

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee A
Report of:	Interim Assistant Director of Regulation and Enforcement
Date of Meeting:	Monday 1st June 2020
Subject:	Licensing Act 2003 Premises Licence – Summary Review
Premises:	Bricklayers Arms, 218 Icknield Port Road, Birmingham, B16 0DA
Ward affected:	North Edgbaston
Contact Officer:	David Kennedy, Principal Licensing Officer, licensing@birmingham.gov.uk

1. Purpose of report:

A review of the premises licence is required following an application for an expedited review under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006).

2. Recommendation:

To consider the review and to determine this matter.

3. Brief Summary of Report:

An application under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) was received on 5th May 2020 in respect of Bricklayers Arms, 218 Icknield Port Road, Birmingham, B16 0DA.

No additional representations have been received from any of the responsible authorities or from other persons.

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

The report complies with the City Council's Statement of Licensing Policy and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

5. Relevant background/chronology of key events:

On 5th May 2020, Superintendent Morris, on behalf of West Midlands Police, applied for a review, under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), of the Premises Licence granted to Admiral Taverns Limited in respect of Bricklayers Arms, 218 Icknield Port Road, Birmingham, B16 0DA.

The application was accompanied by the required certificate, see Appendix 1.

Within 48 hours of receipt of an application made under Section 53A, the Licensing Authority is required to consider whether it is appropriate to take interim steps pending determination of the review of the Premises Licence, such a review to be held within 28 days after the day of its receipt, review that Licence and reach a determination on that review.

Licensing Sub-Committee A met on 6th May 2020 to consider whether to take any interim steps and resolved that the Designated Premises Supervisor be removed and that the Premises Licence be suspended pending a review of the Licence. A copy of the decision is attached at Appendix 2.

The review application was advertised, by the Licensing Authority in accordance with the regulations; the closing date for responsible authorities and other persons ended on the 21st May 2020.

A copy of the current Premises Licence is attached at Appendix 3.

Site location plans at Appendix 4.

When carrying out its licensing functions, a licensing authority must have regard to Birmingham City Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003. The Licensing Authority's functions under the Licensing Act 2003 are to promote the licensing objectives: -

- a. The prevention of crime and disorder;
- b. Public safety;
- c. The prevention of public nuisance; and
- d. The protection of children from harm.

6. List of background documents:

Review Application and Certificate from West Midlands Police, Appendix 1
Sub-Committee Interim Steps Meeting decision of 6th May 2020, Appendix 2
Current Premises Licence, Appendix 3
Site location plans, Appendix 4

7. Options available:

Modify the conditions of Licence
Exclude a Licensable activity from the scope of the Licence
Remove the Designated Premises Supervisor
Suspend the Licence for a period not exceeding 3 months
Revoke the Licence
Take no action

In addition the Sub Committee will need to decide what action, if any, should be taken regarding the interim steps imposed on the 6th May 2020.



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary

I - Supt Gareth Morris

(on behalf of) the chief officer of Police for the West Midlands Police area apply for the review of a premises licence under section 53A of the Licensing Act 2003

1. Premises details: **Bricklayers Arms**

Postal address of premises,(or if none or not known, ordinance survey map reference or description):
218 Icknield Port Road

Post Town: Birmingham

Post Code (if known): B16 0EA

2. Premises Licence details:

Name of premise licence holder (if known): Admiral Tavern

Number of premise licence (if known): 1326

3. Certificate under section 53A (1)(B) of the Licensing Act 2003 (Please read guidance note 1)

I confirm that this is a certificate has been given by a senior member of the police force for the police area above that in his/her opinion the above premises are associated with serious crime or serious disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)

☒

4. Details of association of the above premises with serious crime, serious disorder or both: (Please read guidance note 2)

At around 4pm on the 2nd May 2020, West Midlands Police received a call indicating that the premises had been letting people in from 3pm, and that they were gaining access through a door at the back of the premises.

Officers have attended the premises and as they arrive they see people leaving the premises. The officers found a door open at the rear of the premises and entered the pub.

As they entered they witnessed that the lights were on, the gambling machines were on, TV was on, tills were switched on and operational. The premises smelt of fresh smoke and it was clear that alcohol had been consumed on the premises, with cans of alcohol that had partly been decanted into pint glasses.

Officers have spoken to one of the group that had left the premises as they arrived. The person they spoke to indicated that they had been inside the premises drinking with a friend and had drunk 3 cans of beer.

This would fit in with what officers had witnessed.

Officers also spoke to a male in the premises, who claimed to be the licensee. The details given do not match the name of the DPS that is currently named on the premise licence.

There have been several reports from the 30th March indicating that the premises was open and allowing people in.

In March 2020 the UK Government stated that all licensed premises should close and not allow people inside the premises to drink or eat. This was a result of the pandemic Covid 19 virus that was spreading through the country and was introduced with a raft of other measures to stop the spread of the virus.

Covid 19 is a worldwide virus that has unfortunately seen many people die. It is an infectious disease which is spread as a result of activities carried out by people, hence the reason for the "lockdown" measures that the Government had to introduce.

The risk of spreading infections is deemed a "public nuisance". In the case of *R v Rimmington & Goldstein* (2005) UKHL 63, it quoted the leading modern authority on public nuisance as *Attorney general v PYA Quarries Ltd* (1957) 2 QB 169.

It quotes "..... it is however, clear, in my opinion that any nuisance is "public" which materially affect the reasonable comfort and convenience of life of a class of Her Majesty's subjects....."

Public nuisance is a common law offence which carries an offence of "life imprisonment", and so it is deemed a serious crime under the definition in RIPA.

The effects of the virus have been shown across all media outlets for many months, and so West Midlands Police are very concerned that these premises decided to open putting the safety of the people that go there at risk as well as their families and the wider communities they live in.

I am mindful that these circumstances are during an unprecedented set of events and legislation around the COVID 19 outbreak.

In requesting this review I have considered the following:-

- The person running the bar is putting the health of individuals at serious risk
- That risk extends and amplifies beyond the person just attending the premises so there is a greater threat to a wider section of the public
- The fact that people know they can go there increases this risk as word spreads,
- The risk from the virus has seen significant loss of life
- There are other reports indicating the premises was open, albeit when officers attended they did not witness this.
- The licencing team have viewed body worn video and inform me it indicates persons leaving and also the premises inside being set up for business.

I am further briefed by the licencing team that a premises in Wolverhampton was subject to expedited review in similar circumstances. This was heard last week and the licence was suspended.

I have supported an expedited review as the normal process would potentially take several weeks to reach a licensing committee, (due to the time frames, there is a 28 day consultation period and then a hearing within 21 days) and then the effect of the decision notice does not come into effect for another 21 days or if the decision is appealed until the end of the appeal process (that can be months). This delay is during a time of national emergency and public health risk. As such I believe expedited review is appropriate.

Signature of applicant: Gareth Morris (Electronic)

Date: 4/5/20

Rank/Capacity: Superintendent Birmingham West

Contact details for matters concerning this application: Pc 4075 Abdool ROHOMON

Address: Birmingham Licensing Dept c/o Birmingham Central Police Station, Birmingham

Telephone Number(s):

E-mail -

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more:or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious Disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder or both.

West Midlands Police

CERTIFICATE UNDER SECTION 53A (1)(B) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious crime and disorder

Premises: Bricklayer Arms

Premise Licence Number: 1326

Premise Licence Holder: Admiral Taverns

Designated Premise Supervisor: Jennifer Henry

I am a Superintendent in West Midlands Police.

I am giving this certificate because I am in the opinion that the procedures under the Licensing Act are inappropriate in this case because the standard review procedures are thought to be inappropriate due to the seriousness of the crime, and the serious management failings of the premises concerned.

The actions of the premises took in deciding to open have placed an unnecessary risk to the health of the individuals, families and local communities, at a time where the country is experiencing a national emergency. This is causing a public nuisance

Public nuisance is a serious crime and combined with the national threat that Covid 19 possesses, it warrants the use of this power.

I have considered the use of the normal review procedure but I do not feel this would be appropriate in these circumstances due to the above reasons, and the fact that to maintain the licensing objective of preventing crime and disorder the normal review procedure would not be sufficient.

The severity of the incident is a matter that needs to be brought to the attention of the Licensing Committee immediately.

I am conscious of the guidance on the use of "Expedited Reviews" and given the emphasis that is given to use of this power to tackle serious crime and disorder, my feelings that this process is deemed appropriate are further enforced.

Signed
Gareth Morris (Electronic)
Supt 7005
BW NPU



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE - C

WEDNESDAY 6 MAY 2020

The Bricklayers Arms, 218 Icknield Port Road, Birmingham B16 0EA

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Admiral Taverns Limited in respect of The Bricklayers Arms, 218 Icknield Port Road, Birmingham B16 0EA, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application

and

- that Jennifer Elizabeth Henry be removed as the Designated Premises Supervisor

Before the meeting began the Sub-Committee was aware of the *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* - in particular regulation 4 of these Regulations, requiring premises and businesses to close, and also Schedule 2, which confirms that the Regulations apply to pubs and bars. These Regulations have been in force since 26th March 2020.

Members heard the submissions of West Midlands Police, namely that on Saturday 2nd May 2020, the premises was discovered to be open and trading, in defiance of the national lockdown which had been imposed by HM Government during March 2020. Patrons were entering 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 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 virus is a pandemic which has required all licensed premises to act responsibly and in accordance with the law, in order to save lives. It was therefore a flagrant public nuisance for any licensed premises to breach the lockdown to open to the public and conduct licensable activities.

The Sub-Committee determined that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises. There was a suggestion from the Police that their records of 999 calls indicated that, in addition to the trading discovered on Saturday 2nd May, there may have been other instances of the premises being open and trading, with patrons simply using the back door to enter. In order to prevent further serious crime, the Police asked that the licence be suspended pending the full review of the licence.

The premises licence holder's legal representative then addressed the Sub-Committee. The Members found his submissions very helpful. The premises licence holder did not object to the suspension, took the allegations seriously and intended to take a responsible attitude by cooperating with Police.

Having heard the premises' submission, the Sub-Committee determined that it was both necessary and reasonable to impose the interim step of suspension to address the immediate problems with the premises, namely the likelihood of further serious crime.

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, pending the full Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office in relation to expedited and summary licence reviews, and the submissions made by the Police and by the premises licence holder's representative at the hearing.

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.

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

LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

1326 / 3

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
Bricklayers Arms 218 Icknield Port Road	
Post town:	Post Code:
Birmingham	B16 0DA
Telephone Number:	

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

E	Live music
F	Recorded music
M3	Sale of alcohol by retail (both on & off the premises)

The times the licence authorises the carrying out of licensable activities

Monday-Thursday	10:00	-	00:00	E,F,M3
Friday-Saturday	10:00	-	01:30	E,F,M3
Sunday	11:00	-	23:00	E,F
Sunday	11:00	-	23:30	M3

A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend. A further additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend. A further additional hour every Christmas Eve. A further additional hour every Boxing Day.

The opening hours of the premises

Monday-Thursday	10:00	-	00:30
Friday-Saturday	10:00	-	02:00
Sunday	11:00	-	00:00

A further additional hour into the morning following every Friday, Saturday, Sunday and Monday for each May Bank Holiday, Spring/Whitsun Bank Holiday and every August Bank Holiday weekend. A further additional hour into the morning following every Thursday, Friday, Saturday, Sunday and Monday for the Easter Bank Holiday weekend. A further additional hour every Christmas Eve. A further additional hour every Boxing Day.

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

On and Off Supplies

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Admiral Taverns Limited Milton Gate 60 Chiswell Street	
Post town: London	Post Code: EC1Y 4AG
Telephone Number:	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) 05438628
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Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Jenifer Elizabeth Henry	
Post town:	Post Code:
Telephone Number:	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number	Issuing Authority

Dated 28/02/2012

Nicola Stansbie
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

No supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

The responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises.

The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).

The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.

The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol:-

The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

Where any of the following alcoholic drinks is sold or supplied for sale or consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) the responsible person shall ensure that it is available to customers in the following measures:-

1. Beer or cider - ½ pint;
2. Gin, rum, vodka or whisky - 25ml or 35ml; and
3. Still wine in a glass - 125ml; and

The responsible person must also ensure that customers are made aware of the availability of the aforementioned measures.

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. (2) In this condition:- (a) "permitted price" is the price found by applying the formula $P = D + (D \times V)$, where- (i) P is the permitted price, (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol; (b) "duty" is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; (c) "relevant person" means, in relation to premises in respect of which there is in force a premises licence— (i) the holder of the premises licence, (ii) the designated premises supervisor (if any) in respect of such a licence, or (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence; (d) "relevant person" means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and (e) "value added tax" means value added tax charged in accordance with the Value Added Tax Act 1994. (3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny. (4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

Each individual assigned to carrying out a security activity must be licensed by the Security Industry Agency.

Embedded Restrictions

Alcohol shall not be sold or supplied except during permitted hours. In this condition, permitted hours means:

a. On weekdays, other than Christmas Day, Good Friday or New Year's Eve, 11 a.m. to 11 p.m. b. On Sundays, other than Christmas Day or New Year's Eve, 12 noon to 10.30 p.m. c. On Good Friday, 12 noon to 10.30 p.m. d. On Christmas Day, 12 noon to 3 p.m. and 7 p.m. to 10.30 p.m. e. On New Year's Eve, except on a Sunday, 11 a.m. to 11 p.m. f. On New Year's Eve on a Sunday, 12 noon to 10.30 p.m. g. On New Year's Eve from the end of permitted hours on New Year's Eve to the start of permitted hours on the following day, which would be 11.00 a.m. if New Year's Day falls on a weekday or 12 noon if a Sunday. The above restrictions do not prohibit: (a) during the first twenty minutes after the above hours, the taking of the alcohol from the premises unless the alcohol is supplied or taken in an open vessel; (b) consumption of the alcohol on the premises or the taking of sale or supply of alcohol to any person residing in the licensed premises; (c) the ordering of alcohol to be consumed off the premises, or the despatch by the vendor of the alcohol so ordered; (d) the sale of alcohol to a trader or club for the purposes of the trade or club; (e) the sale or supply of alcohol to any canteen or mess, being a canteen in which the sale or supply of alcohol is carried out under the authority of the Secretary of State or an authorised mess of members of Her Majesty's naval, military or air forces; (f) the taking of alcohol from the premises by a person residing there; or (g) the supply of alcohol for consumption on the premises to any private friends of a person residing there who are bona fide entertained by him at his own expense, or the consumption of alcohol by persons so supplied; or (h) the supply of alcohol for consumption on the premises to persons employed there for the purposes of the business carried on by the holder of the licence, or the consumption of liquor so supplied, if the liquor is supplied at the expense of their employer or of the person carrying on or in charge of the business on the premises.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

Conditions as stated below under the appropriate licensing objective.

2b) Conditions consistent with, and to promote the prevention of crime and disorder

Existing CCTV system will continue to operate during the hours of operation inside and outside of the premises.

The licence holder will ensure that staff are trained in the standards required by the recent legislation.

2c) Conditions consistent with, and to promote, public safety

A health and safety policy to be in place.

A first aid box to be in place.

2d) Conditions consistent with, and to promote the prevention of public nuisance

All music need to be stopped with last orders and is not to be played during drinking up time .

2e) Conditions consistent with, and to promote the protection of children from harm

Children are only allowed in the lounge area and must be accompanied by an adult.

Children are only allowed on the premises before 20:00.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

N/A

3b) Committee conditions to promote the prevention of crime and disorder

N/A

3c) Committee conditions to promote public safety

N/A

3d) Committee conditions to promote the prevention of public nuisance

N/A

3e) Committee conditions to promote the protection of children from harm

N/A

Annex 4 – Plans

The plan of the premises with reference number **76895-1326/3** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection between the hours of 9am – 4pm Monday, Tuesday and Thursday, 10am – 4pm Wednesday and 9am – 3.30pm Friday (excluding Bank Holidays etc) at the Licensing Service, Crystal Court, Aston Cross Business Village, 50 Rocky Lane, Aston, Birmingham B6 5RQ.



