

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 11 JUNE 2018

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 11 JUNE 2018 AT 0930 HOURS, IN THE ELLEN PINSENT ROOM, COUNCIL HOUSE, BIRMINGHAM, B1 1BB

PRESENT: - Councillor Dring in the Chair;

Councillors Beauchamp and Leddy.

ALSO PRESENT

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

NOTICE OF RECORDING

- 01/110618 The chairman advised the meeting to note that members of the press/public may record and take photographs except where there were confidential or exempt items.

DECLARATION OF INTEREST

- 02/110618 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business to be discussed at the meeting. Should a disclosable pecuniary interest be declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 03/110618 The chairman advised the meeting to note that members of the press/public may record and take photographs except where there were confidential or exempt items.

**LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW –
ARTHOUSE, 54 BISSELL STREET, BIRMINGHAM, B5 7HP**

The following report of the Acting Director of Regulation and Enforcement was submitted:-

(See document No. 1)

Those Making Representations

PC Abdool Rohomon – West Midlands Police

On behalf of the Premises Licence Holder

The premises licence holder/those instructed were invited to attend the hearing. There had been no notification that they would not be attending and no further notification that they had instructed anyone to act on their behalf.

Members considered that in the interests of fairness, they would delay the meeting by 30 minutes. This would allow sufficient time for the premises licence holder/those instructed to attend the hearing.

At 1003 all parties were invited to start the meeting.

The Chairman introduced the Members and officers present and explained the hearing procedure. Prior to the commencement of proceedings the Chair asked if there were any preliminary points for the Sub-Committee to consider.

PC Abdool Rohomon explained that he planned on screening the “Body warn camera footage” and requested that it be screened in private due to:

- West Midlands Police still continuing with their investigations.
- Enquires into the incident were still ongoing.

PC Rohomon confirmed that he would go through his representations in public then screen the video evidence in private at the conclusion of his representations.

Members considered the request submitted by the representative of West Midlands Police and concluded that in order not to jeopardise the investigation it was in the interests of the public to screen the body warn evidence in private.

The main points of the report were outlined by David Kennedy, Licensing Section.

PC Abdool Rohomon drew the attention of the Sub-Committee to the following pages in the Police bundle and made the following statements: -

1. Page 17 in the agenda papers – the key conditions imposed on the licence as a result of the Expedited Review hearing 6 months ago. He added that the conditions were very precise and “clear cut”.

2. That the Designated Premises Supervisor (DPS) had been replaced with a Mr Jason Kerin. However West Midlands Police had received no communication from Mr Kerin whatsoever.
3. Page 31 – Venue Management Plan carried out by Tactical Licensing Consultants. The majority of events were TBC (to be confirmed).
4. Page 32 – Security details. Indicated that the security for the night of the Saturday 15th May 2018 was 6. However, there should always be 8.
5. Pages 17-29 – Command and Control logs. Reference was made to a firearm straight away. Reports of people panicking and “star bursting”.
6. Page 22 – it became clear that the incident occurred in the Arthouse and there was mention of the DPS being Mr Jordan Patel a person whom Members decided at the previous Summary Review hearing was to have nothing to do with the management of the premises.
7. Page 22 – The Duty Manager for the club was then specified as Ms Tenesha Stewart. Ms Stewart goes on to specify that the Arthouse was equipped with full CCTV coverage however, only “Jordan” would be able to operate the system for the police. This was a clear contravention of licence.

At this juncture PC Rohomon made the following statements: -

1. That it was clear an incident occurred that night. The manager herself stated that something occurred.
2. That only 6 security guards were present that evening, when there should have been 8 on duty.
3. That West Midlands Police were satisfied something happened that night.
4. Officers made contact with Mr Jordan Patel, but he told them he was unable to meet officers to provide the CCTV and was on his way to his brother’s wedding.
5. Once Mr Patel was told about the potential Expedited Review application he was suddenly available.
6. At no point did Mr Patel explain he was not a point of contact for the venue, nor did he mention Mrs Wilcox or Mr Kerin.
7. Mr Patel agreed to attend at 1500 hours. Mr Patel called again and was very irate that there were no officers present. He stated that the incident had nothing to do with his venue.

8. When officers did arrive to meet Mr Patel, they were given a memory stick. However, once the CCTV was viewed it did not corroborate with what officers had been told and witnessed.
9. Further CCTV had been requested, but according to the Premises Licence Holder, it has been wiped.
10. The car accident happened due to people leaving the venue in a panicked state.
11. A black male door supervisor confirmed that a firearm was seen inside the premises.
12. Page 14 – Sgt Martin Williams confirmed that “Hal” confirmed a gun was seen in the Arthouse. On the signing in sheet there was an employee called Haljit. Therefore, confirmation that someone from the premises saying they were security, witnessed a firearm being produced on the dance floor in the Arthouse.
13. That at one point they even doubted the incident happened, until officers came back with extra information which clarified the event did in fact take place.
14. That the footage from the body worn cameras had been reviewed and the organised crime team had viewed it.
15. That an individual’s name was mentioned in the command and control log, a name linked to an organised crime gang.
16. That the signing in sheets were eventually obtained through various emails. Page 42-44 indicates that Mrs Wilcox had given her operations team the task of organising the requests from West Midlands Police. Page 44 – Mr Patel sent the documents; so therefore confirming he was part of Mrs Wilcox operations team. Page 45 – Mrs Wilcox thanks Mr Patel for sending the signing in sheet, incident report and door staff sheet.
17. Page 48 – the event was supposed to be a birthday party, yet indication that it was in fact an in house promotion. There was no risk assessment completed. Ms Tenesha Stewart made the booking.
18. Page 40-42 – There was an authorisation form for the CCTV reformatting, for which Ms Tenesha Stewart signed. Therefore, Mrs Lucy Wilcox was not aware of the reformatting for 13 days. If Mrs Wilcox was aware of the reformatting, she failed to let West Midlands Police know.
19. PC Rohomon was extremely sceptical as to why anyone would authorise CCTV reformatting when they were already aware the police were looking into an incident at that premises.
20. There was no information regarding “a power cut” and the engineer was also unable to confirm this.

21. The engineer reformatted the CCTV as instructed.
22. The reformatting wipes all the data. The engineer made that very clear.
23. That they were unable to compare the CCTV with the footage they received on a memory stick from Mr Patel and therefore, could not confirm if the CCTV was even the correct day or time.
24. That PC Rohomon had emailed the engineer to confirm what time he had been and reformatted the CCTV, however, the engineers never responded.
25. Page 55 - He made contact with another person, a promoter. The promoter stated he wanted to put an event on in March 2018. He contacted Mr Patel as the owner of the club. Mr Patel confirmed he was the owner.
26. Pages 57 onwards – Numerous emails between the promoter and Mr Patel regarding a refund.
27. Page 64 – further confirmation that Mr Patel was involved with the premises as Mr Patel confirmed to the promoter that he was part of the same company as Mrs Wilcox.
28. That they know Mr Patel was involved with the premises and that Mrs Wilcox was just a figure head. Everyone deals with Mr Patel should they wish to hire the venue, view CCTV, request documents. That indicated he had managerial control.
29. The premises had shown complete disregard for licensing.
30. That revocation was the only option, nothing would work for this premises. We could change security, change DPS but it would not work. They have already had conditions imposed on their licence, and have yet again within 6 months breached those.

EXCLUSION OF THE PUBLIC

04/110618

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.

ARTHOUSE, 54 BISSELL STREET, BIRMINGHAM, B5 7HP

At this stage in the meeting having viewed the Body Worn Camera footage in private the public were readmitted to the meeting.

In answer to Members questions PC Rohomon, on behalf of West Midlands Police made the following points:

1. That it was feasible for the power cut to have affected the CCTV footage, but then why did the power cut not affect hard drives 1 and 2. The engineer cannot confirm the power cut even happened.
2. That the CCTV was not seized as it was the most extreme measure taken. There were no concerns that the CCTV would not be made available when needed.
3. That if officers were told they would not be allowed access to the CCTV they would have seized it.
4. Ms Tenesha Stewart authorised the CCTV reformatting, yet on the night of the incident she was not able to get the CCTV only Mr Patel was able to do that.
5. The premises were at the interim steps meeting claiming nothing happened, yet they did not bring the CCTV to show Members, why?
6. That the emails were factual and indicated that Mr Patel was acting in a managerial role.
7. There were clear issues of public safety, public disorder, and prevention of crime and disorder and public nuisance.

In summing up PC Abdool Rohomon, West Midlands Police made the following points: -

- That it was clear something happened that night, involving a firearm.
- That the premises were trying to cover it up.
- People were involved with the premises who should not be.
- That the conditions imposed by the Committee in November 2017 had already been breached.
- That the premises should not continue to be given opportunities.
- They were recommending revocation.
- That the premises had not even attended.

At 1126 hours the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1208 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

05/110618 **RESOLVED:-**

That having reviewed the premises licence held under the Licensing Act 2003 by Art Venue Limited in respect of Arthouse, 54 Bissell Street, Birmingham B5 7HP, following an application for an expedited review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines that **the Licence be REVOKED, with the interim step of suspension to remain in place until the determination of any Appeal,** in order to promote the prevention of crime and disorder, public safety, and prevention of public nuisance objectives in the Act.

There had been an incident of serious crime and disorder involving a firearm at Arthouse, in the early hours of 12th May 2018. The Sub-Committee's reasons for revoking the licence are due to concerns expressed by West Midlands Police in relation to the operation in general - both the security arrangements and the management arrangements. The incident had shown that management and the security staff had inadequate control over the running of the premises, and as a result public safety was at risk.

Nobody from the premises attended the meeting, nor did they instruct anyone to represent them. The Sub-Committee was keen to hear any submissions that the premises wished to offer, and accordingly they delayed the start of the hearing for thirty minutes, in case the relevant persons were merely delayed.

However, in the event, nobody attended, despite the Director of the company which holds the premises licence attending the Expedited Review hearing in May 2018, at which the instant date was set down. West Midlands Police also confirmed that last week, the Director had asked if she could telephone the Police for a discussion, and was told she could telephone on Monday morning; however at the appointed time she had not in fact telephoned.

Previous Review of Licence – November 2017

The meeting began with an examination of the additional conditions which the Sub-Committee had imposed on Arthouse in November 2017, when the Licence was last reviewed. The Police observed that far from being the fresh start under new management that was offered by Arthouse at that meeting, the reality was that after only six months it had become apparent that those at the Arthouse had breached the majority of the additional conditions, and in particular those relating to Mr Jordan Patel, the CCTV and the Schedule of Events, namely:

- The Sub-Committee had decided in November 2017 that Mr Jordan Patel, who had proven himself to be completely unsuited to responsible and safe operating, was to have no managerial control or decision-making function over these premises. This order appeared to have been taken on board, because the Designated Premises Supervisor named on all documents put before the Sub-Committee was a Mr Jacob Kerin. However the staff from Arthouse, when

speaking to the police officers who had responded to the 999 call reporting a firearm incident, described Mr Patel as the person in charge, and stated that he was the Designated Premises Supervisor for Arthouse.

- The Sub-Committee had decided in November 2017 that the CCTV arrangements should be managed by the Designated Premises Supervisor; this should of course have been Mr Jacob Kerin. Yet dealings with the Police relating to CCTV in the aftermath of the 12th May incident were undertaken by Mr Patel - the person who had been ordered to have no managing control. Indeed the Police confirmed to the Sub-Committee that they had never had any communications from Mr Kerin at any time
- The Schedule of Events, or 'Venue Management Plan', named Mr Jacob Kerin as the Designated Premises Supervisor, and in addition was wholly unsatisfactory in terms of lack of detail, with the majority of events described simply as 'to be confirmed'

The event of 12th May 2018

During the hearing, part of which was held in private for the Sub-Committee to view a video recording of Police bodycam, the Police gave detailed evidence of what had happened – both during the emergency response, and in the aftermath.

To summarise the points made, a 999 call to Police was received at 03:11 hours, to report an incident involving a firearm. The call had come from an individual, not from the Arthouse management. On arrival, Police witnessed a chaotic scene as a 'starburst' of patrons fled the Arthouse site on foot and/or by car; cars were witnessed driving off at high speed.

A member of Arthouse security staff spoke to Police and was recorded on Police bodycam stating that a gun had been pointed at a man's head inside the premises. This security staff member informed Police that the Designated Premises Supervisor was Mr Jordan Patel – thereby confirming breach of the condition imposed at the hearing in November 2017, that Mr Patel was to have no management responsibility.

Another member of Arthouse staff, Ms Tenesha Stewart, who had been acting as some kind of Events Organiser/ Events Manager or similar, also spoke to Police attending on the night. She stated to Police that there had been some disorder in the club, leading to ejections of some patrons, but was adamant that she had not seen any gun. This seemed surprising given that security staff from Arthouse, recorded on Police bodycam, had confirmed that a gun had been pointed at a man's head inside the club.

Ms Stewart also told Police that Arthouse was equipped with CCTV, but stated that only Mr Jordan Patel could operate the CCTV – thereby confirming breach of the condition imposed at the hearing in November 2017, that responsibility for the CCTV lay with the Designated Premises Supervisor.

Police request for CCTV

The Sub-Committee felt that the manner in which Arthouse had handled the CCTV request, made by Police following the incident, made clear that the Arthouse CCTV arrangements were entirely unsatisfactory, and a risk to public safety.

The Police who attended at the premises were not given the opportunity to observe Mr Patel downloading the CCTV in front of them; instead they were handed a memory stick by Mr Patel that he said was the footage from the night in question. When viewed, the film shown on the memory stick did not corroborate any of what officers were told and/or witnessed on the night – namely a 999 call making reference to a firearm being brandished in the club; a chaotic ‘starburst’ of patrons fleeing the premises in a panicked manner; an Arthouse security guard stating that a gun had been pointed at a man’s head; Ms Tenesha Stewart stating that disorder had broken out and as a result some patrons had had to be ejected.

When Police took up this discrepancy with the premises, they were informed by those at Arthouse that the hard drives of the CCTV had been ‘wiped’. The premises blamed the situation on a ‘power cut’, after which the CCTV had been reformatted, despite a clear written explanation from a CCTV expert that reformatting would wipe the recordings. The Sub-Committee found this extraordinary.

The order to reformat the CCTV had been given by Ms Tenesha Stewart – the person who had stated to police that ‘only Mr Patel’ was authorised to deal with CCTV; more importantly, Ms Stewart was also the person who had confirmed to police that a breakout of disorder had occurred in the club. As a result of Ms Stewart’s order to reformat the CCTV, the Police could not even confirm if the date & time of the CCTV on the memory stick was correct, as the original footage had been wiped.

The Sub-Committee looked askance at this. It was the opposite of how a responsible premises would operate.

Other details of the operating arrangements on the night also gave cause for concern. Six security personnel were on duty - not the ‘eight’ shown on the Venue Management Plan. The Incident Report Book for the night was examined by Police and found to be completely blank; this was despite Ms Stewart having confirmed that there had indeed been disorder and that some patrons were ejected as a result.

Management arrangements and personnel:

The unsatisfactory management arrangements were examined in detail.

Mr Jordan Patel

It went without saying that the Sub-Committee took a very dim view of the involvement of Mr Patel at managerial level. The Arthouse licence had only remained in force at the November 2017 hearing after fulsome assurances were given that Mr Patel would no longer have any managerial control whatsoever; yet the evidence presented at the instant meeting was that he was, to all intents and purposes, the Designated Premises Supervisor, responsible for general day-to-day management in all aspects of the operation. This had been confirmed to Police attending on the night by two members of Arthouse staff.

When dealing with Police over the CCTV, Mr Patel expressed irritation and said that the incident of 12th May had been nothing to do with ‘his’ venue. An independent witness (event promoter) who gave a statement to Police confirmed

that all his dealings with Arthouse were only ever conducted by Mr Patel and Ms Stewart; the event promoter said he had been told to contact Mr Patel as the 'owner' of Arthouse, and thereafter Mr Patel himself had confirmed to the promoter that he was the owner.

When the Sub-Committee examined the emails between the event promoter and Mr Patel, it was clear that Mr Patel was acting as Designated Premises Supervisor in his dealings with prospective customers. Mr Patel was the person they dealt with, to whom they made payments, and from whom they demanded refunds.

Mr Jacob Kerin

Conversely it appeared that the named Designated Premises Supervisor, shown on all documents as a Mr Jacob Kerin, was nowhere to be seen – either on the night of the incident, or in the aftermath; he had undertaken no dealings with Police at all. Mr Patel was the person put forward by the two members of staff who spoke to Police on the night of the incident; equally, when contacted by Police, Mr Patel undertook all dealings with the Police, instead of referring Police to the relevant people - namely Mr Kerin the Designated Premises Supervisor, or Mrs Lucy Wilcox the Director of the Premises Licence Holder company.

Mrs Lucy Wilcox

It was apparent that Mrs Lucy Wilcox also did not have any real managerial control over Arthouse. Instead, she was more a 'name' to be used on documents, and in particular to ensure that the premises licence was retained at the meeting in November 2017. Yet despite the assurances given in November 2017, that Mrs Wilcox would take full responsibility, it was apparent that in a few short months Mr Patel had resumed his previous role of general management of the Arthouse premises.

When contacted by Police, Mrs Wilcox referred to her 'Operations Team'; by this she meant Mr Patel. Regarding the CCTV reformatting debacle, Mrs Wilcox's emails to Police showed that she either did not know about the reformatting, or did not tell the Police; either option was unacceptable from any Premises Licence Holder.

The event held on the night of the incident was discussed by Police with Mrs Wilcox by email before the Expedited Review hearing. Yet at the Expedited Review hearing Mrs Wilcox began to refer to the event as 'a birthday party' for the first time, which surprised the Police Officer who attended the meeting. When Police asked for further details of the booking, they noted that it was described on the Venue Management documents as an 'in-house promotion', which would obviously not describe private hire of the venue for a customer's birthday party; moreover the booking was not made by Mrs Wilcox or the Designated Premises Supervisor, but by Ms Tenesha Stewart.

Ms Tenesha Stewart

The name of Ms Tenesha Stewart was already well known to the Sub-Committee due to her association in recent years with problem premises elsewhere in Birmingham, which had been so irresponsibly managed that they had come to be frequented by organised crime groups. Incidents of crime and disorder had occurred at those premises, and the licences for those premises had duly been

revoked by the Sub-Committee. The Sub-Committee was unimpressed that Arthouse, a premises which had had a troubled history itself, had seen fit to employ a person who was known to have demonstrated no concern whatsoever for the safety of night-time patrons in the city.

The Police observed that the unsuitable personnel employed, and the unsatisfactory practices that went on, at Arthouse, could not possibly uphold the licensing objectives. Their arrangements were not a responsible way to operate, and it was perhaps inevitable that with persons such as these employed at the premises, incidents requiring the attendance of the Police would be the result.

The Sub-Committee agreed with the Police, and observed that not one of the four attended the meeting themselves, or instructed anyone to represent Arthouse. Whilst the Sub-Committee had initially been surprised at this, after hearing and viewing the Police evidence, the Sub-Committee concluded that the initial line taken by the premises (of denying that the incident had ever taken place) could no longer be maintained. The failure to attend suggested that they felt unable to account properly for themselves, or to answer the obvious questions.

Decision to revoke

All in all, the Sub-Committee lacked all confidence that the premises was able to uphold the licensing objectives. This was a view formed by the Sub-Committee after hearing directly from West Midlands Police.

It was overwhelmingly clear that a serious incident had indeed occurred inside Arthouse. The brandishing of a firearm had been reported by the person who called 999, and confirmed by Arthouse's own security employee. The loss of control, leading to chaos and a 'starburst' of patrons out of the premises and into the street at around 3am, was significant in terms of the risk to the public. The handling of Police requests, and in particular the order to reformat the CCTV hard drives during an ongoing Police investigation, was unacceptable. Accordingly the Sub-Committee had no confidence in the ability of those at Arthouse to ensure public safety.

The Police's concern was that despite a previous Expedited Review hearing quite recently (November 2017), in which stringent additional conditions had been imposed, the licence holder had shown no regard whatsoever for those additional conditions, and had demonstrated that those at Arthouse were not capable of operating the premises responsibly. There was a clear risk of further crime and disorder, and a risk to public safety - particularly in relation to firearms - which meant that revocation of the licence, and maintenance of the interim step of suspension, was the correct course to ensure public safety.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, remove the Designated Premises Supervisor, or suspend the licence for a specified period of not more than 3 months, but was not satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination. It was the recommendation of the Police that such a course would have no effect. The Sub-Committee agreed with this. The additional conditions imposed in November 2017 had been comprehensively breached.

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 Guidance issued by the Home Office in relation to expedited and summary licence reviews, 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 the Police.

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 of suspension, 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.

06/110618 **OTHER URGENT BUSINESS**

There were no matters of urgent business.

The meeting ended at 1217 hours.

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CHAIRMAN