

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 12 JANUARY 2024
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 12 JANUARY 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Sam Forsyth and Julien Pritchard.

ALSO PRESENT

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

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

1/120124 **NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/120124 **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

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

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/120124

Apologies were submitted on behalf of Councillors Saddak Miah and Adam Higgs and Councillors Sam Forsyth and Julien Pritchard were the nominated substitute Members.

LICENSING ACT 2003 AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 – APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE – CONSIDERATION OF INTERM STEPS – HOLLOWAY CLUB TRADING AND KING VN, 89 HOLLOWAY HEAD, BIRMINGHAM, B1 1QP.

On Behalf of the Applicant

Chris Jones – WMP (West Midlands Police)
Ben Reader – WMP (West Midlands Police)

On Behalf of The Premises Licence Holder

No one attended. The elected Counsel (Duncan Craig) advised the Licensing Section that he would not be attending and therefore the meeting could proceed in his absence.

* * *

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

Ben Reader, WMP advised the Committee that there was an on-going criminal investigation linked to the expedited review application. Persons has been bailed due to offences. WMP intended to screen photos and video footage of what officers found when they visited the premises. Disclose of that information could prejudice the on-going criminal proceedings and subsequently they requested that the meeting be held in private.

Following a short adjournment the Committee approved the request submitted by Ben Reader, WMP and the Chair announced that the meeting would be held in private following the usual procedural points and after the Licensing Officer had presented the report in the public session.

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

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At this stage the chair invited the applicant/their representative to make their presentation in private.

EXCLUSION OF THE PUBLIC

4/120124

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:-

Exempt Paragraph 3

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the short decision was announced at the meeting. A full written decision of the Sub-Committee was sent to all parties as follows;

5/120124

RESOLVED:-

That having considered the application made and certificate issued by a Superintendent of West Midlands Police under section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Mr Hoai Nam Le in respect of Holloway Club, 89 Holloway Head, Birmingham B1 1QP, this Sub-Committee hereby determines:

- that the licence be suspended, and
 - that Thi Hong Quyen Van be removed as the designated premises supervisor
- pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application.

The Sub-Committee's reasons for imposing the two interim steps are due to the concerns which were expressed by West Midlands Police in relation to matters pertaining to serious crime, which had come to light as outlined in the Superintendent's certificate and application. Those documents were in the Committee Report.

The Sub-Committee determined that the cause of the serious crime originated from a style of management which had been incapable of upholding the licensing objectives. The style of management was the responsibility of Mr Le, as premises licence holder for the premises.

West Midlands Police attended the meeting. The licence holder did not attend and was not represented.

The meeting was conducted in private session after the Sub-Committee considered an application made by West Midlands Police under regulation 14(2)

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of the Licensing Act 2003 (Hearings) Regulations 2005. The Police explained that the matter was a live police enquiry regarding a serious crime incident. A Police investigation was ongoing regarding the incident. The Police asked for the proceedings to be conducted in private. The Sub-Committee conducted the meeting in private session.

Members heard the submissions of West Midlands Police, namely that the certificate, which had been issued by a Superintendent under s53A of the Act, related to an allegation of serious crime which had originated at the premises. The details were as per the documents in the Committee Report, and related to the execution of a search warrant at the venue under s23 of the Misuse of Drugs Act 1971.

The Police summarised the investigation thus far, relating to the discovery of significant quantities of illegal drugs, and significant sums of cash, at the site. An offence(s) under the Misuse of Drugs Act 1971 was suspected; the quantities discovered suggested an intent to supply, rather than simple possession.

The Police advised the Sub-Committee that such an offence was classed as a serious crime under s81 of the Regulation of Investigatory Powers Act 2000, as the sentence on conviction was likely to exceed three years. The incident therefore warranted the use of the s53A power, and the matter had been brought before the Sub-Committee for an Expedited Review hearing.

The Police view was that interim steps were required in order to deal with the causes of the serious crime whilst the criminal investigation was under way. It was the advice of the Police that a lack of management control had led to the incident. Overall, the Police had no confidence in the premises' ability to prevent further serious crime. It was therefore the Police's recommendation that the incident had been so serious, and the risk to the upholding of the crime prevention objective so grave, that specific interim steps were required.

The Police recommended that the correct course was to suspend the licence, for the reasons given in the Superintendent's certificate and application, and also to remove the designated premises supervisor. This was in the interests of guarding against the risks of further serious crime pending the full Summary Review hearing in 28 days' time.

The licence holder had not attended and was not represented, and therefore the Sub-Committee did not have the opportunity to hear from him or to ask him any questions.

Having heard all of the evidence, the Members were mindful of the Guidance issued by the Secretary of State under s182 of the Act, which advised them to only impose those steps which were necessary to guard against the risks of further serious crime. However, the starting point was that the Members were not confident that Mr Le understood his responsibilities as licence holder, and moreover were not satisfied that there was proper management control of the premises.

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The Police had observed that both the licence holder and the designated premises supervisor had been on site during the incident. The Sub-Committee considered that the wholly inadequate style of management described was a significant risk to the upholding of the crime prevention objective.

The Sub-Committee agreed with the Police that at this stage it was not possible to have any trust in the management of the operation. The Members felt that they were not prepared to take any risks regarding the potential for further serious crime, particularly relating to illegal drugs being found within licensed premises, pending the full Review hearing.

In deliberating, the Sub-Committee determined that there had been a discovery of a matter relating to serious crime, which was being investigated by Police. It was abundantly clear that the operation was not being run in accordance with the licensing objectives. Any instance of illegal drugs finding their way into licensed premises was extremely serious; moreover, on this occasion, significant quantities of illegal drugs had been discovered inside the premises whilst it was open to the public and conducting licensable activities.

This was a clear risk to the prevention of crime and disorder objective. All in all, the management style seen at the premises was not at all the standard expected of premises licence holders in Birmingham.

The Sub-Committee was not satisfied that the licence holder could be trusted to operate in a manner capable of preventing further serious crime. The Members noted in particular the Police comments regarding the quantities of both illegal drugs and cash found at the site. The Police were the experts in crime and disorder, and accordingly the Sub-Committee accepted the Police's advice.

The Sub-Committee considered the other options of modification of the conditions of the licence, and exclusion of the sale of alcohol by retail from the scope of the licence, but did not consider that these would adequately cover the risks, given the seriousness of what had been described in the Superintendent's certificate and application. Moreover, the Police had not recommended either of these as a satisfactory course for the Sub-Committee to take.

The correct way forward was therefore to suspend the licence pending the full Review hearing, as recommended by the Police. The Sub-Committee found the Police recommendation to be entirely the proper course given what had been described in the documents and in the meeting, and determined that it was both necessary and reasonable to impose the interim step of suspension of the licence to address the immediate problems with the premises, namely the potential for further serious crime.

The Sub-Committee further noted that it was the responsibility of the designated premises supervisor to ensure that alcohol sales were conducted in accordance with the licence. The Sub-Committee therefore determined that the removal of the designated premises supervisor was a very important safety feature.

The Members considered that Thi Hong Quyen Van had fallen far short of the standards expected of any designated premises supervisor, and that the style of

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operation described in the Superintendent's certificate and application was a very significant risk to the upholding of the licensing objectives in Birmingham.

Under the current style of operation, large quantities of illegal drugs and cash had been found inside a licensed venue – the quantities of both suggested that an intent to supply was likely. Public safety was of paramount importance, and the Members considered that it was a danger to the public for the premises to continue to operate in the manner seen on the night in question.

In reaching this decision, the Sub-Committee has given due consideration to the application made and certificate issued by a Superintendent of West Midlands Police, the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the written submissions made, and the submissions made at the hearing by West Midlands Police.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours excluding non-working days.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.

The meeting ended at 1053 hours.

CHAIR.....