

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 14 AUGUST 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 14 AUGUST 2023 AT 1330 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Mary Locke and Izzy Knowles.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Alex Cerutti – Trainee Solicitor
Katy Poole – Committee Services

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

1/140823 **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.

2/140823 **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

3/140823 Apologies were submitted on behalf of Councillors Davis and Morrall and Councillors Donaldson and Knowles were the nominated substitute Members.

MINUTES

4/140823 That the Minutes of the meeting held on 24 July 2023 at 1000 hours were noted, and the Minutes as a whole were confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW – THE ARK BIRMINGHAM, 74 JOHN BRIGHT STREET, BIRMINGHAM, B1 1BN.

On Behalf of the Applicant

Mark Swallow – West Midlands Police (WMP)

On Behalf of the Premises Licence Holder

Adrian Curtis – Solicitor

Jugdeep Singh – Director, Premises Licence Holder (PLH) company.

* * *

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, stated that he did have CCTV footage showing the incident but he didn't believe he needed to show it again unless Members requested to see it. However, if the Committee were minded to see the footage then he requested that the CCTV evidence be screened in private due to the on-going investigation and sensitivity around the footage.

Adrian Curtis on behalf of the PLH company did not object to the application submitted by WMP.

David Kennedy, Licensing Officer asked Mark Swallow to clarify if the application was for part or all of the hearing to be heard in private.

Mark Swallow requested that all of the hearing be held in private.

Chair advised that the Committee were minded to view the CCTV as they had not seen it and approved the request for the CCTV to be screened privately.

David Kennedy, Licensing Section, outlined the report.

The Chair then advised that the private session would start, and all parties moved over to the separate private Teams session.

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

EXCLUSION OF THE PUBLIC

5/140823 **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 public were readmitted into the meeting.

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;

6/140823 **RESOLVED:-**

That having reviewed the premises licence held under the Licensing Act 2003 by Ark Indian Dining & Bar Limited, in respect of The Ark Birmingham, 74 John Bright Street, Birmingham B1 1BN, following an application for an expedited review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines:

1. That the interim steps which were imposed at the Sub-Committee meeting of 20th July 2023 shall be modified, in that they shall be replaced with the conditions below, and thereafter shall remain in place pending the determination of any Appeal
2. That the conditions of the premises licence be modified, as follows:
 - All of those conditions offered by the premises in its document entitled “Licence Plan August 2023” which was submitted in advance of the Sub-Committee meeting are adopted as conditions of the licence [see *below*]
 - There shall be no entry to the nightclub part of the operation after 00.00 hours, and any person re-entering shall be subjected to the search procedure, as a condition of the licence
 - First Aid training shall be undertaken to the satisfaction of West Midlands Police, as a condition of the licence
 - An ACS-approved security provider shall be appointed to the satisfaction of West Midlands Police, as a condition of the licence

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MODIFY CONDITIONS as per the ‘Licence Plan August 2023’ document		
That the conditions of the premises licence be modified as follows, in order to manage the risks of serious crime ad/or serious disorder, and to promote the licensing objectives in the Act:		
A.	Modification of Opening Hours – Reduction of Closing Time for Second floor of the premises.	The second floor of the premises (nightclub-style operation) will be closed by 2am on a Friday & Saturday night. No new entries into the venue after 00.00 hours (midnight).
B.	ID scanner	The licence holder shall maintain and operate an ID Scan to all persons entering the nightclub premises whenever licensable activities are being carried on. The premises to adopt and display a clear notice to the effect that there is a strict policy of "NO ID, NO ENTRY". The ID Scanner to be used for the second-floor club nights from 22.00 hours until last admission. Door staff re-trained to enforce ‘Challenge 25’. Management to conduct regular refresher training on different methods of adopting this policy, which will be documented.
C.	Security body searches	All persons including staff, DJs and entertainers entering the nightclub second floor area to be subject to a full body search. This includes pockets being emptied, males patted down and metal detection equipment used (metal detection wands), DJ equipment including bags to be searched, female handbags to be handed over to SIA approved guards and searched, then to be metal detected. Strict enforcement of the premises’ rule of “NO SEARCH, NO ENTRY”. Searches to always be carried out by one of at least 3 security staff at the front door. Any patron migrating from the restaurant area to the second-floor area to be subject to the same search. Any and each person who may decide to leave and re-enter the second-floor nightclub premises to be subject to the same searches upon re-entering.
D.	Vulnerability policy	The premises to operate a vulnerability policy which will be made available to any of the responsible authorities on request. Premises to offer a safe space for vulnerable people such as an area on the restaurant floor away from patrons.
E.	Staff training on the Licensing Act 2003	All existing and new staff to be trained on the requirements of the Licensing Act 2003 prior to being allowed to sell/ supply alcohol. Training to cover the conditions on the premises licence; the ‘Challenge 25’ policy and the

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		premises' document 'Licence Plan August 2023'. All training including refresher training to be documented and signed off by the Premises Licence Holder and the trainee. All training records to be made available to any of the responsible authorities on request. Staff other than personal licence holders involved in the sale/ supply of alcohol to receive documented refresher training every six months.
F.	Incident log	A refusals/ incident log to be maintained at the premises. The incident log to be made available to the responsible authorities on request.
G.	Security staff	<p>The premises to appoint an ACS-approved security provider which holds Safe Contractor Approved status, to the satisfaction of West Midlands Police.</p> <p>Management to work with the guards on duty to deploy staff in their designated positions in and outside the venue. Security staff must without fail sign in and out, prepare for the nightclub event by wearing fluorescent jackets, check all equipment provided by the venue, which includes radios, earpieces, clickers, body camera and metal detection wands. The premises to keep a profile of all door staff on duty which will include a copy of the SIA licence and photographic ID. The signing in and out log, along with the incident log, to be made immediately available to any of the responsible authorities on request. Guards to remain on duty until all patrons have dispersed from the venue and the front vicinity is all clear. The management to carry out a risk assessment for the front door and for all nightclub nights proposed and work with West Midlands Police who will retain a power of veto over any proposed new club nights which will include the number of door staff required. Details of club nights to be recorded and available to any responsible authority immediately on request. The premises to introduce one dedicated role for an extra member of door staff which includes double checking ID, enforce 'Challenge 25' and ensure that patrons are observing the strict dress code to enter the premises. Dress code policy for the venue is to refuse entry to those patrons wearing tracksuits, sportswear, shorts, manbags, baseball caps.</p>
H	Age restriction (patrons aged under 18 years)	No persons under the age of 18 years will be allowed into the second floor of the premises when licensable activities are taking place. No persons under 18 years will be allowed to be in the restaurant after 22.00 hours.
I	Venue promotion/ hire to external promoters	The premises to no longer use external promoters. The venue will not be hired/used by external promoters. All nights at the venue will be promoted by the premises itself using only employees and contractors who work for the premises.

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J	Event bookings	<p>The venue will not be hired out/used by outside promoters. When bookings for the premises or part of the premises for private parties and events are made, the premises to take details of persons booking the venue including the name, address, telephone number of the person making the booking. Details to be confirmed by photographic ID. Booking details to be kept on the premises for a minimum of 28 days after the event and made available to West Midlands Police on request. All bookings to be subject to a refundable deposit being taken along with a written invoice detailing the agreed booking conditions. All persons booking events to be informed that the premises will be deploying door staff as per the premises risk assessment, and that all persons will be subject to the premises search/entry policy including metal detection.</p>
K	Dispersal policy	<p>Patrons to be reminded to be mindful of local residents as they leave. Door staff to be trained on the importance of the dispersal policy, crowd management and health & safety. Security staff to be equipped with radios and earpieces to ensure coordination with those at the second floor, the first-floor landing and the main entrance. Any large grouped patrons that may wish to leave prior to closing to be advised to wait on the first-floor landing whilst security staff can monitor any patrons gathered outside (if any) before allowing any further patrons to leave the premises. Regular patrols in and out of the premises to be conducted to remind patrons to be respectful of neighbours. Patrons to be advised at point of entry and exiting that there shall be no form of gathering outside the premises. The premises to continue to use the 30-minute cooling down period by reducing the music volume and switching on the main ceiling lights to help the dispersal process. Nearing closing time the premises to implement an additional exit strategy to reduce patrons gathering on the street outside. Barriers to be set up at a minimum of 11 metres in each direction and patrons shown which direction to take.</p> <p>No ropes with metal cordons to be used. Confectionery/sweets will be offered free of charge for patrons leaving. The dispersal policy to be regularly reviewed and updated where necessary.</p>
L	Signage	<p>The premises to ensure notices and signs are displayed around the premises advising patrons to be mindful and respect the nearby residents. Door staff to remind patrons to keep noise levels to a minimum as they depart and leave the street.</p>
M	No alcoholic drinks to be taken outside	<p>No alcoholic drinks in open containers to be taken off the premises including by persons wishing to exit to smoke.</p>

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N	First floor hours restrictions	There will be no regulated entertainment on the first floor between 23.00 hours and 10.00 hours the following day.
O	Noise	<p>The advice given in the acoustic impact assessment carried out by Blue Acoustics (NS363) to be observed, including:</p> <ul style="list-style-type: none"> • A Noise Limiting Device (Ashly Protea DSP360 in-line limiter) is installed to the sound system on the second floor to ensure the volume of music is pre-set and locked to 95dBA so as not to cause a noise nuisance to the occupiers of nearby buildings. • The NLD is an in-line limiter linked to the PA system which has been reviewed by a qualified acoustic specialist. If the system is changed at any point it will be re-approved by a specialist. • The device is lockable and capable of limiting signal output to the speaker system • The only amplification system used will be the house PA and no other sound equipment shall be used. • The NLD shall be maintained in full working order and at the pre-set volume (95dBA) whilst the amplification system is operational. Any damages or malfunction will be reported within 24 working hours of the damage being recorded. The NLD will not be used if damaged or malfunctioning until further approval.
P	Further staff training	<p>Further training programmes to be introduced for all staff relating to Screening and body language training (to include recognition of the early signs of intoxication, a change in body language, how to screen patrons on entry, how to recognise the antecedents to aggression and violence).</p> <p>Search methods training to include hand wands, drug awareness and dress code training.</p> <p>Emergency First Aid training and Bleed Control training to be introduced. (Premises to purchase a Bleed Control Kit).</p>
Q	General	<ul style="list-style-type: none"> • Clicker system to be used to control and keep a track on the correct number of patrons within the venue capacity limit. • Ensure event log sheets, door staff logs and incident logs are documented. • Security staff to be vigilant looking for patron behaviour change, unusual body language and any early signs of patrons being intoxicated. • Any unruly customers are not to be allowed entry and details to be documented in the incident log. Patrons banned from the premises to not be allowed entry documented by 24 hour CCTV recording, written statements from staff members and a signed management acknowledgment. • All complaints concerning unwanted noise generated by the premises to be directed to the duty manager. Duty manager to record and investigate the complaint, including

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		<p>date, time, name, cause and action taken. Reasonable and practical actions to be taken to reduce noise levels and monitor for the rest of the working period.</p> <ul style="list-style-type: none">• All managers to be fully aware and conversant with the 'Licence Plan August 2023' document. Staff to receive adequate training on new conditions and policies, all to be documented. A record of such training to be kept by management on site.• The premises to reinforce 'Challenge 25' policy as the proof of age scheme in operation during licensed hours. Any counterfeit documentation produced by any patrons will be recorded and logged with the ID scanner.
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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.

The Sub-Committee's reasons for imposing the modification of the interim steps and the modification of the licence conditions 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, and which had been discussed at the Interim Steps meeting of 20th July 2023.

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 Ark Indian Dining & Bar Limited, as licence holder for The Ark Birmingham premises. Mr Jugdeep Singh, one of the company directors, attended the meeting, represented by a solicitor.

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 play the CCTV evidence in public would undermine an ongoing criminal investigation, and asked for the Sub-Committee to go into private session for the whole meeting. The solicitor for the premises licence holder had no objection to this course.

The Sub-Committee was a fresh panel of Members (not the same Members who had heard the evidence on 20th July 2023), and therefore none of them had seen the CCTV recording, which was an important part of the evidence. The Sub-Committee agreed 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 Police outlined the incident, as per the Superintendent's certificate in the Committee Report. Since the last Sub-Committee meeting in July 2023, discussions had been held between the Police and the licence holder. The Police had told the premises that they expected to see "robust and far-reaching" measures to lessen the likelihood of any further serious crime and/or serious disorder.

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The Police had examined the 'Licence Plan August 2023' document which the licence holder had submitted in advance of the meeting, and considered that the premises had properly considered the issues. The Police advised the Sub-Committee that if the measures in the 'Licence Plan August 2023' were to be adopted as conditions of the premises licence, the new procedures would be satisfactory.

The Police asked for two additional conditions – the first relating to entry after 00.00 hours/ re-entry, and the second relating to First Aid training. If these were to be added, the Police considered that the new conditions would be sufficient and adequate as an alternative to the current Interim Steps.

The solicitor for the premises then addressed the Sub-Committee to confirm that the Police had made it abundantly clear that nothing less than a complete overhaul of the licence conditions was required. Those at the premises had therefore carefully gone through all aspects of the operation to identify the risk areas, and the substantial document ('Licence Plan August 2023') had been the result. The premises had shown a willingness to make the fundamental changes required by the Police; equally, the Police had been supportive and had advised on what should be done.

Mr Jugdeep Singh also addressed the Members, to state that the incident on the night in question had been unacceptable. He asked the Sub-Committee to note that he personally had been "extremely embarrassed and upset" by what had happened. The solicitor reminded the Members that it had been one isolated incident, and had tarnished the premises' reputation. The licence holder had learnt a hard and expensive lesson. However, the licence holder was confident that the new, focused conditions were sufficient to identify and address the root cause of the issues which had led to an outbreak of serious crime and/or serious disorder.

In summing up, the Police observed that the incident had been "a very serious and sad moment" for The Ark Birmingham. The previous decision, to impose a suspension and removal of the designated premises supervisor, had been entirely correct at that time. However, in the intervening weeks the Police had been reassured by the efforts made by those at the premises to comprehensively tackle the areas of concern. The 'Licence Plan August 2023' document contained what the Police felt were some of the strictest conditions in the city; as such, the Police recommended that these conditions should replace the interim steps imposed at the previous hearing.

When deliberating, the Members were very concerned at how the events on the night in question had been handled, and indeed they agreed with Mr Singh's remark that the incident had been "appalling". However, since the imposition of interim steps at the previous hearing, the Sub-Committee noted the considerable efforts being made by the premises licence holder to remedy and improve the style of operation. The solicitor had called it a 'proactive' response; the Members accepted this, and were pleased to note that the lengthy document submitted by the premises, suggesting a suite of stringent conditions, had been approved by the Police as the correct course to take.

The Sub-Committee considers the modification of the interim steps and the modification of the licence conditions to be appropriate, reasonable and proportionate to address concerns raised, in particular the likelihood of further serious crime and/or serious disorder.

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In reaching this decision, the Sub-Committee has given due consideration to the City Council’s Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the application and certificate issued by West Midlands Police under s53A of the 2003 Act, the written representations made, and the submissions made by West Midlands Police, and by the licence holder company via its solicitor and company director, 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, save for the maintenance of the interim step conditions as modified by the Sub-Committee during today’s meeting, does not have effect until the end of the twenty-one day period for appealing against the decision or, if the decision is appealed against, until the Appeal is determined.

Please note the meeting ended at 1226 hours.

CHAIR.....