

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE C 10 JANUARY 2024</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 10 JANUARY 2024 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Sam Forsyth in the Chair;

Councillors Penny Wagg and Jilly Bermingham

### **ALSO PRESENT**

Bhupinder Nandra – 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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1/210923 **NOTICE OF RECORDING/WEBCAST**

The Chair advised that this meeting would 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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2/210923 **DECLARATION OF INTERESTS**

There were no interests declared.

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

3/210923 None submitted.

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## **LICENSING ACT 2003 TRANSFER PREMISES LICENCE – S & B STORES, 1 - 3 COLLEGE ROAD, HANDSWORTH WOOD, BIRMINGHAM, B20 2HU**

### **On Behalf of the Applicant**

Adrian Curtis - Solicitor

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Hardeep Kaur– Applicant  
Gurdeep Singh – License Holder

### Those Making Representations

Chris Jones (WMP) – West Midlands Police.

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

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

The Chair invited Adrian Curtis to make their submissions, at which the they made the following points: -

- a) Found it unusual for a hearing considering there are few and far between objections by West Midlands Police on transfer applications.
- b) This license should have been transferred months ago. The association between the two families Mrs Hardeep Kaur, the landlord and the freeholders that used to run the shop are very close. The husband worked with Gurdeep Singh for many years and over a long period of time, did a transfer effectively of the business to be run by Mrs Hardeep Kaur.
- c) In the background there is a code review application which is outstanding and waiting to be decided upon. The hearing is listed in 2 weeks time where either the committee or another committee of Birmingham will delve into the facts of that review application which has been brought by Trading Standards. The basis is listed in the witness statement provided by Officer Jones, that the 96 vapes were seized from the premises. There are other circumstances indicated in them of the application which will be responded to at the review application. This isn't a review hearing of the transfer of the license.
- d) The license should remain in Mrs Hardeep Kaur's name effectively, and be granted to be transferred into her name. Therefore she can then be the person to respond properly to the application by Trading Standards on the review application.
- e) Each of the points raised in that review application will be responded to at the substantive review hearing.
- f) Mrs Kaur holds a personal license issued by Birmingham City Council, she did her Level 2 training certificate for personal license holders. Furthermore, she does not have a criminal record.

The Chair asked Mr Curtis if he was in the office so he could scan the documents to the committee. Mr Curtis confirmed that he was in the office however, the license document is on the web already. Bhapinder confirmed this.

The license holder Gurdeep Singh made the following points:

- a) Mr Singh hardly worked for the business, he slowly took over the shop.
- b) There was a small delay regarding the transfer of ownership.

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c) Gurdeep stated the transfer was a complete oversight on his part.

Adrian Curtis stated that the relationship between the freeholder and the leaseholder is a close one, there was a very slow handover of the business because it was building up and paying for the bank purchase of the business. The license should be in Hardeep's name as she was the person who was involved.

The Chair asked members if they had any questions. Councillor Wagg asked that if it was a slow handover, 19 months was very slow for the transfer to be made. Were there any actions being taken before this with Trading Standards or did it start when Trading Standards got involved?

Mr Curtis replied and stated that it is on the record with Birmingham City Council. An application was put in over a year ago which was rejected as it wasn't done correctly.

The Chair asked members if they had any further questions. Members did not have anything to ask.

The Chair invited those making representations to make their submissions, at which Chris Jones made the following points: -

- a) Chris Jones stated that he agreed with Mr Curtis' points with regards to it being very unusual for WMP to object to a transfer application for premises. This shows the concerns we have for the application.
- b) WMP received the application transfer on 4<sup>th</sup> December from Hardeep Kaur.
- c) The transfer application was received 5 days after WMP had received a premises license review application submitted by Trading Standards after they had seized a number of illegal vapes which were on sale at the premises.
- d) In the evidence bundle the review application is on pages 3 to 9 of evidence that was submitted in an email on 5<sup>th</sup> January 2024. On that review paperwork it stated that Gurdeep Singh was the premises license holder when the vapes were seized in 2023 and when the review paperwork was submitted in December 2023. The current license holder was Gurdeep Singh, the applicants for this transfer didn't identify themselves to Trading Standards as being in charge of the premises on 2 occasions on an initial visit by them in August 23<sup>rd</sup> and again when the illegal vapes were seized in November 2023.
- e) On the visit on November 23<sup>rd</sup>, Mr Singh identified himself to Trading Standards as being the owner.
- f) The initial visit for Trading Standards on August 23<sup>rd</sup> was prompted by complaints received from concerned members of the public who believe there was illegal or illicit activity on the premises.
- g) On the visit on August 23<sup>rd</sup> Trading Standards did not mention any illicit vapes on sale at the premises. However, on November 23<sup>rd</sup>, illegal vapes that were openly onstage in the premises were seized by trading standards approximately 3 months after the first visit case which suggests that the illegal vapes were made for sale at the premises between the 2 trading standards visits and therefore when the applicant states that she was in charge of the premises. This has been after Hardeep Kaur had been given advice and left a trader's notice by Trading Standards on the sale of illicit or illegal items.

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- h) On receiving the transfer application on the 4<sup>th</sup> December 2023, it was noted that Hardeep Kaur wanted the transfer to start from the 23<sup>rd</sup> February 2022. Prior to the two Trading Standards visits. This was presumed a mistake on the application and the applicant was spoken to on the phone, over the phone Hardeep stated that the date of February 22<sup>nd</sup> was the date she took over the business. This meant that the applicant had responsibility for running the shop nearly 19 months before the transfers application was submitted and would have had responsibility for the premises when trading standards received the initial complaints from the public, they were concerned of that they believed to be illicit or illegal activity in the premises and responsibility for stocking the illegal vapes which were seized by Trading Standards.
- i) WMP are concerned as to why the applicants submitted the transfer application approximately 19 months after taking control of the business and 5 days after a premises license review application was submitted for Trading funds.
- j) WMP are concerned the applicant ignored a voicemail given by Trading Standards in August 20 2023 when a traders notice was left.
- k) WMP have little confidence in the applicant's ability to promote the licensing objectives and therefore reject objectively transfer application on the prevention of crime and disorder losses in objectives, cases.

The Chair asked members if they had any questions. No questions were asked.

The Chair then invited the parties to make a closing submission.

Chris Jones made the following closing statements: -

- If the applicant had transferred the premises license 19 months ago when she took over the business, it would be her name on the review paperwork submitted by Trading Standards. However, she has failed to do this.
- By Hardeep's own admission, she was in charge of the premises for a considerable amount of time prior to the incidents that promoted the visit to the shop.
- WMP cannot support this application to take over the premises license when we have no confidence in her ability to uphold the licensing objectives, especially around the prevention of crime and disorder.

The Chair invited Adrian Curtis to make his closing submission: -

- We have volunteered all the information regarding the oversight which should have been done, this has been clear all the way through any interactions with responsible authorities visiting the shop and has not been hidden.
- The license should have been in Mrs Kaur's name so she was the person dealing with the allegations.
- There are detailed circumstances regarding the purchase of these vapes that needs to be dealt with. There were not many vapes left at the premises. The vapes that were not seized were legal.
- Clients were duped as the vapes were not regulated as they had no nicotine in them. They were misled and made a poor decision.

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- Ask the committee to keep the status quo as it has been since 4<sup>th</sup> December and then the right person will respond to the review application in two weeks time.
  - The license has been in Mrs Kaur's name legally since 4<sup>th</sup> December.
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### **RESOLVED:-**

That the application by Hardeep Kaur for the transfer of the premises licence under section 42 of the Licensing Act 2003 (the "Act"), in respect of S & B Stores, 1 – 3 College Road, Handsworth Wood, Birmingham B20 2HU, be rejected, on the grounds that the application to transfer would undermine the crime prevention objective in the Act, as the Sub-Committee was not confident, after hearing submissions from both sides, that the applicant was capable of upholding it.

The Sub-Committee considered the documents in the Committee Report carefully. The applicant Mrs Hardeep Kaur attended the meeting, as did the current premises licence holder Mr Gurdeep Singh Samrai; they were represented by a solicitor. Also in attendance were West Midlands Police, who had made representations against the application.

The Sub-Committee heard submissions from the solicitor for the applicant, who explained that such hearings were rare, and that the Guidance was that the Police should only make objections in truly exceptional circumstances. He advised the Sub-Committee that the instant case was unusual because of the background around the premises licence.

The solicitor confirmed that it was accepted by Mrs Kaur and Mr Samrai that there had been an oversight, and that the licence should have been transferred many months ago. Mrs Kaur's husband had worked with Mr Samrai for many years, and "over a long period of time did a transfer effectively of the business, to be run by Mrs Kaur as the licensee".

The solicitor further explained that the Police had decided to make a representation against the transfer application because a Review of the licence was due to come before the Sub-Committee in around two weeks' time. The Review application was being brought by Trading Standards, on the basis of unsatisfactory trading relating to illegal vapes.

The solicitor reminded the Sub-Committee that the instant hearing was solely to consider the transfer application, and was not a Review of the licence. The Members accepted that it was important to focus solely on the transfer application.

The solicitor confirmed that Mrs Kaur's position was quite straightforward – namely that, due to an oversight, the licence had not been transferred, and it should have been. Mrs Kaur hoped that once the application was granted, and the licence was transferred into her name, she could then be the person to respond properly and substantially to the forthcoming Review of the licence brought by Trading Standards. The solicitor considered that this would be a type of regularisation of the licence, such that the correct person would be defending the licence at the forthcoming Review hearing.

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The solicitor confirmed that Mrs Kaur was a personal licence holder (issued by Birmingham City Council), and had no criminal record. The forthcoming Review matter had “not been fully engaged, fully investigated yet, or responded to”, he said. The applicant was simply asking the Sub-Committee to permit the transfer in order that the correct person could respond to the allegations in the forthcoming Review matter.

Mr Samrai then addressed the Sub-Committee, to confirm that Mrs Kaur’s husband had worked for him for a number of years, and had then slowly taken over the shop. There had been a delay over the transfer of the ownership, as paying for the purchase of the business had gone on across a very long period of time. Mr Samrai described the delay in arranging the transfer as “just a complete oversight”.

The Members observed that a period of nineteen months (for the transfer application to have taken) was very slow. Mr Samrai confirmed that an application had been submitted a year earlier, but it had been rejected because it had not been completed correctly. Thereafter, the application had “fallen off the radar”, said the solicitor, and this had been an oversight.

The Sub-Committee then heard from West Midlands Police, who confirmed that to make representations against a transfer application was unusual, and therefore the instant objection showed the level of concern which the Police had regarding the application. The Police fears were based on the Review matter which had been submitted by Trading Standards.

The Police directed the attention of the Sub-Committee to their documents, which were in the Committee Report. The investigation conducted by Trading Standards had been prompted by complaints from members of the public, who suspected that illicit activity was perhaps going on at the premises; thereafter, illegal vape products had been discovered to be on display for sale to customers, and had been seized by officers. Mrs Kaur had identified herself to Trading Standards as the person in charge of the premises, on two occasions. The Sub-Committee noted this.

Upon receiving the transfer application on the 4th December 2023, the Police had noted that Mrs Kaur had requested that the transfer should start from 23rd February 2022, and also noted that she said to the Police that this was the date on which she took over the business. The Police remarked that Mrs Kaur had therefore had responsibility for running the shop for nearly nineteen months before the transfer application had been submitted, and moreover she would have had responsibility for the premises when Trading Standards received the initial complaints from the public.

The Police had concerns as to why Mrs Kaur had submitted the transfer application 19 months after taking control of the business, and five days after a premises licence review application had been submitted by Trading Standards. The Police were not confident that Mrs Kaur’s decision-making was satisfactory, given that the premises appeared to have stocked illegal vapes for sale, and also that she had seemingly ignored advice given by Trading Standards, who had issued her with a Trader’s Notice during a visit in August 2023.

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Accordingly, West Midlands Police had little confidence in the applicant's ability to promote the licensing objectives, and objected to the transfer of the licence in the interests of ensuring the upholding of the prevention of crime and disorder objective.

When summing up, the solicitor observed that "nothing new" had been heard in the submissions from West Midlands Police. He asked the Sub-Committee to note that Mrs Kaur and Mr Samrai had volunteered information about the oversight, and had accepted that the transfer should have been done promptly; moreover, they had taken this approach all the way through all interactions with any responsible authorities visiting the shop. There had been no attempt to hide anything, and the position was simply that the transfer should have been done, but had not been.

The solicitor asked that the licence should be in Mrs Kaur's name "so she can then be the person dealing with the allegations of what has happened in relation to the Review application". He observed that the circumstances regarding the vape stock needed to be addressed at the Review hearing. He stated that the application was simply to regularise the position in order that Mrs Kaur would be the person facing the Review proceedings, not Mr Samrai. He urged the Sub-Committee to note that there was "no further evidence of anything illicit, illegal or any other allegations that that we are aware of that have come up since that date".

Finally, the Sub-Committee heard briefly from Mrs Kaur, who stated that "we have spent all our savings" on the shop, had three children, and also remarked that it was difficult to deal with these types of issues. She asked that the Sub-Committee grant the application ready for the Review hearing.

The Sub-Committee was aware that in exceptional circumstances, where the Police believed that a transfer might undermine the crime prevention objective, the Police could object to a transfer. Such objections were expected to be rare, and to arise only because the police had evidence that those seeking to hold the licence were involved in some way in crime and/or disorder. Therefore, when deliberating, the Sub-Committee paid very careful attention to the advice of West Midlands Police, who had objected to the transfer on the grounds of the prevention of crime and disorder.

Having considered the submissions of the Police, the Members found themselves quite unable to be certain that the Mrs Kaur was capable of promoting the crime prevention objective properly. The Members noted that the Police had been unimpressed that the application had been submitted some 19 months late. Moreover, the Police had pointed out that it appeared that Mrs Kaur had not followed the advice she had been given in the Trader's Notice. This was wholly unsatisfactory given that the grant of the transfer application would make her responsible for the upholding of the licensing objectives at the premises.

The Sub-Committee also looked askance at the earlier transfer application, which had been submitted in an incomplete form, such that it could not be granted. Nothing further had been done to correct and resubmit the form at that time - yet the reason given by the applicant for the application submitted on 4th December 2023 was that Mrs Kaur wanted the position to be 'regularised'. This was not persuasive, given that a period of around a year had passed. The Sub-Committee

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took on board the Police’s observation that the instant application had been made five days after the Review application had been submitted by Trading Standards.

The Sub-Committee noted that a Review application would in due course come before one of the Licensing Sub-Committees; whilst not taking any view on the particulars of that Review matter, the Sub-Committee noted that the advice of the Police was that the transfer application should be rejected because the crime prevention objective had not been upheld. The Police were the experts in the prevention of crime and disorder, and the Sub-Committee therefore noted their recommendation.

All in all, whilst the Sub-Committee carefully considered the submissions made by all those representing the applicant, the Members could not agree that those submissions ought to justify the grant of the application. To permit the transfer would send a message that unsatisfactory arrangements were not a serious matter - on the contrary, they were indeed a serious matter. There had been an inordinate delay of 19 months, and Trading Standards had found the operating style to be quite unsatisfactory. The Police submissions, dealing with the history of trading at the premises (as per the Committee Report), had demonstrated to the Sub-Committee that there were significant grounds for believing that the transfer of the licence would undermine the crime prevention objective. The Sub-Committee therefore considered that there would be a clear risk to the crime prevention objective to permit the transfer.

It had been the strong advice of the Police that the application should be rejected. Regard was also given to paragraphs 8.99 - 8.102 of the Guidance issued under section 182 of the Act by the Secretary of State, and when deliberating the Sub-Committee considered that a refusal in this instance would be an appropriate and proportionate response in all the circumstances. Accordingly, the Sub-Committee determined that the correct course was to reject the transfer application, in order to ensure that the crime prevention objective was not undermined.

In reaching this decision, the Sub-Committee gave due consideration to the information contained in the application, the objection notice submitted under section 42(6) of the Act, and the submissions made at the hearing by the solicitor to the applicant, by the licence holder, by the applicant herself, 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.

**Please note the meeting ended at 11:55 hours.**

CHAIR.....