

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 16 OCTOBER 2023
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 16 OCTOBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mary Locke in the Chair;

Councillors Izzy Knowles and Julien Pritchard.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Katy Poole – Committee Services

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

1/161023 **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.

2/161023 **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

3/161023 Apologies were submitted on behalf of Councillors Phil Davis and Simon Morrall and Councillor Izzy Knowles and Julien Pritchard was the nominated substitute Members.

MINUTES

4/161023 The Public section of the minutes of the meetings held on 25 September 2023 at 1000 hours were noted.

The minutes of the meeting held on 11 September 2023 at 1000 hours and 25 September 2023 at 1130 hours were circulated and confirmed and signed by the Chair.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW, ZULU BAR AND RESTAURANT, UNIT 1, 105-127 BREARLEY STREET, NEWTOWN, BIRMINGHAM, B19 3XJ

On Behalf of the Applicant

Ben Reader – WMP (West Midlands Police)

On Behalf of The Premises Licence Holder

Kerry Cox – Agent

Michael Kahsay – PLH (Premises Licence Holder)

Alex Michael – proposed DPS (Designated Premises Supervisor)

* * *

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

Ben Reader raised as a preliminary matter that there was CCTV footage that some Members may not have seen, if the Committee wanted to view it then it should be viewed in private due to the on-going investigation. Furthermore, he wanted the Committee to note that the CCTV footage was not in dispute by the premises and therefore, they may not deem in necessary to view it.

The Chair gained the views of all parties who were happy for the CCTV to be screened in private and confirmed that Members would like to view the footage.

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

At this stage all parties went into the private session in order that Ben Reader, WMP could screen the CCTV footage.

EXCLUSION OF THE PUBLIC

5/161023

RESOLVED:-

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt information under Schedule 12A of the Local Government Act 1972.

Following the submissions made in private the public were re-admitted to the meeting.

At this stage the chair invited the applicant to make their presentation and Ben Reader, WMP made the following points: -

- a) That on 17 September 2023 a 999 call was made, and it was reported that there had been a disturbance at the premises.
- b) The officers confirmed that one male had facial injuries and a disorder had started inside the premises which resulted in a male employee being glassed by a customer. The incident was recorded as a Section 18 wounding and was a serious offence. The incident triggered an application for Expedited Review.
- c) An aggravating factor was that the incident took place before any licensable activity was permitted.
- d) At the Expedited Review hearing the Committee resolved to suspend the licence as an interim step, which was wholly appropriate and proportionate in order to safeguard the public.
- e) Due to the lack of confidence WMP had in the operator and the fact he failed to attend the Expedited Review hearing, Ben Reader personally delivered the decision notice to him to ensure he understood that he could not trade in the interim period.
- f) Ben Reader went back to the premises the next day to check that they had not traded and was pleased to see that all alcohol had been removed from the premises and the taps were covered up. He spoke with the PLH who was apologetic and was honest about what had happened on the night of the incident and was adamant he would not make any further mistakes.

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- g) The decision notice issued by the City Council noted that Members did not have confidence in the management style of the operator/PLH and did not have confidence that he could uphold the licensing objectives. Ben Reader confirmed that he agreed with that statement, the PLH had only had his personal licence issued for a few weeks/months. However, he was concerned that the training issued to the PLH was insufficient and he should not have been given a personal licence.
- h) There was a language barrier as English was not the PLH's first language.
- i) Ben Reader stated that he was questioning how the PLH was trained at all, or understood the licensing objectives.
- j) That due to Public Sector Equality issues he did not think it fair to revoke the licence and believed that the main issue was the poor-quality training which resulted in the PLH being unaware of his responsibilities as a PLH.
- k) WMP were not asking for revocation.
- l) They wanted to work with the PLH to ensure he fully understands his obligations.
- m) He had been removed as the DPS which was the correct course of action.
- n) That WMP's position was that having a separate DPS and PLH would be an additional check and balance of the way the premises operated.
- o) Proper training needed to be carried out and audited. Training also needed to be on-going.
- p) That ultimately the decision was at the hands of the Committee.
- q) WMP agreed completely with the decision at the interim steps meeting but the position had changed since then.

The Chair then invited Kerry Cox on behalf of the PLH to make her submission and address the Committee on who would be conducting the training.

Kerry Cox on behalf of the PLH made the following points: -

- a) That herself or Duncan Craig (Barrister) would be conducting the training.
- b) The PLH understood how serious the situation was and how important it was to get things right moving forwards.
- c) The PLH was also a private hire taxi licence holder which was issued by Birmingham City Council in 2017. To become a taxi driver, it was required that the person be fit and proper, trustworthy and honest. He had been a taxi driver for 6 years without cause for concern.
- d) The PLH was willing to engage with WMP.

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- e) The new DPS application had already been submitted.
- f) The new proposed DPS was also a taxi driver in Birmingham.
- g) The plan moving forward was the engage, explain, educate, and enforce.
- h) The current condition regarding training was not very detailed and they had submitted a modification to that condition (she read this out for Members, but it is also at page 46 of the report).
- i) The training was very important, and they had engaged with WMP in relation to training. They would ensure that there was full understanding of the conditions and the licensing objectives.

The Members asked questions and Kerry Cox gave the following responses: -

- a) The proposed DPS carried out his personal licence training in 2008.
- b) That Alex Michael's English was much better than the PLH and therefore he would be there to provide anything that's lacking.
- c) Ms Cox confirmed she had no submission to make regarding the Public Health representation.
- d) The proposed DPS got his taxi licence in 2015 and his personal licence in 2008.
- e) The PLH received his personal licence training from an authorised training provider in July 2023.

Members asked questions and Alex Michael, proposed DPS, gave the following responses: -

- a) That he had been a taxi driver in Sandwell before but got his taxi licence in Birmingham in 2015.
- b) He had no experience managing/running a licensed premises before.
- c) He had received a training refresher course last week in relation to his personal licence.

The Chair invited closing submissions and Ben Reader, WMP made the following statements: -

- That the PLH seemed like a genuine person who had been let down by not being properly trained.
- WMP were confident that new and proper training would be the appropriate measure.

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- The premises could trade with modified conditions, the removal of the DPS and a new DPS.

Then Kerry Cox was invited to make a closing submission on behalf of the PLH, he made the following closing statements: -

- That it was important to consider what WMP had said, with training and continued engagement it would ensure the Licensing Objectives could be properly promoted and upheld.
- That the Committee consider the modification of the conditions of licence proposed by themselves and agreed by WMP.

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;

6/161023

RESOLVED:-

That having reviewed the premises licence held under the Licensing Act 2003 by Michael Kahsay in respect of Zulu Bar and Restaurant, Unit 1, 105-127 Brearley Street, Newtown, Birmingham B19 3XJ, 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 conditions of the licence be modified as follows:

TRAINING

- Training in relation to the licensing objectives and the conditions on the premises licence, Challenge 25, underage sales, sales to adults on behalf of minor (proxy sales), sales to intoxicated persons, refusals registers and incident records must be provided and undertaken by all members of staff (whether paid or unpaid) before he/she makes a sale or supply of alcohol and at least every six months thereafter
 - Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained, date, time and content of the training. The record must be signed by the member of staff who has received the training, the designated premises supervisor, the premises licence holder or external training providers
 - Documented training records must be kept at the premises and made available to West Midlands Police or an Officer of a Responsible Authority on request, or during an inspection
2. That the interim steps imposed at the last meeting be modified, namely that the suspension and the removal of the designated premises supervisor be lifted, and replaced with the above conditions relating to training

The Sub-Committee recommends that the training be undertaken as a matter of urgency. Those matters detailed in the operating schedule and the relevant

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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 21st September 2023.

The Sub-Committee determined 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 was the responsibility of Michael Kahsay, who was both the licence holder and the designated premises supervisor for the Zulu premises. Mr Kahsay attended the meeting, accompanied by a representative; also in attendance was a Mr Michael, who was the proposed new designated premises supervisor.

Part of 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 recommended that if the Sub-Committee wished to view the CCTV which had been played at the interim steps meeting, it ought to go into private session for that part of the meeting. The representative for the premises licence holder had no objection to this course.

The Sub-Committee was a fresh panel of Members (not all the same Members who had heard the evidence on 21st September 2023). Only one of them had seen the CCTV recordings, which were an important part of the evidence. The Sub-Committee determined that the CCTV evidence should be played, and agreed that it should be played in private session.

After the CCTV was played the Police outlined the incident, as per the Superintendent's certificate in the Committee Report. Since the interim steps meeting, further discussions had been held between the Police and the licence holder; following these, the Police had come to the conclusion that "the offence was preventable if the licence holder had been trading in accordance with his licence and promoting the licensing objectives".

The Police had been grateful that at the previous meeting the Sub-Committee had taken decisive action and immediately suspended the licence. The Police considered that, at the time, this had been the correct measure, as it had meant that the premises could no longer trade, which had safeguarded the public.

The Police had visited the premises with the Decision Notice from the interim steps meeting, to inform the licence holder that his licence had been suspended and he could no longer sell alcohol. They then returned the following day to ensure that this had been done, and were pleased to see that all alcohol had been removed from sale. The licence holder had been "very apologetic, very

honest about what happened”, and had said to the Police that there would be “no more mistakes”.

This had reassured the Police. Whilst they had not had confidence in the management style of the licence holder, who was also the designated premises supervisor, at the time of the interim steps meeting, their view had changed following the steps taken by the licence holder in response to the decision made by the Sub-Committee. They felt that he had shown accountability in immediately removing alcohol from sale, and apologising.

The Police advised that the central issue was that the licence holder had not understood his responsibilities as a licence holder; they felt that this was perhaps attributable to the fact that he had only become a personal licence holder very recently (in July 2023). He had been “involved with the business before, but there had been some sort of internal change around” with his business partner.

Whilst he had taken sole control of the premises as licence holder and as designated premises supervisor, the Police concern was that the training he had had was insufficient for him to understand what was needed to promote the licensing objectives. They had also noted that there was perhaps a language barrier.

Bearing that in mind, and paying particular regard to the public sector equality duty, the Police had concerns that if they were to ask for revocation of the licence based on the facts that they had seen, that this lead to a disproportionate outcome, as they did not consider that the licence holder was entirely to blame for the incident. The Police view was that the issue was the “poor training” that he had received, and they questioned how he had managed to get a personal licence without fully understanding what his responsibilities were as a licence holder.

The Police felt that the correct course had been to try and work with the licence holder in an “education and engagement” approach, to make sure that he fully understood what he should be doing as a licence holder. The licence holder’s representative had proposed that a new designated premises supervisor would be put in place. The Police considered that this would be “an additional check and balance to the way in which the premises operates”, as there would be two people accountable.

This gave the Police confidence that the licensing objectives would be promoted – two personal licence holders would be managing Zulu. Moreover, a requirement for comprehensive training, such that the licensing objectives were completely understood, would ensure safe trading. Therefore, whilst the Police had asked for interim steps at the previous meeting, they were now taking a different position based on the interactions they had had with the licence holder and with his representatives.

The licence holder’s representative then addressed the Sub-Committee to introduce the proposed training conditions, which had been drafted by her and submitted (just before the meeting began) for Members to examine. She confirmed that the training would be delivered by persons with the proper

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expertise. She confirmed that the licence holder understood the seriousness of the situation.

In addition to being a premises licence holder, Mr Kahsay was also the holder of a private hire driver licence - issued by Birmingham City Council in 2017. He had therefore met the requirements to be a fit and proper person, and to act with honesty and integrity, which were necessary for a private hire driver licence. He had not caused any concern as a taxi driver.

The representative remarked that the licence holder had been willing to engage with the Police because he understood his responsibilities. He had become involved with the Zulu premises as he had wanted to engage with his community more, and to have more opportunity to spend time with his wife (as his wife worked in the kitchen at the premises); he also needed another form of income.

The new designated premises supervisor was also a taxi driver with a licence issued by Birmingham City Council, and had been so since 2015. He too had never been any cause for concern as a taxi driver. He was keen to engage with the Police and to carefully follow the training proposed.

In response to Member questions, the new designated premises supervisor confirmed that he had been a taxi driver since 2015 in Birmingham, and before that in Sandwell. However, he had not run any licensed premises, or indeed done any job involving the sale of alcohol, since gaining his personal licence in 2008. The Members were surprised to hear this.

The representative confirmed that the new designated premises supervisor would be included in the comprehensive training; she observed that he would be “making sure we fully understand” as he did not have any language difficulties.

The Sub-Committee was aware that a written representation had been made by Public Health of Birmingham City Council; this was included in the Committee Report. The representative had no comment to make about this.

In summing up, the Police observed that they felt that the licence holder was “a genuine man who was trying to operate a business”, but that he had been let down by not being properly trained; they felt that the language issue was possibly to blame in this regard. The Police felt confident that new and proper training would be an appropriate measure, together with a new designated premises supervisor in place.

Regarding the interim steps imposed at the previous meeting, the Police confirmed that the step of suspension was no longer required. The Police were content for the licence to remain in force with the modified conditions (addressing the training needs). A variation had been submitted regarding the new designated premises supervisor.

The representative concluded by observing that with the training and the continued engagement requested by the Police, the premises would be able to ensure that the licensing objectives would be upheld.

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When deliberating, all three Members had considerable reservations about the proposal, due to the lack of experience of the new designated premises supervisor, who had no background whatsoever of taking responsibility for alcohol sales. The Members therefore found it somewhat surprising that the Police had suggested that it would be sufficient for the Sub-Committee to simply adopt modifications to the conditions, and thereafter the premises would be allowed to continue trading under a person who was completely inexperienced. The Sub-Committee felt that the obvious concern was that a second incident of serious crime and/or serious disorder could occur.

Furthermore, the Sub-Committee noted that the written representation submitted by Public Health stressed the level of responsibility expected from those conducting alcohol sales, and the negative consequences which followed from failures to uphold the licensing objectives.

However, the Sub-Committee was also mindful of the Guidance issued by the Secretary of State under s182 of the Act, which confirmed at paragraph 2.1 that the Police were the experts in the prevention of crime and disorder; for that reason, the Sub-Committee was prepared to take the course suggested by the Police, and to lift the interim steps, replacing them with the modified conditions regarding training, and also adopting these conditions onto the licence.

The Members noted that both of the persons who would be running the premises had been holders of private hire driver licences for years, and had not come to the attention of the City Council for any matter relating to taxi driving.

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.

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, the submissions made by West Midlands Police, and the submissions made by the licence holder and new designated premises supervisor via their representative, 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 1134 hours.

Chair.....