

# **BIRMINGHAM CITY COUNCIL**

## **LICENSING SUB-COMMITTEE B**

**TUESDAY, 07 MAY 2024 AT 10:00 HOURS**  
**IN ON-LINE MEETING, MICROSOFT TEAMS**

*Please note a short break will be taken approximately 90 minutes from the start of the meeting and a 30 minute break will be taken at 1300 hours.*

### **A G E N D A**

#### **1 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 DECLARATIONS 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 interests flowchart which provides a simple guide to declaring interests at meetings.

3 **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

**5 - 28**

4 **MINUTES**

To note the public part of the Minutes of the meeting of the meeting held on 16 January 2024 at 1000 hours and to confirm and sign the Minutes as a whole.

To note the public part of the Minutes of the meeting of the meeting held on 26 March 2024 at 1000 hours and to confirm and sign the Minutes as a whole.

To note the public part of the Minutes of the meeting of the meeting held on 2 April 2024 at 1000 hours and to confirm and sign the Minutes as a whole.

5 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.

6 **EXCLUSION OF THE PUBLIC**

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

**PRIVATE AGENDA**

1 **MINUTES**

To note the private part of the Minutes held on 16 January 2024 at 1000 hours and to confirm and sign the Minutes as a whole.

To note the private part of the Minutes held on 26 March 2024 at 1000 hours and to confirm and sign the Minutes as a whole.

2 **LICENSING ACT 2003 PERSONAL LICENCE REVIEW UNDER S132A OF THE LICENSING ACT 2003**

Report of the Director of Regulation & Enforcement.

NB: Application scheduled to be heard at 1000 hours.

3 **OTHER URGENT BUSINESS (EXEMPT INFORMATION)**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.



# BIRMINGHAM CITY COUNCIL

<p><b>LICENSING SUB-COMMITTEE B 16 JANUARY 2024</b></p>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON TUESDAY 16 JANUARY 2024 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Diane Donaldson in the Chair;

Councillors Izzy Knowles and Penny Wagg

### **ALSO PRESENT**

David Kennedy – Licensing Section  
Joanne Swampillai – Legal Services  
Mandeep Marwaha – Committee Services

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

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### 1/160124 **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.

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### 2/160124 **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.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/160124 Apologies were submitted on behalf of Adam Higgs and Saddak Miah and Councillors Izzy Knowles and Penny Wagg were the nominated substitute Members.

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**LICENSING ACT 2003 - REPRESENTATIONS BACK AGAINST INTERIM STEPS IMPOSED – HNDRX, HOLLOWAY HEAD, BIRMINGHAM, B1 1QP – LICENSING NUMBER 1952 – AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 - APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS**

**On Behalf of the Applicant**

PC Ben Reader – West Midlands Police  
Chris Jones – Licensing Team, West Midlands Police

**On Behalf of Those Making Representations**

Dorian Chan – Mao Wah Limited (Premises License Holder)  
Councillor Yvonne Mosquito – In support of the License Holder

\* \* \*

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

At this juncture, the Committee Lawyer advised the Chair to check the reason for Council Mosquito attending. Councillor Mosquito confirmed she was in attendance to support her constituent, Dorian Chan.

At this juncture, PC Ben Reader made the following points:

- Matters would be discussed in relation to the previous hearing which took place on Friday.
- The previous hearing took place in private session due to the ongoing criminal investigations.
- There was no change since the criminal investigation since the hearing.
- The private session was granted therefore WMP would be asking for this to go into private session again to discuss any matters related to the Police Operation at the premises.

Councillor Mosquito queried if she was able to ask questions for clarification.

The Chair indicated questions can be asked at the appropriate time.

The Chair queried with WMP representatives if Councillor Mosquito invited to the private session.

PC Reader did not want to exclude anyone necessary however, he was unsure of Councillor Mosquitos role as she was not legally representing the premises or the License holder. He suggested to seek advice from the Committee Lawyer if this would be appropriate for the Councillor to be in the private session or remain in the public session.

At this juncture, Councillor Mosquito confirmed she would not be present in the private session.

The Chair explained the Committee Members, Committee Lawyer and Committee Manager would deliberate and see if the meeting will be held in private 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.

The Committee Lawyer advice the Chair that Councillor Mosquito had given her views that she would not be part of the private session however, Mrs Chan had not given her thoughts on this matter.

Mrs Chan sought clarity who the private session attendance referred to. The Chair advised Mrs Chan would be invited to the private session however, her view was required to Councillor Mosquitos attendance to the private session. Mrs Chan was content with Councillor Mosquito making a decision on this matter.

At this juncture, the Chair referred back earlier points made for the Committee Members, Committee Lawyer and Committee Manager would deliberate and see if the meeting will be held in private session.

Councillor Mosquito indicated if the meeting involved Dorian Chan she would like to be present to support her.

The Committee Lawyer sought steer from WMP in their views on this matter.

In response, PC Reader suggested the decision was for the Councillors however, he was unsure if the capacity of Councillor Mosquito as she was not representing the license holder and she was not the license holder. Sensitive matters related to the operations would normally take place between the responsible authorities, license holder and their leal representatives.

In recent cases, other responsible authorities had to leave the session as they were no privy to the sensitive information that would be disclosed. He suggested the Councillors get legal advice on the matter to make this decision.

The Committee Lawyer asked if WMP representative explain what was the evidence that would be discussed in private sessions and why should Councillor Mosquito not be able to see it.

In response, PC Reader referred to the decision notice from Friday's meeting was held in private and there was a rationale in why the decision was taken in private. The same matter would be discussed, and other issues may be raised by the license holder that would not be for the public domain. Normally, the private session would be limited to legal advice and premises licence holder.

At 1026 hours, the meeting was paused, and the Committee Members, Committee Lawyer and Committee Manager moved into a private meeting for deliberations.

At 1037 hours, the meeting resumed, and the Committee Members, Committee Lawyer and Committee Manager returned to the public meeting.

The Chair advised after deliberating with the Committee, the Committee had made a collective decision to hold the hearing in private and exclude Councillor Mosquito from the private hearing.

A link to the private hearing was set up by the Committee Manager.

Councillor Mosquito confirmed she was going to leave the meeting as she had other commitments at 11am.

At 1039 hours, the meeting was paused, and the Committee moved into a private session to hear the remainder of the hearing.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was sent to all parties as follows (a short version was read out in the public meeting);

4/16/01/2024      **RESOLVED:-**

That, having considered the representations made under section 53B of the Licensing Act 2003 on behalf of Mao Wah Ltd, the premises licence holder for HNDRX, 89 Holloway Head, Birmingham B1 1QP, in respect of the interim steps which were imposed at the Sub-Committee meeting of 12<sup>th</sup> January 2024, this Sub-Committee hereby determines that, in order to address the risk of further serious crime:

- the interim step of suspension of the licence, which was imposed on the last occasion, is lifted
- the licence conditions are modified by the adoption of a new condition (which was agreed between the parties at today's meeting) as an interim step, namely that the premises shall not trade without the permission of West Midlands Police
- the interim step of the removal of Parmjit Singh as the designated premises supervisor, which was imposed on the last occasion, will remain in place pending the 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 the decision regarding the interim steps which were originally imposed at the meeting of 12<sup>th</sup> January 2024, were due to the representations made by both the licence holder company and by West Midlands Police during the meeting.

The licence holder company was represented by a manager at the meeting. The local Ward Councillor attended to support her local constituent (ie the manager). West Midlands Police also attended.

The meeting was conducted in private session after the Sub-Committee considered an application made by West Midlands Police under regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005. The Police explained that there had been no change in the criminal investigation. The matter remained a live police enquiry regarding a serious crime incident. The Police asked for the proceedings to be conducted in private.

The Sub-Committee asked for clarification as to whether the Police required the local Ward Councillor to leave, as well as the public. The manager had said that she would like the Ward Councillor to remain. The Police said they did not look to remove persons unnecessarily, but asked the Sub-Committee to seek advice from the Committee Lawyer in this regard. The Committee Lawyer asked the nature of the evidence which the Police did not wish the Ward Councillor to see. The Police said that the evidence would relate to the same issues as last time and stated that the evidence could not be in the public domain.

The Sub-Committee noted that the Ward Councillor had attended to support a constituent, and not as a representative or to act for the company in any capacity. The Sub-Committee therefore excluded the public, including the Ward Councillor, and conducted the meeting in private session with only the Police and the company manager in attendance.

The licence holder, via the manager who had attended, then addressed the Sub-Committee to explain the background of the ongoing issues relating to the lease arrangements at the site. She stated that the licence holder company was not involved with the activities which had been described in the Superintendent's certificate and application; instead, it was simply the landlord, and had no adverse history.

The HNDRX licence was not trading. Trading had been conducted at the 89 Holloway Head site under a licence which was entirely separate from the HNDRX licence. This other licence was held by another person, not Mao Wah Ltd. The Sub-Committee was aware of this.

The unsatisfactory activities which had formed the subject of the Superintendent's certificate and application were therefore entirely the responsibility of a separate licence holder. The manager informed the Sub-Committee that the Police now understood that the two licence holders were not linked. The Sub-Committee noted this.

The manager confirmed that she agreed with the Police that the designated premises supervisor should be removed, and said that she had tried to do this herself, but Parmjit Singh had not been available to sign the relevant document.

However, regarding the suspension, she asked that this should be lifted, as she agreed that a condition not to trade without the permission of the Police should be adopted. The Sub-Committee noted this.

In response to Member questions, the manager confirmed that the licence holder company did not intend trading to start under its licence any time soon. The manager remarked, “it will be at least two years”.

The Chairman then asked the manager if she was in agreement with the Police now regarding the adoption of a suitable condition, as this had not been the case at the last meeting. The manager confirmed that she was.

The Sub-Committee then heard from West Midlands Police, who said that the manager’s submissions regarding the licence holder’s failed attempt to remove designated premises supervisor had not been correct. The Police remarked that it had been the manager’s own error in submitting an incorrect form, and moreover the company had had ample opportunity to remove Parmjit Singh years ago in any event, but had not in fact done so. The Sub-Committee noted this.

The Police advised that they supported the course which had been adopted by the Sub-Committee at the last meeting, and expressed surprise that the manager had decided to make representations against the interim steps without speaking to the Police first. The Police were particularly dissatisfied that whilst the manager had stated that the licence holder would not trade under the lease for two years, the holder of the other premises licence for the 89 Holloway Head site held a set of keys.

The Police stated that they did not want the premises to trade, and advanced a suggestion that the representations had been made by the licence holder company for reputational reasons, but then left the decision entirely to the discretion of the Sub-Committee.

The Members asked for clarification as to what the Police recommendation was, and whether, if the suspension were to be lifted, the Police recommended the adoption of the same condition as had been proposed at the last Sub-Committee meeting.

The Police replied that they did not want the premises to trade and were concerned that the other licence holder could become involved. They reminded the Members that on the last occasion the Sub-Committee had considered that the proposed condition was not sufficient.

At this point the Committee Lawyer asked for clarification of the Police position. In response to this, the Police advised that under the current interim suspension of the licence, the premises could not trade; if that position were to change, the Police would want some safeguards, particularly in view of the fact that the other

licence holder held keys to the site. The Police felt that the company's motivation for the representations had been image and reputational risk.

The Police had understood the Sub-Committee's decision on the last occasion and the rationale for it. However, their view was that if the manager wished to discuss the issues with them, they would do so. The Sub-Committee noted this.

In summing up, the manager stated that she felt that the issuing of the Superintendent's certificate and application regarding HNDRX had been "a mistake because they did not know that two licences were in force; they thought that the landlord [ie HNDRX] was trading". She was confident that the Police now understood that the landlord and tenant were totally separate, and that HNDRX "had been nothing to do with it".

She confirmed that those at the company were upset and felt that the suspension would damage the company's reputation. She felt that the company as landlord was being punished for the actions of its tenant. The tenant had been trading under his own licence, and could not use the landlord's licence. She confirmed that the company was keen to work with the Police to ensure that no-one could trade from the site.

Having heard all of the evidence, the Members were mindful that the manager had now accepted the condition proposed by the Police at the last meeting. This was a significant change from the position at the last meeting. The manager had also accepted that the interim step of removal of the designated premises supervisor, imposed on the last occasion, should be maintained pending the full Summary Review hearing.

The Sub-Committee was of course primarily concerned with the likelihood of a further serious crime incident, pending the full Summary Review hearing. The original incident which had given rise to the Expedited Review application had been a very serious criminal matter, in which there were suspicions of some type of drug supply operation being conducted at the site of licensed premises; public protection was therefore the first priority.

However, having heard all of the representations at the instant meeting, the Sub-Committee was satisfied that to lift the suspension, and instead to substitute an agreed condition requiring Police permission before trading, was an appropriate course which would not create any increased risk of any further serious crime incident pending the full Summary Review hearing.

The Sub-Committee was therefore satisfied that the interim step of suspension could be lifted, as it was accepted that there was no increased risk of further serious crime. The Members resolved to adopt the condition which had been proposed by the Police at the previous meeting, as the licence holder company now agreed that the condition should be adopted. The removal of the designated premises supervisor was also the subject of agreement between the parties, and therefore remained in place.

The Members considered that the correct way forward in the interim period, before the Summary Review hearing, was for the licence holder to cooperate with the Police, and to take whatever course was guided by the Police.

In reaching this decision, the Sub-Committee has given due consideration to the application made under s53B by the licence holder, the certificate issued earlier 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 the manager representing the licence holder company, and by West Midlands Police.

All parties are advised that the premises licence holder may make further 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.

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CHAIR

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE B 26 MARCH 2024</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 26 MARCH 2024 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Diane Donaldson in the Chair;

Councillors Phil Davis and Julien Pritchard.

### **ALSO PRESENT**

Shaid Yasser – Licensing Section  
Andrew Evans – Legal Services  
Katy Poole – Committee Services

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

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### 1/260324 **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.

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### 2/260324 **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.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

- 3/260324 Apologies were submitted on behalf of Councillors Saddak Miah and Adam Higgs and Councillors Phil Davis and Julien Pritchard was the nominated substitute Member.
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**MINUTES**

- 4/250324 The Public section of the Minutes of the meeting held on 12 January 2024 at 1000 hours & 1100 hours and the Minutes of the meeting held on 30 January 2024 at 1000 hours were circulated and the Minutes as a whole were confirmed and signed by the Chair.
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**LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW – ELITE COCKTAIL BAR AND RESTAURANT, 81 STEWARD STREET, BIRMINGHAM, B18 7AF.**

**On Behalf of the Applicant**

Mark Swallow – West Midlands Police (WMP)  
Paul Littler - WMP

**On Behalf of Those Making Representations**

Duncan Craig – Barrister, St. Philips Chambers  
Angella Raymond – Premises Licence Holder (PLH)

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

Mark Swallow, WMP made a preliminary request that the CCTV footage of the incident be shown in private due to the on-going investigation and to allow all parties to speak freely in relation to the incident.

Mr Craig was invited to make comments on the request but simply stated that he had no objection to the request that the footage be screened in private.

The Chair approved the request made by Mark Swallow and confirmed that the Committee would benefit from viewing the CCTV footage.

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

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**EXCLUSION OF THE PUBLIC**

5/260324

**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

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The public were readmitted to the meeting at 1210 hours.

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;

6/260324

**RESOLVED:-**

That having reviewed the premises licence under s53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) held by Angella Raymond, at Elite Cocktail Bar and Restaurant, 81 Steward Street, Ladywood, Birmingham, B18 7AF, 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 Premises Licence is revoked
- 2) Angella Raymond is removed as Designated Premises Supervisor

in order to promote the prevention of crime and disorder and promotion of public safety licensing objectives.

The Sub-Committee exercised its power to hold part of this summary review hearing in private in accordance with regulation 14 of the Licensing Act 2003 (Hearings Regulations 2005) because there is an ongoing criminal investigation, the integrity of which ought reasonably to be protected at this time and parts of the Police's representation related to sensitive information.

The premises licence was suspended and the DPS, Angella Raymond, removed, as interim steps on 29<sup>th</sup> February 2024 after West Midlands Police applied for a

review of this premises licence under s53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006).

This premises has a licence which permits the provision of licensable activities until 1am each day with a closing time of 1.30am, by which time a clear condition on the licence requires the premises to be clear of members of the public.

On Friday 23<sup>rd</sup> February 2024 the premises were open and conducting licensable activities until 01.45 hours in breach of the permissions and conditions on its licence.

At this time an incident of disorder occurred at the premises involving up to 15 persons. The incident was caught on CCTV. It appeared to continue for no more than two or three minutes. It is not known whether anyone was injured in that incident. There is no evidence that weapons were used.

The Police characterise the incident as one of a violent disorder. The Premises Licence Holder's legal representative today submitted that it was not a violent disorder but the sort of jostling that would not cause a person of reasonable firmness present to fear for their personal safety.

The Sub-Committee reviewed the CCTV. In the Sub-Committee's opinion, it shows an incident of disorder in the premises between up to 15 people in which violence was used and likely threatened. Persons could be seen moving away from the disorder likely frightened or concerned by what was occurring inside a licensed premises.

It is not for the Sub-Committee to determine the criminality or otherwise of the events in question, or to determine the criminal charge or label that might apply. The Sub-Committee was satisfied that a significant but relatively short-lived disorder took place which clearly engaged the prevention of crime and disorder licensing objective.

People left the premises of their own accord and no staff appeared to intervene to stop the incident occurring. The emergency services were not called. The inference was that staff and door staff were unwilling to become involved.

Patrons were permitted to smoke at the premises on the night in question, in contravention of the smoking ban.

The Police were also concerned that the safe capacity of the premises fixed at 60 persons was also exceeded with around 80 persons on the premises. The Premises Licence Holder disputed any breach of the fire safety capacity limit by reference to the applicable regulations. There was some discussion on this topic in the hearing which could have further engaged the promotion of public safety licensing objective if the allegation was made out. The Sub-Committee was unable to find that there was a breach of the capacity limit notwithstanding how crowded the bar area appeared at the scene of the disorder.



The Premises Licence Holder explained through her legal representative that the premises was hired out on the night in question to a man named Ricky for a party. Ricky was told that the closing time was 1.30am. Ricky charged an entrance fee at the door, provided a DJ and 3 security personnel. The Police are therefore additionally concerned that the event was externally promoted in further breach of a specific condition on the Premises Licence.

The Police representation also advised the Sub-Committee that the premises in question is associated with gang activity, to the extent that it is a licensed venue they have historically and currently frequent. The Police advise that prominent gang members were present at the premises on the night in question. The Police are concerned that the style of operation of the premises and its location is attractive to gang members in Birmingham and that there is a continuing risk of crime and disorder occurring. The Premises Licence Holder maintained that she had no knowledge of or association with any gangs or their members. The Sub-Committee accepted this part of the Police's representation having scrutinised the information from a police officer who is an expert in gang activity to support it. The Sub-Committee finds that the premises and its style of operation makes it vulnerable to pressure from gang activity and a risk of serious harm resulting from any failure to promote the licensing objectives.

The Police also suggested that the premises was associated with drug use but the Sub-Committee could make no such finding on the evidence presented to it today.

The Sub-Committee considered that the incident in question amounted a major lapse in responsible control of the premises for which the Premises Licence Holder had to take responsibility, as she properly accepted today.

The Premises Licence Holder has engaged appropriately with the Police since the incident in question but has not been able to allay their concerns in respect of the continuing operation of the premises under present management. The Premises Licence Holder proposed the addition of conditions to the licence, shorting the terminal hour to 11pm each day and that her son Aldane becomes DPS when he obtains a personal licence in the near future. It is their intention, if the premises licence is restored, to take the premises in a very different direction to become a "LGBTQ bar".

The Sub-Committee considered that if the licensing objectives are to be properly promoted this premises, in light of its recent background, and the pressure it is under from gang activity, needs to be operated in any future guise by an experienced personal licence holder and were not satisfied that the Premises Licence Holder's son was a suitable candidate in light of his inexperience and close family relationship to the current Premises Licence Holder and DPS. The Sub-Committee was invited to and did consider whether it should also suspend the licence until such time as these changes could be made but were not persuaded that the proposal was an acceptable way forward.

The Sub-Committee took into account the break in trading over the last month but was not satisfied that this period, or the maximum suspension period of three months would be sufficient to allay their concerns.

Taking all relevant matters and representations into account the Sub-Committee determines that the appropriate and proportionate step is to revoke the premises licence and remove Angella Raymond as Designated Premises Supervisor.

The Sub-Committee also determines for the reasons set out above to maintain interim steps of suspension of the licence and the removal of Angella Raymond as Designated Premises Supervisor pending the resolution of any appeal that may be made against the decision in the summary review. These interim steps remain necessary, appropriate and proportionate to promote the licensing objectives.

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 2003 Act, the Guidance issued by the Home Office in relation to expedited and summary licence reviews, the application and certificate issued by West Midlands Police under Section 53A of the 2003 Act, the written representations, and the submissions made at the hearing by the Police, and the Premises Licence Holder and their 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 on the summary review 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.

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**The meeting ended at 1213 hours.**

CHAIR.....

# BIRMINGHAM CITY COUNCIL

<p><b>LICENSING SUB-COMMITTEE B 2 APRIL 2024</b></p>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 2 APRIL 2024 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Diane Donaldson in the Chair;

Councillors Saddak Miah 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)

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### 1/020424 **NOTICE OF RECORDING/WEBCAST**

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### 2/020424 **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 interests flowchart which provides a simple guide to declaring interests at meetings.

**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/020424 Apologies were submitted on behalf of Councillor Adam Higgs and Councillor Julien Pritchard was the nominated substitute Member.

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**LICENSING ACT 2003 – PREMISES LICENCE – GRANT – WALMLEY LOCAL, 243 – 245 EACHELHURST ROAD, WALMLEY, SUTTON COLDFIELD, B76 1DT.**

**On Behalf of the Applicant**

Nira Suresh - Arca Licensing

**On Behalf of Those Making Representations**

Chris Jones – West Midlands Police (WMP)

\* \* \*

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

Nira Suresh, on behalf of the applicant requested an adjournment due to an emergency travel situation. He anticipated that he would be back at the end of the week and therefore asked for the case to be adjourned until he was back.

Chris Jones, WMP did not understand why the applicant needed an adjournment. WMP had requested documentation and it had not been forthcoming for 7 weeks. If there was a legitimate transfer of the business, then the requested documentation should easily have been submitted to WMP.

At 1012 hours the Committee adjourned to deliberate the preliminary request. The Members, Committee Lawyer and Committee Officer withdrew to a private session in order for Members to consider the request.

At 1020 hours the Committee re-joined the meeting and advised that they had decided to refuse the request as all parties were in attendance.

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.

The chair then invited the applicant to make their presentation and Nira Suresh made the following points : -

- a) That it was unfortunate that the Committee had decided to continue with the hearing despite the adjournment request.

- b) That they objected to the police submissions.
- c) The application was for a landlord of the business who had been given the premises to operate, on a franchise basis.
- d) That the previous licence holder had had the contract terminated and would have nothing to do with the premises moving forward. They were happy to have a condition on the licence which stated that person would have no involvement with the premises.
- e) It was a new application and had nothing to do with the previous person.
- f) There was no business purchase, the contract was terminated, and the new application was put forward.
- g) The police had not put any evidence forward about the applicant – indicating that there were no obvious problems with the applicant.
- h) The landlord was taking back the premises and wanted to continue with an alcohol licence and running the premises.
- i) They would provide the documents but due to emergency travel they had not had chance to do that. They could provide a termination letter.
- j) The land registry also indicated that the applicant was the landowner.
- k) The matter could be dealt with outside of the courts and by way of conditions.

The Committee invited WMP to make their presentation, Chris Jones made the following points: -

- a) That WMP requested the documents on 12 February 2024.
- b) The documents would provide proof of separation from the previous premises licence holder.
- c) The documents should have easily been available and WMP should not have been waiting 7 weeks.
- d) The previous PLH had their licence revoked and therefore it was important that there were documents to prove that the new applicant was the new business owner.
- e) WMP received the application on 9 February 2024, the previous licence was revoked in February 2021 after Trading Standards submitted a review of the licence after discovering counterfeit bottles of alcohol at the premises. The review application was supported by WMP. The previous PLH tried to deceive Trading Standards by saying he had purchased the alcohol legitimately and provided a receipt of sale from a legitimate company. However, the receipt was not real, and the premise was operating illegally. The decision to revoke the licence was appealed and the final hearing was scheduled to be heard in

February 2024. Just prior to that date the PLH withdrew the appeal, she was still invited to court to ensure she understood the consequences of withdrawing. Some 8 days later a new application for a premises licence was submitted.

- f) WMP were concerned over the short period of time that the appeal was withdrawn, and the new application being submitted. Therefore, they requested documentation to evidence that the new applicant had nothing to do with the old PLH/operation.
- g) WMP emailed the agent requesting the documentation and did not receive a reply.
- h) The documents should have been easily available.
- i) Several documents were requested; a contract between the parties showing the sale of the business, or legal documents for control and ownership of the business, payment of the business, utility bills with the applicant's name on, business rates with applicant's name, waste collection with applicant's name, rent agreements with the applicant's name on. None of these had been supplied and WMP emailed again on 5 March 2024 requesting an update, again there was no reply.
- j) Without proof of separation from the previous business WMP could not support the application and they had no confidence in the applicant without proof of separation from the previous licence holder.
- k) Therefore WMP requested that the application be refused.

The Chair invited all parties to make a brief closing submission and Chris Jones, WMP made the following closing statements: -

- a) The documents requested should have been easily supplied, they still had not been forthcoming.
- b) WMP were concerned over the promotion of the licensing objectives without the proof of separation from the previous licence holder.
- c) WMP requested that the application be refused.

The applicant/representative was invited to make a brief closing submission and Nira Suresh, on behalf of the applicant made the following closing statements: -

- a) That WMP had a concern with the previous licence holder but that was nothing to do with the new applicant and WMP had not submitted any evidence to show there was a link between the previous PLH and the new applicant.
- b) They had invited WMP to check the land registry which was readily available.

- c) They had offered a condition that the previous PLH would have no involvement with the running of the premises and that would address the concerns.
- d) The landlord (applicant) had the right to take over the premises and the right to apply for a licence. He had previous experience of operating licensed premises.
- e) The contract between the landlord and previous licence holder had been terminated.
- f) It was a completely new application and he requested that it be granted.

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;

4/020424     **RESOLVED:-**

That the application by Kularatnam Pararasalingnam for a premises licence in respect of Walmley Local, 243 – 245 Eachelhurst Road, Walmley, Sutton Coldfield B76 1DT, be rejected. In reaching this decision, the Sub-Committee was mindful of the promotion of the licensing objectives in the Act - in particular, the prevention of crime and disorder, and public safety.

The Sub-Committee's reasons for refusing this application for a premises licence are due to the concerns which were raised by those making representations, namely West Midlands Police. The application was for off-sales of alcohol from 06:00 hours until 23:00 hours daily, with the opening hours to match these times. At the start of the meeting the Sub-Committee noted that the applicant and West Midlands Police had both submitted documents, all of which were in the Report.

In advance of the meeting, the Police had made requests to the applicant. These requests were due to the previous history of highly unsatisfactory trading at the site, which had resulted in a Review hearing before the Licensing Sub-Committee in 2021. At that time, the premises had been known as 'KVK Supermarket', and the licence holder had been a company called KVK Supermarket Ltd (sole director: Mrs Kuladevi Thavarasa).

The outcome of the hearing in 2021 had been a revocation of the premises licence, after the Sub-Committee heard from West Midlands Police that bottles of counterfeit alcohol had been found at the premises.

The licence holder had appealed against the decision, and the appeal hearing had been set down for February 2024, but the licence holder withdrew the appeal. Some eight days later, the instant application for the grant of a licence was submitted, in the name of Kularatnam Pararasalingnam. The Police were concerned about the very short period of time between the withdrawal of the appeal and the submission of the new application.

Requests were therefore made by the Police to the applicant, in advance of the meeting. These were for documentation to satisfactorily evidence that the business had changed hands, such that the previous company (and its sole director) running the old business had no part in the running of the proposed new business. The Police had wanted to see a proper separation between the old arrangements at 'KVK Supermarket', and the operation proposed by the new applicant, who would be trading as 'Walmley Local'. However, nothing had been provided by the applicant in response to these Police requests.

The applicant was represented at the meeting by his agent. As a preliminary point, the agent made an application to adjourn the meeting to a date outside the statutory hearing window, per regulation 12 of the Licensing Act 2003 (Hearings) Regulations 2005. The agent explained that he had been overseas and would be travelling back at the end of the week, and therefore requested an adjournment.

The Police opposed this application, remarking that they did not understand why the applicant had not supplied the paperwork that had been requested. An email had been sent to the applicant on the 12<sup>th</sup> February 2024, asking for documentation showing evidence of the ownership of the business. The email was in the Committee Report. The Police observed that the applicant had had seven weeks to supply documents which should have been easily and readily available if the business had legitimately changed ownership.

The Police further noted that the documents had not been made available even at the start of the meeting, and remarked that it was not clear how an adjournment would change the availability of the documents.

The Sub-Committee agreed with the Police that sufficient time had been given to the applicant for the production of all or any of the documents listed in the Police email – yet no documents at all had been forwarded in the weeks since the email had been sent. The Sub-Committee agreed with the Police that suitable documents should have been readily available, and further agreed that it was not clear how an adjournment would assist. The Sub-Committee therefore resolved to proceed with the meeting.

The agent for the applicant addressed the Members, and explained that the applicant was the landlord of the premises. He had let it on a franchise basis. The contract between the landlord and tenant had been terminated, and the applicant "had all the documents". There had not been any business purchase transaction; the contract has been terminated.

The agent remarked that the Police concerns had related to the previous operator. The agent assured the Sub-Committee that the previous operator was no longer anything to do with the premises, as the contract had been terminated. It was a fresh application.

Regarding the failure to produce the documents, the agent remarked, "there was a contract, a termination, you know, agreed. That has been terminated and the new application is put forward". He also stated that "it didn't give the opportunity to respond to the police things" [sic].



The agent suggested that the licence should be granted with conditions attached, and confirmed that the applicant had already put forward a proposed condition to the Police that the previous operator should have nothing to do with the running of the premises. The landlord was taking back the premises, and alcohol was part of the business. The intention was for the applicant to start running the premises himself, and to completely exclude the previous operator.

The agent went on to suggest that the Sub-Committee could grant the licence with “a condition to say that we will submit all the documents”. The Sub-Committee was surprised at this suggestion, and was further surprised that the agent then remarked, “in honesty we could have submitted 24 hours before, the documents to the committee to look at today, but we were not able to do that”. He said that he was “requesting an opportunity to present the documents, but we could have a condition on the licence to do that”. The Sub-Committee did not consider that this was a suitable way forward, and was unsure why the documents had not been produced at any point during the previous seven weeks, or indeed at the meeting itself.

The agent stated that the only document that would be offered was a termination letter, which would state that the contract had been terminated. He added that the applicant also had the Land Registry entry showing that he was the owner of the premises. The agent considered that these items would be sufficient, and asked the Sub-Committee to grant the application with his suggested conditions.

The Sub-Committee noted that under paragraph 9.43 – 9.44 of the Guidance issued under s182 of the Act, there was a presumption to grant such applications unless there was good evidence of a risk to the promotion of the licensing objectives. The Sub-Committee therefore looked carefully at whether there was evidence that the proposed operation would in fact have an adverse effect on the licensing objectives by considering the submissions of those making representations.

West Midlands Police addressed the Members and directed their attention to the Committee Report, which contained a copy of the Police email of 12<sup>th</sup> February 2024 requesting the documents. The applicant had been asked to provide items which would show proof of separation from the previous operator; these documents should have been easily available. However, seven weeks later, there had been no proof that the new business would be separate from the KVK Supermarket operation, which had had its licence revoked for irresponsible and illegal practices relating to counterfeit alcohol.

An aggravating factor had been that the premises licence holder at KVK Supermarket had attempted to deceive Trading Standards officers that the counterfeit alcohol had been purchased legitimately, by providing officers with a false receipt of sale from a legitimate warehouse company.

The Police observed that the Licensing Sub-Committee which had revoked the licence had noted that the way the premises was operated was not merely irresponsible, but also illegal, and had also commented that the company

director's explanations had not inspired any confidence whatsoever that she understood the licensing objectives.

Regarding the appeal, the Police confirmed that the premises licence holder of KVK Supermarket had withdrawn the appeal against the revocation at a late stage. The premises licence holder was instructed to attend court, as a District Judge wanted to ensure that she understood the consequences of withdrawing the appeal. She did attend, and the District Judge was satisfied that she was aware that the revocation of the premises licence became effective from that time.

It was only 8 days after the withdrawal that the current grant application had been lodged. The Police had been concerned about the short period of time, in case it was an attempt to subvert the process and the requirements of the Licensing Act 2003. Documents were therefore requested that showed that the applicant was the legitimate owner of the business, and was separated from the previous licence holder of KVK Supermarket.

The email in the Committee Report detailed what had been requested; none of the documents had been forthcoming. The request was chased up on 5<sup>th</sup> March and again there was no reply to this email. The Police had concluded that the documents were not available, and would not be available. They were therefore concerned that the applicant was not separated from the previous licence holder, and that there was a risk that the instant application could be an attempt to subvert the process and the spirit of the Licensing Act 2003.

The Police recommended that the application should be refused, observing that without proof of separation from the previous licence holder, there were concerns for the promotion of the licensing objectives, especially around the prevention of crime and disorder, and public safety. The police confirmed that they had no confidence in the applicant without the proof of separation from the previous licence holder. The Sub-Committee noted this.

Having heard all of the evidence, the Sub-Committee retired to determine the application. The Sub-Committee examined the operating schedule put forward by the applicant, but was not at all persuaded that matters were in order. As the Police had observed, there was nothing to properly show a genuine separation between the previous operator and the new applicant. The Members agreed with the Police that such documents should have been readily available, and noted that nothing at all had been forthcoming. This did not inspire confidence in the applicant.

The Sub-Committee also agreed with the Police observation that there were significant risks to the promotion of the licensing objectives unless a proper separation could be shown. The Police had explained that the application was not a normal application due to the previous history, which had involved a revocation of the premises licence after counterfeit alcohol had been found within the KVK Supermarket.

The Members considered that a particular concern was that the licence holder at the time had attempted to deceive officers via the use of a false receipt; this made it all the more important that a true separation should be shown, via documents.

The Members examined the list of documents that the Police had requested, and found it to be entirely reasonable.

A ‘normal’ application involving a changeover of premises licence holder would perhaps not be subject to such a level of scrutiny. However, the Members bore in mind that in the instant application, the Police had observed that to grant the application where there had been a licence revocation, and then a withdrawal of an appeal, would place the licensing objectives at risk, as there was no confirmation of a proper separation between the current applicant and the previous operator.

The Sub-Committee agreed that the very poor past history of the premises required a cautious approach, and agreed with the Police that to proceed without the proper documents in place would be quite unsatisfactory given the revocation. The Police had looked askance at the submission of the application only eight days after the withdrawal of the appeal; the Members agreed that this was a concern, and were not at all reassured that the two businesses were separate.

The Sub-Committee accepted the Police advice that it would place the prevention of crime and disorder objective, and the public safety objective, at risk to grant the licence in these circumstances. The Police recommendation had been that the only correct course was that the application should be rejected, in order to ensure the promotion of the licensing objectives. Whilst the agent had said that he considered that a “termination letter” and the Land Registry record would be sufficient, the Police had requested specific documents. The list of documents had been reasonable, and the Sub-Committee considered that the applicant should have endeavoured to supply the documents, and to do so in a timely fashion. This had not happened.

The Sub-Committee gave consideration to whether any measures could be taken to ensure that the licensing objectives were adequately promoted and that therefore the licence might be granted; however, the suggestions made by the applicant’s agent were entirely unsatisfactory – in particular the proposal that the licence should be granted with a condition requiring that the documents should be produced. It was obvious to the Members that the production of satisfactory documents should precede the grant of the licence – not the other way round.

In any event, the Sub-Committee shared the confusion expressed by the Police regarding the reason why these documents, which should have been readily at hand, had instead been unavailable for numerous weeks; moreover, the documents had not even been produced at the meeting itself. The Members had been surprised that the agent had not given a clear reason as to why the documents had not been produced; the comments that he had made in the meeting had not addressed the issue satisfactorily.

In the light of the past history, which had involved a licence revocation, the Sub-Committee determined that evidence (via documents) of a proper separation was essential. This had been the advice of the Police; their view had been that without proof of a proper separation, the licensing objectives would be put at risk. The conditions proposed by the agent during the meeting did not adequately address

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the risks. Accordingly, the Sub-Committee resolved to follow the Police recommendation, and rejected the application.

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 information contained in the application, the written representations received, and the submissions made at the hearing by the applicant via his agent, 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.

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**The meeting ended at 1044 hours.**

CHAIR.....