

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE A 23 MARCH 2020
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**MINUTES OF A MEETING OF LICENSING
COMMITTEE A HELD ON MONDAY
23 MARCH 2020 AT 0930 HOURS IN
ELLEN PINSENT ROOM, COUNCIL HOUSE,
BIRMINGHAM**

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Martin Straker-Welds.

ALSO PRESENT

Emma Rohomon - Licensing Section
Sanjeev Bhopal- Committee Lawyer
Katy Townshend - Committee Manager

NOTICE OF RECORDING

- 1/230320 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

- 2/230320 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

- 3/230320 Councillor Beauchamp did not attend the meeting.

MINUTES

- 4/230320 The Minutes of meeting held on 13 February 2020 were circulated and confirmed and signed by the Chairman.

That the Public Section of the Minutes of meeting held on 17 February 2020 were noted.

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That the Public Section of the Minutes of meeting held on 24 February 2020 were noted.

The Minutes of meeting held on 2 March 2020 were circulated and confirmed and signed by the Chairman.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW – JAM ROCK, 32 NEW JOHN STREET WEST, BIRMINGHAM, B19 3NB

The Licensing Sub Committee A meeting was scheduled on the basis that Councillors Mike Leddy (Chair), Martin Straker Welds and Bob Beauchamp would be in attendance from 9.30am onwards to deal with all the items set out on the Agenda for the meeting.

Councillor Beauchamp did not attend the meeting and despite the best endeavours of officers and Members to find a substitute Member to sit on Licensing Sub Committee A, they were unable to do so. Subsequently it was discovered after the meeting that Councillor Bob Beauchamp was in self-isolation due to the Covid19 pandemic. On advice from the Committee lawyer, Members were informed that the meeting would not be quorate until 3 Members were in attendance in compliance with the Constitution and Section 9 (1) Licensing Act 2003.

Members were also informed that the substantive item on the agenda had to be determined within a statutory time limit which expired this week and there was a real risk given what had been happening nationally in response to the Covid19 outbreak that if the application was not determined today it would not be determined at all.

The Licensing officer referred Members to Regulation 31 and 32 of the Licensing Act 2003 (Hearings) Regulations 2005 and provisional advice from Counsel indicating that a procedural irregularity in the proceedings would not of itself render the proceedings void. In the circumstances, the Meeting could proceed with only 2 Members in attendance but there was a risk of legal challenge. To negate this risk all parties to the Summary Review application were asked whether they would take issue with the meeting proceeding with only two members. Duncan Craig, Counsel on behalf of the Premises Licence Holder (but not in attendance) and PC Abdool Rohomon on behalf of West Midlands Police indicated that they were both content for the hearing to proceed with only two members in attendance. This was raised as a preliminary point before the substantive meeting started.

The meeting started at 1034.

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

No one attended on behalf of the premises.

Following introductions by the Chair, the Committee Lawyer advised as a preliminary point the following: -

In the circumstances, the Meeting could proceed with only 2 Members (having regard for Regulation 31 and 32 of the Licensing Act 2003 (Hearings) Regulations 2005 and provisional advice from Counsel). To negate any risks all parties to the Summary Review application were asked whether they would take issue with the meeting proceeding with only two members. Duncan Craig, Counsel on behalf of the Premises Licence Holder (but not in attendance) and PC Abdool Rohoman on behalf of West Midlands Police indicated that they were both content for the hearing to proceed with only two members in attendance.

Following on from the preliminary point raised by the Committee Lawyer the main points of the report were outlined by Emma Rohomon, Licensing Section.

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

1. The Superintendent signed the review application.
2. Following investigations, they established that a male had self-presented at Walsgrave Hospital with a stab wound to the leg. He had been at Jam Rock where there had been a disorder inside where the IP (Injured Person) had been attacked; punched, bottles and stabbed.
3. The premises did not call the police.
4. There were also issues with CCTV which was of extremely poor quality. Further, WMP were also concerned over the lack of management skills in terms of door staff and security.
5. The premises licence only allowed for late night refreshment and alcohol, until 2am. There was no provision for regulated entertainment, no DJ booth and therefore, WMP would have established the application as 'low risk'.
6. PC Rohomon pointed Members to the premises plan and drew their attention to the various types of doors, namely inward opening and outward opening doors. He then explained that the fire regulations indicated that outward opening doors allowed a capacity of 90 persons, and inward doors allowed for a capacity of 60 persons. Therefore, by having an inward opening door it would limit capacity to 60 persons.
7. There was no fire risk assessment for the premises.
8. The premises was an industrial unit.

9. Having received notification of a stabbing back in February WMP were then carrying out investigations and requesting CCTV footage from the premises. At which point Mr McKenzie provided such footage however, the quality was so poor it rendered the CCTV useless.

At 1051 the CCTV footage was shown to the Committee. PC Rohomon ran through the CCTV with comments to explain what could be seen (very little).

PC Rohomon continued to make the following points: -

1. That the premises had been operating beyond their licence hours; sometimes beyond 5am.
2. People were seen smoking in the premises.
3. The premises was completely packed out and WMP estimated that at least 200-300 people were in the venue on some occasions.
4. The premises was poorly controlled.
5. The WMP representative stated that clearly there should have been a fire risk assessment.
6. PC Rohomon read out the IP statement.
7. The PLH (Premises Licence Holder) stated when questioned by police that something did happen however the incident report was vague and did not fit with the account the IP gave to WMP.
8. There was a DJ booth and lights on several occasion, as seen on the CCTV footage.
9. The premises was not very big, and yet it was completely packed out with people.
10. The PLH also suggested there was only 70 people at the premises, but the CCTV showed there were more.
11. The CCTV was obscured by balloons and smoke on several occasions.
12. According to the paperwork and sign in sheets from the premises there were no door staff after 2am.
13. They asked the PLH about door staff and examined the sign in sheets.
14. The sign in sheets indicated that on occasions door staff did not start until 0130 hours in the morning.
15. The door staff were also not from a registered company, instead they were 'friends of friends'. However, the PLH did not have SIA authorisation to employ his own door staff.

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16. The premises should not have been open beyond 2am. They did not apply for a Temporary Event Notice.
17. A man was stabbed at the premises, and it was deemed a Section 18 wounding.
18. The premises had been operating way beyond licensable hours.
19. That nothing added up.
20. That Chris Jones had visited the premises regarding the fire risk assessments and referred them to the fire authority.
21. The premises had no regard for public safety and fire safety.
22. That if Members were not minded to revoke the licence then WMP would be concerned. The premises were not complying with current licence, so conditions would have no impact. WMP had no confidence in the PLH/DPS to manage the premises.
23. The person received a serious injury.
24. There were issues of overcrowding which put public safety at risk.
25. The PLH didn't seem to "have a clue".
26. People were smoking inside the premises.
27. WMP felt there was no other option than revoking the licence due to the serious crime that happened at the premises. Further, that the interim step of suspension should remain in place.
28. That the prosecution process should not remedy the revocation of the licence. The meeting was to consider the licence and not to look at the prosecution. WMP had 12 months to prosecute is necessary.

PC Rohomon was invited to make a closing submission but confirmed he had nothing further to add.

At 1203 hours, the Sub-Committee adjourned the meeting and the Chair requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1301 hours, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/230320

RESOLVED:-

That having reviewed the premises licence held under the Licensing Act 2003 by Rohan McKenzie in respect of **Jam Rock, 32 New John Street, Birmingham, B19 3NB**, following an application for an Expedited Review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines to **revoke the premises licence** in order to promote the prevention of crime

and disorder and public safety objectives in the Act.

The Sub-Committee's reasons for revoking the licence was due to the concerns which were expressed by West Midlands Police in relation to matters pertaining to serious crime, namely a section 18 wounding, which had come to light as outlined in the Chief Officer of Police's Certificate and Application and the subsequent representations made by the West Midlands Police.

The Sub-Committee determined that the cause of the serious crime originated from a complete lack of management control on the night in question – particularly in relation to door control and security. Inconsistent evidence had been submitted to the Police about exactly which door supervisors were on duty on the night in question when the serious wounding offence had taken place.

In short, the Police had grave and serious reservations about the ability of the Premises Licence Holder to properly promote the Licensing Objectives on the night in question or at all when considering: -

1. The Premises Licence Holder appeared to be undertaking licensable activities at a time when there was no legal basis to do so i.e. there was in force no Premises Licence or Temporary Event Notice (TEN), which permitted the sale of alcohol and regulated entertainment. This was evident from viewing the various CCTV footage which had been presented to the Sub-Committee which was time stamped albeit the images were not particularly clear and the vantage points were not particularly well shown of at least two separate trading days in February 2020;
2. The Premises Licence Holder or his staff had condoned "smoking" within the premises, in that two individuals were clearly seen smoking in the bar area, within very close proximity of the bar staff serving other patrons at the venue. This practice was not challenged by any of the staff on duty.
3. That having been provided with guidance around Fire Risk Assessments for the venue in January 2019, which included its actual size and use of inward and outward facing door at the premises, fire safety doors, provision of loo facilities the venue had significantly more than 60 people which should be considered a maximum number having regard to this criteria on at least two separate dates in February 2020 as shown in the CCTV;
4. The use and availability of SIA Door Supervisors to ensure public safety particularly on the 23 February 2020. CCTV could not make out who was working as Door Supervisors on the night as they could not be clearly identified through their attire. The signing in sheets presented to the Police from the Premises Licence Holder cast further doubt in the mind of the Police, about the number of Door Staff on duty on that night, as it suggested there was only one on duty and not the two which the Premises

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Licence Holder had alluded to when meeting with the Police on the 27 February 2020.

The premises licence holder, who was also the designated premises supervisor, had spoken to Police; however his comments had not inspired any confidence whatsoever in his ability to operate safely. He stated to Police that “a few people” had been in the premises having drinks - yet Police estimated the number to have been approximately 200 persons (the Police estimate of the number was borne out by what was shown on CCTV). In any event, the premises licence holder had no way of correctly assessing numbers, as clickers to check capacity had not been in use. Poor door control, as shown on the CCTV, was of great concern to the Sub-Committee, not least due to fire safety. The Police confirmed that no fire risk assessment appeared to have been done.

The premises licence holder’s own description of the activity on the night in question, namely that it had been a ‘birthday party’ which had been booked in advance, was not accepted by Police; his comment to Police that he “forgot” to submit a Temporary Event Notice was similarly not accepted. The Sub-Committee agreed with the Police on these points. These seemed to be extraordinary statements, and not at all what would be expected from any competent operator.

The Sub-Committee did not have the opportunity to hear submissions by, or on behalf of, the premises licence holder, as nobody representing the premises attended the meeting. The legal representative for the Premises Licence Holder had contacted the Licensing Authority to explain that although he was instructed in this matter he would not be attending the meeting and asked that the meeting proceed in his absence.

Members were satisfied that the Police evidence demonstrated on the balance of probabilities that the operator had shown a blatant disregard for public safety and could not properly promote the prevention of crime and disorder objectives within the Act.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, remove the Designated Premises Supervisor 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.

Interim Steps imposed on the 2 March 2020

The Sub-Committee heard representations from West Midlands Police on the effect of the Interim Step imposed by Sub-Committee on the 2 March 2020 and resolved that in light of substantive decision to revoke the Premises Licence and the reasons for that decision as set out above, it was both reasonable and proportionate to maintain the Interim Step that the licence be suspended. To reach any decision to the contrary would not be consistent with the substantive decision of the Sub Committee to revoke the premises licence and

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properly promote the licensing objectives of preventing Crime and Disorder and promoting Public Safety.

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 and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003, the additional written representations made by West Midlands Police and the submissions made at the hearing by the 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 save for the retention of interim steps of suspension, 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 disposed of.

OTHER URGENT BUSINESS

6/230320 There was no urgent business.

EXCLUSION OF THE PUBLIC

7/230320

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:-
(Paragraphs 1, 3 & 7)

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CHAIRMAN

PRIVATE

8/230320

MINUTES

That the private section of the Minutes of meeting held on the 17 February were noted and the minutes as a whole were confirmed and signed by the Chairperson.

That the private section of the Minutes of meeting held on the 24 February were noted and the minutes as a whole were confirmed and signed by the Chairperson.

OTHER URGENT BUSINESS (EXEMPT INFORMATION)

9/230320

No items of other urgent business were submitted.

Meeting ended 1310 hours

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CHAIRPERSON