

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 20 JULY 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON WEDNESDAY 20 JULY 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Julien Pritchard and Sybil Spence.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Ed Brown – Committee Services

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

1/200723

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.

2/200723

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

3/200723 Apologies were submitted on behalf of Cllr Simon Morrall and Mary Locke. Cllrs Julien Pritchard and Sybil Spence were nominated as substitute members.

**THE ARK BIRMINGHAM, 74 JOHN BRIGHT STREET, BIRMINGHAM, B1 1BN -
LICENSING ACT 2003 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

Mark Swallow – West Midlands Police
Ben Reader -West Midlands Police

On Behalf of the Premises Licence Holder

Adrian Curtis – Solicitor
Deepak Singh – Designated Premises Supervisor
Jugdeep Singh – Premises Director

* * *

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, West Midlands Police, requested that the expedited review be heard in private session as it was the subject of an ongoing Police investigation, and it was intended that CCTV footage be shown which may prejudice the investigation if shown in public.

David Kennedy, Licensing Section, outlined the report.

The Chair then advised that the private session would start and all parties moved over to the separate private Teams session.

At this stage the Members, officers and other parties joined a separate MS Teams meeting which was held privately.

EXCLUSION OF THE PUBLIC

4/200723 **RESOLVED:-**

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That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the short decision of the Sub-Committee was announced in public, then a full written decision was sent to all parties as follows;

5/200723 **RESOLVED:-**

That having considered the application made and certificate issued by a Superintendent of West Midlands Police under section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Ark Indian Dining & Bar Limited, in respect of The Ark Birmingham, 74 John Bright Street, Birmingham B1 1BN, this Sub-Committee hereby determines:

- that the licence be suspended, and
- that Mr Deepak Singh be removed as the Designated Premises Supervisor

pending a 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 imposing the two interim steps are due to the concerns which were expressed by West Midlands Police in relation to matters pertaining to serious crime and/or serious disorder, which had come to light as outlined in the Superintendent's certificate and application.

The Sub-Committee determined that the cause of the serious crime and/or serious disorder originated from a style of management which had been incapable of upholding the licensing objectives. The style of management was the responsibility of Ark Indian Dining & Bar Limited, as licence holder for The Ark Birmingham premises.

Mr Deepak Singh, one of the company directors, was the person named on the licence as the designated premises supervisor. Mr Singh and another director of the licence holder company attended the meeting, represented by a solicitor.

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 to hear the evidence in public would undermine an ongoing criminal investigation. The meeting would also involve the playing of the CCTV evidence. The Police

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therefore asked for the Sub-Committee to go into private session for the whole meeting. The solicitor for the premises licence holder had no objection to this course.

The Sub-Committee agreed that the best course was to hear all of the evidence in private session. This was to ensure fairness to all parties, and to ensure that the licence holder was able to properly address the Police submissions without the need to avoid mentioning those parts of the evidence shown in private.

The meeting therefore went into private session and Members heard the submissions of West Midlands Police, namely that the certificate, which had been issued by a Superintendent under s53A(1)(b) of the Act, related to an allegation of serious crime and/or serious disorder which was said to have originated at the premises. It was the advice of the Police that a complete absence of management control had led to the incident.

The Police summarised the investigation thus far – exactly as detailed in the Report. It was the advice of the Police that interim steps were required in order to deal with the causes of the serious crime and/or serious disorder. A criminal investigation was under way. The CCTV was played to the Sub-Committee.

Overall, the Police had no confidence whatsoever in the premises' ability to prevent further serious crime and/or serious disorder. It was the Police's recommendation that the incident had been so serious, and the risk to the upholding of the licensing objectives so grave, that specific steps were required.

The Police recommended that the correct course was to suspend the licence and to remove the designated premises supervisor, pending the full Summary Review hearing, for the reasons given in the Superintendent's certificate and application. The Police noted in particular that there had been a distinct lack of cooperation shown by the premises' management during dealings with them in recent weeks.

The Sub-Committee then heard from the solicitor for the licence holder company, who addressed the Members together with the company directors. The licence holder had been appalled at the actions of the door staff and felt that they had acted completely at variance with the instructions they had been given; the door staff had been fully trained in their responsibilities, and also trained regarding the conditions of the licence, but had departed from their instructions.

They were under strict instructions to not leave the door, but instead to alert other staff members, who would come to assist. Despite this, a number of them did in fact leave the door to enter the nearby streets. Both company directors stated that they would not have expected the door staff to act in the manner seen on CCTV, because they had instructed the door staff never to do so.

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During the training, the premises had instructed the door staff that the correct way to act was to defuse situations and to only use reasonable force, not excessive force, and if a situation could not be controlled, to contact the Police. The premises felt that door staff were there to protect the venue and the public, and were therefore under strict instructions not to leave the door.

The incident had broken out when no member of management was at the door. The designated premises supervisor had not been on duty; the other director was on an upstairs floor of the premises. The CCTV viewing facilities were in the office and therefore not being watched. Although a radio system was in use, at the time in question any alerts “got missed”.

Whilst the CCTV showed the behaviour of the door staff, the solicitor asked the Sub-Committee to note that patrons had also played a significant role in the incident; this had included an attack on the door staff using objects as weapons. Moreover, the suggestion made by the Police that door staff had thrown one individual onto the pavement was not accepted; instead, the company director had himself moved the person onto the pavement, in order to ensure that the person was not in the road and at risk of further injury. The director had then ordered the door staff to return to the door immediately. He had also overheard nearby persons stating that the Police were on their way; within a short time he had heard sirens approaching.

The licence holder had decided to no longer work with the security company which provided the door staff, feeling that they had shown that they did not follow protocols or the licence conditions. It was the licence holder’s view that the incident had escalated when the door staff made the unilateral decision to leave the door, against all instructions. The licence holder intended to change the security company; the directors stated that they would accept the advice of the Police regarding suitable security providers.

The solicitor reminded the Sub-Committee that any interim steps imposed should be only those necessary to prevent any further serious crime and/or serious disorder. He assured the Sub-Committee that both directors understood that the incident was of the utmost seriousness, and they did not oppose the Police’s suggestion that the nightclub-style part of the operation, on the second floor, should be suspended. The management accepted that the style of music offered on Friday nights had perhaps started to attract a problematic clientele; Saturday nights were trading without difficulties as the style of music on Saturdays was different.

However, it was the premises’ view that the restaurant part of the operation, based on the first floor, which had a very good reputation and indeed was considered “the fourth best restaurant in Birmingham” locally, should not be part of any suspension. It operated to 23.00

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hours with no regulated entertainment, only background music, and had been trading safely with no problems whatsoever. All at the premises were confident that the restaurant area could be completely separated, such that the only trading would be as a restaurant (with no nightclub-style offer on the other floor), and were confident that this would prevent any recurrence of serious crime and/or serious disorder.

Regarding the management team, the solicitor assured the Sub-Committee that the management was not the problem; instead, the issue was that the door staff had acted outside their instructions. The solicitor also remarked that it was not correct that the Police could have no confidence in the premises, reminding the Sub-Committee that one of the directors had personally moved an individual to safety when he discovered him lying in the road.

Regarding the designated premises supervisor, the solicitor said that whilst it was accepted that there had been serious incident on the night in question, it was not accepted that there had been a management failure, as the premises considered that it could demonstrate compliance.

In summing up, the Police stated that whilst the door staff had culpability, they acted on the instructions of management; it was the premises who set the code for dress, admission and so on. Whilst one director had said that he was appalled by the incident, he had in fact been there on the night. No staff member had called the Police; this was left to passers-by.

In the event that the Sub-Committee were to decide that the restaurant should continue to operate, the Police asked that the licence conditions be modified to try to guard against risk. In particular, the Police observed that whilst a director had stated that he would be happy to work with the Police, that had not been the case in recent times.

The solicitor for the licence holder accepted the Police's proposed conditions. He urged the Sub-Committee to permit trading as a restaurant, and urged the Members not to suspend the designated premises supervisor, reminding them that only those steps which were strictly necessary should be imposed.

Having heard all of the evidence, the Members were mindful of the reminder from the solicitor for the licence holder, who had urged them to only impose those steps which were necessary to guard against the risks of further serious crime and/or serious disorder. However, the starting point was that the Members were not confident that the company understood its responsibilities as licence holder, and were definitely not satisfied that there was proper management control of the premises.

The Sub-Committee noted that some of the existing conditions on the

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licence would have guarded against the risk of precisely this type of incident if they had been observed on the night in question – in particular, the requirement that the licence holder or nominated member of staff should monitor the external areas from 23.00 hours. Whilst one director had been on duty, he was upstairs on the second floor, and not following the requirements of that licence condition.

The Sub-Committee agreed with the Police that it was not possible to have any trust in the management of the operation, and in particular agreed that the incident would not have happened at all if the premises had been observing the conditions of the licence.

The Members looked askance at the premises upon hearing the Police's remarks that they had recently noted something of a lack of cooperation from those at The Ark Birmingham. Whilst the Police had said during the meeting that it might be possible for the restaurant to trade provided a suite of additional conditions was imposed, the Members were not prepared to take any risks regarding serious crime and/or serious disorder, noting in particular that nobody from the premises had telephoned the Police or called an ambulance.

The Members also felt that it was important to send a clear and unambiguous message to the premises that any failure to cooperate with Police pending the full Review hearing, particularly following a very serious incident in which both patrons and staff had involved themselves, and which had occurred on the streets in the centre of Birmingham, was completely unacceptable.

In deliberating, the Sub-Committee determined that there had been an allegation of serious crime and/or serious disorder, which was being investigated by Police. It was abundantly clear that the operation was not being run in accordance with the licensing objectives. The Members also observed that had the licence conditions been followed properly, in particular the requirement for a senior person to monitor the external area after 23.00 hours, the incident might not have happened. All in all, the management style at The Ark Birmingham was not at all the standard expected of premises licence holders in Birmingham.

Whilst there had been discussion of allowing the restaurant part of the operation to continue, the Sub-Committee was not satisfied that those at the premises could be trusted either to uphold additional conditions, or to cooperate with the Police properly. The correct way forward was to suspend the licence and remove the designated premises supervisor, pending the full Review hearing.

The Sub-Committee found the Police recommendation to be the proper course, and determined that it was both necessary and reasonable to impose the interim step of suspension of the licence to address the immediate problems with the premises, namely the

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potential for further serious crime and/or serious disorder.

The Sub-Committee also determined that the removal of the designated premises supervisor, as recommended by the Police, was also a very important safety feature, given that it was this individual who was responsible for the day to day running of the premises. The Members considered that he had fallen far short of the standard expected; this was of particular relevance when the Sub-Committee was considering whether it could impose alternative interim steps which would permit operation as a restaurant.

The Members felt unable to permit operation to continue, even on a “restaurant only” basis, due to the management failings which had led to an allegation of serious crime and/or serious disorder; these failings were a significant risk to the upholding of the licensing objectives in Birmingham. Public safety was of paramount importance.

In reaching this decision, the Sub-Committee has given due consideration to the application made and certificate issued 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 West Midlands Police, and by the licence holder via its solicitor and two directors.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours.

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

Please note the meeting ended at 12:20 hours.

CHAIR.....