

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 11 MAY 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 11 MAY 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Philip Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp.

ALSO PRESENT

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

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

NOTICE OF RECORDING/WEBCAST

- 1/110520 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.

2/110520 **DECLARATION OF INTERESTS**

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

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/110520 No apologies were submitted.
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MINUTES

4/110520 The Minutes of meeting held on 23 March 2020 were circulated and confirmed and signed by the Chairman.

LICENSING ACT 2003 PREMISES LICENCE – REVIEW – YARDLEY CUT PRICE, 83 BROADSTONE ROAD, YARDLEY, BIRMINGHAM, B26 2BY

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

(See document No. 1)

On Behalf of the Applicant

Martin Williams – Trading Standards

Those Making Representations

PC Abdool Rohomon – West Midlands Police (WMP)

On behalf of the Premises Licence Holder

Duncan Craig – Barrister – Citadel Chambers
Abdullah Khan – Premises Licence Holder (PLH)

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

Mr Craig indicated he had a preliminary point and the Chairman invited Mr Craig to make his submission.

Mr Craig confirmed that he was forwarding instructions on how to dial into the meeting to his client. His client was experiencing difficulties, but Mr Craig had been instructed to continue. As an additional point, Mr Craig asked if Members of the Committee had sight of the paperwork which he had submitted the night prior to the hearing.

Mr David Kennedy, Licensing Section, advised that the Members had not had sight of the documentation and for Mr Craig to outline the documents and his request in line with the hearing procedures.

Mr Craig indicated that he had only received confirmation of his instructions to the hearing on Tuesday and therefore wasn't in a position to be in receipt of supporting evidence from his client until Thursday, where a number of videos came into his possession. Friday was a bank holiday, of which he had forgot, and accordingly he was left in a position whereby evidence had come into his possession, which would be highly relevant to the review, unfortunately all

businesses were closed for the weekend and the hearing was on Monday. He did contact PC Rohomon to discuss the matter with him, however, he did not speak to TS until today.

Furthermore, whilst the review was in relation to a test purchased on 20 February 2020, there were ancillary matters in the background which WMP and TS had referred to in their representations. The PLH accepted that the test purchase was failed. However the other matters referred to in the background, he did not accept, in particular the alleged assault that took place in November 2019. The family involved in that were subsequently the family that reported the premises for the cans of beer they found in their sons' bedroom; the son told them he had purchased the alcohol from the premises. Mr Craig explained further that the videos he had been sent were in relation to the alleged assault and were from direct witnesses to that incident. The evidence directly rebutted the assertion of the assault on the premises.

Mr Craig confirmed that he sent the files to licensing yesterday evening (Sunday) and yet two of the files bounced back; 1 of which was 32mb and the other was 29mb. The late service of those documents was due to the unusual situation going on due to Covid-19 and therefore he requested an adjournment on that basis.

Mr Craig had discussed the adjournment with WMP and TS. WMP position in principle was that they had no objection, however PC Rohomon did mention that there was another application for this premises (Mr Craig confirmed he was not instructed for that application) and the owner and director of that premises was the landlord. Mr Craig suggested that the landlord had taken it upon himself to protect his position. As a result of that application Mr Craig asked when the other application was scheduled and whether there was a slot before then to fit in the reschedule. Moreover, Mr Craig emphasised the importance of a fair hearing. He proposed to convert the footage into DVD format and therefore wanted confirmation as to how that would be served on the Council.

Mr Craig reiterated that the Birmingham City Council server was not fit for purpose and was a real problem, especially in terms of public interest.

The Chairman invited the other parties to make comments on Mr Craig's adjournment request.

Mr Williams (TS) stated that whilst he had the greatest sympathy, the late submission was certainly the fault of the licence holder and he thought the PLH would take the matter more seriously. Furthermore, the subject of the video didn't have any bearing on the real matter brought before the committee, namely; the test purchase.

PC Rohomon (WMP) confirmed that he did indeed have a conversation with Mr Craig, and he found it rather interesting that suddenly footage had appeared even after WMP had carried out investigations into the incident and no independent witnesses came forward. The Committee were not being asked to make a judgement or determine the guilt in relation to the crime, they were purely there to point out that crimes were logged against the PLH. PC Rohomon would

be interested to see the footage however, he agreed with Mr Williams that the review was launched some 3 weeks after MWP closed their investigation so how had video footage magically appeared.

Mr Craig added that the footage was not of the incident itself it was of people who were willing to give evidence in court and their position was that WMP never got in touch with them.

At this stage the meeting was adjourned in order to allow to Committee to consider the request submitted by Mr Craig and seek legal advice. Due to the meeting being held virtually all parties muted their microphones and the Members, Committee Lawyer and Committee manager withdrew from the public session and went into a separate private Teams session to deliberate.

Having considered the request, the Members, Committee Lawyer and Committee Manager re-joined the public meeting at 1123 and all parties were invited to 'unmute' their microphones and the Chairman advised that the adjournment request had been refused as they did not feel the material was at all relevant to the review application.

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

Afterwards, the Chairman invited the representative of TS to outline the review application. At which stage Mr Williams made the following points: -

- a) That TS received a complaint from a concerned mother who had discovered cans of beer in her sons' bedroom. When questioned, her son said he got them from Broadstone News (Yardley Cut Price) and that the premises had sold alcohol and cigarettes to minors before. The mother went to the premises to complain and it became heated.
- b) On 26 November 2019 Mr Ellson (TS) went to visit the shop and the sign above the shop stated 'Broadstone News'. Mr Ellson found the shop was in a state of chaos. There was a lady there who said she was not working for the premises but was just helping out. There was no sign of a refusals book in the shop. A man named Mr Khan stated he was the manager and Mr Ellson issued him a trader notice along with giving him advice about selling tobacco and alcohol to minors. He also told him the cigarette display was not to be left open.
- c) TS carried out a test purchase exercise at the premises. They used two female volunteers; the girls were aged 14 and 15 years old.
- d) The female volunteers went into the premises and the 15yo girl was sold a full pack of WKD Blue (a vodka-based alcopop). The sale was observed by the TS officer.
- e) When the volunteers came out of the shop the TS officer went in and noticed the same women behind the counter as before. The female volunteers were not asked by Ms Habid for any form of ID.

- f) The TS officer explained to Ms Habid that it was an offence to sell alcohol to minors and another trader notice was issued. She signed the notice and was given a copy.
- g) That neither the PLH or DPS were present during the visit.
- h) That underage sales were an offence and alcohol had serious consequences when sold to young persons as they were considered vulnerable.
- i) The premises had received a warning and clearly the complaint was justified.
- j) The premises licence was granted in August 2009 and there was a complaint from a member of the public and a TS officer went to the shop in November 2016 and issued a trader notice regarding the sale of illicit tobacco.
- k) Given the history and the amount of warnings Mr Williams did not believe that under the current management style the premises would change.
- l) The incident with the 15yo boy showed what could happen when alcohol ended up in young people's hands.
- m) The Committee should consider all options open to them in order to avoid repetition of such issues in the future.

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

- a) That the premises was clearly selling alcohol to underage children.
- b) That WMP found it concerning that alcohol had been sold to a 15yo boy and when challenged he indicated it was purchased from the premises which was subject to the review.
- c) The parents of that child went to the shop to question why it had happened, and that turned into another issue.
- d) The point PC Rohomon wanted to raise was that the premises were well known to WMP and without a doubt that parent went to that premises and as a result there were two 999 calls logged; 1 from the injured person and a second 999 call.
- e) PC Rohomon was not asking the Committee to determine guilt but rather consider the submissions as a matter of fact.
- f) Only the owner of the premises could operate the CCTV and when WMP contacted the PLH regarding the CCTV footage WMP were told the CCTV had only recorded for 3 days and therefore, it was no longer available.
- g) As a result, there was no witnesses, no recording of the incident and no further details. The 5 crimes were all filed as not solved.

- h) The premises had been told by the parent about not selling to minors as well as receiving advice from WMP and TS.
- i) There was also another incident; an assault. It was detailed within the supporting documents and was not detailed with a view to looking into the crime but to look at the circumstances, especially that the premises were allowing customers to have tabs for alcohol. PC Rohomon stated that it was not socially responsible, or what was expected of a premises. It was not promoting the licensing objectives given that a crime then occurred as a consequence of allowing a customer to run up a debt.
- j) The offender denied the assault so WMP were unable to clear that up either.
- k) Advice had been given by TS in verbal and written form and the premises had received a complaint from a young boy's parent.
- l) The women who sold the alcohol to the female volunteers was not a personal licence holder.
- m) It is classed as a serious crime selling alcohol to minors and PC Rohomon referred to the Section 182 Guidance in particular the reference that in the first instance of the offence the Committee should consider revocation.
- n) The government had decided that it was a very serious crime and was listed with other serious crimes such as paedophilia, gangs and violence. (Page 19 of WMP documents).
- o) PC Rohomon then went through the supporting documents including the reports from Barnardo's, NHS and Drink Aware. The main points of the submissions were the impact alcohol had on young people, affects on health, abnormalities in brain function, children missing school, exploitation, increased vulnerability and increased sexual exploitation.
- p) That the Committee should bear in mind the current conditions on the licence which were things the premises should already have been doing but weren't.

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

- a) That WMP had visited the premises but not in relation to the review application so he could not discuss that any further.
- b) WMP had visited the premises when responding to the concerns of a parent and found parties at the shop and at the home address of the parent.
- c) They were told there was CCTV initially and then later they were told it had only recorded for 3 days and therefore was not available.
- d) They had never heard anything about witnesses.

Mr Williams added that his colleague went to the shop on 26 November 2019 to speak to them about the complaint of selling alcohol to minors and the woman behind the counter said she was just helping out. They could not locate a refusals book and things that should have been in place weren't. It made his colleague feel that the shop was out of control.

On behalf of the PLH, Mr Duncan Craig made the following points: -

- a) That he was not sure why PC Rohomon and Mr Williams were addressing the Committee on the incident.

The Chairman asked questions about the supporting documents and then also enquired as to whether the licence holder was online and participating in the meeting.

Mr Craig confirmed that his client was not dialled in and whilst professionally speaking he could continue he was conscious that his client may have been making efforts to join the meeting.

At this stage (12 noon) the Chairman advised that the meeting would be adjourned to allow officers to engage with the licence holder and attempt to get him dialled into the meeting. Due to the meeting being held virtually all parties muted their microphones for 18 minutes and the meeting was resumed at 1218, where all parties were invited to 'unmute' their microphones.

Mr Craig advised that his client was still not present and was waiting for someone to call him to assist.

The Chairman confirmed that a member of the Committee Services Team would call him.

Mr Khan, the PLH joined the meeting at 1235 hours however PC Rohomon reminded the Committee that Mr Khan had missed a proportion of the meeting due to him not being present during WMP and TS's submissions and he may wish to make comments on those submissions and his Barrister, Mr Craig, may not deem it to be fair.

Mr Craig thanked PC Rohomon for bringing the point to the attention of the Committee and felt it would be sensible for him to contact his client to find out the position. However, he did indicate that there was nothing new submitted that was not already in the report and supporting documents.

At this stage (1240 hours) the Chairman advised that the meeting would be adjourned for approx. 10 minutes to allow Mr Craig to contact his client. Due to the meeting being held virtually all parties muted their microphones for 11 minutes and the meeting was resumed at 1251, where all parties were invited to 'unmute' their microphones.

The Chairman invited Mr Craig to update them on the position.

Mr Craig explained that he had updated Mr Khan on the morning's submissions however, there had been several questions from Members which the licence holder had not had chance to listen to. Further, he also questioned whether it was possible for a fair hearing to take place and therefore, on that basis, he was instructed to request an adjournment. Additionally, Mr Craig pointed out that Mr Khan had provided his phone number prior to the meeting and had made multiple attempts to dial in. Mr Craig asked the officers to confirm if Mr Khan was currently dialled in to the meeting.

The Committee Lawyer advised that there was a number which was Mr Khan's dialled into the meeting, but his microphone was muted.

PC Rohomon indicated he was happy to repeat his questions.

At this stage (1258 hours) the Chairman advised that the meeting would be adjourned in order for the Members to consider the adjournment request. Due to the meeting being held virtually all parties muted their microphones and when the meeting was then resumed at 1310 hours, all parties were invited to 'unmute' their microphones.

The Chairman advised that they had considered the adjournment request and had resolved to refuse the request. Mr Craig was invited to make his representation and as such, Mr Craig made the following points: -

- a) That he wasn't quite sure why PC Rohomon and Mr Williams had referred to the assault from 13 November 2019 and he was also concerned that they had pointed to evidence that supported the account one way or another. It was evidence that the Committee could not consider as the BCC server was simply not up to the job. The Committee could not consider any of the submissions regarding the assault, the alcohol found in the kids' bedroom or the motivation behind the incident being reported to TS as they had determined it was not relevant.
- b) He had seen evidence that rebutted WMP's representation and the police did not do their job and follow up the enquiries or take witness statements from the people who had information.
- c) That the issue around credit was not in relation to alcohol.
- d) The accusation of assault could not be considered, and no weight could be attached to the allegation as there was only a police log made by someone who was accused of an offence. Mr Craig invited the Committee to discount it.
- e) The position regarding the incident was that the individual owed the premises for milk and was therefore refused service at which point he assaulted a member of staff and drove off. The PLH did nothing wrong.
- f) In relation to the compliance visit which took place on 26 November 2019, he submitted that the suggestion of non-compliance was not a matter of fact. There was no suggestion that the premises licence was not on display and in terms of the cigarette gantry being open, it was not wholly relevant to the

review as it was not a licensable activity. Therefore, little weight could be attached to that submission.

- g) That what needed to be dealt with was the test purchase. PC Rohomon stated that the test purchase took place a few months after the first incident, it was over 3 months in fact.
- h) The PLH conceded that the sale should not have taken place however, the individual who sold the alcohol did not feel the female volunteer looked 15yo.
- i) Mr Craig had requested a photo of the 15yo volunteer yet that had not been forthcoming and therefore there was no real evidence and the Committee were being asked to speculate, again.
- j) That it as unfair to link what happened at the premises to the other offences listed under the Section 182 Guidance.
- k) That the Committee had to consider all options open to them, but it had to be proportionate and appropriate and seek to tackle to causes that gave rise to the review in the first place. What the Committee were being asked to deal with was the sale of 4 WKD Blue bottles. The premises had been operating for 11 years and since 2009 had never been reviewed. There seemed to be a suggestion that there was an on-going pattern which was not the case.
- l) That revocation was wholly disproportionate.
- m) That it was quite often the case that premises failed test purchases; including premises such as Tesco.
- n) The premises accepted that the sale should not have taken place.
- o) That both Mr Khan and Ms Habid had done the personal licence holder course on 23 March 2020. They were taking the matter very seriously.
- p) The premises had voluntarily adopted a challenge 25 policy, instead of challenge 21.
- q) The store did not offer credit the man purchased some milk, but forgot his card to make payment so they said he could pay for it next time. There was nothing unlawful about that.
- r) Mr Craig had seen the footage that the Committee deemed not relevant and he stated that all the customers on the footage gave him a sense that the shop provided a real service to the community. The footage gave him the impression that the shop was well regarded and therefore, the suggestion from TS that the shop was chaotic was not consistent with what he had seen.
- s) That the Committee did have the power to suspend the licence however, it should not be used as a punishment. It would give the premises time to take a step back and reflect on ways to improve. There was also an option for the Committee to add conditions to the licence.

- t) Suspension should only be so long as is appropriate in order for the premises to get their 'ducks in a row'; weeks not months.
- u) Revocation would not be proportionate or fair.

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

- a) In terms of training that was a requirement of the licence holder and the premises would have to accept it had not happened to the standard required. However, Mr Khan would focus his efforts on that, and TS could follow that up again. The premises was committed to training.
- b) That all staff would be put through a personal licence course.
- c) That staff would be wearing 'bodycams'.
- d) That whilst the test purchase failure did happen, it had never happened before and there was no evidence of that. It was the case, that sometimes premises fell below the standards expected of them however, that didn't mean that revocation was appropriate.
- e) The premises should be given the opportunity to make improvements.
- f) That someone made a mistake, the lady was mortified and devastated about the mistake she had made. They were sorry for what had happened and wanted to take steps to remedy the situation moving forward.
- g) That the CCTV was available for 12 days and WMP had footage for previous incidents outside the shop.

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

- That there was a bundle of evidence submitted, on time, by WMP.
- The pint of milk must have been very expensive.
- The issues around CCTV were made clear in the log.
- To say that WMP hadn't done their job was an outright lie.
- That a family found alcohol and cigarettes in their son's bedroom and that's why they went to the shop, to confront them.
- TS had given the premises advice and issued trader notices.
- The evidence indicated just how serious it was to sell alcohol to minors.
- The premises failed a test purchase after having advice from TS about selling alcohol to children.

- It was becoming common that licence holders were under the impression that if it wasn't a condition on the licence then it didn't matter, however, they still always had a duty to uphold the licensing objectives .

In summing up Mr Williams, of TS made the following points: -

- That the test purchase volunteers always looked their age.
- Additionally, it was mandatory that PLH's ensured that a challenge 21 policy was in operation at the premises. Therefore, even if the employee thought the girls looked over 18, she should have challenged them.
- It was a clear failure; the premises were failing to uphold the licensing objectives.

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

- That it was grossly unfair to criticise the premises in the current circumstances (Covid-19 national lockdown) given that both the PLH and Mr Craig's own movements were restricted.
- Further, Mr Craig highlighted that if the BCC server was capable of taking documents over 10mb then the evidence would have been submitted. The Committee deemed the evidence not relevant from 13 November 2019 so the only matter of concern was from 20 February 2020 and the Committee should focus their efforts on that.
- That the premises had traded for some time, and for the responsible authorities to suggest it had been failure after failure was incorrect and just not the case.
- That to revoke the licence for one test purchase failure would be disproportionate and unfair.
- The Committee could impose conditions or if they felt it appropriate, they could suspend the licence for a period which was considered fair and right.

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

5/110520

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Abdullah Khan in respect of Yardley Cut Price, 83 Broadstone Road, Yardley, Birmingham B26 2BY, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines that the licence be revoked, in

order to promote the prevention of crime and disorder, public safety, and protection of children from harm objectives in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns expressed by the responsible authorities, namely the Trading Standards department of the City Council, and West Midlands Police.

Trading Standards had submitted a Report to the Sub-Committee explaining that in November 2019, Trading Standards had received an allegation from a local resident which suggested that the shop had been selling alcohol to those under 18 years of age.

Trading Standards therefore visited the shop in the same month, in order to issue a Trader's Notice to advise the management that the underage sale of alcohol was an offence under the Licensing Act 2003, and also to put them on notice that a test purchase exercise (for underage alcohol sale) could be undertaken as a follow-up, to ensure that the licence holder was complying with his responsibilities under the legislation. Test purchasing, which is a regular part of Trading Standards' normal work, is carried out to check compliance with the law – namely whether or not a premises is prepared to sell alcohol to a teenager who is visibly under 18 years of age.

In February 2020 Trading Standards conducted a test purchasing exercise. They visited the Yardley Cut Price premises. On the day in question, two female volunteers were assisting the officers – one a 14 year old, and the other a 15 year old.

On entering the Yardley Cut Price premises, at approximately 11.25am, a Trading Standards officer stood in the shop and observed as the staff member behind the counter allowed the 15 year old volunteer to purchase a four-pack of "WKD", which is an alcopop-style pre-mixed vodka drink of 4% ABV, by selecting it from the shelf, taking it to the counter and paying for it.

The staff member behind the counter who permitted the sale did not ask the 15 year old to show some age-related ID; indeed the staff member did not even ask the volunteer to state her age. These circumstances did not inspire confidence that the premises was properly managed, properly staffed, or capable of following the law. After leaving the shop with the volunteers, officers returned to the shop to inform the staff member that the underage sale was an offence, and that it would be reported. A further Trader's Notice was issued.

Given that the shop had proven itself incapable of handling sales of alcohol legally, despite being put on notice that a test purchase exercise could be carried out, the recommendation of Trading Standards was that the Sub-Committee should revoke the licence. This proposed course was supported by West Midlands Police, who addressed the Sub-Committee on the impact that underage sales of alcohol have on the licensing objectives.

The Sub-Committee found the information provided by the Police in the Report to be useful in explaining the effects of improper sales of alcohol on youngsters, their families and the emergency services. The Sub-Committee agreed with the

Police's conclusion, namely that any licensed premises prepared to take such risks with the licensing objectives was failing to uphold the trust placed in them by the City Council.

The Sub-Committee then heard from the licence holder, through his legal representative. The Sub-Committee gave careful consideration to the licence holder's submissions, but was not remotely satisfied, given the evidence submitted by the two responsible authorities, that the premises was capable of proper operation.

The suggestion from the premises, namely that the appropriate course was to simply add some further conditions and impose a suspension of the licence, was not sufficient to ensure that the licensing objectives would be properly promoted. As the Police observed, conditions were already on the licence to cover proper operation. The issue was that poor management and a lack of responsibility (despite advance warning) were undermining the licensing objectives.

The Sub-Committee was of the view that it was impossible to have any confidence in the premises, given the management style which had been described by the responsible authorities. Accordingly the only course was to revoke the premises licence.

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.

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 there is an appeal against the decision, until the appeal is heard.

Please note, the meeting ended at 1402.