

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE A 1 JUNE 2020</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 1 JUNE 2020 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp.

### **ALSO PRESENT**

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

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

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### **NOTICE OF RECORDING/WEBCAST**

- 1/010620 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](http://www.civico.net/birmingham)) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

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2/010620 **DECLARATION OF INTERESTS**

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 will be recorded in the minutes of the meeting.

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### **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

- 3/010620 No apologies were submitted.
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**LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW - THE  
BRICKLAYERS ARMS, 218 ICKNIELD PORT ROAD, BIRMINGHAM B16 0EA**

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

**On Behalf of the Applicant**

PC Abdool Rohomon – West Midlands Police (WMP)

**On behalf of the Premises Licence Holder**

Malcolm Ireland – Napthens of Blackburn Solicitors  
Scott Saunders – Premises Licence Holder (PLH)

The Chairman introduced the Members and officers present and prior to the commencement of proceedings the Chair asked if there were any preliminary points for the Sub-Committee to consider. At this stage PC Rohomon requested that the CCTV/'body cam' footage be shown in private due to the sensitive and confidential material that would be shown.

Mr Ireland confirmed they had no objections to WMP's request.

At this stage (1016 hours) the meeting was adjourned in order for the Committee to consider the request. Due to the meeting being held virtually all parties muted their microphones and the Members, Committee Lawyer and Committee manager withdrew from the public session and went into a separate private Teams session to deliberate.

Having considered the request, the Members, Committee Lawyer and Committee Manager re-joined the public meeting at 1028 and all parties were invited to 'unmute' their microphones and the Chairman advised that the preliminary request had been accepted.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy to outline the report.

PC Rohomon was invited to make his submissions and it was at this point he indicated that he wished to show the 'body cam' footage and therefore the session should be conducted in private.

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**EXCLUSION OF THE PUBLIC**

4/010620

**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 Bricklayers Arms, 218 Icknield Port Road, Birmingham 16B 0EA

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At this stage in the meeting having heard the submissions in private the public were readmitted to the meeting and PC Rohomon continued to address the Committee.

PC Rohomon made the following points: -

- a) The incident that resulted in the expedited review application was detailed within the police log in WMP supporting documents.
- b) The body cam footage was taken at the back of the premises, the front door to the premises was locked.
- c) PC Rohomon read through pages 29 and 30 of the police logs and confirmed that the intelligence they had received was that people were gaining entry to the premises through a back door, when officers arrived the back door was open. Therefore, indicating that the intelligence was correct.
- d) WMP made a request for the CCTV footage and yet they still had not received it. PC Rohomon was aware that the position of the PLH is that the CCTV was only recording for 15 days and therefore it had not been handed over accordingly.
- e) The CCTV would have been crucial, it would have been able to determine if they were breaching the lockdown regulations or not.
- f) The evidence was clear from the body cam footage that people were drinking at the premises.
- g) It was not acceptable that people were using the toilet facilities.
- h) It didn't make sense.
- i) That WMP had visited other premises and the tills had been empty, gaming machines turned off, no bar optics on display and yet this premises had not done any of those things, instead everything indicated that they were operational.
- j) The tenant lived on the premises, so the story about having the till on to get change made no sense, as he would have the cash float upstairs.
- k) The Covid-19 pandemic was serious, 40,000 people had died. The tenant had put not only himself at risk but also his family and wider community.

- l) That he had been in communication with Mr Ireland who had explained that they had surrendered the lease by the tenant. WMP were satisfied with that and it would have been one of the things they were seeking through this process.
- m) That it was the PLH responsibility to promote the licensing objectives.

At this stage the Chair invited Mr Malcolm Ireland, on behalf of the PLH to make his representation and as such, Mr Ireland made the following points: -

- a) That Admiral Taverns was a credible name and had a reputation for working well with local authorities.
- b) In terms of involvement with the premises, they did not have day to day control over the premises. The premises was leased to the *now* previous tenant. Admiral always supported and assisted their tenants.
- c) That sometimes Admiral Taverns weren't aware of the day to day things.
- d) The way Admiral operated was a perfectly acceptable approach. However, it did mean that sometimes, they didn't know what was happening at 'ground level'.
- e) The first the PLH knew about the issues was when the expedited review application was submitted.
- f) They attended the interim steps meeting and were happy to have the licence suspended so they could find out what had gone on and investigate the issues further.
- g) They had spoken with the tenant. His position is that he was with friends, he wasn't selling alcohol or carrying out any licensable activity at the time. They were hoping to be able to confirm that position with the CCTV footage however, the CCTV footage never materialised and therefore it put them in a predicament.
- h) They contacted WMP and asked them what they were looking for, they advised they would be seeking to get the tenant removed or the licence revoked.
- i) Admiral always supported their tenants if it was the right thing to do, but on this occasion, it wasn't, and the tenant had not helped himself. Whether he was doing licensable activity or not, his actions were still wrong.
- j) WMP still had some concerns over how long it would take to remove the tenant. However, that would not be the case in these circumstances as the tenant had agreed to leave amicably.
- k) They didn't think the tenant would try to trade again. He was remorseful and knew he had made a big mistake.

- l) It would also be a criminal offence if the tenant began to trade again.
- m) That legally they could remove the tenant, but they were not going to put him out on the streets, they would give him time to find somewhere else to go.
- n) They were not 'one-time' operators, they were concerned about their reputation and they were responsible.
- o) WMP also had the ability to object to any DPS they proposed.
- p) They requested that the Committee dismiss the interim steps and take no further action against the PLH.
- q) That they would hope the tenant would be gone within a few weeks but given the current lockdown situation he could not be certain.
- r) The DPS was an employee of the tenant. However, they didn't think it was fair to criticise the DPS, she was on furlough at home and therefore was not aware of what was going on.

Following the representation from Mr Ireland, both parties were invited to make a closing submission.

In summing up PC Rohomon made the following points: -

- That everyone in the country knew about the lockdown and the procedures.
- Admiral Taverns had been extremely responsive. The CCTV would have been crucial.
- The PLH acted quickly in removing the tenant however, WMP did still have concerns about him being in the property. Admiral were aware of the actions WMP would take if the tenant traded again.
- That in relation to what action the Committee should take, PC Rohomon felt suspension was not warranted. In principle the suspension could be left in place until the tenant leaves, however, whether that could be done within 3 months he was not sure.
- That he didn't believe the issues warranted revocation.

In summing up Mr Ireland made the following points: -

- That he had said what he needed to say.
- Admiral Taverns had acted properly and in accordance with WMP.
- They had done everything in their power.

## Licensing Sub-Committee A – 1 June 2020

- The Committee should consider proportionality when making their decision.
- Dismiss the interim steps and take no action.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

5/010620

### **RESOLVED:-**

That having reviewed the premises licence held under the Licensing Act 2003 by Admiral Taverns Limited in respect of The Bricklayers Arms, 218 Icknield Port Road, Birmingham B16 0EA, 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 Licence be suspended for a period of 3 months,
2. Jennifer Elizabeth Henry to be removed as Designated Premises Supervisor from the licence, and
3. The interim step of suspension to remain in place until the determination of any Appeal

The Sub-Committee's reasons for imposing a suspension of the licence are due to the concerns expressed by West Midlands Police in relation to the discovery made on Saturday 2nd May 2020 that the premises was open and trading, in defiance of the national lockdown which had been imposed by HM Government during March 2020.

The Police explained that the premises' decision to open was an overt risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. The Covid-19 pandemic has required all licensed premises to act responsibly and in accordance with the new regulations.

The Sub-Committee determined that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises.

A decision had been made by the tenant of the licensed premises, without the knowledge of the licence holder company, to breach the regulations in order to open to the public and conduct licensable activities.

The scene observed by the Police officers who attended on the 2<sup>nd</sup> May 2020 was of a public house which was open and trading as if it were a normal Saturday. Patrons were able to enter through the back door in order to buy and drink alcohol, play gaming machines, watch the television – all the usual activities which would have

gone on in The Bricklayers Arms were it not for the national lockdown.

The tenant had spoken to Police attending the scene and had given unsatisfactory answers to their questions – for example, claiming that the reason that the premises was open was so that persons living next door could use the lavatories; that the reason the till was switched on and working was so that the tenant could get out some cash in order that he could play the gaming machines.

The tenant denied that he was open and trading as usual. This was not convincing; the Police observed that the bar had mats and drip trays on it, the optics for bottles of spirits were in place, and one table had a can and glass of drink on it. In addition, the till, the gaming machine and the television were all switched on and working, and the CCTV was switched on and recording. Police requested the CCTV footage from the tenant in order to see what had been going on before their arrival, but the tenant did not provide it. The tenant's actions were completely unsatisfactory to both the Police and the Sub-Committee.

Conversely, it appeared that the licence holder company had been cooperative with Police - for example by telling the tenant to hand over CCTV footage (albeit without success). The company was unamused at the tenant's failure to hand over the CCTV, and did not endorse any of the tenant's explanations.

The company had entered into discussions with Police, and had noted that the Police view was that either the tenant should be removed or the licence be revoked. The company had therefore taken steps towards the removal of the tenant. Documents to this effect were put before the Sub-Committee, including a letter expressly prohibiting the tenant from carrying on licensable activities under the authority of the company's premises licence.

However, the company asked the Sub-Committee to note that their intention was not that the tenant should be ejected immediately; as the legal representative remarked, "we won't put him out on the street". They expected him to go voluntarily. The Sub-Committee asked when the tenant was expected to leave. The company's legal representative replied, "we would not say several months ..... a few weeks, but we would not want to be held to it".

Having heard the premises' submission, the Sub-Committee determined that it was both necessary and reasonable to impose a three month suspension to address the immediate problems with the premises, namely the likelihood of further serious crime. Three months would give the premises time to remove the tenant properly and to establish a suitable person in a new tenancy and to ensure that the licensing objectives were promoted.

The Sub-Committee considered whether it could impose other interim steps, including modification of licence conditions, or exclusion of the sale of alcohol or other licensable activities. Obviously, these were not appropriate in the context of the national lockdown.

However the Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the lockdown in order to trade as usual. Therefore the risks could only be addressed by the suspension of the Licence but also removal of the DPS, together with the maintenance of the interim step of suspension pending any Appeal.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the latest version of the Guidance issued under Section 182 of the Licensing Act 2003 by the Secretary of State, the application and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003, the written representations and the submissions made at the hearing by West Midlands Police, and by the premises licence holder through its legal representative.

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, save for maintaining the interim step decision of the 6<sup>th</sup> May 2020, 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.

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*Please note, the meeting ended at 1230.*