

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB COMMITTEE A FRIDAY 8 JUNE, 2018</b>
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**MINUTES OF A MEETING OF LICENSING  
SUB COMMITTEE A HELD ON FRIDAY  
8 JUNE, 2018 AT 1000 HOURS IN  
ELLEN PINSENT ROOM, COUNCIL HOUSE,  
BIRMINGHAM**

**PRESENT:** - Councillor Barbara Dring in the Chair;

Councillors Nagina Kauser and Mike Leddy

**ALSO PRESENT**

David Kennedy - Licensing Section  
Joanne Swampillai – Committee Lawyer  
Louisa Nisbett - Committee Manager

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**NOTICE OF RECORDING**

1/080618 The Chair advised the meeting and it was noted that members of the press/public may record and take photographs except where there are confidential or exempt items.

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**DECLARATION OF INTERESTS**

2/080618 Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations to be recorded in the minutes of the meeting.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/080618 There were no apologies or nominee members.

**APPOINTMENT OF SUB-COMMITTEE**

4/080618 **RESOLVED:-**

That the appointment of by the City Council of the Committee and Chairman for the Municipal Year 2018/19 be noted.

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**MINUTES**

5/080618 The public part of the Minutes of the meetings on 9 April, 23 April, 24 April and 14 May, 2018, having been previously circulated were confirmed and signed by the Chairman.

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**DELEGATIONS TO SUB-COMMITTEE**

6/080618 **RESOLVED:-**

That the delegations to the Sub-Committee be noted as follows:-

To determine matters relating to the Licensing Act 2003, the Gambling Act 2005, hackney carriage licences and private hire licences and such business as may be referred by the Director of Regulation and Enforcement.

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**LICENSING ACT 2003 – PREMISES LICENCE – REVIEW, CLOUD NINE, GOOCH STREET NORTH, BIRMINGHAM, B5 6QU**

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

(See document No. 1)

The following persons attended the meeting:-

**On behalf of the Applicant:**

Mohammed Malik – Premises Licence Holder  
Duncan Craig – Counsel for Premises Licence Holder

**Those Making Representations on behalf of West Midlands Police**

Sergeant Ben Parsons – West Midlands Police  
Molly Joyce – Counsel for West Midlands Police

Following introductions by the Chair, the main points of the report were outlined by David Kennedy, Licensing Section.

Molly Joyce requested that the photographs and CCTV footage which included images of children should be shown in private.

The meeting adjourned at 1035 and reconvened at 1038 hours. It was

7/080618

**RESOLVED:-**

That the photographs and CCTV footage should be viewed in private for the protection of children.

The following additional evidence - CCTV footage (to be shown in private), photographs and a Conditions of Hire document was submitted by West Midlands Police:-

(See document no. 2)

Molly Joyce made the following points on behalf of West Midlands Police and in response to Members' questions:-

1. It was noted that the Premises Licence did not permit the sale of alcohol therefore a Designated Premises Supervisor was not required for the premises.
2. As a result of the Closure Order issued to Cloud 9 by the Magistrates Court under section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014 the Licensing Authority is required to review the premises licence.
3. West Midlands Police have submitted a bundle of evidence and would draw attention to the relevant parts. Reference was made to the Witness Statement by P C Rob Moore indicating that a man had been arrested on 7 May 2018 for selling silver canisters of Nitrous Oxide to children from a vehicle outside of Cloud Nine Shisha Lounge. A number of boxes containing Nitrous Oxide had been seized from the premises including some that were stored in the fridge.
4. Molly Joyce highlighted particular aspects of the statements from Officers of West Midlands Police. P C Cartmell on his arrival found small silver canisters on the floor which he suspected to be psychoactive substances known as laughing gas. A PACE search was carried out and boxes of Nitrous Oxide and used canisters were found on the floor inside the premises.
5. In the statement from PC Willetts, a large number of youths were present at the premises a number of which were under 18 and he witnessed one of them inhale the contents of a balloon. He had met Mr Ashtiq at the premises on a previous occasion. During a search of Mr Ashtiq's car a box and bag containing unused canisters of Nitrous Oxide, balloons and cash were found.
6. A number of photographs were taken as evidence by WMP, including some of children. There was also evidence of large number of capsules lying on the street.
7. At another incident PC Willetts had been told by a member of the public that the street had been covered in capsules before the police had arrived, however it had been cleaned up.

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8. WMP and West Midlands Fire Service were called out to an incident on Easter Monday 2018. Several hundred young people had entered the premises, causing traffic chaos outside the premises. In his view there was a look out person at the premises because each time WMP arrived the venue closed the shutters to make it look as if they were closed. When they attempted to gain entry the premises appeared to be closed however they could hear the music from inside. WMFS were called out at which point the shutters were opened. Inside 2 open plan rooms contained 250 – 300 people. One youth said he was 13 however in the opinion of WMP he was more likely to be 11. The licence was for over 18's.
9. The premises were completely full with 250-300 young people even though the licence allowed for up to 50 people. Some of the customers said that they had been sold canisters from the bar staff. There were empty Moet and wine bottles although there was no alcohol licence for the premises.
10. The Fire Safety Officer said that there was no working fire alarm. The shutter had been closed down at the front of the premises. Had there been a fire the people inside the premises would have been trapped. A DPS was not required.
11. The Fire Safety Officer had imposed a restriction on trading until there was a working fire extinguisher. The CCTV showed that they had been trading 5 hours after the licence allowed.
12. The attitude of staff had been appalling. They had been obstructive, rude and laughed at the police officers. Pictures of empty canisters, empty capsules, balloons, empty Moet and Champagne bottles were highlighted.
13. Statements from 2 April 2018, page 80/81 indicate that once the shutters were opened up a large amount of young people rushed out. Again there was alcohol being consumed. A lock knife was found on the floor. When asked Mr Ashiq stated that no searches were carried out on entry as there were too many people to search and it would take all night.
14. Page 86 – Further statements were read out stating that the ages of some of the young people were younger than 16. Customers were told that staff could supply them with alcohol and the canisters if they wanted them. A number of teenagers said they were waiting to get in as their friends were inside.
15. The street outside the premises and floor of the premises were littered with canisters and boxes of alcohol. There were also boxes outside the premises next to the bins.. Incidents had occurred on 18 February as well as 7 May. When the police arrived following an incident on 18 February at 0210 hours the venue was full of customers. The manager said it was closed and he had asked them to leave. The young people informed that the premises was normally open at this time and they would be let back in after the police had gone.
16. Incident on 23 April 2017 – The shutters were closed down and there was approximately 30 youths inside causing carnage throwing capsules at each other. When the staff saw the police they tried to clean up the canisters.

17. Staff said that they were nothing to do with the canisters. They could not control what happened there. Someone was told in Urdu to hurry up and clear up the floor. A staff member was seen holding the canisters in his hand. A man called Cameron said he was the manager and not aware of the legislation regarding the canisters but would ask people to leave.
  18. A parent had complained on 25 October 2017 that Cloud Nine was allowing his 14 year old son to attend and smoke tobacco.
  19. A closure order had been imposed on 20 May, 2018. There had been a potential breach of the closure order on 29 May when there were 6 men inside the premises and an investigation of the incident was ongoing.
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**EXCLUSION OF THE PUBLIC**

08/080618 **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.

Cloud Nine, Gooch Street North, Birmingham, B5 8QU.

CCTV footage and photographs of children.

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The meeting reconvened in public at 1221 hours.

1. Molly Joyce continued that with regard to Crime and Disorder - WMP were seeking a revocation of the licence because it was the opinion of a number of police officers who had attended incidents at the venue that criminal activity was taking place on the premises. The canisters had been supplied to children under 18 years of age.
2. Public Safety – Numerous incidents had been captured on CCTV when there were large numbers of children present in the premises. If there had been a fire and electrical failure all those inside would have come to potential harm.
3. The main aim was to protect children. Police resources had been used to visit the premises on numerous occasions. As well as the incident on 2 April 2017 other incidents had taken place.
4. David Kennedy explained the background to the licence being granted in 2016 with modified conditions to the original application.
5. WMP confirmed that if the premises were to reopen following the closure order they would probably make representations. They were asking for the Sub-Committee to revoke the licence.

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The meeting adjourned at 1234 hours and reconvened at 1235 hours. The Chairman advised the representative for the Applicant, Duncan Craig that any questions should relate to the public meeting.

Duncan Craig questioned whether there was any evidence that Mr Malik was at the premises at the time of the incidents. Mr Malik was not aware of the incidents as he was not present.

Duncan Craig in presenting the case for the Premises Licence Holder and in response to questions from Members made the following points:-

1. The Closure Order gives the powers of the Court to close a premise for 4 to 6 months and the punishment and steps taken should be proportional. The premises licence holder had co-operated with the police during the proceedings and the closure order was by consent.
2. With regard to the dates in question, Mr Ashiq had been arrested for the supply of psychoactive substance nitrous oxide. The substance also had legitimate uses in diary products.
3. The Licence for Shisha Bars included food. With regard to the 12 or 13 items that had been found in the fridge, sweets and deserts were sold in most restaurants in the City therefore there would be nitrous oxide in the fridge.
4. There was no evidence of any substance being supplied in the premises and the supply had taken place outside. The premises were not responsible as this was away from the control of the premises. The vast majority of canisters had been found in the street
5. Mr Malik felt let down by Mr Ashiq who was the door supervisor on a sub-contracted basis. An ongoing criminal investigation was taking place.
6. The allegations had been made against the premises, however apart from being present after a wedding on 2 April, 2018, Mr Malik had not been present.
7. There was no hard evidence to prove the ages of the young people present. There was nothing wrong with people under the age of 18 being on the premises prior to 1800 hours.
8. Focus should be on what was inside the premises. The applicant was not present but was told that the shutter was put down because it was felt that the situation could become potentially unsafe.
9. The fire risk assessment stated the capacity as 55 which was surprising as the premises were of a decent size. The person calculating the capacity had set the limit on the number of fire escapes. They did not feel that the capacity set was still applicable as the premises had complied with the fire risk assessment. WMFS had been concerned that the rear door was not illuminated sufficiently and there had been a trip hazard. There was now more than one fire escape which changed the position of the capacity.
10. In response to a query David Kennedy advised that the fire risk assessment they were operating to at the time was a capacity of 55. Had there been any

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changes then they should have requested that the fire risk assessment be amended. Premises operate on the last fire risk assessment undertaken.

11. Mr Malik had not been present when the shutter had been closed because it was felt that the premises could become potentially unsafe due to the number of young people coming in. They were not aware that the police were outside.
12. There premises did not have a licence to sell alcohol as it was not that type of premises. No stocks of alcohol had been found on 2 April apart from a couple of champagne bottles. It was suggested that the young people must have taken alcohol into the premises themselves. There was no evidence to suggest it had been sold inside the premises. Alcohol boxes had been found in the bin over the road.
13. There had been no breach of the closure order. The reason Mr Malik had attended the premises was because the fire alarm had gone off. He had the right to protect his property.
14. There would be more clarity in the conditions of licence if the condition relating to under 18's was removed and replaced with – "that no persons under 18 years old be permitted on the premises at any time".
15. Two hard drives belonging to Mr Malik had been taken by West Midlands Police. He had requested that they be returned but did not receive a response to the request.
16. Mr Malik was willing to take whatever steps were necessary to satisfy West Midlands Police that the premises should remain open. Subject to the closure order the premises could open and serve food up to 2300 hours. The Committee were invited to use its powers to modify the conditions of licence. It was submitted that to revoke the licence in these circumstances was not appropriate.
17. Mr Malik had not been present at any of the incidents and has cooperated with the police.
18. The events on 2 April and 7 May, 2018 had been special events and the premises had been hired out. The pictures of alcohol were taken outside the premises. The contract for security included searching individuals and recording refusals.
19. Mr Malik had allowed Mr Ashiq to hire out the premises on 7 May, 2018. On 2 April, 2018 it had been booked by travellers for a birthday party and the venue was to provide security arrangements, however the security had not turned up and Mr Ashiq undertook this role. Mr Malik was not aware that Mr Ashiq had not worn high visible wear as he was not there.
20. In response to a comment that the CCTV equipment was out of order for a month, Mr Malik was not aware that the hard drive had been taken by the police on 7 March and thought that they had downloaded the footage. This had led to there being no CCTV recording being available for later events.

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21. Mr Malik said that Steve Graham, WMFS had agreed that the capacity calculation could be changed but he had not received any correspondence from him. He was not aware what the new number for capacity was as the premises were closed.
22. Mr Malik was still in the process of transferring the licence to a Mr Hussain and was awaiting confirmation. His only connection with Mr Ashiq was that he had worked for him previously however there had not been any issues. He did not know him prior to that. There was approximately 12-14 staff on duty at busy times and 4 on quiet days.
23. Mr Ashiq had signed the document on 2 April, 2018 but had told the police he was not in charge. There was a contract for the hire out of the venue. There was a search policy on the door and the door supervisor should sort this out. The previous incidents had not been brought to his attention. If he had been aware of them he would have taken action. The hire of the venue was signed off by himself or one of the staff. He was shown references etc for promoters of events to be held there. He had not been told that he must be present at all times when they were open.
24. He would not allow his child to attend the premises.
25. Staff worked on a rota basis. They used a large amount of the canisters for drinks. Potentially 90% of customers bought drinks so they found it cheaper to buy the stock of nitrous oxide in bulk. The premises was used as a multi-purpose venue for Shisha, arcade, restaurant, deserts and conference purposes.
26. The issues he has been made aware of today should have been addressed with staff at the time and the police should have spoken to him about them.
27. All of the security staff were self-employed but SIA registered. He was aware of the importance of carrying out searches.

In summing up Molly Joyce stated that Mr Malik had been aware of the issues and they were included in the bundles prepared in advance of the meeting. It was not the responsibility of the police to find the licence holder and speak to them about the issues as they had spoken to someone who appeared to be management at the time and said that his name was Cameron.

Evidence had been provided in the form of CCTV footage, pictures and evidence in the bundle. There was an ongoing investigation into crime and disorder at the premises. A member of staff had been arrested on suspicion of selling substances to young people. Substances were also found in the fridge and officers had been told by the young people that they had been sold to them by staff.

There was an element of disorder seen in the number of call outs and obstruction on the street. The pictures inside the premises showed hundreds of nitrous oxide capsules on the floor. It was not plausible that staff were not aware how they got inside. This showed they had been sold and consumed on the premises. There was a lack of regard for public safety. The fire exit had been shut and the explanation for shutting the shutters to stop more people coming in was not



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plausible. It can be seen on the CCTV footage that they were shut when the police arrived. There were in excess of 250 young people on the premises when the capacity was 55.

The licence should be revoked, there was a lack of regard for the safety of children. The events were targeted for the under 18's. The police had been told by the children that they had been sold alcohol and drugs by staff and they had allowed underage children to consume them on the premises. The condition being offered was not acceptable or workable.

There was no CCTV of the incidents in April and May in line with the conditions of licence. The responsibility for the licence is with the Premises Licence Holder. It was not plausible that he was not aware of what was going on. To revoke the licence was the only action.

In summing up, Duncan Craig said that the evidence was unreliable. It was not known what was contained in the boxes that were carried in. The statements from young people could not be verified. Mr Malik did not know who Cameron was.

Mr Malik wanted to positively work with West Midlands Police in opening the premises and promoting the licensing objectives. The condition for no under 18's to be on the premises at any time should be accepted.

The Applicant should be given a chance and the Sub-Committee should step back from revoking the licence.

At 1400 hours, the Sub-Committee adjourned and the Chair requested that all present, with the exception of Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1440 hours, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

9/080618

### **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Mohammed Malik, in respect of Cloud Nine, 76 Gooch Street North, Birmingham B5 6QU, in accordance with Section 80 of the Anti-Social Behaviour, Crime and Policing Act 2014, this Sub-Committee hereby determines that the licence

### **BE REVOKED**

in order to promote the prevention of crime and disorder, public safety, and the protection of children from harm objectives in the Act.

The Sub-Committee decided to revoke the licence due to concerns expressed by West Midlands Police in relation to a recent incident. The Police confirmed that the Cloud Nine premises operated under a Licence which permitted regulated entertainment and late night refreshment, but no sale of alcohol.

A daytime Special Event held at the premises in May 2018 had required the attendance of both West Midlands Police and the West Midlands Fire Service. There had been a lack of proper management control which had resulted in the

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Police forming the view that crimes were being committed and that public safety and child protection was being seriously compromised. It had also been observed by Police that the Conditions of the Premises Licence were not being observed, for example relating to CCTV and security, and that there were inadequate management arrangements across the entire operation. Public safety was at risk. The incident, which had involved the staff (and /or associates) and the management of the premises, had resulted in Birmingham Magistrates' Court issuing an immediate Closure Order against the premises.

The greatest concern was the safeguarding of children. At the incident in May 2018, it was observed by Police that all the indications were that:

- the majority of patrons at the event were aged under 18;
- there were no safeguarding measures whatsoever in place for a daytime event aimed at, and attracting, those aged under 18, and some of whom appeared to be as young as nine years of age;
- the person in charge of the event confirmed to Police that patrons were not searched at the door, and other staff added that this was due to the large numbers being admitted;
- illegal psychoactive substances were being supplied by, and consumed on, the premises;
- alcohol was being supplied by, and consumed on, the premises - despite the premises holding no licence to sell alcohol by retail;
- the fire capacity of the premises had been vastly exceeded, and in the event of a fire, public safety would have been compromised

Given all the circumstances, West Midlands Police recommended that revocation was the only correct course in order to promote the licensing objectives in particular the prevention of crime and disorder, public safety, and the protection of children from harm.

The Sub-Committee heard from the Premises Licence Holder and was unimpressed with his answers to questions. He was the person with responsibility for the premises, yet had shown a flagrant disregard for every licensing objective, especially relating to child safeguarding.

The West Midlands Fire Service had found that one fire escape was nailed shut, and the front entrance was controlled by electric shutters which had been lowered, perhaps to conceal what was going on inside. The Sub-Committee was aghast on hearing how fire safety had been further jeopardised by those at Cloud Nine due to the decision to exceed the 55-person capacity limit several times over; the daytime event had attracted some 200 to 250 children under 18, who would have been at significant risk of being trapped inside the building in the event of a fire.

At the conclusion of the evidence, Members had no confidence whatsoever that the Premises Licence Holder was capable of promoting the licensing objectives. The Premises Licence Holder (PLH) suggested that he had been misled by the person running the event, but the Sub-Committee considered the PLH to be entirely culpable; he was, after all, the responsible person. They considered his offer of an amended condition to be completely inadequate, especially given that the Police were not satisfied that he was observing the existing conditions. The

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fact that the PLH confirmed to the Sub-Committee that he would not permit any child of his to attend an event of this type spoke for itself.

Having heard all the evidence, the Members of the Sub-Committee determined that the only correct course to ensure the safety of the public, especially children, and to promote the four licensing objectives within the Act, was to revoke the Premises Licence.

The Sub-Committee gave consideration as to whether it could modify the conditions of the licence, or suspend the licence for a specified period of not more than 3 months, but was not satisfied given the evidence submitted (part of which was heard with the public excluded from the hearing following a request from West Midlands Police, in accordance with Regulation 14 of the Licensing Act 2003 (Hearings) Regulations 2005), that the licensing objectives would be properly promoted following any such determination.

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 Closure Order made by the Magistrates' Court which prompted the Review hearing, the written representations received and the submissions made at the hearing by those representing West Midlands Police, and the premises licence holder and his legal adviser.

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 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 disposal of the appeal.

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### **DATE OF MEETINGS**

10/080618 **RESOLVED:-**

That the Sub-Committee will meet on Mondays at 0930 hours, subject to business.

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### **OTHER URGENT BUSINESS**

11/080618 There was no urgent business.

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**EXCLUSION OF THE PUBLIC**

12/080618 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 Paragraph 3

Private Minutes

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CHAIRMAN