

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 24 APRIL 2023
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 24 APRIL 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Mary Locke and Julien Pritchard.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

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

1/240423

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.

2/240423

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

- 3/240423 Apologies were submitted on behalf of Councillors Phil Davis and Simon Morral and Councillors Diane Donaldson and Julien Pritchard were the nominated substitute Members.
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MINUTES

- 4/240423 To confirm and sign the Minutes of the meeting held on 25 October 2021 at 1200 hours.
- To note the public part of the Minutes of the meeting held on 26 October 2021 at 1000 hours and to confirm and sign the Minutes as a whole.
- To note the public part of the Minutes of the meeting held on 6 March 2023 at 1000 hours and to confirm and sign the Minutes as a whole.
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LICENSING ACT 2003 PREMISES LICENCE – VARIATION – DIAMOND LOUNGE, 17-19 BARR STREET, NEWTOWN, BIRMINGHAM, B19 3EH.

On Behalf of the Applicant

Habtom Ghebremichael – PLH (Premises Licence Holder)
Duncan Craig – Barrister, Citadel Chambers.

On Behalf of the Premises Licence Holder

Martin Key – EH (Environmental Health)

* * *

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

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. Bhapinder Nandhra, Licensing Section, outlined the report.

At this stage the chair invited Duncan Craig to outline his case on behalf of the licence holder and he made the following points: -

- a) He hadn't visited the premises until last Thursday and therefore, wasn't able to engage with Martin Key until Friday. He would have liked to have done that sooner.

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- b) Once he had visited the premises, he was struck by how seriously his client had taken the various matters raised by responsible authorities.
- c) A letter from MWFS (West Midlands Fire Service) outlined 15 points, which had all been addressed in under a month.
- d) There had also been an enforcement visit from a Planning Officer, they had submitted a change of use application, but were still awaiting the outcome.
- e) The current representations were from EH and another person, he asked the Committee to attach no weight to the representation from the other person.
- f) Martin Key, EH, made a number of observations. Mr Craig tried to contact him and eventually spoke to him on Friday where he requested an adjournment however, Mr Key wanted to continue with the hearing.
- g) The principal reason for the adjournment is due to an adjoining wall being changed and therefore a minor variation will need to be submitted regardless of the outcome of this hearing.
- h) The variation of the doors is a consequence of WMFS and Mr Key's observations and concerns. The photos submitted on page 4 and 5 show the changes.
- i) The changes to the doors ensure there are 2 layers of doors which helps limit noise break out.
- j) The PLH has made adjustments, to ensure there are 2 layers of doors and although it's not scientific, it limits noise break out.
- k) Due to the adjustments made at the premises, they invited Mr Key to visit the premises again and re-evaluate his position, which could have a bearing on his position today.
- l) The current situation with the premises is not in cohorts with what Mr Key saw when he visited the premises and subsequently made his representation.
- m) WMP were content with the reduced hours and had agreed conditions with the PLH.
- n) The PLH had also offered further conditions.
- o) Mr Key made reference to other residents, but only one representation had been received from another person, who didn't want to be named and hadn't attended the hearing and therefore, there is no opportunity to scrutinise that representation. Subsequently Mr Craig asked the Committee to attach little weight to it.
- p) That it is wholly unfair for an evaluation today to be based upon Mr Key's suggestion of future development in the area.

- q) The licence was transferred to his client a year ago and the previous issues could not be attributed to him.
- r) His client had taken into consideration everything that had been said or advised.
- s) Much of the concerns had been addressed.
- t) They had a dispersal policy to address vehicles and a noise management plan.
- u) His client had offered a number of practical measures to address issues and invited Mr Key to re-visit the premises and find out for himself.
- v) They invited the Committee to grant the application as it now stands.

Members were invited to ask questions and Duncan Craig gave the following responses: -

- a) The smoking area has another double door.
- b) The late submissions were due to Mr Craig being extremely busy and only viewing the premises on Thursday.
- c) The additional conditions and submissions weren't applied for initially because this client hadn't instructed Mr Craig at that stage and didn't anticipate representations.

Martin Key, EH was then invited to make his case and he made the following points: -

- a) The area is industrial/commercial but is subject to regeneration.
- b) The property opposite is only 15 meters away and houses 156 residents. There are also further residential development schemes down there.
- c) The day time is primarily wholesale businesses and the night time is very quiet; there are no 24 hours business operations.
- d) Parking is also an issue.
- e) It's a very quiet street at night.
- f) The building needed planning consent.
- g) The premises came to their attention in 2021 due to noise complaints relation to noise break out and activities in the street.
- h) Since October 2022 there have been 5 different complaints. Noise break out is an issues, vehicles, horns, anti-social behaviour.

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- i) The issues they have faced is people not wanting to make statements along with complaints due to fear.
- j) There are also noise impacts on site; extraction systems, external smoking area, door staff not dealing with night time activity outside and taxis honking horns etc.
- k) The lobbies in the premises are poor, the original lobby doesn't have the right angle turn and however the changes they have made will help reduce noise.
- l) The smoking area has evidence of a BBQ and there is no double door in the lobby smoking area. The doors are also poorly fitted and not acoustically rated.
- m) The speakers were all active and had built in amplifiers but there is no noise limiting device or noise management fitted.
- n) The lobbies need to be improved, doors acoustically treated, extraction fans need acoustic treatment and there are concerns about Shisha being used on the premises.
- o) Behind the bar there is a roller shutter door and there is conflicting information about whether it opens or not. That needs investigating.
- p) He had carried out visits over the last 2 years and on one occasion after midnight the whole road was pretty much blocked.
- q) The dispersal policy lacks detail and doesn't address all of the issues.
- r) The noise management plan doesn't assess or address the issues. It's just a reaction to the comments Mr Key made on the site visit.
- s) He had had discussions with Mr Craig but the issue is the hours and the location, conditions offered may mitigate some noise but they are just a knee jerk reaction to Mr Key's comments.
- t) The photographs don't ease the concerns about the doors in terms of whether the doors are self closing or acoustically rated? There is also no information about the roller shutter door or how the old entrance has been sealed.
- u) There is no noise impact assessment provided, no review of the premises structure.
- v) The comment that local residents are happy because they haven't made representations isn't acceptable. Many have made complaints but are not willing to put name and address forward because of fear or reprisals.
- w) Even with sound proofing there are still issues with dispersal, hours and the location therefore he asked the Committee to refuse the application.

Members asked questions and Martin Key gave the following responses: -

- a) The premises first came to EH attention when they received complaints in 2021 but he wasn't sure when they original premises licence was issued.
- b) The residential properties commenced in early 2018.
- c) He couldn't comment on why the other responsible authorities didn't make representations, but EH were the lead on noise impact.

The Licensing Officer confirmed that the first licence was issued in October 2020.

The Chair invited the parties to make a closing submission and Martin Key, EH made the following closing statements: -

- He was pleased to see that the applicant had made changed, but they were not focussed enough or based on a proper assessment of the premises. There were lack of conditions and controls about music itself.
- The conditions offered don't really address the concerns.
- The premises is in a quiet area where they were already receiving complaints.
- It doesn't meet the licensing objectives and should be refused.

Duncan Craig, on behalf of the applicant made the following closing statements: -

- There are other premises nearby.
- He didn't accept Mr Key's comments about people not making representations through fear of reprisals, there could be a number of reasons. But in any case, there is no concrete evidence in this case.
- His client concedes that the security weren't as engaged as they could have been, but that has been addressed and there is a section on security in the noise management plan and dispersal policy.
- The BBQ is gone and has nothing to do with his client.
- The shutters would be filled in.
- They had identified issues with noise management plan dispersal policy, his client is also happy to engage with Martin Key.
- If the application was granted it would give Martin Key additional regulatory tools to tackle the issues.
- His client takes this very seriously, it is an extra hour on weekends.
- He invited Mr Key to visit the premises again.

- On that basis he requested that the Committee should grant the application.

The PLH, Habtom Ghebremichael, added that he would build a double door behind the fire exit and it would have to appropriate noise insulation.

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;

5/240423

RESOLVED:-

That the application by Ghebremichael Habtom to vary the premises licence in respect of Diamond Lounge, 17-19 Barr Street, Newtown, Birmingham B19 3EH, under section 34 of the Licensing Act 2003, be granted as follows.

The amended hours for licensable activities agreed by the applicant in advance of the meeting shall apply, and the conditions of the licence shall be modified, namely by adopting all those conditions agreed between the applicant and West Midlands Police in advance of the meeting, and by adopting all those conditions offered by the applicant in advance of the meeting (as amended by the Sub-Committee).

1. conditions agreed between the applicant and West Midlands Police in advance of the meeting:

- The licence holder shall maintain and operate an ID Scan to all persons entering the premises whenever licensable activities are being carried on. The premises is to adopt and display a clear notice to the effect that there is a strict policy of "NO ID, NO ENTRY"
- Simon Mebrahto will play no part in the running or management of the premises
- The Designated Premises Supervisor or other competent person shall carry out observations in the vicinity of the premises on at least two intervals between 20:00 and midnight (Monday - Thursday) and 20:00 and 04:00 (Friday - Sunday) whilst recorded music is playing in order to establish whether there is a noise breakout from the premises. If the observation reveals noise breakout at a level likely to cause disturbance to the occupants of properties in the vicinity then the volume of music shall be reduced to a level that does not cause disturbance. A record of such observations shall be kept, records shall be completed immediately after the observation detailing the time, location and duration of the observation, the level of noise breakout and any action taken to reduce noise breakout. Records shall be available at all times upon request to an authorised officer of the Licensing Authority, Environmental Health Department or the Police

- No person will be allowed entry to the premises after 02:00 hours, save for re-entry for persons who were on the premises before 01:30 hours. Every person re-entering the premises will be strictly subject to the body and metal detection searches

2. conditions offered by the applicant in advance of the meeting (as amended by the Sub-Committee):

- The licence holder shall cooperate with the Environmental Health department of the City Council and follow their advice on all matters relating to the prevention of public nuisance objective
 - The premises will have an operational dispersals policy and noise management plan
 - The smoking area will be cleared of patrons from 3:30am
- A. DISPERSALS
- Staff shall be proactive in advising customers to vacate the environs of the premises quietly and with respect for others. It is to be made clear that any transgressors will not be welcome back to the premises in future
 - The premises will have a system to ensure that patrons leave gradually over a period by utilising the door staff and operating a zonal system in the licensable area of encouragement of patrons to leave the premises when licensable activities cease
 - A notice shall be clearly displayed by the exit door reminding guests to leave the premises and area quietly, to respect neighbours
 - A permanent taxi facility is available nearby and patrons will be advised of this information via notices displayed within the premises. If it is within permitted hours the customers should be asked to remain inside the premises pending the arrival of the taxi. The appointed taxi firm should be asked to instruct their drivers to ring the premises or the customer on arrival or go to the premises to notify their customer of their arrival and not to sit outside blowing their horns
 - When customers have dispersed, staff outside the premises will check the immediate vicinity to ensure that no glass or undue rubbish is left lying around
 - Staff will invariably leave the premises much later than customers will. Their behaviour can impact on local disturbance also and have therefore been instructed to leave quietly. Failing to do so could seriously undermine the licensing objectives
 - Any patron who fails or refuses to leave the area, or takes drinks outside the premises, will be initially firmly engaged by staff in an effort to make them comply and will be (inter alia) given the following suggestions and assistance:
 - o Calling a taxi
 - o Provide information on local bus/trains
 - o Help to locate friends
 - o Call someone for themin order to assist with their swift dispersal from the area. If none of the above options/assistance is effective, then the premises will call for assistance from West Midlands Police. Each incident where patrons have failed to disperse, despite the foregoing efforts of the premises,

will be logged in the incident book, including, where possible, the name of the patron(s) for future reference

- Anyone hiring the venue will be subject to this dispersals policy

B. NOISE MANAGEMENT

- By the end of the authorised hours for the sale of alcohol, the music will be turned off. The lighting shall gradually be increased, and announcements shall be made to patrons regarding their quiet and swift dispersal and of the presence of CCTV systems monitoring the external environs of the premises.
 - The premises licence holder, or other nominated person/staff, shall monitor the external areas of the Premises after 23:00 hours.
 - The premises will introduce a training regime to bring every member of staff up to date with the implications of The Licensing Act 2003, the licensing objectives, and the need to respect this policy. Staff will thereafter be subject to refresher training every 6 months.
 - Signs shall be placed at all exits asking customers to respect the needs of local residents and requesting that they leave the premises quietly.
 - The premises licence holder shall ensure the conduct of patrons leaving the premises will be supervised and monitored to minimise potential nuisance
 - The premises licence holder shall not permit noise emanating from the licensed premises to unreasonably disturb persons in the neighbourhood. The premises licence holder shall ensure that whenever regulated entertainment takes place within the licensed premises, such entertainment will not be such as to be a statutory nuisance in the nearest noise sensitive or residential premises
 - The premises licence holder shall ensure that any deliveries and refuse collections are organised at times to minimise any nuisance to neighbouring properties
 - To avoid nuisance being caused to nearby noise sensitive premises the Premises Licence Holder or other nominated person/staff, shall monitor the external areas of the premises whenever licensed activities are being undertaken and also until all patrons have been effectively dispersed
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The licence holder was represented at the meeting by counsel. Counsel told the Sub-Committee that he had been unable to visit the premises until a few days before the meeting, but that he had then contacted Environmental Health without delay to discuss the issues. In addition, counsel remarked that upon meeting the licence holder he had been struck by how seriously the licence holder had taken the application, and how the licence holder had cooperated with the responsible authorities carefully.

West Midlands Fire Service had written to the licence holder regarding 15 points of concern; all of these had been addressed by the licence holder in less than a month. Accordingly, the Fire Service had not made a representation against the application. Furthermore, following an enforcement visit from a Planning Officer of the City Council, the

licence holder had instructed counsel to submit an application for a change of use of the premises, in order to regularise the position. Counsel noted from the Committee Report that only two representations had been received - one from the Environmental Health department of the City Council, and one from a local resident living in the vicinity of the Diamond Lounge.

Counsel drew the attention of the Sub-Committee to the photographs which were in the Committee Report, and explained that they showed a reconfiguration of the doors which had been carried out at the premises. These changes had been made as a consequence of comments made by West Midlands Fire Service and from Environmental Health, and a minor variation was going to be submitted within the next week or so relating to the new doors.

The purpose of the works had been to control noise breakout from the Diamond Lounge, such that it would not be audible from the street. The licence holder had turned the music up to full volume and had then stood outside the premises, and had confirmed that there was “absolutely no noise whatsoever”. Counsel invited the Environmental Health officer to revisit the premises in order to evaluate whether that position was correct or not, remarking that to do so “may have a significant bearing on the representation that he has made”.

Counsel also noted that it appeared that Environmental Health were perhaps considering bringing a Review of the licence. However, he reminded the Members that this was not the purpose of the instant hearing, which was a meeting to deal with a variation application. Counsel also observed that the current position, following the reconfiguration works, was entirely different from the arrangement seen at the time when Environmental Health had submitted the representation.

Counsel addressed the adjustment of the requested times in the application. The licence holder had originally sought operation to 05:00 hours from Thursday to Sunday. Following engagement with West Midlands Police, the requested hours had been reduced. Counsel observed that the effect was to reduce the time sought to a further hour on the licence.

Counsel invited the Sub-Committee to consider the reduction in the hours in conjunction with the conditions which had been agreed with West Midlands Police; currently there was no condition on the licence requiring an ID scanner, no “entry” condition, and no condition requiring exclusion from the premises of a named individual. The licence holder had been prepared to offer these further conditions on the licence in order to promote the licensing objectives; as a result, the discussions with West Midlands Police had concluded in an agreed position. Counsel reminded the Sub-Committee that if the application were to be rejected, these new conditions agreed with the Police would not be adopted onto the licence.

Counsel noted that the provision of regulated entertainment had been raised by Environmental Health. He clarified the position with regard to regulated entertainment – namely that if it were offered for less than 500 people it did not commence until 23.00 hours. Regarding the other points which had been raised by Environmental Health, counsel noted the reference to residents. Only one representation had been received, from a person who had not attended the meeting. Counsel observed that the Sub-Committee would therefore not have an opportunity to ask questions of that person, and therefore invited the Members to attach little weight to that representation, noting that no other local residents had objected.

Environmental Health had also mentioned the development works going on in the area. However, counsel urged the Sub-Committee to deal with the application as it stood today, remarking that it would be “wholly improper and wrong” for any evaluation to be made based on future residential development in Newtown; he said that such developments might not happen, and moreover, new residents who moved into the area could in fact want to have a premises such as the Diamond Lounge nearby. New residents would have an opportunity at future times if necessary, via a Review of the licence. Counsel therefore recommended that future development should not be a relevant consideration for the Sub-Committee.

The licence had been transferred to Mr Ghebremichael Habtom a year ago. Whilst there had been some issues with the premises previously, these had happened before he had taken over and were nothing to do with him. He had been assiduous in following the advice of the Planning department and the Fire Service. The key points raised by Environmental Health had all been addressed satisfactorily. Noise attenuation measures had been put in place in the building, along with arrangements to clear the smoking area by a stated time; the risk of noise breakout had therefore been dealt with properly. Access and egress would be carefully controlled via the dispersal policy and noise management plan. The dispersal policy would also deal with potential nuisance from vehicles (although counsel noted that parking was not a licensable activity).

Counsel urged the Members to note that money had been invested in the reconfiguration of the building, as shown in the photographs; he also urged Environmental Health to visit to view the improvements for themselves. The reconfiguration, the dispersal policy and the noise management plan were accompanied by the conditions agreed with West Midlands Police. Counsel reassured the Sub-Committee that all of these together would have the effect of creating “a more rigid and more enforceable framework” which was satisfactory to the Police.

Counsel reminded the Members that if they decided to reject the application, they would have to take into account that the new Police conditions would not form part of the licence. The licence holder was

asking simply for an extra hour, and given the scaled-down application, together with the further conditions and the extra steps that had been taken, counsel felt that the application could be safely granted.

The Sub-Committee then heard from the Environmental Health officer, who outlined his concerns about the potential impact of the application. The area was historically light industrial and commercial, and had been for a long period of time, but was now subject to significant regeneration. A regeneration scheme was going on at the property directly opposite, approximately 15 metres from the front door of the Diamond Lounge - a development which had commenced in 2017. 156 residents lived there, some of them on the rear facade directly facing the Diamond Lounge. Another development was currently under construction nearby and would be 129 apartments; then within the section from Great Hampton St down onto Barr St there were a large number of residential schemes.

He explained that the area was typified by daytime-hours wholesale operations, most notably of handbags, and light industrial operations at night time. The officer felt that the area was very quiet, with no 24-hour business operations. Parking was an issue, as many of the residents in the new developments were parking on the street. However, the officer then said that “there is not really any use of that road at night times. It is a relatively quiet road, not used as a cut-through”. He described the road as “a quiet commercial street with some residential use on it”.

The history of the Diamond Lounge site, and its current planning consent, was for warehouse operation. The officer noted that counsel had confirmed that the applicant would be seeking planning consent. The premises first came to the attention of Environmental Health in 2021, when it was under a different operator, after a number of complaints were made about noise, namely bass music creating noise breakout from the building, and there had been a large number of complaints to do with activities in the street, such as parking, people coming out of the premises late at night, antisocial behaviour, cars, horns, and music emanating from vehicles. These were problems regularly seen with venues offering late night activity where patrons were picked up directly outside.

Since October 2022, Environmental Health had had a number of complaints. The officer stated that the issue was again bass frequency noise breakout from the building, and also noise from vehicles, people in the street, car horns and antisocial behaviour. The officer stated that none of the complainants had been prepared to produce a witness statement “because of fear of reprisals”.

The officer’s most recent visit to the site had been on the 16th March 2023; he was pleased to hear that the licence holder had put measures in place as described by counsel. However, the officer was still concerned about a few issues, namely that the extraction system had no noise attenuation to it, and the external smoking area was

open. He noted the reconfiguration of the doors, but drew the attention of the Sub-Committee to the likelihood of night time activity outside, such as taxis sounding their horns, although he acknowledged that this was a common problem which Environmental Health had with any late-night premises.

The officer said he would address the Sub-Committee using his original comments because that was what he had seen first-hand. The lobbies were poor, and he had discussed with the applicant the possibility of using the adjacent entrance, which seemed to be what had been done in the reconfiguration works, however, he remarked that the doors would need to be acoustically rated. The PA system had no noise limiting device and no obvious noise management system on it. There was a structural gap where a heater, for example, went through the wall. He also had concerns over the roller shutter door.

The officer noted that the existing conditions on the licence were generic – to do with deliveries, monitoring, and keeping doors closed. Environmental Health had carried out a number of visits to the premises over the last two years, and at 02:30 hours on two occasions the street had been “pretty much blocked”. The officer’s view was that the dispersal policy lacked a little bit of detail and did not address all of the issues; the noise management conditions were in his view inadequate. The officer felt that there had been no specific assessment of the premises; instead, the measures appeared to him to be a reaction to the comments he had made during a site visit.

He felt that the conditions that had been offered might well mitigate some of the noise, but remarked that “they need to be properly planned and properly implemented and designed, rather than an ad hoc knee jerk reaction”. He also took issue with counsel’s comments about a potential Review of the licence, stating that at no point in his evidence had he planned to mention any Review; the department was continuing to investigate complaints made by residents and was collecting information, and the assessment he had given in his representation had been based on the existing use of the area and his view of the operational controls.

He noted that there had been no noise impact assessment provided, and no review of the premises’ structure or even the potential noise sources on the site. Local residents had complained, but the reason that the complaints had gone no further was due to the fact that they were not prepared to put their name and address forward, which was an issue that the department commonly found with night time complaints “because of the fear of reprisals”.

Regarding nuisance to residents, he noted that there was residential use directly opposite the Diamond Lounge, some 15 metres from the front door; moreover, the vicinity was a redeveloping area, characterised by largely low-level daytime commercial use with some residential housing. There was no other significant night time activity

on Barr Street.

The officer had concerns over the dispersal policy – namely that at the terminal hour when patrons came out, even over the staggered discharge, a significant number of vehicles would come to collect people, and many patrons would be on the streets; in the early hours of the morning, at 15 metres from residential windows, this would be a significant issue, particularly during the summer months. The officer would therefore have preferred a planned approach based on an assessment and looking at some of the other operational and structural controls. He felt that the extended hours would further exacerbate the existing problems the residents were facing, and recommended that the application should be refused on the grounds of not meeting the licensing objectives, particularly in respect of the effect of regulated entertainment on the public nuisance objective.

In response to these representations, counsel noted that there were two public houses nearby, which were licensed to quite late hours. Regarding the dispersal policy and the noise management plan, he confirmed that the licence holder was “perfectly happy to engage with the officer” in relation to refining the proposals. Counsel reminded the Members that that would only be possible from an enforcement point of view if they granted the application, because the applicant had offered the noise management plan as a condition. He observed that to grant the application would give Environmental Health more regulatory tools at their disposal to tackle what was necessary. The Sub-Committee agreed with this.

Counsel repeated that he had been impressed with the licence holder when he met him, and had found him to be taking his responsibilities seriously. Counsel further noted that the applicant was effectively asking simply for an extra hour at weekends, with a suite of tailored conditions; on the basis, agreement had been reached with the Police and significant reconfiguration works had been undertaken. Counsel therefore asked that the Sub-Committee grant the application.

The Sub-Committee then heard briefly from Mr Habtom, who stated that he understood that all concerned were doing their jobs for the benefit of the community. Regarding the shutter, which had been specifically mentioned by Environmental Health, he intended to build another double door behind it in order to prevent noise breakout. He also confirmed that the doors were self-closing, and that all of the noise measures had been put in place with great care, to prevent disturbance to local residents.

The Sub-Committee carefully considered the operating schedule put forward by the applicant, and the likely impact of the application. The Sub-Committee also took into consideration the views of the person who had made representations – the local resident living nearby. The Members bore in mind paragraph 9.12 of the Guidance issued under s182 of the Act, namely the need for robust evidence in decision

making. The representations which had been received were concerned with the potential for public nuisance, especially noise, and also the risk of antisocial behaviour, if the variation were to be granted.

The Sub-Committee noted that there had been no objection from the responsible authorities who had dealt with the premises in recent weeks, and further noted that West Midlands Police had found all to be in order with the addition of some suitable conditions. However, the Sub-Committee was mindful of the fact that Environmental Health, who were the expert authority on the potential for public nuisance, had objected.

The Sub-Committee determined that the concerns of Environmental Health could be taken into account by requiring the applicant to cooperate with and take advice from them. After hearing directly from Mr Habtom in the meeting, the Members shared counsel's view that the applicant had taken his responsibilities seriously, and was a very trustworthy person who was keen to ensure that the licensing objectives would be properly promoted. The Members agreed with counsel that he was an impressive applicant in whom they could feel confident. The Members felt reassured that the licence holder was a person who could be trusted to operate safely.

Counsel had stated that the applicant was willing to cooperate with, and take advice from, Environmental Health; the correct course was therefore to grant the application with a condition stipulating that he should do so. This would allay the apprehensions from both of those making representations about the potential for an adverse effect on the licensing objectives from arising in connection with the proposed variation to the operation.

The conditions which had been agreed with the Police would ensure smooth trading, with no risk to the promotion of the licensing objectives. The interests of local residents would be protected. The Sub-Committee determined that the applicant's responsible style of management, and the conditions, would enable the premises to uphold the licensing objectives for the additional hour or so. The Sub-Committee considers the conditions imposed to be appropriate, reasonable and proportionate to address concerns raised.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Home Office, the application for the variation of the premises licence, the written representations received and the submissions made at the hearing by the applicant via his counsel, and by Environmental Health.

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.

EXCLUSION OF THE PUBLIC

6/240423

RESOLVED:-

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.

CHAIR.....