

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE C 26 FEBRUARY 2020

**MINUTES OF A MEETING OF LICENSING
COMMITTEE C HELD ON WEDNESDAY
26 FEBRUARY 2020 AT 0930 HOURS IN
ELLEN PINSENT ROOM, COUNCIL HOUSE,
BIRMINGHAM**

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Martin Straker-Welds and Neil Eustace.

ALSO PRESENT

Bhapinder Nandhra - Licensing Section
Joanne Swampillai – Committee Lawyer
Katy Townshend - Committee Manager

NOTICE OF RECORDING

- 1/260220 The Chair advised the meeting and it was noted that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATION OF INTERESTS

- 2/260220 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 the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/260220 There were no apologies.

MINUTES

- 4/260220 That the Public Section of the Minutes of meeting held on 8 January 2020 were noted.
The Minutes of meeting held on 22 January 2020 were circulated and confirmed and signed by the Chairman.

**LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW –
SUBSIDE, 57 HIGH STREET, DIGBETH, BIRMINGHAM, B5 6DA**

The following report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

The following persons attended the meeting:-

On behalf of the Applicant:

PC Abdool Rohomon – West Midlands Police (WMP) Licensing Team

On behalf of the Premises

Melissa Toney – Gregg Latchams Solicitors
David Longmate – Premises Licence Holder (PLH)
Ben Mortiboy – Designated Premises Supervisor (DPS)

Following introductions by the Chair, the main points of the report were outlined by Bhapinder Nandhra, Licensing Section.

P C Rohomon made the following points on behalf of West Midlands Police and in response to Members' questions:-

1. The officers from WMP task force executed 2 warrants; one for a private address and one for Subside under the Misuse of Drugs Act. They had intelligence that drugs were being sold from Subside premises.
2. The home address was that of a manager of Subside. The manager had been dismissed. During the search of his premises they found the keys to Subside, which enabled them to execute the warrant at the premises without forcing entry.
3. During the search at Subside 2 safes were found; a white one and a black one. The white one contained a large quantity of drugs and money. Which linked to the drugs, drug paraphernalia and money found at the 'ex' managers home address. The findings from that search resulted in the application for Expedited Review submitted by WMP. They had serious concerns over the quantity of drugs and money found at the premises and felt that the premises were involved in the supply and sale of Class A drugs – suspected Cocaine and Ketamine however they were still awaiting the analytical results for the substances.
4. After the initial suspension of the licence at the Interim Steps meeting, they began discussions and negotiations with the PLH and it became clear that there was absolutely no involvement between the PLH and DPS in the sale or supply of the drugs. The rogue member of staff ('ex' manager) was facilitating the criminal activity without the knowledge of the PLH and DPS. However, there had been failings in the operation and management style which had

Licensing Sub Committee C – 26 February 2020

allowed the rogue staff member the ability to do such things without the knowledge of management.

5. The premises had worked with WMP to provide up to date amended policies and procedures and additionally they had confirmed that all the staff would be trained on such policies and procedures.
6. Much of the policies and procedures went above and beyond what other premises did however WMP were happy with the proposals.
7. The premises would employ a new security company for 3 months to allow the management time to get their SIA security badges.
8. The premises had updated their CCTV in order to ensure that every area of the premises was covered. It had a significant financial impact to install such CCTV.
9. The updated position of WMP was that they were initially concerned due to the seriousness of the drug issue at the premises. Yet they were now satisfied that the PLH and DPS was not involved in the sale or supply of drugs and were impressed by their proactive approach in dealing with the problems quickly. Additionally, WMP were satisfied with the additional CCTV, new policies and procedures and were not requesting that the licence be revoked. Instead they requested that the licence be reinstated but the additional agreed conditions to form part of the licence.
10. The safe was for the 'ex' managers' personal documents which he requested to store there due to his house burglary. The PLH and DPS did not have access to it and had learnt a "hard lesson".
11. That WMP were satisfied that the premises would uphold the licensing objectives if their licence was reinstated.
12. WMP had absolutely no issues with the premises operating under their licensed hours and was not requesting a reduction in hours.

Melissa Toney made the following points on behalf of the PLH and in response to Members' questions:-

1. That it was conceded that the PLH and DPS bestowed an element of trust in their staff which had led to a miscalculation on their part.
2. The incident which had led to the review was an isolated incident and there was no evidence that the PLH or DPS had been involved in the sale and supply of drugs. It was purely the act of a rogue member of staff who had now been dismissed and was currently under investigation by WMP.
3. Moving forward, the problems would not be repeated, and the premises had improved diligence and policies.
4. The safe came to be in the premises as the 'ex' manager had his house burgled and requested a safe inside the premises purely for personal documents to ensure that they were safe. The DPS and PLH agreed and they

Licensing Sub Committee C – 26 February 2020

investigated the safe on two separate occasions and found nothing other than paperwork and documents – absolutely nothing to cause them any concerns. WMP found drugs in that safe, but that was not discovered by the DPS when he carried out his own inspection of the safe.

5. They had contracted a new security firm for 3 months to work alongside the PLH and DPS whilst they were obtaining their own SIA badges.
6. The security search process had been approved. The premises was at its busiest on weekends and they were going to have a female officer on duty at all times to help with random searches on a weekend. Improved searches on the entry and exit points were also agreed.
7. Signage had been distributed all over the premises regarding their 'zero tolerance' policy in relation to drugs. They had put signage up near the toilets to ensure the message was clear.
8. All staff had been trained on all the updated policies and procedures.
9. The safe was only accessible by managers – of whom there were 3.
10. CCTV was expected to be installed by 27 March 2020 and would include a new 4 HD system to be installed throughout the entire premises, with the toilet lobby areas to also be included.
11. The staff would receive updated training frequently by the duty manager and PLH.
12. That she hoped the Committee were satisfied and would modify the conditions on the licence.
13. There were no circumstances to revoke the licence.
14. The reduction in hours from the representation against interim steps meeting should be lifted. The premises busiest times were of a weekend from midnight – 6am and therefore the reduction in hours would cause financial hardship on the business and ultimately make the business unviable.
15. The premises had been used for community events such as Jazz Festivals and Theatre Shows and was a great asset to the community.
16. There was no way that curtailing the hours would be necessary.

In response to questions from Members Mr Mortiboy, DPS made the following points:-

1. The process of the expedited review had resulted in some difficult weeks for the premises and they now had a "black mark over" the business.
2. He had "rammed it down the staff's throats this was never to happen again".
3. They had addressed the key areas such as the toilets and were installing CCTV in the lobby area to ensure all angles were covered.

4. That staff members would have continuous training.

In response to Members questions Mr Longmate, the PLH made the following statements: -

1. He had his laptop with him and could show the Committee the difference between January and February's take ins. He could also show the daily reports which would be kept on file to ensure they were aware of "every single problem".
2. He had put his life into the bar and could not afford for the business to close, he would lose his house and "stuff".
3. The business was important to him and he would sack anyone who did not implement or comply with the policies and procedures they had put in place.
4. They were awaiting the outcome of the Summary Review hearing before booking themselves onto the SIA course. The courses ran on Thursdays, Fridays and Saturdays, of which they had work commitments therefore, they were hoping to contact the company who supplied the training to see if they could come to the premises in the day time and do the training from the premises.
5. He had contracted a security firm to come and check that all staff were implementing the policies and procedures, they would do spot checks every month for 1 year to check compliance.
6. That the training policies were already in place previously, however the updated ones were far more robust. The new CCTV system was an improved system covering more areas. The CCTV system allowed them to view the CCTV from their phones remotely to ensure the management could see everything even if they were not in the country.
7. Every corner of the bar area was under CCTV surveillance.

In summing up PC Rohomon, on behalf of WMP made the following points: -

- ❖ He was satisfied with the policies and procedures put in place by the management team.
- ❖ WMP recommendation was to modify the conditions on the licence.
- ❖ The CCTV condition already on the premises licence needed the word 'where' removing.
- ❖ The PLH had learnt a "brutal lesson" and the Expedited Review process was "not without pain".
- ❖ They recommended that the licence be reinstated with the modification of conditions and the inclusion of the drugs policy conditions, and the CCTV to be made immediately available.

Licensing Sub Committee C – 26 February 2020

- ❖ He had no issues with the licence being 24 hours.

In summing up Melissa Toney, on behalf of the PLH made the following points: -

- ❖ That they were happy with what PC Rohomon had suggested. The CCTV condition would need inserting and amending to include 40 cameras and the drug policies and training will be included.
- ❖ They would continue to meet the licensing objectives without issue.
- ❖ The PLH would be grateful for the hours to go back up to 24 to enable them to continue trading.

At 1035 hours, the Sub-Committee adjourned and the Chair requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1153 hours, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/260220 **RESOLVED:-**

That having reviewed the premises licence held under the Licensing Act 2003 by Subside Bar Limited in respect of Subside, 57 High Street, Digbeth, Birmingham B5 6DA, following an application for an Expedited Review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines that:

1. The original hours as shown on the premises licence are reinstated with immediate effect; accordingly the curtailed hours which were imposed by the Sub-Committee on the 13th February 2020 are lifted

And in addition:

2. The conditions of the premises licence are **modified as follows**:

NEW POLICIES AND PROCEDURES

The following new policies and procedures shall be implemented:

- Licensing Training Handbook and Questionnaire
- Licensing Training Questionnaire Answers
- Licensing Training Record Sheet
- Drugs Policy Handbook and Record Sheet
- Eight Step Drugs Seizure Policy as follows:
 1. Drugs confiscated
 2. Details of customer taken, if safe and appropriate to do so
 3. Drugs passed to duty manager
 4. Drugs secured in sealed evidence bag and placed in drugs safe by duty manager
 5. Incident recorded and signed by duty manager and security staff or bar staff (two people)
 6. Record made in handover book for next day (or next duty manager changeover)
 7. Where the Designated Premises Supervisor ['DPS'] is not duty manager, details of incident passed to the DPS as soon as possible

Licensing Sub Committee C – 26 February 2020

8. Incident discussed at monthly meeting and arrangements made for transfer of sealed evidence bag to Police

To facilitate the Eight Step Drugs Seizure Policy:

- the drugs safe located inside the main safe and accessible only by the management shall be used to secure any seized item
- sealable evidence bags shall be used
- an incident book shall be used
- the Premises Licence Holder ['PLH'] will arrange for a check to be made once a week of any and all incidents logged in the incident book, and a check to be made to ensure that the sealed evidence bags match the logged incidents

TRAINING

All current staff will have refresher sessions every six months. New staff upon commencement of employment will be given initial training, and thereafter will take part in refresher sessions.

CCTV

- A forty camera 4K HD CCTV system shall be installed by Friday 27th March 2020 throughout both the public areas and the staff areas at the premises, recording images within every room including the toilets
- The CCTV camera for the welfare/vulnerability room shall also be equipped with an audio recording facility
- The premises licence holder shall arrange for the provision of CCTV data immediately upon request by any officer of West Midlands Police or any authorised officer

SECURITY

- Both the PLH and DPS shall undertake to obtain SIA badges by 1st June 2020
- After 1st June 2020 security will be an in-house responsibility
- On weekend nights random patrons will have a bag/pocket search upon entry, with a more robust search should security deem it appropriate
- Anyone refusing a search will not be admitted
- A female security operative will be added to the weekend staff rota

FUTURE MANAGEMENT STAFF

All future management level staff will complete a satisfactory DBS check.

CHALLENGE 25 CHECKS, AND PATRONS REFUSED ENTRY

- Any patron subject to the Challenge 25 checks who does not produce ID shall be refused entry to the bar
- The refusal of entry to the bar will be recorded on refusal sheets kept at the bar or entry kiosk
- The refusal sheets will be collated into a separate book for inspection and maintained by the duty manager each night and overseen by the DPS weekly
- All staff will have 6 monthly training on this procedure

ADDITIONAL CHECKS

The premises licence holder will arrange for the carrying out of unscheduled spot audits on the policy recording documents for a period of twelve months from 26th February 2020.

In addition to the above conditions, those other matters detailed in the original operating schedule, and the relevant mandatory conditions under the Licensing Act 2003, will continue to form part of the licence issued.

The Sub-Committee's reasons for imposing these modified conditions are due to submissions made by West Midlands Police in relation to the efforts made by the premises to improve the standard of the operation. The Police had found the management of the premises to be cooperative, and noted that the management had sought and taken Police advice on the implementation of the new policies and procedures. The Police had confidence that the premises could operate to their previous standard, ie before the events which had led to the application for an Expedited Review of the licence. The Police were also amenable to the restoration of the original operating hours, seeing no need for any continuation of the curtailed hours which the Sub-Committee had imposed at the most recent meeting.

The Police also confirmed that they had found no evidence whatsoever of any collusion between the Subside management and the staff member whose conduct had recently been discovered to be unsatisfactory. It was accepted by the Police that the member of staff had been on a frolic of his own, entirely unbeknown to the management; the management had considered the individual to be trustworthy until the misconduct was brought to their attention. It had been an isolated incident as the premises had previously enjoyed a good operating history.

Since the imposition of interim steps at the two previous hearings, the Sub-Committee agreed that considerable efforts were being made by the premises licence holder and management staff to remedy all aspects of the operation; in particular there was to be an improved policies and procedure regime with a keen focus on drug issues. Other improvements included a complete overhaul of the CCTV arrangements, now to involve the use of forty cameras, such that every room would be surveilled. Improved staff training was also a positive step.

The Sub-Committee noted that many aspects of the improved management style had already been implemented to the satisfaction of the Police. All in all, it seemed entirely proper to allow the restoration of the original operating hours; the Sub-Committee resolved that all that was required was the modification of some conditions. The Sub-Committee considers the modified conditions imposed to be appropriate, reasonable and proportionate to address concerns previously raised, in particular the likelihood of serious crime.

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 2003 Act, the Guidance issued by the Home Office in relation to expedited and summary licence reviews, the application and certificate issued by West Midlands Police under Section 53A of the 2003 Act, the written representations, and the submissions made at the hearing by the police, and the premises licence holder and his legal representative.

Licensing Sub Committee C – 26 February 2020

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 disposal of the Appeal.

OTHER URGENT BUSINESS

6/260220 There was no urgent business.

.....
CHAIRMAN