub staff that had alerted the Police and reported the incident. When the review had been carried out by the Licensing Committee in 2013 Mr Bywater had been allowed to retain his licence with no reduction in hours of operation or activities. There had been no problems reported since 2013.

With reference to Mr Bywater's character, Mr Thomas stated that Birmingham City Council had granted Mr Bywater a premises licence so he must have been satisfactory in their eyes. PC Gardiner had checked out Mr Bywater and was happy that he was a fit and proper person to hold a premises licence.

Mr Thomas referred to the fact that despite making representations, Mr Parkinson had not attended today's meeting thus denying him the opportunity of challenging Mr Parkinson and his accusations. Mr Thomas then drew the Sub-Committee's attention to Home Office guidance on the crime and disorder objective and indicated that there was nothing to demonstrate that Mr Bywater's premises could not be licensed. He concluded by reiterating the fact that he would consider Mr Parkinson's representations vexatious and aimed at delaying the opening of a competitors premises for no justifiable reason.

With reference to the Cumulative Impact Policy (CIP) Mr Thomas reported that the Sub-Committee should take into consideration whether it had been referred to in representations. As the CIP was not referred to in Mr Parkinson's representations it could be disregarded in connection with his application. He continued that since 2008 when the CIP was drawn up, a number of nightclubs in the town centre had closed, so there would be no negative impact if this licence was granted. He asked the Sub-Committee to grant the licence as requested with the additional conditions required by West Midlands Police.

Referring to Mr Bywater's character, Mr Thomas reported that he was a former Police Officer and Victim Support Officer; had been a former assistant Head Teacher at a school in Birmingham and had promoted links between his school and a school in Jamaica; was a designated Premises Supervisor and owner of a nightclub in Sutton Coldfield and also operated a day nursery. He therefore submitted that Mr Bywater was a fit and proper person to hold a premises licence in Walsall.

Mr Bywater informed the meeting that when he had originally submitted his premises licence application in September, 2016 he had hoped that the nightclub would be up and running for the festive season. However, the representation by Mr Parkinson had delayed the determination and cost him a considerable amount of money. Mr Thomas advised the meeting that nightclubs can make up to one-third of their annual income over the Christmas period.

Brian Jones referred to the Shisha proposals and asked for clarification. Mr Thomas replied that the Hookah pipes could only be smoked in an open space. The pipes could be purchased within the club and supplied by staff to the smokers in the open air smoking area.

Councillor Sarohi referred to the Police request for a review of rumours nightclub in Sutton Coldfield. Mr Thomas reminded the meeting that this had taken place in 2013. Since then there had been no problems at the premises.

Councillor Sarohi referred to the incidents contained in Mr Parkinson's representations. Mr Thomas replied that the 1p a drink promotion had been discontinued in 2013 after the Police had considered it inappropriate and the premises review had been carried out. He added that Mr Bywater had complied with all the licensing objectives at Rumours since then.

With regard to the nightclub attack and the woman being injured, Mr Thomas reiterated the fact that it was the Club's management who had reported the incident to West Midlands Police. He added that Mr Parkinson operated Vogue and Religion nightclubs in Walsall and he could provide newspaper reports implicating them in criminal activity if he chose to. However, Mr Bywater had been the subject of a review in 2013 and had been allowed to continue to manage his establishment.

Councillor Sears asked if there was also a smoking area at the rear of 132-132A Lichfield Street, Walsall. Mr Thomas confirmed that the smoking area was contained within the curtilage of the building and was screened from the footpath.

Councillor Rochelle referred to the assault on the woman in the nightclub and asked when management had become aware of the problem.

Mr Bywater replied that the assault had taken place in the female toilets. Women security staff routinely checked the toilets every thirty minutes. It was during one of these sweeps that the victim was discovered and the Police were called. The assailants had already left the nightclub when the police arrived but were apprehended later.

Councillor Rochelle asked when would Mr Bywater normally call for police assistance. Mr Bywater replied that the police would normally be called to any violent incident. He added the club's CCTV could be used to spot problems and the premises would be linked to the police by the Walsall radio link.

Councillor Rochelle referred to the Cumulative Impact Policy. Mr Thomas reminded the meeting that the Police had indicated that it did not need to be invoked in this instance.

The parties were invited to sum up and Mr Thomas requested the Sub-Committee to grant the application as requested. Mr Jones indicated that he had nothing further to add.

Councillor Rochelle asked if the parties were satisfied that they had had ample opportunity to air their views. This was confirmed and the parties withdrew from the meeting at 11.35 a.m.

The Licensing Sub-Committee carefully considered all the evidence submitted and the representations made during the hearing and it was

Resolved

That the Sub-Committee grants the premises licence in respect of 132-132A Lichfield Street, Walsall, WS1 1SL under Section 17 of the Licensing Act 2003 as requested together with the mediated conditions agreed with West Midlands Police.

The parties were re-admitted to the meeting at 11.56 a.m. and informed of the Licensing Sub-Committee's decision. The parties were advised of their right of appeal to the local Magistrates Court within 21 days of receipt of the determination.

Termination of Meeting

The meeting terminated at 12 noon.

Chairman.....

Date.....