

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE
TUESDAY 29 August 2023**

**MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE
A HELD ON TUESDAY 29 AUGUST 2023 AT 1000 HOURS AS AN
ON-LINE MEETING.**

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Sadak Miah and Penny Wagg.

ALSO PRESENT

Bhapindra Nandhra – 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)

1/290823 **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 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.

2/290823 **DECLARATION OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

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- 3/290823 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.
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4/290823 **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

Apologies were submitted on behalf of Councillor Higgs. Councillor Councillor Wagg was the nominated substitute.

5/290823 **MINUTES**

That the public section of the Minutes of the meeting held on 1 August 2023 at 1000 hours were noted and the minutes as a whole were confirmed and the minutes as a whole were confirmed and signed by the Chair.

6/290823 **DIAMOND FOOD AND WINE, 1001-1003 TYBURN ROAD, ERDINGTON, BIRMINGHAM, B24 0TQ**

On Behalf of the Applicant

Paul Ellson – Trading Standards

Those Making Representations

WMP – Mark Swallow
BCC Licensing Enforcement – Christine McCullough
David Tuitt - Agent
Mahir Kilic – Agent
Nuri Bay – PLH and DPS

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

The Chair then explained the hearing procedure prior to inviting the Licensing Officer, Bhapindra Nandhra, to outline the report.

The Chair invited the applicant to make their submission and Paul Ellson, on behalf of the applicant, made the following statements:-

- a) He had visited the premises in response to a complaint that the premises was selling illegal tobacco and nitrous oxide. Including to people under 18.
- b) During the visit he had spoken to employees and the Designated Premises Supervisor (DPS), issuing a warning and explaining legislation on the sale

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of tobacco, electronic nicotine devices and nitrous oxide. He had also issued a 'traders notice' explaining that the aforementioned activities were illegal. This notice had been signed by the DPS Mr Bay.

- c) Mr Bay was informed that it was his responsibility to check his stock and ensure that it was compliant with UK law.
- d) There was no refusal register at the site.
- e) Trading Standards received two further complaints about the sale of illicit tobacco, electronic nicotine devices, nitrous oxide and the sale of single cigarettes. A further notice was issued to Mr Bay, with comprehensive advice on how to comply. This notice included an added statement on the sale of alcohol to Under-18s.
- f) A further two complaints were received in December 2022.
- g) On 16 February 2023, the premises was included in an operation to detect and seize non-compliant tobacco products with police dogs. Mr Bay was present during this visit.
- h) Illegal electronic nicotine devices were discovered, nitrous oxide canisters were discovered with a large charger and balloons, an illegal bottle of whisky (with no UK Duty Paid stamp) was discovered and illicit tobacco products were discovered. All illegal items were seized.
- i) A further five complaints were made since the seizure of illegal products, regarding the sale of illegal items and the sale of alcohol to Under-18s.
- j) The Licence for the premises contained basic conditions. The Premises had been given two warnings and time to comply. The premises was seen as a threat to public safety and people under-18.
- k) Mr Bay blamed the previous owner for the non-compliance, however, this appeared to be untrue as there had been more consumer complaints and non-compliance.
- l) A licence relied on responsibility so that people could have confidence in the management of the shop and so that they did not trade irresponsibly or illegally. A licence was a privilege and not a right. Trading illicit tobacco was a serious matter both due to health issues and because duty was not paid.
- m) Mr Elson had attended a seminar on the effects of nitrous oxide during which he learned that its use could have serious health issues.
- n) The casual attitude to flouting the law reflected badly on Mr Bay. The premises had continued to flout the law and as such the withdrawal of the licence was requested.

In answer to a Members' questions Paul Elson gave the following response: -

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Electronic nicotine products were regulated by the Medicines and Healthcare products Regulatory Agency (MHRA). Any device capable of more than 600 'puffs' were technically illegal as they were not notified to the MHRA and contained too much nicotine.

WMP made the following statements:-

- a) A review had been submitted to Trading Standards about a large quantity of illegal tobacco, non-duty-paid whisky and nitrous oxide.
- b) These had been found as part of an operation across the area.
- c) The premises had been visited twice prior to this, on 23 August 2022 and 10 November 2022.
- d) Mr Bay had been left with a traders notice giving advice on how to be compliant.
- e) All of the items seized, other than the whisky, were items previously mentioned by Trading Standards.
- f) There was evidence that Mr Bay had ignored advice and the visits by Trading Standards and was putting profit above the licensing objectives.
- g) Although nitrous oxide was not illegal, it was an offence to supply it if used for psychoactive effects.
- h) The nitrous oxide was hidden and found with balloons (which could be used to inhale the gas), which suggested that the premises had been reckless in its supply.
- i) There was no possibility that the tobacco and electronic nicotine devices could have been obtained legitimately.
- j) The sale of these items was unlikely to be reflected in the business accounts as no duty had been paid on them. This could mean they could be sold at a lower price which could have a detrimental effect on other businesses.
- k) As these items were not obtained legitimately, the premises could not know if they were safe or what health effects they could have, particularly as the ingredients of illicit tobacco were not known.
- l) The World Health Organisation (WHO) claimed that the illicit tobacco market could account for 1 in 10 cigarettes, and that this was an acute problem in Europe and a serious threat to public health.

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- m) Cheaper cigarettes were also undermining government tobacco controls, and creating a loss in tax and customs revenue that was used to prevent international criminal activity.
- n) The PLH had been given advice on how to be legitimate and had not shown that he was prepared to trade legally. Therefore WMP supported Trading Standards in their request for the licence to be revoked.

Christina McCullough, Birmingham City Council Licensing Enforcement, made the following statements:-

- a) She had been given the task of putting up notices in the shop as part of the review. She had attended the premises and spoken to the manager of the premises. He was fully aware of the situation.
- b) On the last day of the representation period, she had gone to see the level of compliance at the premises. She was met by two young assistants and she had asked them for the licensing documents. They called their manager to obtain the documents.
- c) An inspection was done in the presence of the manager.
- d) The licence, issued to Mr Bay, did not have many conditions in its operating schedule. She had gone through the conditions with staff. The only condition that was being met was the 'Challenge 25' signage.
- e) Failures over licensing conditions included:
 - a. The entrance door had no electronic device to monitor entry.
 - b. The entrance door was not closed between midnight and the close of business hours, as required to ensure control over the entry of customers. The door had been wedged open with a metal bar.
 - c. There were no staff training records available on this visit. They had been received since.
 - d. They were unable to access CCTV footage as required by the conditions of the licence. At this time Mr Bay was out of the country.
 - e. Notices were not displayed requesting people to leave the premises quietly.
 - f. Parts 1 and 2 of the licence were not displayed correctly.
- f) It would be expected that the premises should be on top of compliance at the end of the review period. This was not the case. This showed contempt for the licence.

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- g) As previously mentioned, a licence was a privilege and if conditions were not complied with it could have major consequences. No steps had been taken to ensure compliance.
- h) The refusal register that had been subsequently produced, could not be identified as chronological. There were large gaps in dates and there were no years on the dates.
- i) It was an offence to breach the licence. Taking into account the number of visits that the premises had received and the amount of non-compliance, the Sub-Committee was asked to consider revoking the licence.

David Tuitt made the following statements:-

- a) This was a small convenience store and its sales included alcohol and tobacco products.
- b) The seriousness of the matter was recognised and would not be downplayed.
- c) An alternative to revocation had been presented asking that a modification of the licence be the outcome.
- d) 11 new conditions had been proposed to address the issues around the discovery of non-duty-paid alcohol and illicit tobacco products.
- e) Photographs supplied showed how concerns were being addressed.
- f) It was suggested that the wording on the condition about CCTV could be amended to state that the footage be kept for a minimum of 31 days rather than up to 31 days, so add clarity.
- g) No more illicit goods would be stocked and they were happy to prohibit the sale of nitrous oxide.
- h) It was felt that this remedial action should be appropriate and a modification of the licence would ensure promotion of the licensing objectives.
- i) He apologised on the part of the licensee for the need for action.

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

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WMP made the following closing statements:-

- What had been seen up to this point was the wholesale ignoring of the law and licensing objectives, therefore the imposition of further conditions could not be seen as the answer as history would suggest that they would not be followed as they hadn't been up to this point.
- Mr Bay was in a position of trust to promote the licensing objectives, but had failed to follow the law despite two warnings and advice from traders notices. He was putting profit first.
- Operating conditions were also not being followed.
- The conditions were there to promote the licensing objectives, and given Mr Bay's history, it could not be seen how he could be trusted to promote the licensing objectives. Therefore it was requested that the licence be revoked and the DPS/PLH removed.

Christina McCullough, Birmingham City Council Licensing Enforcement following closing statements:-

- No matter how many conditions were on a licence, it would not solve the problem that the premises had shown it was not capable of following conditions.
- It should not be necessary for enforcement visits to ensure compliance.
- Mr Bay had a responsibility for compliance, and he could not even ensure compliance in the midst of a review.
- Papers provided did not prove anything nor had they changed her mind.
- It was asked that the licence be revoked and the DPS removed.

Paul Elson, Trading Standards made the following closing statements:-

- It was concerning that there had been an element of persistence whereby advice and conditions had been consistently ignored.
- He could not see how adding more conditions would enable compliance when information given had been ignored.
- The information given had been comprehensive and it had taken a long time to get the premises to comply.
- There were many continuing complaints.
- Mr Bay had seemed lured by profit.

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- There had been an abuse of trust and this behaviour should not be rewarded.
- The proposed conditions did not say anything about electronic nicotine devices, tobacco or nitrous oxide.
- There had been no refusals book prior to 22 August and the one submitted had no structure to it.
- He could not see any alternative but revocation.

David Tuitt made the following closing statements:-

- Mr Tuitt made reference to guidance from the Home Office stating that licensing authorities did not have the power to judge criminality or otherwise of any issue as this was a matter for the Courts. The licensing authority was not to establish guilt or innocence but to uphold the licensing objectives.
- There was a process for criminal charges. What had been discussed were allegations and no crime had yet been proven in this case.
- It was felt that the additional conditions proposed would be appropriate and proportionate for the promotion of licensing objectives.

Mahir Kilic made the following closing statements:-

- The Licensing Act 2003 was about objectives, not punishment.
- It was important to acknowledge that he had emailed the applicants regarding evidence, such as test purchases. It had been confirmed by email that test purchases had not taken place.
- Staff had been trained and conditions complied with.
- The Sub-Committee could be assured that the licence holder would be able to comply with conditions.

7/290823

RESOLVED

That, having reviewed the premises licence held under the Licensing Act 2003 by Nuri Bay in respect of Diamond Food and Wine, 1001-1003 Tyburn Road, Erdington, Birmingham B24 0TQ, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that:

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- the Licence be revoked, and that
- Nuri Bay be removed as Designated Premises Supervisor

in order to promote the licensing objectives in the Act of the prevention of crime and disorder, public safety and the protection of children from harm. The Sub-Committee's reasons for revoking the licence were due to the concerns expressed by the three responsible authorities, as outlined fully in the Committee Report.

The application for review had been made by the Chief Officer of Weights and Measures (Trading Standards department of the City Council). An officer of Trading Standards attended the meeting, to summarise the background and the visits to the premises, exactly as per the documents in the Committee Report.

Since August 2022, complaints had been received about the premises relating to the sale of illegal product versions of tobacco, e-cigs/vapes, nitrous oxide and alcohol, to young people visiting the shop. A number of visits, by officers of three of the responsible authorities, had been conducted, and comprehensive advice given to the licence holder (who was also the designated premises supervisor).

The issue of concern was the discovery of illicit and non-compliant tobacco products, illegal e-cigs/vape products, illegal alcohol and nitrous oxide products. These were found after the premises had been given two warnings and ample time to comply with advice and instructions.

Trading Standards advised the Sub-Committee that the management control of the premises could “at best be described as lamentable, and at worst a threat to public safety and to persons under 18 years old”. The licence holder had originally blamed the previous owner and employees for the failings of the premises; Trading Standards had found this unpersuasive.

Efforts had been made by Trading Standards to engage, explain and encourage Mr Bay to comply, but the officer felt that the assistance “had been met with indifference and further non-compliances”. The officer reminded the Sub-Committee that an alcohol licence confers on a business a responsibility towards customers and the community around it, and remarked that the responsibility should mean that customers could have confidence in the management of the shop, and especially that they would not trade carelessly or illegally.

He noted that selling and dealing in illicit tobacco, e-cigs and alcohol “was a serious matter for numerous health reasons”, and explained the difference in strength of the types of e-cigs/vapes permitted under the legislation. He reminded the Sub-Committee

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that such products were not duty paid either (because they were illegal). There were also health risks to selling nitrous oxide.

The officer drew the attention of the Sub-Committee to the “casual attitude to flouting the law” shown by the licence holder, which he said was a significant risk to the upholding of the licensing objectives. During the investigation, the premises had been found to display numerous examples of illegal and non-compliant activity; moreover, the premises had continued to break the law despite receiving helpful advice and assistance from various officers of the responsible authorities. The Sub-Committee accepted that Trading Standards officers had done their utmost to carefully assist and support the licence holder to trade properly; however, their efforts had been undermined by the actions of the licence holder.

Trading Standards commented that the Sub-Committee should remember that the vast majority of retailers in Birmingham strove to comply with both the letter and the spirit of their licences, and “did not treat their community or the law with such casual indifference”; for that reason, Trading Standards requested the revocation of the premises licence and the removal of the designated premises supervisor.

The Sub-Committee then heard from West Midlands Police, who had noted from the Committee Report that Trading Standards had quite a history of attempting to help the premises, and indeed had visited on three occasions. The Police drew the attention of the Members to the trader’s notices which had been issued by Trading Standards. These gave the licence holder specific advice on the relevant legislation, and indeed outlined everything he should do to become compliant with the law such that he could uphold the licensing objectives properly.

The Police remarked that it was apparent that the licence holder had decided to ignore the advice given by Trading Standards, “clearly putting money and profit over the promotion of the licensing objectives”. The Police observed that whilst it was not illegal to possess nitrous oxide, it was an offence to supply it where a person knows or is reckless as to whether it would be used for its psychoactive effects.

The Police further noted that the nitrous oxide at Diamond Food and Wine had been hidden from public view, and also that balloons had been found next to the canisters. It was the Police view that this finding, when taken together with the intelligence regarding the sale of nitrous oxide to children, strongly suggested that the premises had perhaps been reckless regarding the sale of nitrous oxide. The Police explained that nitrous oxide canisters were often emptied into balloons; thereafter the gas would be inhaled from those balloons.

Regarding the illicit tobacco and e-cigs/vapes seized by Trading Standards, the Police advised the Sub-Committee that there was no possibility that they could have been purchased through the legitimate supply chain, as they were illegal for sale in the UK.

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The Police considered that the purchase by the premises of these illegal items would probably have been made in cash, and was thus unlikely to be reflected in the business accounts; certainly there had been no tax or duty paid. This meant that the items could be sold at a lower price than that offered by legitimate retailers, rendering legitimate retailers unable to compete on price. Moreover, due to the illicit supply chain, the premises could have no idea of the provenance of the products - not knowing if they were safe for sale to the public. The Sub-Committee found this very worrying in terms of the public safety objective.

The Police advised that illicit tobacco was a serious threat to public health because it increases access to problem products, often at cheaper prices, thus fuelling the tobacco epidemic and undermining tobacco control policies put in place by government. It also caused substantial losses in tax and customs revenue for government, and was also suspected to contribute to the funding of international criminal activities. The Sub-Committee noted this.

Regarding the licence holder, the Police view was that he had been given advice on previous occasions prior to the seizure of the items on the final visit, yet had quite clearly demonstrated that he was not prepared to trade within the limits of the law. The Police agreed with Trading Standards that the licence holder prioritised profit over the promotion of the licensing objectives of the prevention of crime and disorder, the promotion of public safety and protection of children from harm.

The Police also had concerns over that fact that identical complaints and intelligence about the sale of the same illicit products were still being received by Trading Standards, and reminded the Sub-Committee that the previous intelligence had been shown to be correct. The Police therefore supported the Trading Standards recommendation that the premises licence should be revoked.

The Sub-Committee then heard from Licensing Enforcement of the City Council. The enforcement officer had conducted an inspection to assess the level of compliance with the conditions of the licence, and had found that the only compliance was with the signage regarding the Challenge 25 policy.

Licensing Enforcement had identified numerous failures relating to the conditions - the entrance door was not fitted with an electronic locking device or similar, and nor was it closed between the hours of midnight until the close of business to ensure staff had control over customers entering the premises; indeed, the door was in fact wedged open with a small metal bar. The condition had originally been put on the licence due to the proximity of residential properties. The members of staff present in the inspection were asked what time the door was closed, and said that they closed it every day at 01:00 hours, which was when they closed the premises. The officer noted that between midnight and 01.00 the door should be closed.

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Other failures included staff training records; staff confirmed to the officer that they had not been trained, although documentation was forwarded later. The officer could not access the CCTV footage, and noted that one of the licence conditions was that CCTV should be digitally recorded for up to 31 days and available on request to the licensing authority. The conditions required that there would always be a member of staff on duty who was trained and able to show/download images from the CCTV system during operation under the opening hours. However, on the day in question, nobody at the premises could do this, and the officer therefore could not ascertain whether the CCTV was even working. The officer reminded the Members that CCTV conditions were imposed onto licences for a reason – in order to ensure that the licensing objectives could be upheld.

The officer observed to the Members that it had to be borne in mind that at the time of the inspection the licence holder was in fact out of the country, in Turkey, and asked the Sub-Committee to reflect on the fact that in case of some emergency requiring that the responsible authorities (particularly West Midlands Police) should have immediate access to CCTV footage, it would not have been available.

Notices were not displayed as required to ask customers and patrons to leave the premises quietly and be considerate of neighbours. This was unsatisfactory as there were numerous residential properties in the vicinity. The officer also noted that the licence was not displayed as required.

Licensing Enforcement had formed the view that the premises had “totally disregarded” the conditions of its licence, and had “taken no steps at all to ensure compliance”. The officer looked askance at the fact that the staff training records produced were actually completed on the day of the inspection. The premises had also produced a refusals register, but it was completely unsatisfactory, with large gaps in the dates, and moreover it was not in numerical order.

Taking into account the number of breaches of licence conditions, the number of visits paid to the premises, and the amount of advice that the premises had been given, Licensing Enforcement also recommended that the Sub-Committee should revoke the premises licence.

The Sub-Committee then heard from the licence holder, who attended the meeting together with two other persons - his agent, and also a representative who was acting as a Turkish interpreter for him. All of the licence holder's submissions were made via his agent, who explained that the shop was a small convenience store selling a wide range of groceries, fruit, vegetables and other household goods; amongst the range of goods offered were alcohol and tobacco products. Mr Bay had been the licence holder since July 2022, and had been involved in the business for about two years.

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The licence holder had no wish to downplay the seriousness of the Review application, and did not blame Trading Standards for calling the Review, but had drafted additional conditions as an alternative to Trading Standards' request for revocation. These proposed conditions were in the Committee Report. The licence holder asked that Members consider modification of the licence as a suitable determination – not revocation.

The 11 new conditions proposed by the licence holder had been specifically designed to address the issues that had been raised in the application, said the agent - namely the issues around the discovery of non-duty paid alcohol and also the discovery of illicit tobacco. The agent directed the attention of the Members to the photographs supplied (which were in the Report). These had been submitted in order to demonstrate that the issues raised by Licensing Enforcement had been addressed.

Regarding the proposed CCTV condition, the agent suggested further modification of that draft condition, such that CCTV would be digitally recorded for a minimum period of 31 days and be made available to an authorised officer upon request. The agent remarked that this would make the CCTV condition clearer.

Regarding the issue of nitrous oxide paraphernalia, the agent stated that the licence holder had not stocked any more of these products since the visit in February 2023, and that he was also happy to add a condition prohibiting the sale of nitrous oxide canisters, products or paraphernalia associated with the consumption of nitrous oxide.

The agent observed that whilst it was worth mentioning that the government had stated its intention that nitrous oxide would be banned this year, there would potentially be challenges in implementing any ban, given that the Home Office's own Independent Advisory Council on the Misuse of Drugs had felt that it could be disproportionate given the level of harm associated with nitrous oxide, and could create significant burdens for the legitimate use of the substance. However, regardless of this, the licence holder was willing to accept a condition regarding nitrous oxide.

Reference was made by the agent to the Guidance issued by the Home Office under section 182 of the Act. Paragraph 11.20 recommended that in deciding which of the powers to invoke in terms of review applications, it was expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify; thereafter, the remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of the concerns that had instigated the review. The Sub-Committee noted this.

The licence holder felt that that the modification of the licence by way of the additional conditions would ensure the promotion of the licensing objectives, and was confident that all of the issues raised by the responsible authorities could properly be addressed,

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in the manner recommended by paragraph 11.20 of the Home Office Guidance, by such a modification. The licence holder considered that in the circumstances revocation was neither necessary nor proportionate; modification of the licence would address all issues satisfactorily and promote the licensing objectives. The licence holder via his agent expressed his sincerest apologies to both the Sub-Committee and to the responsible authorities.

In response to the licence holder's proposals, all three of the responsible authorities confirmed that they did not find the suggested conditions satisfactory, and moreover, did not accept that modification of the conditions was a suitable alternative to revocation of the licence.

The Police drew the attention of the Sub-Committee to what the Police termed the "wholesale ignoring of the law and the licensing objectives by this premises", saying that the suggestion of an imposition of some further conditions was no answer to the problem, given the history of the premises. The Police, who were the experts in crime and disorder, considered that the new conditions were unlikely to be followed, as the existing terms of the licence had not been followed in the first place. The Sub-Committee agreed that, given what had been seen in the officer visits, it did seem very unlikely.

The Police further observed that Mr Bay was in a position of trust as both the licence holder and the designated premises supervisor – yet had failed to follow the law and/or to promote the licensing objectives. He had been given two warnings and comprehensive advice in the form of trader's notices, but had still failed to follow the law, putting profit above public safety. He had not followed his own operating conditions.

The advice of the Police was that, given this history, it was not seen how Mr Bay could be trusted to promote the licensing objectives. Hitherto, he had appeared to be completely unable and/or unwilling to do so in relation to the sale of tobacco, e-cigs/vapes, alcohol and nitrous oxide, or to follow his operating conditions. The Police asked the Sub-Committee, "so therefore, why would he follow the law and the licensing objectives now?" The Members agreed that this argument was persuasive, and they noted that the Police recommendation was that the licence be revoked and that the designated premises supervisor be removed.

Licensing Enforcement agreed with the Police, stating that the issues at the premises were such that "no matter how many conditions you put on the licence, it will not solve the problem", as the licence holder had proven himself incapable of complying with conditions. The officer stated that putting more conditions onto the licence did not mean that the licence holder would follow them, and indeed added that it "could have even the opposite effect", because to allow the premises to continue to trade was unsafe. The Sub-Committee accepted that there was a strong likelihood that the new

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conditions would not be followed, and that this created a significant risk to the licensing objectives.

Licensing Enforcement observed that it should not be the case that enforcement visits from the responsible authorities were required in order to ensure compliance. It was the responsibility of the licence holder, who was in this case also the designated premises supervisor, to comply; the officer reminded the Sub-Committee that it was an offence not to comply.

The officer felt that it should not take a visit, and certainly not repeated visits, in which the responsible authorities told him what he ought to do in order to trade properly, to ensure that a licence holder operated within the law. The officer reminded the Sub-Committee that it was Mr Bay himself who held the responsibility for compliance. The Members accepted that this was the case, and were not at all impressed that the licence holder had needed a series of repeated visits by officers.

Licensing Enforcement pointed out that the licence holder had been away to Turkey without putting measures in place to ensure that the business was being legally operated. He had allowed major breaches to occur; the level of non-compliance with the premises licence, and the other breaches, were of a serious nature. The officer therefore asked that the premises licence be revoked and the designated premises supervisor be removed.

Trading Standards agreed with both the Police and Licensing Enforcement, drawing the Members' attention to "the element of persistence" shown by the licence holder. Trading Standards noted that Mr Bay had consistently ignored all the advice; on that basis, the Trading Standards officer concurred with those from the other responsible authorities, remarking that he could not see how adding more conditions and making the licence more complex would enable Mr Bay to comply when he had always ignored the advice, information and support he had been given.

Regarding the proposed conditions, Trading Standards found them entirely unsatisfactory. There were no, or insufficient, provisions regarding e-cigs/ vapes, tobacco, and nitrous oxide; leaving that aside, the officer's view was that even if other conditions were added to cover these matters, he could not see them working, given that the licence holder had been "ignoring all of us since the beginning of August 2022".

Trading Standards also reminded the Sub-Committee of the issues with the refusals book. In August 2022, there had been no refusal book on the premises; thereafter, the refusals book which had been submitted had been both unusual and entirely unsatisfactory. All in all, Trading Standards felt that the suggested conditions were not sufficient, and in any event would not be upheld.

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The officer observed that the information that Trading Standards had given the premises had been comprehensive, and the officer had personally spent a long time attempting to get Diamond Food and Wine to comply; of particular note was that the action taken, namely the seizure of the relevant items, “did not seem to have affected him at all”.

The officer’s opinion was that the licence holder was motivated purely by profit; he stated that he could not see any other reason for ignoring the law. The officer considered that this was “a shameless abuse of the trust” that had been placed in the licence holder, and strongly recommended that such behaviour should not be rewarded by allowing him to continue to trade; the proper course was to revoke the licence to ensure the promotion of the licensing objectives. The Sub-Committee found this highly persuasive.

The agent, in his concluding remarks, again drew the attention of Members to the Home Office Guidance at paragraph 11.24. He explained that the reason for this was because submissions had been made by the officers about the law, and ignorance of the law.

The agent pointed out that the Guidance at paragraph 11.24 advised that licensing authorities did not have the power to judge the criminality, or otherwise, of any issue; that was a matter for the courts. Instead, the licensing authority’s role when determining such a review was to ensure the promotion of the crime prevention objective, and not to establish the guilt or innocence of any individual. He stated that whilst allegations had been made, no criminal offence had been proven via the courts.

The Sub-Committee accepted that this was the case, but viewed the evidence brought by officers on its own merits. It was entirely usual that officers of the responsible authorities, as experts in their respective fields, brought evidence to the Sub-Committee without prosecution action having been taken. It was for the Members to examine the evidence, and to make a determination in the light of that evidence.

The agent repeated the offer of modification of the conditions. The licence holder remained confident that the suggested conditions would address all issues raised in the Review application.

The Sub-Committee then heard from the licence holder’s representative who had attended to act as interpreter. He was of the opinion that any punishment or penalty should only be given by the courts, and asked whether any enforcement action had been taken by the responsible authorities, such as test purchases. He considered that as there had not been any test purchases, there was no evidence of any underage sales. The Sub-Committee was not persuaded by this; the central issue was the presence of illicit goods at the premises. The evidence had shown that illicit goods were in fact stocked at the premises, and had indeed been seized.

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The representative reminded the Sub-Committee that the issue was whether the premises could promote the four licensing objectives or not; he felt that the addition of the proposed conditions would be sufficient to ensure this. However, the Sub-Committee had already heard very lengthy submissions on this point from all three of the responsible authorities, each of whom had pointed out that the licence holder had not followed the existing conditions, and moreover had acted against all the advice he had been given on numerous occasions.

The representative agreed that the licence holder had been away, but observed that “he came back”. The door control system was working, as was the CCTV system; the licence holder and staff had been retrained and training records were available, together with a refusals book. The licence holder was complying with all of the conditions, said the representative, and asked that the Members be assured that the licence holder would comply with the proposed conditions, along with the current operating schedule.

When deliberating, the Sub-Committee agreed with the responsible authorities that for any licensed premises to be involved in trading illicit goods put the licensing objectives at very grave risk; as such, the Sub-Committee took a very dim view of it. It was a drain on the public purse, as the responsible authorities had to allocate resources to investigate and deal with activity which had been undertaken, for profit, by a person who should have been more than aware of the standards expected of all licence holders in Birmingham.

The Sub-Committee looked at all options when making its decision, and placed particular emphasis on the need to ensure that it had confidence that the management of the shop would not engage in, and encourage, dubious practices; illicit goods negatively affected not only consumers, but also respectable local businesses in Birmingham.

The Members bore in mind the agent’s remarks that their decision had to address the causes of the risks to the licensing objectives in a reasonable and proportionate way, as per the Home Office Guidance. All three officers at the meeting had observed that they had no confidence whatsoever in the management at the premises to uphold the licensing objectives.

After scrutinising the evidence carefully, in particular the advice and support given by officers during the visits, the Members shared these concerns. The Members were unsure as to how Mr Bay had felt that his style of management was a proper way to operate licensed premises. Nothing in his operating style inspired confidence.

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Officers had remarked that the licence holder was not following his existing conditions, and therefore it was not at all likely that he would properly observe any additional conditions; the Members agreed with this, and for that reason they found themselves unable to accept that to modify the conditions was the proper course.

The evidence, and in particular that of Trading Standards, had shown a complete disregard for the law by the licence holder. The operation had been managed in a way that was not merely irresponsible, but also illegal. The findings had shown a lack of professional supervision and control by Mr Bay as the licence holder, and in short he had demonstrated that he was incapable of upholding the licensing objectives. This was completely unacceptable, and a significant risk to the upholding of the licensing objectives, given that he was also the designated premises supervisor.

The Members gave consideration to whether they could impose some other sanction, such as suspension of the licence for a specified period, but were not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, or that the premises would operate within the law if the determination was simply to suspend. The Members again bore in mind what had been found and seized by officers.

After scrutinising all the evidence, the Sub-Committee determined that the breaches were indeed so serious that they could not be tolerated. A determination to revoke and to remove the designated premises supervisor would follow the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003, and was an entirely proportionate sanction given that the premises' style of operation seriously undermined the prevention of crime and disorder, public safety and protection of children from harm objectives in Birmingham.

There were no compelling reasons to depart from the Guidance on this occasion. To take some other course (other than revocation and removal of the designated premises supervisor) ran the risk of sending a message that the presence of illicit goods in licensed premises was not a serious matter, or that there would be no consequences for illegal activities, which the Sub-Committee was not prepared to do. The Sub-Committee therefore resolved to revoke the licence and to remove Nuri Bay as designated premises supervisor.

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, the written representations received and the submissions made at the hearing by Trading Standards, West Midlands Police and Licensing Enforcement, and by the licence holder via his agent and his representative.

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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 determined.