

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE A,
FRIDAY 28 APRIL, 2023**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON FRIDAY, 28 APRIL, 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Izzy Knowles and Mary Locke

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Louisa Nisbett - Committee Services
Saanya Khattak – (Trainee Solicitor)

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

1/280423

NOTICE OF RECORDING/WEBCAST

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

2/280423

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.

Licensing Sub-Committee A - 28 April, 2022

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/280423 An apology was submitted on behalf of Councillor Simon Morrall. Councillor Izzy Knowles was the nominee Member.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW FRANCY, 348 SOHO ROAD, HANDSWORTH, BIRMINGHAM, B21 9QL

3/280423 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On Behalf of the Applicant

David Dodds – Legal Representative
Adriana Pesea – Premises Licence Holder

Those Making Representations

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

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

Mark Swallow, WMP requested that the hearing be held in private owing to the on-going police investigation. A number of people had been arrested however there were some outstanding warrants for arrests.

David Dodds, Solicitor confirmed that they had no objection to the hearing being held in private.

The meeting was adjourned at 1007 hours for the Sub-Committee to consider the request and reconvened at 1011 hours. The Chairman announced the decision of the Sub-Committee that the meeting be held in private.

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

Following this and at 1034 hours it was

EXCLUSION OF THE PUBLIC

4/280423 **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.

After an adjournment, and at 1125 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

5/280423 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Adriana Camelia Pesea in respect of Francy, 348 Soho Road, Handsworth, Birmingham B21 9QL, following an application for an expedited review made by a Superintendent of West Midlands Police, this Sub-Committee hereby determines that:

- the interim step of suspension of the licence, which was imposed at the Interim Steps meeting of 4th April 2023, is lifted
- the designated premises supervisor Adriana Camelia Pesea is removed
- all of the conditions which were agreed between the licence holder and West Midlands Police in advance of the meeting shall be adopted both as a modified interim step and as the substantive decision following the review of the licence. Those agreed conditions are as follows:
 1. Adriana Camelia Pesea, who is removed as the designated premises supervisor for the premises, shall be replaced
 2. When the premises is trading at least one of the members of staff on duty will be first aid trained and the licence holder will have available for use a working bleed kit whenever licensable activities are carried on from the premises
 3. The premises will operate a vulnerability policy. This policy will be available to any of the responsible authorities on request
 4. The premises will operate a dispersal policy. This policy will be made available to any of the responsible authorities on request
 5. The doors to the premises will be locked to the outside and customers will only be allowed access to the premises after speaking with staff at the premises via an intercom and then passing through a staff-controlled door. The area around the front door will be covered by the premises CCTV system
 6. All drinks supplied will be decanted into glasses. No bottles or other containers will be in the customer area of the premises
 7. The premises will only re-open when all these measures are in place

Licensing Sub-Committee A - 28 April, 2022

The Sub-Committee's reasons for this determination were due to the recommendation from 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 had determined at the Interim Steps meeting of 4th April 2023 that the cause of the serious crime and/or serious disorder had originated from a style of management which had been incapable of upholding the licensing objectives. The style of management had been the responsibility of Adriana Camelia Pesea 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 Pesea had also been the person named on the licence as the designated premises supervisor.

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. West Midlands Police reminded the Sub-Committee of the ongoing criminal investigation, and of the CCTV evidence showing the violent incident inside the premises. The solicitor for the licence holder company agreed that it would be difficult to separate the evidence across public and private sessions, and therefore confirmed that he did not object to the holding of the meeting in private session.

The Sub-Committee therefore decided to hold the meeting in private session, particularly as none of the three Members in the meeting had been part of the panel for the Interim Steps meeting, and had not viewed the CCTV evidence.

The meeting therefore went into private session and Members heard the submissions of West Midlands Police, The Police summarised the investigation thus far – exactly as detailed in the Report. The incident had been the subject of crime reports for wounding, per s18 of the Offences Against the Person Act 1861. A criminal investigation was under way.

CCTV from inside the premises was played to the Sub-Committee. The Police stated that they had serious concerns regarding the promotion of the licensing objectives at 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 Sub-Committee was aware 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 perhaps not have happened had the operating conditions of the premises licence been followed.

It was the advice of the Police that conditions were required in order to deal with the causes of the serious crime and/or serious disorder and to ensure that the premises could safely reopen. Seven suitable conditions had been agreed between the Police and the licence holder, in advance of the meeting. The

Licensing Sub-Committee A - 28 April, 2022

members noted that these new measures included a vulnerability policy and a dispersal policy; the Police explained what these would entail.

The Police advised the Sub-Committee that the adoption of the agreed conditions would ensure that the licensing objectives could be promoted and that therefore the incident would not be repeated. The Police invited the Sub-Committee to lift the interim step of suspension which had been imposed on the 4th April 2023, and to replace it with the seven agreed conditions.

The Sub-Committee then heard from the licence holder, via her solicitor. The solicitor noted that no other party had made representations – whether the other responsible authorities, businesses or local residents. Moreover, he noted that the Police, who had brought the Review of the licence, had confirmed that the seven agreed conditions were all that was required to allow the premises to resume trading.

The solicitor drew the attention of the Sub-Committee to paragraph 9.12 of the Guidance issued by the Secretary of State under s182 of the Act, which explained that each responsible authority was an expert in their respective field, and was likely to be the licensing authority's main source of advice in relation to a particular licensing objective; the Police were therefore the licensing authority's main source of advice on the crime and disorder licensing objective. The solicitor agreed entirely with the Police that the adoption of the seven agreed conditions was the correct course.

Whilst the solicitor acknowledged that the licence holder had been operating beyond the terms of the licence, he noted that the CCTV had been working and was made available to the Police, and had therefore provided crucial evidence. The solicitor also stated that in his opinion "the incident could have happened anywhere", as it had involved an invasion by persons who were not connected to either the licence holder or her staff. The premises itself had therefore played no part in the incident, he said.

The solicitor was arranging for all documents to be translated into the Romanian language for the licence holder, after he noted that there had possibly been some confusion among the management over whether or not trading was permitted at the time in question (on the night of the incident). Apart from that, the solicitor was confident that the incident had been "a one-off", and had not been connected to the licence holder or the operational side of the business. He urged the Sub-Committee to take the expert advice of the Police and to impose the seven agreed conditions; he observed that to do this would be "appropriate and proportionate".

In summing up, the Police confirmed that there was no link between the premises and the persons who had entered on the night in question. However, the Police's view was that the incident was in fact directly related to the premises, because of the fact that it was trading beyond the permitted hour. Nonetheless, and leaving that aside, the Police recommendation was to lift the suspension and to adopt the seven agreed conditions, as this would be the most effective way to promote the licensing objectives.

Licensing Sub-Committee A - 28 April, 2022

Having heard all of the evidence, the Members agreed with the Police that it was not possible to have any trust in the designated premises supervisor, and in particular agreed that the incident would not have happened at all if the premises had been observing the conditions of the licence; it was obvious that the decision to trade after the terminal hour had been the cause. However, there was no connection between those who had invaded and the licence holder.

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 unamused 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 licence holder’s language difficulties had been a worry to the Sub-Committee at the previous meeting, and the Members were therefore pleased to hear that translations of documents were being prepared for her.

All in all, whilst it had been a very serious and dangerous incident, the Sub-Committee was satisfied that the Police, who were the experts on the prevention of crime and disorder, had recommended a course which would allow the suspension to be lifted, such that the premises could resume trading. Upon examining the agreed conditions, the Sub-Committee found the Police recommendation to be the proper course, and agreed with the licence holder’s solicitor that the new conditions were appropriate, reasonable and proportionate to address concerns raised, in particular the likelihood of serious crime and/or serious disorder, and to ensure safe operation.

The Sub-Committee also accepted that the removal of Adriana Camelia Pesea as designated premises supervisor, as recommended by the Police, was a very important safety feature, given that it was this individual who was responsible for the day to day running of the premises. The failings seen on the night in question had been a significant risk to the upholding of the licensing objectives in Birmingham. Public safety was of paramount importance, and the safest course was to replace her with a more suitable person.

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will continue to form part of the licence issued.

Licensing Sub-Committee A - 28 April, 2022

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the latest version of the Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State, the application and certificate issued by West Midlands Police under section 53A of the Licensing Act 2003, the written representations, and the submissions made at the hearing by West Midlands Police, and by the solicitor acting for the licence holder.

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, save for the imposition of the agreed conditions as a modified interim step, 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 determination of the appeal.

The meeting ended at 1131 hours.

Chair