

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE,
MONDAY 15 JANUARY,
2024**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY, 15 JANUARY, 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Diane Donaldson and Mary Locke

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Andrew Evans – Solicitor representing BCC
Louisa Nisbett - Committee Services

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

1/150124 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/150124 **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.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/150124 An apology was submitted on behalf of Councillor Simon Morrall. Councillor Diane Donaldson was the nominee Member.

**LICENSING ACT 2003 PREMISES LICENCE – REVIEW JEWELS LOUNGE,
UNIT 2, 19 – 23 PITSFORD STREET, LADYWOOD, BIRMINGHAM, B18 6LJ**

4/150124 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On Behalf of the Applicant

Ben Reader, West Midlands Police
Shaid X Ali, Enforcement BCC
Martin Keys, Environmental Services
Ben Ross, Witness

On behalf of the premises licence holder

Duncan Craig, Solicitor
Filmon Abraham, Premises Licence Holder

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

There being no points to consider the main points of the report were outlined by Bhapinder Nandra, Licensing Section.

In making representations Martin Keys, Environmental Services made the following points with regards to the application and in response to questions from Members:-

1. He had 3 short videos to play which were less than 30 seconds each and will be calling as a witness, a local resident, Ben Ross.
2. The licence had been transferred on the 14 July 2022 to Mr Abraham with limited conditions however there were no conditions in respect of noise.
3. Premises with an alcohol licence were permitted to have live and recorded music for up to 500 people between the hours of 0800 and 2300 hours.
4. The area was historically a commercial area but over the last 10 years had been subject to significant regeneration, with residential led schemes. There was a mixture of one, two and three bed build to rent properties totalling 395 units on the Goodyard development.
5. The area was relatively quiet however complaints about noise started in August 2022 relating largely to music events on Sunday evenings. Further complaints had been received in January 2023 and the complainants had logged regular late night activity beyond 2300 hours every Sunday.
6. Officers had visited and witnessed the nuisance in April late at night, the visit had been followed by a meeting with the premises.
7. The area where the music was played was an external area with the upper walls made out of plastic sheeting.
8. A noise abatement notice had been served on the limited company and the directors, one of them being Mr Abraham. Further visits had been carried out and on the 15th of July at 2330 dance music was clearly audible on the street in a breach of the notice. The number of complaints had increased and a number of additional visits resulted in a further letter on the 19th of September and meeting with one of the managers who claimed they no longer played music in the evening however according to the complaints received including one on the Sunday after the meeting, this was not the case. They were advised of the breach also that we would be seeking a licence review.
9. When we attended to carry out the warrant by the Magistrates Court on the 5 of December with the police we were not able to gain access owing to shared access of the roller shutter.
10. Three statements from residents were attached and Ben Ross was present to explain the impact on himself. The three short videos from Martin Keys were unable to be viewed owing to a technical error.

Ben Ross, a resident gave evidence and reported as follows:-

1. Music was played on Saturdays and without question every Sunday night concluding at approximately 1230 and maybe later on some occasions. This was followed by shouting, cars beeping and clattering from cleaning. It is indescribable how this has impacted him personally. His partner was doing a master's degree at university. They both start Mondays fatigued, irritated and frustrated having had about four or five hours of sleep and having been subjected to extreme loud music until the early hours of the morning,
2. Last night had been probably one of the loudest nights that they had been subjected to and he had only 4 hours sleep. At this rate they will be moving out at the end of their tenancy if not before.
3. Martin Keys continued there had been a complete disregard for the noise abatement notice. They had no confidence in the management of the premises and suggested that the licence be revoked.

Ben Reader, WMP reported as follows:-

1. He commended Martin on his detailed presentation and efforts to engage and encourage the premises to do the right thing.
2. The enforcement work had been ignored by the licence holder giving WMP a complete lack of confidence in ability of the premises to operate in the correct way and to promote the licence objectives.
3. It was unusual for a resident to be prepared to speak up against a premises and he gave evidence that last night was particularly bad showing a complete lack of respect for the process and shows that if there were any conditions applied to the licence they would not be complied with.
4. He suggested that the premises licence should be revoked.

Shaïd X Ali, Enforcement BCC made the following point:-

1. The abatement notice did not appear to have caused the desired effect and he had little confidence in the management style of the premises.
2. The premises had been warned a number of times so from a licensing enforcement point of view he had no confidence that they could manage the premises as required by the licence. He recommended that the licence be revoked.

Duncan Craig spoke on behalf of the licence holder as follows:-

1. He had been instructed to act on behalf of the premises at short notice so his ability to engage with this process was limited.
2. One of the issues with his clients was a lack of understanding on their part as to the framework of the licence. He felt the existence of the Live Music

act had confused them and he had spoken to them and explained the framework of the licence and what they were allowed to do.

3. His instructions from his client was to seek to operate the premises as a restaurant going forward. He could say with confidence that they now understood what was permitted. They had struggled to understand previously as their English was not that good.
4. With regard to the previous suggestions of breaches of conditions there were training records and CCTV was now in operation. He had spoken to his client about this week and his client did not accept that the music was especially loud at the weekend.
5. These were not premises that have given WMP any particular issues in respect of crime disorder. Any steps taken should be aimed at resolving matters. His clients should be allowed to continue to operate as a restaurant which was proportionate in the circumstances and the Committee should take into account that any previous breaches had been addressed by them.

Filmon Abraham, the PLH responded to questions from Members as follows:-

1. In response to a question he was experienced and had been a licence holder for the last four years without any complaints. He thinks there were issues as soon as they moved to this neighbourhood owing to his African background.
2. They did not open until late and finished at 1200 even though they had a licence until 0100 hours. The area was mostly a commercial area to begin with. He had spoken to Shaid Ali about complaints a year ago and Shaid Ali had visited him 3 times and recorded the music from outside the premises. He was told it was okay.
3. He had previously worked at a licensed premises before but was not in charge.

In summing up Martin Keys was concerned about the suggestion that it was the type of music being played that had led to the complaints. He had witnessed the noise nuisance personally. The noise had been extremely loud and was totally unacceptable. He had no confidence in the management and recommended that the licence be revoked. The premises was failing to uphold the licensing objectives in respect of the prevention of public nuisance.

In summing up Ben Reader commended the approach Martin Key had taken and also the witness for giving evidence. He noted the premise licence holder was still not accepting there was an issue and still disputing what had been said. The only resolution would be to revoke the licence.

In summing up Shaid Ali was still of the opinion that the best option was to revoke the licence as the PLH had been given enough chances and advised of the consequences should he continue to ignore the advice.

In summing up Duncan Craig clarified that he had said there had been no evidence of any sales of alcohol outside. The Committee was required to take proportionate and appropriate action in respect of this review. He said that times were difficult and challenging for licenced businesses and he asked that the Sub-committee consider all of the alternatives available in place of revoking the licence.

At 1117 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting who will conduct the deliberations in a separate private session. The decision of the sub-committee will be notified to all parties within 5 working days

5/150124

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by

Filmon Abraham, in respect of Jewels Lounge, Unit 2, 19 – 23 Pitsford Street, Ladywood, Birmingham, B18 6LJ upon the application of Environmental Health, this Sub-Committee hereby determines that the licence be revoked, and Mr Abrahams be removed as DPS, in order to promote the licensing objectives, in particular the prevention of public nuisance objective in the Licensing Act.

The Sub-Committee's reasons for revoking the licence are due to concerns set out by Environmental Services, supported by a local resident Mr Ross a witness today, West Midlands Police and Licensing Enforcement.

The premises and its operation have led to multiple complaints of significant noise nuisance since the premises licence holder began operating the premises in around August 2022. The Sub-Committee notes that the area in which the premises are situated is of mixed use with a significant and increasing residential sector in the regenerating Jewellery Quarter. There are a number of residential premises nearby. It noteworthy that complaints have come from three different residential zones around the premises, rather than from an isolated source, and all on the same themes of significant noise disturbance late at night, mostly from loud music.

The Sub-Committee heard that against the background of multiple and continuing complaints Environmental Services officers themselves witnessed noise that in their opinion clearly constituted a public nuisance. This led to other regulatory action being taken through other legislation and even an attempt to seize the music equipment at the premises. Those other steps taken or attempted have been to no avail. The noise problems have continued unabated to date.

The Sub-Committee is satisfied that the noise levels and noise overall, especially on the worst nights Sundays, is intrusive and constitutes public nuisance. The Sub-Committee accepted the evidence of a local resident Mr Ross who gave a first-hand account of the noise levels and the disturbance it caused to him and his partner late into the night. The Sub-Committee also accepted Mr Ross' representation that noise nuisance continued late into even last night, the night before this hearing.

The Sub-Committee was also told that the premises is unsuitable for amplified music because it has no structure or soundproofing that could reduce noise escape when a significant part of it is open air. The premises appears to be wholly unsuitable for its current style of operation.

The Sub-Committee has no confidence in the ability of the premises licence holder to promote the prevention of public nuisance licensing objective. The responsible authorities have worked in 2022 and 2023 to try to engage with the premises but without any progress being made. There is no evidence of any improvement as a result of their significant and protracted efforts with the premises.

Mr Abrahams made representations to us that they turned the music down or off at midnight. The Committee does not accept his representation and prefers the evidence of Mr Keys on behalf of Environmental Services and that of Mr Ross.

The Sub-Committee notes that while the premises may lawfully provide amplified music until 11pm by virtue of the Live Music Act exemption, it has no permission on its licence for regulated entertainment after 11pm. The Sub-Committee is satisfied that regulated entertainment has been put on after 11pm until after midnight causing public nuisance.

Licensing Enforcement advised the Sub-Committee that it too had no confidence in the premises licence holder due to numerous licence breaches discovered in 2023 including a failure to record and make available CCTV for many months, an absence of staff training records and a failure to display the summary premises licence.

The Sub-Committee agreed that the responsible authorities had exhausted all other avenues to address the problems with the premises before seeking a review of the premises licence.

The Sub-Committee considered whether to take some lesser step including lifting the exemption under S177 of the Licensing Act 2003 relating to regulated entertainment. Given that there was evidence of regulated entertainment being provided after 11pm the Committee had no confidence in the premises licence holder's ability to abide by any new conditions.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, remove the Designated Premises Supervisor or suspend the licence for a specified period of not more than 3 months, but was not satisfied given the evidence submitted that the licensing objectives would be properly promoted following any such determination. There was nothing said on behalf of the premises or by the premises licence holder that re-assured the Sub-Committee of their ability to promote the licensing objectives if the licence were to remain.

The Sub-Committee further determines it appropriate and proportionate to remove Mr Abrahams as the DPS at the premises to acknowledge further his personal responsibility for the failings and problems to date.

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 by the Secretary of State, the application for review,

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the written representations received, and the submissions made at the hearing by the premises licence holder, Police, Environmental Services and Licensing Enforcement.

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 against, until the appeal is disposed of.

The meeting ended at 1130 hours.

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Chairman