

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE B 4 APRIL 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 4 APRIL 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Sam Forsyth and Saddak Miah.

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)

1/040423 **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.

2/040423 **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

3/040423 Apologies were submitted on behalf of Councillor Adam Higgs and Councillor Diane Donaldson was the nominated substitute Member.

LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 – APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS – FRANCY, 348 SOHO ROAD, HANDSWORTH, B21 (HOLYHEAD WARD)

On Behalf of the Applicant

Mark Swallow – WMP (West Midlands Police)
Huram Taj – WMP

On Behalf of the Premises Licence Holder

Adriana Camelia Pessea – PLH (Premises Licence Holder)
Ana-Marie Pessea – Daughter (helping translate, Romanian)

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

Mark Swallow, on behalf of WMP advised that he wished to show CCTV footage of the incident that led to the application for Expedited Review and requested that it be held in private due to the on-going criminal investigation.

The PLH did not object to it being held in private.

After a short adjournment to consider the request the Chair advised that the whole meeting would be held in private to ensure fairness to all parties due to the on-going investigation.

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

EXCLUSION OF THE PUBLIC

4/040423 **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.

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;

5/040423 **RESOLVED:-**

That having considered the application made and certificate issued by a Superintendent of West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Adriana Camelia Pessea in respect of Francy, 348 Soho Road, Handsworth, Birmingham B21 9QL, this Sub-Committee hereby determines:

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- that the licence be suspended, and
 - that Adriana Camelia Pessea be removed as the Designated Premises Supervisor
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pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application.

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

The Sub-Committee determined that the cause of the serious crime and/or serious disorder originated from a style of management which had been incapable of upholding the licensing objectives. The style of management was the responsibility of Adriana Camelia Pessea as premises licence holder of Francy, a restaurant licensed for 'on' sales of alcohol ancillary to the purchase of a meal (licence number 11570). Adriana Camelia Pessea was also the person named on the licence as the designated premises supervisor.

The licence holder attended the meeting accompanied by her adult daughter. The daughter stated that the reason that she had accompanied the licence holder was to "act as interpreter" for the licence holder due to language difficulties.

The meeting was conducted in private session after the Sub-Committee considered an application made by West Midlands Police under regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005. The Police explained that to view the CCTV evidence in public would undermine an ongoing criminal investigation. The Police therefore asked for the Sub-Committee to go into private session for the playing of the CCTV evidence, although the rest of the evidence could be heard in public.

The premises licence holder was asked for her views and stated that she did not mind whether the meeting was conducted in public or in private. However, the Sub-Committee considered that the best course was to hear all of the evidence in private session. This was to ensure fairness to all parties, and to ensure that the licence holder was able to properly address the Police submissions without the need to avoid mentioning those parts of the evidence shown in private.

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

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

At 00.07 hours on Sunday 26th March 2023, the premises had been open and conducting licensable activities. However, the Police observed that under the terms of the premises licence, the authorised time for licensable activities was only until 23.00 hours; indeed the closing time was 23.30 hours.

At 00.07 hours, a person or persons had entered the premises with a weapon(s). A disorder then ensued inside the premises, in which those who had entered began to attack patrons using their weapons. Patrons then fought back, using bottles and other items as weapons. A number of people were hit with a weapon and as a result sustained lacerations and stab wounds. Police officers who had been in the vicinity were flagged down by concerned passers-by, and attended the scene.

CCTV from inside the premises was played twice to the Sub-Committee. The Police observed that the Francy premises was conducting licensable activities beyond the time when it was supposed to cease. The CCTV showed alcohol being served to persons at a time beyond the terminal hour. Moreover, these sales of alcohol were not ancillary to the service of meals (as required by the licence conditions). Persons could be seen on CCTV to be vertically drinking, contrary to

the operating conditions. The Members observed that some patrons were even dancing, suggesting that recorded music was being played, which was a further breach.

The incident had been the subject of three crime reports for wounding, per s18 of the Offences Against The Person Act 1861. The Police reminded the Sub-Committee that such offences are serious crimes which on conviction attract a maximum sentence of life imprisonment. A fourth person had reported a head injury. The incident was an ongoing enquiry, and the Police considered that there could be more reports of injuries.

The Police stated that they had serious concerns regarding the promotion of the licensing objectives at the premises; in particular, they had no confidence in the management of the premises. The CCTV had clearly shown that the licence holder had carried on licensable activity beyond the hour that it should have ceased – drinks were shown being served at 23.14, when alcohol sales were required to end at 23.00. Furthermore, alcohol was being served whilst not ancillary to a meal, and vertical drinking could be seen taking place. The Police took a very dim view of the style of management shown on the night in question.

The Police remarked that their lack of confidence in the Francy management had been compounded by the fact that the premises licence had only been in place for approximately six months, yet such a serious incident had occurred within a short time of the grant of the licence; furthermore, the incident would not have happened had the operating conditions of the premises licence been followed.

Overall, the Police had no confidence whatsoever in the premises' ability to uphold the licensing objectives. It was the Police's recommendation that the incident had been so serious, and the risk to the upholding of the licensing objectives so grave, that the premises licence should be suspended, and the Designated Premises Supervisor removed, to prevent a risk of further serious crime and/or disorder pending the hearing of the summary review in 28 days' time. The Police confirmed that in the meantime they would work with the premises licence holder.

The Sub-Committee then heard from the licence holder, via her adult daughter. The licence holder accepted that she had been in the wrong to permit alcohol sales beyond 23.00; she explained that this had been due to a delay in serving the drinks orders. She confirmed that she did encourage patrons to leave at the closing time of 23.30. Regarding the patrons shown on CCTV to be dancing, she accepted that they had been dancing to recorded music after 23.00, which was not permitted under the premises licence, but observed that this was a cultural practice within the Romanian community, and that "people were just having fun".

Members were concerned that the licence holder was unable to speak English, yet was responsible for upholding the licensing objectives in Birmingham. The daughter confirmed that the licence holder understood English “to a minimal extent”.

Members asked if the licence holder had been present for the incident. She stated that she had gone to smoke, and “out of fear she did not go back in”. When asked if, at any stage, anyone from the premises had telephoned the Police, she replied that there had been no time to do this, and that “the intruders” (as she called them) had left once the Police arrived. These persons had not been patrons. She also described them as “outsiders”.

Whilst accepting that she had been in the wrong for allowing the sale of alcohol after the permitted hour, and apologising for this, the licence holder remarked that it had been the first instance of poor management; she therefore felt that a warning would suffice.

Regarding the violence seen on CCTV, the licence holder’s opinion was that this was not connected to her decision to breach the conditions of the licence. Whilst she accepted that she had been in the wrong, she felt that the incident had been caused by the persons who had entered. She repeated that she felt that a warning was the appropriate sanction.

Having heard all of the evidence, the Members were not confident that Adriana Camelia Pesea understood her responsibilities as either licence holder or designated premises supervisor; nor was she taking proper management control of the premises. It rather appeared that those at the premises had little intention of upholding the licensing objectives – the trading “after hours” had demonstrated this.

The Sub-Committee agreed with the Police that it was not possible to have any trust in the management of the operation, and in particular agreed that the incident would not have happened at all if the premises had been observing the conditions of the licence. The Members looked askance at the licence holder’s suggestion that the violence had not been connected with the breaches of condition; it was obvious that the decision to trade after the terminal hour had been the cause.

In deliberating, the Sub-Committee determined that there had been an allegation of serious crime and/or serious disorder, which was being investigated by Police. It was abundantly clear that the operation was not being run in accordance with the licensing objectives – even leaving aside the serious crime incident of the wounding/ grievous bodily harm offences, the Sub-Committee looked askance at the breaches of the conditions of the licence (trading beyond permitted hours, selling alcohol beyond the permitted time and not ancillary to meals, and offering regulated entertainment), all of which were serious matters. Regarding the sale of alcohol, the Members observed that the CCTV had shown that there was no sign of any food service

whatsoever. It therefore appeared that the sale of alcohol had definitely not been 'ancillary to meals'.

The Sub-Committee was also appalled that a weapon(s) had been brought into any restaurant at a time when the premises should have been closed to customers with nobody able to enter. This was not at all the standard expected of premises licence holders in Birmingham. The Police had only been alerted by passers-by, who brought the disorder to the attention of officers in the area; nobody from the premises had telephoned the Police.

The licence holder's language difficulties were also a worry to the Sub-Committee; in these circumstances any capable licence holder should have been aware that the responsible course was to employ suitable persons, capable of speaking English, to manage the premises for her, and not take on the role herself.

All in all, it had been a very serious and dangerous incident, and the licence holder's style of operation was a clear risk to the safety of the public in Birmingham. The Sub-Committee noted that the Police had advised that they had no confidence that the operation could uphold the licensing objectives, and that a criminal investigation was ongoing. They had recommended that the Sub-Committee ought to impose two interim steps – to suspend the licence and remove the Designated Premises Supervisor, pending the full Review hearing.

The Sub-Committee found the Police recommendation to be the proper course, and determined that it was both necessary and reasonable to impose the interim step of suspension of the licence to address the immediate problems with the premises, namely the potential for further serious crime and/or serious disorder.

The Sub-Committee also determined that the removal of the designated premises supervisor, as recommended by the Police, was also a very important safety feature, given that it was this individual who was responsible for the day to day running of the premises.

The Sub-Committee did consider whether it could impose alternative interim steps, but considered that this would offer little to address the real issue, which was the management failings which had led to an allegation of serious crime and/or serious disorder; these failings were a significant risk to the upholding of the licensing objectives in Birmingham. Public safety was of paramount importance.

In reaching this decision, the Sub-Committee has given due consideration to the application made and certificate issued by a Superintendent of West Midlands Police, the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the written submissions made, and the submissions made at the hearing by West Midlands Police, and by the licence holder via her adult daughter acting as interpreter.

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

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

Please note the meeting ended at 1132 hours.

CHAIR.....