

Minutes of the Licensing Sub-Committee 4

Tuesday 15th May, 2018 at 10.00 am
In the Council Chamber, The Council House, Dudley

Present:-

Councillor C Elcock (Chair)
Councillors J Baines and C Perks

Officers:-

B Hughes – Assistant Team Manager Waste and Fleet Care (Place Directorate);
R Clark – Solicitor and K Griffiths – Democratic Services Officer (Chief Executive's Directorate).

62 **Apologies for absence**

Apologies for absence from the meeting were submitted on behalf of Councillors J Cowell and A Taylor.

63 **Appointment of Substitute Members**

It was noted that Councillors J Baines and C Elcock had been appointed as substitute members for Councillors J Cowell and A Taylor respectively for this meeting of the Sub-Committee only.

64 **Declarations of Interest**

No Member made a declaration of interest in accordance with the Members' Code of Conduct.

65 **Application to Vary a Premises Licence – The Coast Afro Cuisine, 32 King Street, Dudley**

A report of the Strategic Director Place was submitted on an application for variation of the premises licence in respect of the premises known as The Coast Afro Cuisine, 32 King Street, Dudley.

The following persons were in attendance at the meeting:-

Mrs A Nsinga – Designated Premises Supervisor (DPS)
Mr D Nsinga – Manager of The Coast Afro Cuisine
K Turley – West Midlands Police
D Jenkins – West Midlands Police
K Mullings – Enforcement Officer

Following introductions, the Assistant Team Manager Waste and Fleet Care presented the report on behalf of the Council. It was noted that CCTV footage had been provided by the West Midlands Police showing a recording of two females pulling up in a taxi with one woman observed to be consuming a substance and then both women entering the premises at 02.53 hours on 28th April, 2018, outside the permitted licensing hours. The footage was viewed prior to the meeting by all parties, however, it was available to present during the hearing, should it be necessary.

D Jenkins made representations on behalf of West Midlands Police, raising objections to the variation of premises licence in order to prevent crime and disorder, making particular reference to information that had been received, on three separate occasions, in relation to the premises operating outside of their current licensing conditions. CCTV footage to corroborate the complaints had been viewed and despite having been informed in January 2018 that in order to prevent futures breaches of the premises licence, a variation to the licence or a Temporary Event Notice would need to be applied for, Mrs Nsinga, DPS continued to breach the premises licence on two further occasions, ignoring the advice that had been provided.

On 13th April, 2018, the West Midlands Police Local Neighbourhood Sergeant and a Local Authority Enforcement Officer visited the premises, however, no contravention of the premises licence had been observed.

Negotiations/mediation with the DPS and Manager of The Coast Afro Cuisine had been attempted in relation to the proposed opening hours of the premises and the times requested for recorded/live music, however, these had failed. It was noted that the DPS had no intention of having live music playing at the establishment. During enquiries, the DPS informed West Midlands Police that the CCTV system recorded for 28 days and that two SIA registered door staff were employed on Friday and Saturday evenings, however, upon further questioning at the hearing, this information appeared to be incorrect. The Sub-Committee were informed, however, that following a visit to the establishment on 14th May, 2018, the premises now had CCTV recording for 28 days.

The Enforcement Officer presented representations on behalf of the Head of Fleet and Waste Care reiterating comments made above and confirmed that the representations made by West Midlands Police against the licensing hours requested were supported.

Mr Nsinga then presented his case and in doing so informed the Sub-Committee that The Coast Afro Cuisine was a new business and although training had been provided by the DPS, he recognised that more knowledge and understanding was required on the Licensing Law and objectives. He referred to the advice provided by the Enforcement Officer and the meeting which had taken place to mitigate issues and indicated that he had been grateful for the information provided and assured the Sub-Committee that he now understood his responsibility as a Manager. Although acknowledging the incident on 28th April, 2018, he indicated that he was not responsible for the actions of customers prior to entering the premises. It was noted that the footage in relation to the time the two customers entered the premises was the concern not what had been witnessed prior to the women entering. A discrepancy between the footage from the establishment and the Local Authority in relation to the time the customers entered the building was raised. It was noted that the time on the CCTV footage at the establishment was showing exactly an hour earlier than that reported by the West Midlands Police. Having considered the issue, the Sub-Committee were happy to rely on the Local Authority's footage as the system was tested and monitored frequently and used to provide evidence in various court cases.

Following questions from a Member it was confirmed that the DPS was a personal licence holder and that she was present at the premises at all times when operating.

In providing the circumstances of the breach of licence on 28th April, 2018, Mr Nsinga reported that the establishment was in fact closed, however, he had been unaware that the door providing entrance to the premises was open. He stated that there had been a few customers inside the establishment, however, these were all waiting for taxis, CCTV footage could be made available if required to support the comments.

Following questions from Members, it was reported that the capacity of the premises was 100 persons and the main purpose of the business was a restaurant/late night bar. The layout of the venue provided 9/10 tables with approximately 50 dining in the restaurant at any one time with no allocated area for a dancefloor. The idea of applying for recorded music was to increase business during weekdays.

In advising the Sub-Committee in relation to the complaint received in March, 2018, Mr Nsinga indicated that the complainant had a personal vendetta against him following an argument regarding parking. He also indicated that no further complaints by other establishments in the area had been received.

In responding to a question from a Member, Mr Nsinga confirmed that he was aware and understood the procedure in relation to applying for Special Event Notices. It was confirmed that private parties included Christenings and, Birthday parties.

Following confirmation of the operating hours of other establishments in the area and the purpose of staggering the licensing hours of those premises, Mr Nsinga indicated that he would be happy to alter the proposed variation to an extension of time to play recorded music to 2.30am and close at 3.00am in line with other premises in the area. In response to the proposed variation of licensing hours for live music/recorded music and opening hours, West Midlands Police advised the Sub-Committee that they had attempted to negotiate with the DPS and Mr Nsinga by suggested slightly earlier operating times than those applied for, however, these had been refused.

Mr Nsinga indicated that the Enforcement Officer had recommended the licensing hours applied for in the application. In response, the Enforcement Officer refuted the comment made and stated that she had advised many applicants in her previous role and only provided advice that was required.

In discussing security, the DPS confirmed door supervisors were not currently employed during operating hours as it was considered unnecessary, as the premises did not exceed 50 persons. It was confirmed that on one occasion, during a private party, Mr Nsinga had employed 2 door staff, however, these were not SIA registered but two people that he had previously worked with. In response, West Midlands Police challenged the comments made and referred to an e-mail received from the DPS on 3rd April, 2018 at 10.36am, which was read out during the hearing. Although slightly confusing, it clearly stated that SIA registered door staff were employed at the premises during Friday and Saturday evenings. The Sub-Committee expressed concern that despite the venue having a capacity of 100 persons, door staff were not employed. It was suggested that the DPS seriously considered taking advice and to employ security staff as when questioned in relation to what measures were put in place should the venue exceeded 50 person, the DPS and Mr Nsinga failed to convince the Sub-Committee that they had methods to control the situation should it occur.

Having heard the comments made at the meeting and refused the offer for further negotiations, West Midlands Police had serious concerns and considered that the DPS and Mr Nsinga had shown a clear mis-management of the premises and a blatant disregard to the premises licence and recommended that the Sub-Committee consider refusing the application.

The parties withdrew from the meeting to enable the Sub-Committee to determine the application.

The Sub-Committee having made their decision invited the parties to return and the Legal Advisor outlined the decision.

Resolved

That, following careful consideration of the information contained in the report submitted and presented at the meeting, the application to vary a Premises Licence in respect of The Coast Afro Cuisine, 32 King Street, Dudley, be refused for the reasons outlined below.

Reasons for Decision

This is an application dated 27th March 2018 by The Coast Afro Cuisine Ltd. to vary their premises licence to permit the venue to play live and recorded music each day to 2.00am and 3.30am on Fridays and Saturdays, and for the premises to remain open to 4.00am on Fridays and Saturdays. In addition the premises seeks to be able to hold private parties for an additional 1 ½ hours.

The premises licence holder is The Coast Afro Cuisine Ltd. and the DPS is Ms Nsinga. She attended today with Mr Delon Nsinga the Manager of the premises. He stated that he had been trained by his mother and had previously managed a licenced restaurant in the High Street. Ms Nsinga stated that she is at the premises all of the time that it is open. They stated that they currently have no door staff but would do if they had more than 50 persons in the premises. The E-mail communication with the police has been very confused on this issue. The E-mail communication (seen by the sub-committee) also appears to confirm that the premises had CCTV which recorded for 28 days, but that it did not at that point in time. It may well record for 28 days now.

The applicant today explained that the purpose of the application was to extend the hours for recorded (not live) music until 2.00am in line with the current hours. He did state that he could not be responsible for what people did outside the premises (in the bus stop for example) and could not know whether people were taking drugs outside. He confirmed that the maximum capacity for the club is about 100 persons but was not specific.

The applicant explained that the business of the club was a restaurant, and the licence to play music, which would be recorded music only, not live, was in order to increase weekday business. The maximum people for meals was about 50.

The Local Licensing Authority has raised concerns (further to complaints in January 2018) that prior to the application to vary, the premises were open beyond 2.00am. A meeting was convened in January 2018 and the issues discussed.

On 13th April 2018 a joint police/licencing authority visit was made to the premises at 11.35pm. No contravention of the premises licence condition was observed.

West Midlands Police have made representations that in March 2018 CCTV footage is available that shows the premises open with patrons dancing after 3.00am (beyond the time on the licence of 2.00am both for opening and sale of alcohol).

The police recommend that live/recorded music should be played no later than 2.00am on any night and that the premises should not be open any later than 2.30am on any night. They recommend that an additional 30 minutes for all activities and hours be granted on bank holidays and that private parties should be dealt with through Temporary Event Notices.

The police have also submitted a DVD which purports to show two women entering the premises on 28th April 2018 at 2.53am (the current closing hour being 2.00am), one having apparently consumed a substance in a bus shelter outside the premises.

The Sub-Committee notes that the premises licence was granted in September 2017, and that in the 6 – 7 months since that date, there is clear evidence that the premises has been open to customers on two occasions at around 3.00am when the conditions on the licence state that the closing time is 2.00am. The first occasion was in March 2018 (after there had been a meeting between the licencing authority and the premises management to discuss compliance with the licence conditions). The second was on 28th April 2018 after the application to vary had been made, but well before the Sub-Committee today. There was also a third incident in January 2018 when an initial complaint was made. The Sub-Committee is therefore very concerned that the premises appears to be opening when it wishes, regardless of the conditions on the original licence.

The applicant today confirmed that it sought no extension of the alcohol licencing hours, but did seek an extension of time to play recorded music to 2.30am and close at 3.00am in line with other premises in the area.

The Sub-Committee was also concerned that the DPS and Manager did not demonstrate a clear understanding of their business, that the application was completed in a very poor and unclear manner, and that their application today was very unclear and altered throughout the Sub-Committee hearing. Having read copies of the e-mail communication between them and the police, the communication has been very unclear and it was inaccurate when the applicant stated that the CCTV recorded for 28 days. At that time it did not.

The Sub-Committee therefore refuses the application for variation. The premises has not complied with the current conditions of the licence, the application to vary is very confused and some of the communication has been inaccurate. This gives the Sub-Committee no confidence that the premises would be managed in compliance with the licencing objectives, if the hours were increased.

In the light of the fact that the communication regarding the CCTV was inaccurate, the Sub-Committee does take the step to impose the following conditions on the premises licence.

1. CCTV to be in place at the premises and to be recording at all times when the premises are open for licensable activity, to the specifications of the West Midlands Police Crime Reduction Officer. All images are to be recorded and kept for a minimum of 28 days and made available to any responsible authority upon request on reasonable notice, and all staff are to be trained and able to operate and download CCTV. The hard drive is to be locked but readily accessible to staff.
2. The Premises License Holder will take proportionate steps to review the premises CCTV on a weekly basis in order to identify any concerns. A record of these checks shall be maintained and be available for inspection upon request by an officer of any responsible authority.

In terms of the application for increased hours for private parties, the Sub-Committee is satisfied that these can be managed by applications for a Temporary Event Notice.

The meeting ended at 12.05pm

CHAIR

