

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE A 25 JANUARY 2021
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 25 JANUARY 2021, AT 1000 HOURS, AS AN ONLINE MEETING

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Errol Wilson – Committee Services

NOTICE OF RECORDING

- 1/250121 The Chair advised the meeting of housekeeping for online meetings and confirmed that the meeting is public and will be live streamed via Birmingham City Council's website. Members of the press/public may record and take photographs except where there are confidential or exempt items.
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DECLARATIONS OF INTERESTS

- 2/250121 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the 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

- 3/250121 None noted
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- 4/250121 **LICENSING ACT 2003 PREMISES LICENCE – REVIEW KINGSTANDING
SECOND CITY ABC, 834 KINGSTANDING ROAD, KINGSTANDING,
BIRMINGHAM B44 9RT**

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

Christina McCullough, Licensing Officer, Birmingham Council
Sharon Watts, Licensing Officer, Birmingham City Council
PC Mark Swallow, West Midlands Police
PC Ben Reader, West Midlands Police

Those Making Representations

Mr Robert Edge, Licensing Consultant
Mrs Michelle Bond, Kingstanding ABC
Mr Patrick Farrell, Kingstanding ABC

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The Chair introduced the Members and officers present and asked if there were any withdrawals of representation.

The Chair invited preliminary points. None were noted.

The Chair explained the hearing procedure prior to inviting Senior Licensing Officer, Bhapinder Nandhra to outline the report and present options for decisions to Members.

The Chair invited representation on behalf of Birmingham City Council Licensing Enforcement. At this stage Christina McCullough requested that Members refer to documentation submitted and made the following points: -

- Concerns were identified in regard to the manner in which the business is being managed following receipt of two complaints regarding loud music playing outside licensable hours.
- Following the first complaint a visit took place on 25th October 2019 where CCTV footage was viewed. The footage clearly evidenced that loud music had been playing until after the licensable hours on the date reported. As a result, a Traders Notice was issued (refer to Appendix 1).
- Following a second complaint a further visit took place on 12th February 2020. CCTV footage could not be viewed at that time and a return visit date was agreed.
- On 17th February 2020 the Licensing Officer met with Mr Edge and Mr and Mrs Bond, at the premises. CCTV footage was viewed which evidenced that loud music had been playing and alcohol had been served after licensable hours on the date reported. Mr Edge informed the Licensing Officer that a set of procedures had been drawn up to avoid this happening again.
- Requests for copies of CCTV footage were unable to be met due to technical difficulties.

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- Due to the pandemic and resulting lockdown in March 2020, it was decided that an advisory letter would be issued on 3rd August 2020 (see Appendix 5) rather than formal procedures being taken. The letter clearly stated what action would be taken if further breaches were identified.

Sharon Watts then made the following points: -

- An advisory visit was performed on 24th September 2020 as a result of a complaint made to environmental services relating to a breach of Covid safety legislation.
- Mrs Bond was informed of the complaint and a request was made to review the Covid Risk Assessment. Mrs Bond was unable to locate this document at the time of the visit and was also unable to provide the Premises License or Personal License. A Traders Notice was issued as a result of this which outlined breaches in relation to the legislation.
- As a result of this incident and the previous notification already issued, the decision was made to take further action.

Christina McCullough then added the final point: -

- Following discussion with Ms Watts it was ascertained that the latest breach of legislation had occurred a very short time after the advisory letter. This raised concerns about consistent breaches which then led to this action being taken.

In response to Members questions Christina McCullough made the following statements:-

All complaints were received by one local resident.

No previous complaints about the premises have been received prior to 2019.

Leniency was given following the initial breaches due to the difficult circumstances surrounding the pandemic.

Cllr Davis invited representations;

PC Mike Swallow made the following points: -

- Two occasions have been identified of music being played and alcohol being served outside licensable hours.
- CCTV has been requested but not provided. Provision of CCTV is a condition of the operating schedule of the premises.
- The premises license holder has failed to produce premises and personal licenses. This is a criminal offence and demonstrates that the premises are not upholding the prevention of crime and disorder objective.
- The premises have also failed to comply with Coronavirus Regulations 2020 by not producing a Risk Assessment on request.
- On two occasions the premises license holder has stated that the breaches took place in their absence. This shows a lack of effective management and appropriate staff training.

In response to Members questions PC Mike Swallow made the following statements: -

The police have not visited the premises or provided any intervention. They are not aware of what Covid safety measures are in place at the premises.

Appropriate records are a condition of the license and should be held at the premises.

The Police consider that the only course of action is to revoke the license due to persistent and serious breaches resulting in no confidence in the license holder's ability to promote the license objectives.

PC Ben Reader then made the following points: -

- It is unusual for police not to be involved in this type of action but the Licensing Enforcement Team have brought the review and WM Police support their findings and concerns about measures to protect public safety not being taken.
- The submission by Mr Edge is comprehensive but there is little confidence in the operator to put the proposed measures into place.

In response to Members questions PC Ben Reader confirmed that all of the information the police have on the matter has been received from the Licensing Enforcement Team.

Mr Edge then made representations on behalf of the License Holder and referred to documents already submitted. Key points: -

- Facebook posts on Covid safety awareness ensured that regular customers were aware of expectations and evidence of purchases to support measures were provided.
- A Risk Assessment was created in July 2020 and Mr Edge had oversight of this. Safety measures were already in place prior to this and no concerns about Covid safety measures were raised by the Licensing Officer during their visit.
- Mrs Bond has been the license holder for six years with no previous concerns or intervention. Recent health concerns have added a level of pressure and have highlighted the need for additional support to be put in place, which is now being addressed.
- CCTV and the circumstances around the issue of access during the officer's visit was explained.
- Diligence was taken at all times to ensure Covid safety measures were in place.
- The officer's report indicates that alcohol was continually being served until 2pm. This is inaccurate as CCTV footage showed that there was one incident of the sale of alcohol during this time. This illegal transaction was acknowledged and resulted in disciplinary action for the member of staff involved.

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- Reliance on staff due to ill health was admitted and this will be addressed by putting robust policies in place to uphold the licensing objectives and continue to be an asset to the community.

Mr Bond represented Mrs Bond by providing the following key points: -

- Two incidents were identified in six years, which have resulted in measures being put in place to ensure that music is not played beyond the licensable hours.
- Following Mrs Watts visit, paperwork was located on the same day in response to the Traders Notice but due to ill health Mrs Bond's frame of mind meant she was unable to meet the requirements at the time of the visit.
- Mr Bond provided details about Mrs Bond's health difficulties and the impact this has had on the running of the premises.
- The background and history regarding the club were given and its success in supporting the boxing club over the last six years. The club is regarded as an asset to the community.
- Further investment has recently been made to allow events and exhibitions to take place to further support the boxing club.

Mr Farrell then provided information regarding the background and history of the boxing club and its value within the local community. The premises supports the boxing club financially and they could not operate without the funds and support it provides.

Mr Bond then added details about fundraising activity undertaken in support of local residents, the boxing club and the local school.

In response to Members' questions Mr Bond and Mr Farrell provided verbal assurances that the issues raised by the Licensing Enforcement Team will be addressed.

Mr Edge identified the issues and the level of complaints received. Confirmation of a full review and health check of the premises' operating procedures will be undertaken in order to address and rectify these.

Plans are in place to appoint a new Designated Premises (DPS) to relieve Mrs Bond from covering both roles, to assist with policies, procedures and staff training, and to work closely with the Licensing Enforcement Team in implementing these.

Cllr Davis extended good wishes to Mrs Bond for her recovery from recent health issues and invited closing submissions.

In summary PC Swallow raised the following concerns on behalf of WM Police: -

- Two breaches for licensable activity have been identified regarding the playing of loud music, and a third regarding the serving of alcohol outside licensable hours.
- The License Holder was unable to provide CCTV footage, appropriate licenses and the Covid Risk Assessment on request.

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- The lack of an on-site Risk Assessment raises serious concerns about the ability of the premises to ensure the safety of its staff and customers.
- The reliance on staff to carry out the License Holders instructions was unsuccessful and indicates a lack of appropriate management, training and supervision, resulting in WM Police having no confidence in promoting the licensing objectives.
- Appointment of a new DPS would be a positive step but Mrs Bond would continue to be the premises license holder and has demonstrated a lack of ability to appoint and supervise staff appropriately.
- The incidents represent systematic breaches which could put the community at risk.

In summary Christina McCullough made the following points: -

- The Licensing Enforcement Team have no confidence in the license holder to put procedures in place due to their failure to comply with the Licensing Act regulations following assurances in February 2020.
- Breaches taking place out of licensable hours took place and were identified by the Licensing Officer. The number of complainants is not relevant.
- Further breaches occurred only five to six weeks following the warning letter and requests for CCTV footage and documentation were unable to be provided on request.
- The Licensing Enforcement Team considers that adequate management is not in place to promote the licensing objectives. Despite two warnings the premises was still not compliant.

In summary Mr Edge made the following points: -

- The License Holder has upheld the licensing objectives for six years without incident and the two incidents reported occurred five months apart.
- The premises provides a community driven endeavor in support of the local boxing club.
- The License Holder has acknowledged the breaches and has provided assurances that they will not be repeated. Measures are being put in place to ensure this.
- It is requested that the License Holder's previous character be considered.
- Stringent Covid protection measures are in place at the premises, staff are briefed and additional advice has been sought where necessary to ensure compliance.
- Following the complaint on 24th September regarding Covid safety breaches, the License Holder has provided evidence of the Risk Assessment, appropriate purchases and measures taken to support compliance.
- There has been no police intervention prior to this hearing and no previous licensing enforcement issues.
- Strict and thorough staff training in accordance with Section 182 and the appointment of a new DPS will be initiated should the premises be allowed to continue to trade.

In summary Mrs Bond made the following points: -

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- None of the breaches were intentional and every effort is made to ensure issues are addressed with regard to safety and compliance.
- Issues were exacerbated due to circumstances at the time of the visits, which are now being addressed.

At 1146 hours the Sub-Committee adjourned and the Chair requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and the decision of the Sub-Committee was sent out to all parties as follows: -

RESOLVED: -

That, having reviewed the premises licence held under the Licensing Act 2003 by Michelle Bond, in respect of Kingstanding Second City ABC, 834 Kingstanding Road, Kingstanding, Birmingham B44 9RT, upon the application of Licensing Enforcement, this Sub-Committee hereby determines that, due to the repeated failures to observe the conditions of the licence, and in order therefore to promote the licensing objectives in the Act:

- the Licence is revoked, and that
- Mrs Michelle Bond is removed as Designated Premises Supervisor

. The Sub-Committee's reasons for revoking the licence are due to concerns expressed by Licensing Enforcement and by West Midlands Police. Two officers from Licensing Enforcement, who brought the review of the licence, addressed the Sub-Committee and gave the full background of the failures to observe the licence conditions, as per the Report.

The matters of complaint had begun towards the end of 2019. These were the playing of music beyond the permitted hour, the sale of alcohol beyond the permitted hour, and failure to provide CCTV when requested (which was a breach of a condition on the licence).

Despite visits, advice and a warning letter, in September 2020 there was then a failure to produce both the premises licence and Mrs Bond's personal licence when required to do so by an authorised officer - both of which are offences under the Licensing Act 2003. Moreover Mrs Bond was unable to produce the Covid-safe risk assessment, required under regulations, when requested. It was the recommendation of the Licensing Enforcement officers that the licence be revoked, as they had no confidence in the licence holder to either observe the conditions or uphold the licensing objectives.

West Midlands Police supported this recommendation. Two officers attended to address the Sub-Committee. They observed that the premises license holder was not present to manage the premises, and in her absence had left the premises in the control of people who were entirely incapable of upholding the licensing objectives. Due to the actions of the premises license holder, West Midlands Police felt they had no confidence in her ability to properly manage the premises. As such, it was their recommendation that the licence be revoked.

The Sub-Committee then heard from the licence holder via her representative, and also via her husband who read out a statement on her behalf. Mrs Bond accepted the failings and the need for a fresh start, but asked for her severe ill-health to be taken into consideration. The Sub-Committee was sympathetic to Mrs Bond's poor state of health, as indeed were those making representations, and it was clear to all that she was struggling due to being very unwell. It was also recognised by the Sub-Committee that the premises played a useful role in the community, and did a lot of good work in fundraising for community groups.

However, the focus of the Sub-Committee was, of necessity, the upholding of the licensing objectives. It was most unfortunate that Mrs Bond had not seen fit to ensure that duties were delegated to suitable persons, who would have taken the proper responsible attitude to, for example, observing the hours for licensable activities as set out on the licence. Instead, a situation had arisen where there was no management control; even the Covid risk assessment, required of all licensed premises in the ongoing pandemic, could not be produced when the authorised officer asked for it.

The inability to produce the CCTV was a very serious breach of licence condition which the Sub-Committee could not excuse, regardless of Mrs Bond's ill health. As Licensing Enforcement observed, Mrs Bond had been the licence holder for six years; upholding the conditions was her responsibility, and she should not have required the City Council to point out failings - especially not as she held other licences elsewhere.

Whilst Mrs Bond's representative described the failings regarding the production of the licences as a 'misdemeanour', West Midlands Police disagreed, stating that it was a serious lack of management direction which put the community at risk. The Sub-Committee agreed, and determined that the only safe course was to revoke the licence and to remove Mrs Bond as designated premises supervisor.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, or suspend the licence for a specified period of not more than 3 months, but was not satisfied given the evidence submitted, that the licensing objectives would be properly promoted following any such determination. The issue was the lack of management control.

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 the premises licence holder (via her adviser and her husband), by Licensing Enforcement, and by West Midlands Police.

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.

5/250121

OTHER URGENT BUSINESS

There were no matters of urgent business.

The meeting ended at 1217 hours.

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CHAIRMAN