

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE B
TUESDAY 31 JANUARY
2023**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 31 JANUARY 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Saddak Miah and Adam Higgs.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/310123 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/310123 **DECLARATION OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an

interests flowchart which provides a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/310123 No apologies were submitted.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – PREMIER, 393
SUMMER LANE, NEWTOWN, BIRMINGHAM, B19 3PL.**

On Behalf of the Applicant

Chris Jones – (WMP) West Midlands Police
PC Dalton – WMP
Huram Taj – WMP (Observing and assisting with technology issues)

On Behalf of the Premises Licence Holder

Duncan Craig – Barrister, Citadel Chambers

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The Chair introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

Opening for the (PLH) Premises Licence Holder, Duncan Craig of counsel, advised that he was unable to open the footage WMP intended to show at the hearing. He did manage to open it with assistance, but he hadn't been able to take instruction from his client regarding that footage. Due to the on-going investigation, he requested that the hearing be held in private.

Chris Jones, on behalf of WMP, agreed with the submissions made by Duncan Craig.

Following a short adjournment to seek legal advice, the Committee resolved that the hearing would be held in private to ensure that no sensitive material ended up in the public domain and subsequently hindering the criminal proceedings.

At this stage, the Chair outlined the procedure to be followed at the hearing and invited David Kennedy to present his report. David Kennedy, Licensing Section, outlined the report.

At this stage WMP indicated that they wished to go into private session.

EXCLUSION OF THE PUBLIC

4/310123 **RESOLVED:-**

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was sent to all parties as follows;

5/310123

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Raj Kumar, in respect of Premier, 393 Summer Lane, Newtown, Birmingham B19 3PL, upon the application of West Midlands Police, this Sub-Committee hereby determines that:

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- the Licence be revoked, and that
 - Anna Urbanowicz be removed as Designated Premises Supervisor
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in order to promote the licensing objective in the Act of the prevention of crime and disorder. The Sub-Committee's reasons for revoking the licence were due to the concerns expressed by West Midlands Police, as outlined fully in the Committee Report.

The meeting was conducted in private session after the Sub-Committee considered an application made by counsel for the premises licence holder under regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005. Counsel explained that to hear the evidence in public would undermine an ongoing criminal investigation, and that it was best to hold the entire hearing in private. He had discussed this with West Midlands Police, who confirmed that CCTV recordings were to be played in the meeting, and that they were happy for the entire hearing to be held in private. The Sub-Committee therefore agreed to hold the meeting in private session.

The Police summarised the investigation thus far, as per the documents in the Committee Report. On the 5th November 2022, local neighbourhood police officers had been made aware that alcohol had been stolen (shoplifted) from other licensed premises. The theft had happened that morning, and was thought to have been around twenty bottles, with a value of approximately £350.

Whilst making enquiries, officers become aware that, shortly after the theft from other licensed premises, the suspected shoplifters had been seen leaving the Premier shop in Summer Lane. CCTV from the Premier shop was therefore examined, and was found to clearly show the suspected shoplifters entering Premier carrying bottles of alcohol; thereafter, a female staff member behind the counter at Premier was

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shown purchasing the bottles of alcohol from the suspected shoplifters. This female member of staff was arrested for handling stolen goods.

Officers also spoke to a male at Premier, believed to be the licence holder, and explained that they would be conducting a search of the shop to look for stolen property. Upon hearing this, the male produced two bottles of spirits; both bottles had hard plastic security tags attached, of the type that is removed at point of sale. Officers observed that these bottles must have been stolen, as Premier did not have any such system of hard plastic security tagging in place.

The two bottles were not part of the twenty bottles which had been shoplifted that morning from other licensed premises, as they were a different brand. However, the presence of security tags on the two bottles, when Premier did not use such security devices, suggested the overwhelming likelihood that they had been stolen in other theft offences. Officers conducting a search then found further, numerous, bottles of alcohol on which security tags had been removed, damaging either the packaging or the labels. The same packaging damage was observed on other products found, such as razor blades.

The Police remarked that the production by the licence holder of two stolen bottles of alcohol strongly indicated that the purchase of stolen property was a regular occurrence at Premier, and moreover that it was something of which the licence holder was aware.

Officers seized all the items believed to be stolen, and also the premises' CCTV hard drive. Examination of the events of the morning of the 5th November 2022 showed that the female member of staff behind the counter at Premier had purchased alcohol from the shoplifters some 17 minutes after they had stolen alcohol from another premises. This suggested that the offenders were confident that stolen items would be welcomed at Premier.

Moreover, the Police had noted in the Committee Report that all the items seized by officers were items of the type targeted by organised groups of thieves carrying out bulk thefts at retail premises around the city.

On the 7th November 2022 officers returned to the Premier shop and spoke to the licence holder Mr Raj Kumar. Another male in the shop acted as interpreter, although officers observed that the licence holder was capable of holding a conversation in English.

The licence holder confirmed that officers attending on the 5th November had seized the CCTV hard drive. Officers informed him that any sale of alcohol without a functioning CCTV system in operation would be a breach of a condition of the licence; in response to this, Mr Kumar stated that he was not selling alcohol, and pointed out that two of the fridges had their shutters down. However, officers observed that all other alcohol in the premises was displayed for sale in the normal

manner, with no indication that it was not for sale.

Regarding the incident of the 5th November, Mr Kumar confirmed that the female member of staff behind the counter who had purchased the stolen alcohol was still employed at Premier. Officers then began a compliance check, but found that Mr Kumar could not supply staff training records or the incident book. The refusals register was available, but showed no entries whatsoever. Mr Kumar stated that all paperwork unavailable for inspection “had been destroyed in a flood” at the premises, some four months previously; however, he gave no explanation as to why it had not been replaced or renewed.

The seized CCTV hard drive held images for up to six months. Officers viewed the footage and noted that it showed staff at Premier buying what the Police considered to be “large quantities” of stolen goods. Taking the approximate 12 week period of 7th August – 5th November 2022, the officer had viewed twenty days selected at random, and had found sixty occasions in which staff behind the counter appeared to purchase stolen goods from shoplifters visiting Premier to offer items for sale.

A selection of the CCTV recordings showing these purchases of stolen goods was played to the Sub-Committee – eleven clips in total. The persons conducting these purchases were the licence holder Mr Kumar, and two other staff members. They were shown to be involved via the CCTV footage. One was a female, the other was the male who had acted as interpreter. The items purchased from shoplifters included bottles of alcohol, bottles of soft drink, and large tins/tubs of the type used by chocolate brands.

All of the stolen goods accepted by the staff member on duty were paid for in cash, and no receipts or invoices were exchanged. The Police observed that these transactions were “very unlikely” to have been put through the premises’ accounts. The Police remarked that, if this were the case, it would mean that tax would not have been properly paid.

Once purchased, some of the stolen goods were put on display in the shop straight away, for immediate sale to the public – yet the licence holder would have had no idea of the provenance of the goods, or whether the genuine product was in the container, or if they were safe for consumption and/or to sell to the public, and would not have known if they had been stored correctly before selling them, as they had not been purchased through a legitimate supplier.

Persons described by the Police as “prolific shoplifters” had been identified on seven out of the eleven clips. The Police acknowledged that not all shoplifting offences were reported to them, but there had been three crime reports in relation to the clips shown to the Sub-Committee. These persons had been identified, prosecuted and convicted of theft. The Police remarked that the Premier shop was

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“profiting from other premises which had been the victims of crime”, by purchasing stolen property on a regular basis.

The Police also reminded the Sub-Committee that if Premier were not purchasing the items, then the offenders would not be committing the thefts, as they would not have an outlet to exchange stolen goods for ready cash with no questions asked. The Sub-Committee agreed with this.

Having played the selection of eleven CCTV clips to the Sub-Committee, the Police stated that they had no confidence in the premises to uphold the licensing objectives, particularly the prevention of crime and disorder, and accordingly requested that the licence be revoked.

The Sub-Committee then heard submissions from counsel for the licence holder, who confirmed that he had been instructed on the Review application itself, and the Police statement, but that he was not able to comment on the CCTV as he had not been instructed on that. He noted that the Review application had made reference to a female member of staff, and to a male acting as interpreter, and not Mr Kumar. Regarding the CCTV footage, he asked the Sub-Committee to consider whether a person with criminal intention would allow it to be seen on recordings, inviting the Members to consider whether it was more likely that such a person would turn the camera off.

Regarding the lack of compliance with the licence conditions, counsel confirmed that the licence holder acknowledged the failings, and was in the process of engaging a consultant to resolve those issues in the next few weeks.

Regarding the CCTV footage, counsel noted that the Police had described some of the shop’s visitors as “known offenders”, but that there was nothing to corroborate that, and he was unable to challenge it. Regarding the stolen goods, counsel observed that in matters involving the handling of stolen goods there was usually some evidence in relation to the provenance of such goods, but in this case he was not in a position to evaluate that. The incident had occurred in November of 2022 and counsel was not aware of anything further being brought to the attention of the Police since then.

Counsel pointed out to the Sub-Committee that looking at CCTV footage did not always provide the full picture, because the element of context was required. He urged the Members to consider paragraph 9.12 of the Guidance issued under s182 of the Act, which required that the evidence of a responsible authority should be given scrutiny. He also directed the Members’ attention to paragraph 9.43 of the Guidance, and asked them to be proportionate in making their decision.

He acknowledged that the Sub-Committee might feel that some

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sanction should be imposed on the premises, and recommended that the Members could consider imposing a suspension of the licence, of a period of up to three months. He also asked the Sub-Committee to note that the licence holder felt that Premier was important in terms of serving the local community. The Sub-Committee did not hear from the licence holder directly, as he had not attended the meeting.

Members asked counsel to confirm who the designated premises supervisor [DPS] was for Premier; counsel confirmed that it was the licence holder. However, the Principal Licensing Officer stated that his officers had reviewed the application history for the premises, and had found that on the 4th March 2021 a simultaneous transfer and DPS variation had been received, to change the licence holder to Mr Kumar, and the DPS to Anna Urbanowicz, with immediate effect. This had not been shown in the documents within the Committee Report, due to a data migration error during the implementation of new software, but the position was that Anna Urbanowicz was the DPS for Premier. Counsel accepted this.

The Sub-Committee then heard closing submissions. The Police stated that the offenders were known to local police officers, who had had previous dealings with them. The Police reiterated that whilst they acknowledged that not all shop thefts were reported, in this case three of them had been; the Police had identified the offenders, who had later been convicted.

The Police opinion was that the premises was not promoting the licensing objectives, particularly not in terms of the prevention of crime and disorder – indeed it was doing the opposite, and in fact increasing criminal activity, by offering cash in return for stolen goods. The Police confirmed that, with those facts in mind, their request was for revocation. Counsel then asked the Sub-Committee to scrutinise the evidence closely, and to make a proportionate determination.

When deliberating, the Sub-Committee agreed with the Police that for any licensed premises to be involved in handling or purchasing stolen goods from local shoplifters put the licensing objectives at very grave risk; as such, the Sub-Committee took a very dim view of it. It was a drain on the public purse, as West Midlands Police had to allocate resources to investigate and deal with a criminal activity which had been undertaken, for profit, by a person who should have been more than aware of the standards expected of all licence holders in Birmingham. The breaches of condition were likewise unacceptable.

The Police had observed that they had no confidence whatsoever in the management at Premier to uphold the licensing objectives. After scrutinising the Police evidence carefully, in particular by viewing the eleven CCTV clips, the Members shared the Police concerns. The Police had remarked that the CCTV “spoke for itself”; the Members agreed with this. Whilst counsel had felt that CCTV did not always give the full picture, the Members felt that what it had shown was more than

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sufficient to confirm that the premises was operating in a manner which undermined the licensing objectives.

Although counsel had invited the Members to reflect on whether a licence holder with criminal intent would not simply turn the CCTV camera off, it was equally likely that where there was little regard for the law, this might not be a consideration. Certainly the eleven CCTV clips played in the meeting had amply demonstrated that, in the day to day operation of the Premier shop, it was entirely usual that local shoplifters would arrive bearing armfuls of stolen goods (in one instance, waiting outside the front door for the premises to open), confident that these goods could instantly be exchanged for cash from whoever was manning the till. The Members noted that the random sample of twenty days viewed by Police had shown sixty instances of such transactions.

The Sub-Committee looked at all options when making its decision, and placed particular emphasis on the need to ensure that it had confidence that the management of the shop would not engage in, and encourage, criminal activity; criminal activity affected not only consumers, but also respectable local businesses in Birmingham.

The Members were also aware of the need to consider whether they had confidence that the premises could uphold not only the licensing objectives generally, but also its own licence conditions, given what had been found in the compliance check. Counsel had stated that a consultant would be engaged shortly to deal with the compliance issues, but the Members were unsure how Mr Kumar had felt that his style of management was a proper way to operate licensed premises. Nothing in his operating style inspired confidence.

The Members gave consideration to counsel's suggestion that they should suspend the licence for a specified period, but were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, or that the premises would operate within the law if the determination was simply to suspend. The Members again bore in mind that the sample of twenty days' worth of CCTV recordings had shown sixty instances of staff purchasing stolen goods from shoplifters calling at Premier.

Similarly, modifying the conditions of the licence was not possible as the evidence, and in particular the CCTV recordings, had shown a complete disregard for the law by the licence holder and his staff. The operation had been managed in a way that was not merely irresponsible, but also illegal. The findings had shown a lack of professional supervision and control by Mr Kumar as the licence holder, and in short he had demonstrated that he was incapable of upholding the licensing objectives.

After scrutinising all the evidence, the Sub-Committee determined that the purchase and sale of stolen goods was indeed so serious that it

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could not be tolerated; in addition, there had been breaches of condition. A determination to revoke and to remove the designated premises supervisor would follow the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003, and was an entirely proportionate sanction given that the premises' style of operation seriously undermined the prevention of crime and disorder objective in Birmingham.

There were no compelling reasons to depart from the Guidance on this occasion. To take some other course (other than revocation and removal of the designated premises supervisor) ran the risk of sending a message that purchasing and reselling stolen goods was not a serious matter, or that there would be no consequences for illegal activities, which the Sub-Committee was not prepared to do. The Sub-Committee therefore resolved to revoke the licence and to remove Anna Urbanowicz as designated premises supervisor.

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 application for review, the written representations received and the submissions made at the hearing by West Midlands Police, and by counsel for the licence holder.

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 appeal is determined.

Meeting ended at 1129 hours.

CHAIR.....