

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 6 MAY 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 6 MAY 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Martin Straker-Welds and Bob Beauchamp.

ALSO PRESENT

David Kennedy – Licensing Section
Bhapinder Nhandra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services
Phil Wright – Committee Services

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

NOTICE OF RECORDING/WEBCAST

- 1/060520 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/060520 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/060520 Apologies were submitted on behalf of Councillors Neil Eustace and Councillor Bob Beauchamp was the nominee Member.
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**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – THE
OBSERVATORY, 44A BARKER STREET, LOZELLS, BIRMINGHAM, B19 1EP**

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Richard Green – South Road Housing Co-operative (SRHC)
Nicole Madourie – Resident

Those Making Representations

PC Abdool Rohomon – West Midlands Police (WMP)
Christina McCullough – Licensing Enforcement Officer (LEO)

On behalf of the Premises Licence Holder (PLH)

Richard Clarke – Clarendon Homes Ltd
Jake Flanagan - Portcullis Group

The Chairman introduced the Members and officers present and after a short pause due to technical difficulties the Chair asked if there were any preliminary points for the Sub-Committee to consider. No one indicated that they had any preliminary points.

However, the Chairman advised the Committee to note that he did know Mr Richard Green; whom used to be a Council Officer however, the Chairman confirmed the association was only in a professional capacity.

Further, Mr Flanagan wished to highlight that although the hearing was well intentioned, it was distracting, and he felt it may impede his client's ability to a fair hearing.

The Chairman advised that the meeting would be adjourned to seek legal advice. At this stage the three Members, Committee Lawyer and Committee Manager went into a private on-line meeting.

The public session was resumed and having considered Mr Flanagan's point, the Chairman confirmed that although there had been some technical difficulties early on and a delayed start they would continue with the hearing.

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

Afterwards, the Chairman invited Mr Richard Green to outline the review application. At which stage Mr Green made the following points: -

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- a) That the application had been submitted on behalf of the local residents and community who had been directly affected by the ASB (antisocial behaviour) as a result of this premises.
- b) The local residents had been continuously affected by the nuisance, excessive noise and street BBQs all associated with the premises. During the 2019 December holiday period the nuisance happened frequently, especially Christmas Eve, Boxing Day and then throughout the new year.
- c) SRHC and WMP made attempts to engage with the licensee to no avail, including sending out numerous letters to both registered addresses; one on the 22 August 2019 and one on 18th September 2019. The licensee was put on notice but again did not respond or take any positive steps to engage or take any action. The PLH had a complete lack of regard for the local community.
- d) The premises was causing a significant nuisance and therefore they requested that the licence be revoked and the premises be indefinitely closed.

Ms Nicole Madourie added that some local residents had been threatened verbally and had also experienced people urinating by/on their properties. The persons who were seen doing it had emanated from The Observatory.

Members asked questions and Mr Green responded: -

- a) That he had sent a letter to the licensee and there had never been any response or acknowledgement of the complaints highlighted in the letters.
- b) In total 3 letters had been sent to the licensee. The nuisance had been going on sometime and they had held some multi-agency meetings before deciding to send the letters.
- c) The issue was a combination of everything; noise nuisance, fights outside the premises, a stabbing and other ASB. The residents had safety concerns and were being impacted by the noise nuisance.
- d) There had not been a petition set up. Mr Green thought that the residents were in fear of complaining.
- e) That none of the letters were sent recorded delivery.
- f) Within 200 meters there were 7 or 8 residential properties, 4 of whom had made complaints.
- g) That there had been police logs, but he had not included them in the review application.
- h) That the residents on Barker Street had off street parking and therefore, they could only assume the parking issues were from the observatory.

The Chairman invited PC Rohomon, WMP to make his representation at which stage PC Rohomon made the following points: -

- a) That it was the local police team who had been involved with the premises and had attended the multi-agency meetings.
- b) That WMP had received several calls over the last year from concerned residents in relation to ASB (anti-social behaviour) emanating from the premises. Issues such as parking, street BBQs and noise nuisance had been brought to WMP's attention.
- c) WMP had met with the DPS and given her advice relating to such issues.
- d) Residents were living extremely close to the premises and it was clear that the premises was causing issues.
- e) WMP were under pressure from residents to resolve the issues. The local neighbourhood team had been working with the premises to try and resolve the issues, however the issues would cease for a short time, but then reoccur.

In answer to questions from Members, PC Rohomon gave the following responses: -

- a) That WMP had received 7 immediate calls (emergency) and then 2 further calls which were in relation to ASB. Although PC Rohomon confirmed he had not been through the entire list, he knew there were a fair few listed on the police system.
- b) The stabbing was a result of a robbery and the victim was uncooperative and therefore, WMP were unable to ascertain that the fault could be attributed to the licensed premises. The circumstances were similar with the fire bombing incident, where again WMP struggled to attach a degree of fault to the premises.
- c) PC Rohomon had no information about a fight, other than an incident where two people were fighting, and a group of people had gathered round to watch and therefore he couldn't assist the Members any further regarding that.
- d) Letters had been sent to the licence holder, however they were not aware of any response from them and there was no evidence of any replies from the licensee.
- e) They had been in contact with the DPS prior to the review application being submitted. WMP gave her advice and she was made aware of the problems.
- f) That the police had intervened, but the issues would only resolve for a short period and then reoccur.
- g) That the issues outside the premises could be resolved with SIA door staff. The hours of operation were clearly an issue which needed addressing. The premises was situated in close proximity to residents.

- h) PC Rohomon confirmed that there were measures that could be taken to control the issues however, if the issues weren't resolved by conditions then revocation would be the next course of action.
- i) The DPS was not the strongest person, however, more stringent conditions would give her more support.
- j) If Members were minded to add conditions on the licence, they needed to be confident that the PLH could uphold them and adhere to them. Currently, the PLH had a distant relationship with the DPS, who had been left to manage the premises. The PLH had also been difficult to get hold of and therefore did not inspire confidence that they had adopted a hands-on approach.
- k) The licensing objectives were there to reduce risk and if the measures weren't met there would be a massive risk to public safety.
- l) The ASB threat was primarily outside the premises, however, some of the noise nuisance was emanating from inside the premises.

On behalf of Licensing Enforcement, Ms Christina McCullough made the following points: -

- a) The premises came to the attention of Licensing Enforcement in July 2008 and they had received a total of 23 complaints from residents including allegations in relation to street BBQs, ASB and the premises operating outside of their licensable hours.
- b) Licensing Enforcement had carried out visits and spoken with the DPS regarding the concerns of residents and there had been periods with no complaints, however, the issues kept resurfacing.
- c) Since 2017 there had been 13 complaints.
- d) The DPS did not accept that the premises was causing problems.
- e) The premises had no CCTV. Residents were scared to come forward with complaints.
- f) That they had tried to get in contact with the licence holder but had not been successful. If the address or contact information was wrong, then the premises licence holder had failed to update it.

In answer to members questions Ms McCullough made the following points: -

- a) That every time she visited the premises the DPS was present.
- b) The premises licence did not have any conditions as it was an older style licence.
- c) The premises licence permitted the sale of alcohol until 0100 hours.

- d) The premises was quite small so it didn't have a huge capacity.
- e) That it was difficult to say whether the DPS would be strong enough to enforce conditions.
- f) If licensable hours were reduced and the premises employed door staff then she felt the issues would be able to be better managed.
- g) The premises licence fee was due in November and was 4 months late.

The Committee Lawyer confirmed the fee had now been paid by the licence holder.

Mr Jake Flanagan was invited to make his representation on behalf of the premises licence holder and as such made the following points: -

- a) Mr Flanagan confirmed he was representing the licence holder and had never met the DPS before so therefore could not make any comment on that.
- b) He also told the Committee that nothing he was going to say on behalf of the licence holder was in anyway an attempt to justify conduct as clearly there had been issues and legitimate concerns from residents.
- c) That the PLH had not received the letters as described.
- d) The PLH had been led by the information they had received from the DPS and had not been made aware of anything untoward. The PLH was a responsible operator of licensed venues in Birmingham, Warwickshire and Manchester.
- e) There was no indication of how many people had complained. The complaints were all using similar language and themes, the word 'rowdy' appeared in the first four complaints, which led Mr Flanagan to surmise that it was just one complaint.
- f) Further, he also raised a point specifically that out of 23 complaints how many were being directly affected and how many of the complainants had made representations. It was not clear.
- g) There had been no breach of the licence conditions.
- h) It was difficult to attribute any blame or issues directly to the premises.
- i) The headline grabbing incidents such as the 'stabbing' resulted in no action and no expedited review application. It was not possible to link the activity to the premises.
- j) There were no representations from the Environmental Health department and no enforcement action.

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- k) WMP stated they had reports of incidents but not enough for any action to be taken, and there was no more information.
- l) There had been periods of 3-4 years where the premises had no issues, no complaints and had been operating well. That would suggest that the DPS was more than capable of managing the premises.
- m) The 13 complaints brought to the attention of the Committee by the LEO had mainly occurred between May – July last year and many of them used similar language – therefore suggesting it was one person making multiple complaints.
- n) That the PLH was largely unaware of the issues, until the review process was triggered.
- o) They were not seeking to justify the conduct of the DPS and although the PLH does hold regular meetings with her, they are very much DPS led and reliant on her providing them with accurate information.
- p) The position of WMP and the LEO was that there were issues but not attributable to the premises. Additionally, if the concerns could be linked to the premises WMP would have submitted an expedited review application or alternatively taken action against the premises, yet they had not.
- q) That the PLH was operating in 'blissful ignorance' and should be given the benefit of the doubt and an opportunity to put it right.
- r) That things needed tightening up.
- s) That jumping straight to revocation was not justifiable.
- t) The PLH was very capable and the DPS had been working at the premises for a long time.
- u) There was nothing from the representations that could be attributed to the premises.

In answer to questions from Members, Mr Flanagan made the following points: -

- a) The PLH has not had any direct contact with any responsible authorities. They had been in contact with the DPS however, she had been clear that whilst there had been incidents, none of them could be linked to the premises. WMP and the LEO had accepted that the evidence could not be related directly to the premises, and therefore had not enforced any action.
- b) The PLH could answer some of the questions.

Mr Richard Clarke, on behalf of the PLH made the following points: -

- a) That they had been in contact with the DPS and she had never mentioned anything regarding issues at the premises. Therefore, they were obviously ill

informed and when they asked questions, she always said there had been no issues.

- b) That their involvement should have gone further, which would have ensured they knew what was going on.
- c) The communication with the DPS had been limited.
- d) The issues had not been brought to the PLH's attention.
- e) That he had confidence in the DPS to put conditions into place and felt she was a 'strong lady'.

Mr Flanagan added that whilst they didn't know about the issues, they did know now and wanted to strengthen the licence and issue a 'system of oversight' so they could find out about issues straight from the 'horses' mouth'. The operating schedule was no longer suitable.

At this stage the meeting was adjourned in order to allow all parties to take a short comfort break. Due to the meeting being held virtually all parties muted their microphones for 15 minutes and the meeting was resumed at 1239, where all parties were invited to 'unmute' their microphones and the Chairman invited PC Rohomon to seek clarification regarding a few points.

PC Rohomon asked when the PLH first became aware of the review.

Mr Clarke confirmed that they were experienced operators and did not know about the review until the review application was submitted.

PC Rohomon enquired as to why they did not know about the issues before.

Mr Clarke advised that although the company was not that experienced in the operation of licensed premises, he was very experienced, and he was representing them. At the time he had been furloughed and therefore, it was not possible to do anything before.

Mr Flanagan added that it was not possible to do anything before due to the timing. Mr Clarke had been furloughed and it would be disingenuous to attach any weight on the date in March that his client became aware of the review.

PC Rohomon sought clarity over Mr Clarke's role in the company as he was not listed as a director on Companies House.

Mr Clarke confirmed that although he was not a director he worked directly for the directors.

Mr Flanagan confirmed that Mr Clarke as more of a regional manager.

Following the representations, all parties were invited to make a closing submission.

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In summing up Ms McCullough, on behalf of Licensing Enforcement made the following points: -

- That the conditions attached to the licence were not adequate.
- The location of the shop needed to be considered, especially given the operating hours which were until the early morning hours.
- The operating schedule had no conditions to help alleviate the concerns. It was difficult for her to investigate complaints without enforceable conditions or CCTV.
- She had spoken to various residents and on balance the premises were causing issues.
- They had difficulty contacting the licence holder and its not clear how they were supposed to contact them.
- It was not a good defence to say they didn't know what was going on. They simply do not have control of the premises.
- That she was not sure whether conditions would work.
- Numerous visits had been carried out.
- That she didn't agree with the proposed conditions, the premises would need SIA door staff to filter people away in order to cause less disturbance.
- She did not believe the PLH or DPS could comply with the licence and therefore suggested the licence be revoked if the Committee was not minded to attach conditions to the licence.

In summing up PC Rohomon, on behalf of WMP, made the following points: -

- That there had been intervention and therefore a degree of enforcement has been actioned against the premises.
- The submissions from the PLH/representative suggested that the licence wasn't fit for purpose. However, they still always had to promote the licensing objectives and should have been doing so. Just because the licence had a lack of conditions that did not mean the objectives disappeared.
- That the operator was not experienced.
- The PLH had not even attended, they had just sent an employee.
- That the Committee needed to be able to trust the operator.
- Mr Clarke could get sacked tomorrow.

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- That he had not heard anything today the inspired confidence in the operator.
- The PLH found out about the review before lockdown yet chose not to engage with any of the responsible authorities.
- That if the Committee were minded to add conditions to the licence, the ones offered by the premises did not go far enough. The LEO conditions were better, but the real question was whether the Committee had confidence in the operator.

In summing up Mr Green made the following points: -

- That the only appropriate course of action was to revoke the licence however if the Committee were minded to attach conditions, he requested that the ones he had submitted also be attached.
- Further, that amendment to the opening hours should be considered and he suggested that the premises should not operate beyond 2300 hours.
- There should be a 6-monthly review of the licence conditions and the PLH/DPS should respond to correspondence when put on notice about ASB or nuisance behaviour.

In summing up, Mr Flanagan on behalf of the PLH, made the following points: -

- That the Committee had been asked to revoke the licence for a premises which had been in operation pre-dating the Licensing Act. The premises had seen great periods of successful operation and not only were the Committee being asked to revoke the licence of a premises who has demonstrated it can operate successfully, they were also being asked to do so on the basis of information that had not been acted upon.
- The PLH had been furloughed and therefore was unable to respond straight away to the review, PC Rohomon was using that as a way of suggesting the premises was not being managed appropriately.
- There was a line of communication missing which needed rectifying.
- There was no information from the WMP neighbourhood team and therefore, the Committee had been asked to make assumptions about that, even though Environmental Health had made no representation.
- The complaints were unclear. There was no information to indicate how many people had made complaints, or whether it was simply one person keeping a log.
- They were fully committed to the new operating schedule and felt the issues could be dealt with.

- They accepted there had been issues and wanted to deal with it.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/060520 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Clarendon Homes Ltd in respect of The Observatory, 44a Barker Street, Lozells, Birmingham B19 1EP, upon the application of the South Road Housing Cooperative, this Sub-Committee hereby determines that the licence be revoked, and that the designated premises supervisor Sophia Lawrence be removed, in order to promote the prevention of crime and disorder, public safety and prevention of public nuisance objectives in the Act.

Owing to the critical incident response to the Covid-19 outbreak, the initial hearing scheduled for Wednesday 1st April 2020 was adjourned under Regulation 11 of the Licensing Act 2003 (Hearings) Regulations 2005, as it was deemed in the public interest to do so. The meeting was held on 6th May 2020 via Microsoft Teams, with a simultaneous livestream being broadcast on the City Council's website.

The Sub-Committee listened to the concerns expressed by the South Road Housing Cooperative relating to the premises trading outside the licensed hours, and being the source of antisocial behaviour, noise at late hours, parking disputes, and other public nuisance including the holding of street barbecues. Numerous attempts had been made by the Housing Cooperative to contact the licence holder company, by letters sent to the Registered Office address as well as another address, but no response had been received. It had become apparent that the designated premises supervisor had displayed an inadequate management style. It was also apparent that the licence holder company took no interest whatsoever in the premises, or the upholding of the licensing objectives.

West Midlands Police also made representations to confirm that they were aware of the issues. They supported the application for review. They too had been unable to contact the licence holder, but had had some dealings with the designated premises supervisor. The Police noted that the licence holder had suggested some additional conditions in advance of the meeting; however it was the Police view that before additional conditions were considered, the onus was on the licence holder to demonstrate to the Sub-Committee whether or not the premises would be capable of proper operation.

The Sub-Committee then heard from Licensing Enforcement who had experienced similar difficulty in contacting the premises licence holder, as they had not notified changes of address to the Licensing Department. Licensing Enforcement agreed with others making representations that the premises was a public nuisance and the source of antisocial behaviour; a particular worry was the trading beyond the licensed hours, which had been observed by local residents.

The premises licence holder company addressed the Sub-Committee through its representative. The main thrust of the licence holder company's submission was that the licence holder was led by the designated premises supervisor; in addition, there were limited communications, and therefore the licence holder was not aware that there was anything untoward happening.

The Sub-Committee was not impressed at all by these submissions. Some of the comments made by the representative were extraordinary – one example was, “the premises licence holder was unaware. He should have been, but wasn't”. This inspired no confidence whatsoever, and the Sub-Committee suspected that the real position was that the licence holder had no interest or involvement in the premises, leaving everything in the hands of the designated premises supervisor. It was noteworthy that the licence holder company's lack of interest also extended to the notifying of change of address, and even to the payment of the licence fee (its representative confirmed that the company had paid the fee two days before the instant hearing; unfortunately the due date for the fee was in November 2019).

The licence holder's representative remarked that although he did not seek to justify the licence holder's conduct, the company was dependent on the designated premises supervisor to keep it informed of problems; this had not happened, and therefore the company had been unaware. This remark entirely missed the point, namely that it was the licence holder's responsibility to appoint a suitable person and to ensure that that person received proper direction/instruction, and at the very least to ensure that proper levels of contact were maintained with the licence holder.

In response to their questions about the level of involvement which the licence holder had with the premises, the Sub-Committee was astonished to hear the representative state that, because the company was unable to be present in the venue, “if they don't know, they don't know”. The Members looked askance at this remark, which seemed to sum up the licence holder company's attitude to its responsibilities. It was the company's responsibility to ensure that they were aware, through the appointment of a suitable person, and by taking a proper interest in the operation. Such a responsibility was an elementary part of the holding of licences, especially as the licence holder company described itself as an experienced operator which held other licences elsewhere (in Manchester and Warwickshire).

An employee of the company then addressed the Sub-Committee; this person stated that he was currently on furlough from his employment, following the national lockdown imposed by HM Government due to the Covid-19 pandemic. It was noted that the company had chosen not to send a Director to a Sub-Committee meeting in which their licence was at stake, but instead had sent a furloughed employee.

The employee stated that although the company accepted that it had not had as much involvement as it should have had, they intended to “change that, and have more constructive input as necessary”. In response to questions about the designated premises supervisor, he replied, “obviously, we've had conversations

with her and she has never brought up anything about anything going on”. He then added, “it is only now, listening to the facts, that we see we should have had greater involvement”. He agreed that it was fair to say that there had been limited communications between licence holder and designated premises supervisor.

This seemed to be the root of the problem at The Observatory. An unsuitable individual had been appointed, was running the premises, and not keeping the licence holder informed; equally the company did not take sufficient interest, and definitely did not demonstrate the level of responsibility expected of any licence holder. All in all, it was a very poorly managed operation. Yet when asked whether the company had confidence in the designated premises supervisor to uphold the company’s proposed conditions, the employee agreed that the designated premises supervisor would be able to do so. This was completely unpersuasive.

Upon hearing the submissions from the company’s representative and employee, Licensing Enforcement remarked that the company’s responsibility had been to ensure proper operation; they had not done this. There was no control, or even involvement, from the licence holder, and grave doubts about whether the designated premises supervisor was a capable person. Licensing Enforcement therefore recommended revocation.

West Midlands Police also had doubts about the company’s proposed new conditions, and whether they could improve the operation; the problem in the eyes of the Police was whether the company could be trusted to comply with such conditions in order to operate properly. In any event, as the Police pointed out, the imposition of new conditions was not really the issue; regardless of the conditions, the premises had a duty to uphold the licensing objectives, and had failed in this regard. The Sub-Committee agreed with these submissions. The Sub-Committee was not at all convinced that the licence holder company understood its own duties in terms of either accountability or responsibility.

In summing up, the premises’ representative repeated that, “we got to this position because we did not know what we did not know”, and stated that, “a line of communication needs to be integrated into the operating schedule”. This was surprising to hear; an experienced company holding licences elsewhere should not need an operating schedule to set out the day to day communication between licence holder and staff. It did not inspire confidence in the company or its management capabilities. It was also apparent that the company attributed a lot of the problems to ‘lack of communication’ without acknowledging that it was the company itself which made it difficult, or even impossible, for anyone to contact them; the Sub-Committee considered that this state of affairs perhaps also applied to their internal management contact arrangements.

The representative ventured his opinion that those making representations had not demonstrated the scale of the problem. However the Sub-Committee felt that all three submissions had made clear that the premises was not upholding the licensing objectives. Moreover it was after hearing directly from the company representative and employee that the Sub-Committee’s attention was drawn to the wholly inadequate management arrangements (especially relating to communication), lack of responsibility, and in fact the general unsuitability of the

licence holder and designated premises supervisor to operate without causing nuisance and antisocial behaviour in the Barker Street vicinity. Accordingly the Sub-Committee resolved to revoke the licence and to remove the designated premises supervisor.

The Sub-Committee gave consideration as to whether it could suspend the licence for a specified period of not more than 3 months, or whether it could modify the conditions of the licence (having examined the conditions proposed by the licence holder, and also those suggested by Licensing Enforcement). However the Sub-Committee was not remotely satisfied, given the presentation by the licence holder and the employee during the meeting, that the licensing objectives would be properly promoted following any such determination. All in all, the Sub-Committee had no confidence that either the licence holder or the designated premises supervisor were capable of proper operation.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under Section 182 of the Licensing Act 2003 issued by the Secretary of State, the application for review, the written representations received and the submissions made at the hearing by the South Road Housing Cooperative, West Midlands Police, Licensing Enforcement, and the premises licence holder (via their representative and their employee).

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision. The determination of the Sub-Committee does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed, until the appeal is determined.

Please note, the meeting ended at 1308.