



BIRMINGHAM CITY COUNCIL
LICENSING SUB-COMMITTEE C

14 SEPTEMBER 2020

PB's, 54 – 57 Key Hill, Hockley, Birmingham, B18 5NX

That having reviewed the premises licence held under the Licensing Act 2003 by Nickeshia Reid-Davidson in respect of PB's, 54 – 57 Key Hill, Hockley, Birmingham, B18 5NX following an application for an expedited review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines that

1. The Licence be revoked,
2. Nickeshia Reid-Davidson be removed as Designated Premises Supervisor from the licence, and
3. The interim step of suspension is to remain in place until the determination of any Appeal

Before the meeting began the Sub-Committee was aware of the amended Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, the updated Guidance entitled 'Closing Certain Businesses and Venues in England' issued by HM Government on 3rd July 2020, and the Guidance entitled 'Keeping Workers and Customers Safe in Covid-19 in Restaurants, Pubs, Bars and Takeaway Services' issued originally by HM Government on 12th May 2020 and updated regularly thereafter.

Part of the evidence was heard 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 hear the evidence in public would undermine the licensing process. The legal representative for the premises did not object to this course, and therefore the Sub-Committee agreed.

Members then heard the submissions of West Midlands Police, namely that on at least seven occasions from the start of August 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, the Police had observed a general failure by PB's to follow the Government Guidance. Upon visiting the premises, Police found that loud music was playing at a volume which prevented conversation, and also observed that patrons were not seated but were standing (many were in fact dancing). There was no social distancing or limitation of numbers of patrons to allow for safe operation as per the Covid-19 requirements. The Police ascribed these failures to unsatisfactory management by the premises licence holder, who is also the designated premises supervisor.

The Sub-Committee was perturbed to hear that although Police had spoken directly to the premises licence holder to advise, to offer guidance and to explain what was

expected of a licensed premises to trade safely in the ongoing Covid-19 pandemic, these numerous attempts to advise had had no effect. Police officers sat with the premises licence holder to guide her on what to do; despite this, it appeared that she was either unable or unwilling to follow advice from the Police, and indeed she had even remarked to Police that she was too busy 'preparing food' (for an event at the premises) to follow the instructions relating to Covid-19. The Sub-Committee looked askance at this comment, and considered it an indication of an operator who had failed to take her responsibilities seriously.

Police had requested that the licence holder supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; this had not been forthcoming. The document which was supplied to Police later, which had been submitted to them as a 'risk assessment', was in fact better described as a check-sheet, and was found to be wholly unsatisfactory by Police.

Furthermore, it was also observed that the premises licence holder was even in breach of some of the existing conditions on the licence, for example by placing a large speaker in the yard outside the premises. Security guards informed Police Officers that this speaker had been installed to play music for an event.

The Police explained that Ms Reid-Davidson's decision to trade in this unsafe manner, which was completely at variance with the Government Guidance, was an overt risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. The Covid-19 virus is a pandemic which has required all licensed premises to act responsibly and in accordance with both the law and the Government Guidance when trading, in order to save lives. It was therefore a flagrant public nuisance for any licensed premises to breach the Government Guidance by trading in an unsafe manner.

All in all, the Police were concerned that the premises licence holder had shown recklessness in her style of operating, and was endangering public health by risking the spread of Covid-19. The Police recommendation therefore was that the Sub-Committee should revoke the licence.

The Police representations were fully supported by both Public Health and Environmental Health. It was noted by the Sub-Committee that Dr Justin Varney, Director of Public Health for Birmingham, had reportedly been aghast to hear of the style of operation practised by Ms Reid-Davidson, in the midst of a pandemic. It was dangerous conduct of this kind, by a minority of licensed premises, which had contributed to the need for special lockdown measures (specifically for Birmingham) which had been announced by HM Government on Friday 11th September 2020, ready for introduction on Tuesday 15th September 2020. These measures were an attempt to control the sharp rise in Covid-19 cases in the city.

It was further noted by the Sub-Committee that this style of irresponsible trading undermined the efforts of other licence holders in the city, who had been showing a proper and responsible attitude in doing their best to observe the Government Guidance, at great cost to themselves. It was conduct which could not be supported by anyone involved in the licensed trade. Many venues were struggling, across the city - and indeed across the country. Reports of the plight of licensed premises had been appearing in news reports for months.

The premises licence holder then addressed the Sub-Committee via her legal representative. Having heard these submissions, the Sub-Committee agreed with the

Police that the causes of the serious crime originated from unsatisfactory internal management procedures at the premises. The Sub-Committee was not persuaded by the representations made on behalf of the licence holder. When the licence holder herself addressed the Sub-Committee directly, Members were thoroughly unimpressed with her answers to questions. All in all, the Sub-Committee considered her to have failed to take her responsibilities seriously. This failure was overwhelmingly due to her lack of experience; whilst she had had a previous background of bar work, she had not had any managerial experience at all in the licensed trade. Her other occupation had been care work.

The legal representative suggested a course for the Sub-Committee to take, namely to impose a one-month suspension, amendment/enhancement of the conditions, and also to remove Ms Reid-Davidson as designated premises supervisor so she could be replaced by somebody more suitable.

This proposed course was completely unsatisfactory to all three of the responsible authorities. Public Health had no confidence in such an inexperienced person continuing to deal with licensing responsibilities, and described the style of operation as “one of the worst examples we could wish to see” at any licensed premises during the pandemic. Environmental Health observed that one month would definitely not be sufficient time for an inexperienced person to implement revised conditions, especially given that she had not been compliant with existing conditions. West Midlands Police felt that any replacing of the designated premises supervisor would not tackle the real issue, which was the unsuitability of Ms Reid-Davidson to hold the premises licence and to uphold the licensing objectives.

In making their decision, the Sub-Committee determined that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises; it was therefore both necessary and reasonable to revoke the licence to address the immediate problems with the premises, namely the likelihood of further serious crime. Any other course would offer little to address the real issues, which were the unsatisfactory operating practices, and the irresponsible attitude shown, by the licence holder personally. This was particularly important given that the day after the meeting Birmingham would be going into special lockdown measures ordered by HM Government due to a spike in Covid-19 cases in the city. The Sub-Committee agreed with the Police that to revoke would act as a deterrent to other unsatisfactory operators, whilst also supporting those operators who had been responsible in abiding by the Government Guidance.

The Sub-Committee also determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the Government Guidance in order to trade as usual. The Sub-Committee was not persuaded by the legal representative’s argument – namely that there was no need for a ‘deterrent’, and instead Ms Reid-Davidson could become an example of a licence holder who was able to improve; her poor record and complete lack of managerial experience made this a vanishingly remote possibility and, given the context of the pandemic, was a risk that the Sub-Committee could not countenance. Therefore the risks could only be properly addressed by the revocation of the licence and also removal of the designated premises supervisor, together with the maintenance of the interim step of suspension pending any Appeal.

In reaching this decision, the Sub-Committee has given due consideration to the City Council’s Statement of Licensing Policy, the latest version of the Guidance issued

under Section 182 of the Licensing Act 2003 by the Secretary of State, the application and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003, the written representations and the submissions made at the hearing by West Midlands Police, by Public Health, by Environmental Health, and by the premises licence holder through her legal representative.

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 maintaining the interim step decision of the 19th August 2020, 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.