



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE - C

WEDNESDAY 6 NOVEMBER 2024

**NOX BAR (FORMERLY TMRW), THE ARCADIAN,
70 HURST STREET, BIRMINGHAM B5 4TD**

That having considered the application made and certificate issued by a Superintendent of West Midlands Police under section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by UK.BM.Power Entertainment Limited in respect of Nox Bar (formerly TMRW), The Arcadian, 70 Hurst Street, Birmingham B5 4TD, this Sub-Committee determines:

- that the licence be suspended, and
- that Mr Manoochehr Esmaili be removed as the designated premises supervisor

pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application.

The Sub-Committee's reasons for imposing the two interim steps 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. Those documents were in the Committee Report.

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 the company, as premises licence holder for the premises.

West Midlands Police attended the meeting. The designated premises supervisor also attended the meeting. He confirmed to the Chair that he had been given authority to represent the licence holder company. The Sub-Committee noted this.

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 the matter was an ongoing police investigation regarding an incident of serious crime and/or serious disorder. The Police asked for the proceedings to be conducted in private because if the evidence were to be heard in public it could prejudice the investigation. The designated premises supervisor confirmed that he did not object. The Sub-Committee therefore conducted the meeting in private session.

Members heard the submissions of West Midlands Police, namely that the certificate, which had been issued by a Superintendent under s53A of the Act, related to an allegation of serious crime and/or serious disorder which had originated at the

premises. The details were as per the documents in the Committee Report. The incident warranted the use of the s53A power, and the matter had been brought before the Sub-Committee for an Expedited Review hearing.

The Police had found numerous aspects of the management style to be unsatisfactory – ranging from the risk assessments, security arrangements, and the handling of the incident described in the Report. The Police informed the Sub-Committee that three persons had been stabbed, and there a large-scale disorder had broken out, including the use of bar furniture as weapons. The Police confirmed that as a result of what had been seen thus far, they had no confidence in the licence holder.

The Police advised the Sub-Committee that breaches of the licence conditions were suspected. It had been found that on the night in question the premises had been hosting a promoted event.

The Police view was that interim steps were required in order to deal with the causes of the serious crime/serious disorder. They described the incident as a “catastrophic failure”. It was the advice of the Police that a lack of management control had led to the incident, and that therefore the incident could happen again. It was the Police’s recommendation that the incident had been so serious, and the risk to the upholding of the crime prevention objective so grave, that specific interim steps were required. The safety of the public was at risk.

The Police advised that the correct course was to suspend the licence and to remove the designated premises supervisor, for the reasons given in the Superintendent’s certificate and application. This was in the interests of assisting with the ongoing investigation, and would also guard against the risks of further serious crime and/or serious disorder, pending the full Summary Review hearing in 28 days’ time.

The licence holder company, via the designated premises supervisor who had confirmed that he had been authorised to represent the licence holder, then addressed the Sub-Committee to accept that there had been an incident, as described by the Police. Mr Esmaili described the trading arrangements.

The Principal Licensing Officer observed that there had been no notification of any change of trading name. He asked Mr Esmaili if he was representing UK.BM.Power Entertainment Limited; Mr Esmaili confirmed that he was. The Principal Licensing Officer remarked that in a licence transfer, a company chose to take on the licence and all of the conditions on it. The Sub-Committee noted this.

Mr Esmaili stated that he had been at the premises on the night in question, and stated that the premises “always cared about patrons”. The Sub-Committee asked about the promoted event; Mr Esmaili’s answers were not altogether clear. He answered their questions about what had happened during the event.

The Police made closing submissions and asked the Sub-Committee to note that the event had been promoted and had been a ticketed event advertised on the premises’ website at the time. The Police considered that there had been multiple failings by the management at the premises and the Police had no confidence in the personnel or their ability to uphold the licensing objectives.

In response to this, Mr Esmaili reiterated that he was keen to prevent a recurrence of the incident, and proposed new security measures. However, the Police asked the Sub-Committee to note that nothing had been put forward formally, and the proposals

were not detailed or properly set out. The Police advised that a hiatus was required to properly investigate the incident and to examine the current conditions of licence (which were suspected to have been breached).

Having heard all of the evidence, the Members were mindful of the Guidance issued by the Secretary of State under s182 of the Act, which advised them to only impose those steps which were necessary to guard against the risks of further serious crime and/or serious disorder. However, the starting point was that the Members were not confident that the company understood its responsibilities as licence holder, and moreover were not at all satisfied that there was proper management control of the premises.

The Sub Committee determined that the causes of the serious crime and/or serious disorder appeared to originate from deficient security measures and inadequate internal procedures at the premises, because violence and large-scale disorder had broken out. The Sub-Committee was not persuaded that the premises was being operated to a satisfactory standard, and was not prepared to take any risks whatsoever regarding the potential for further serious crime. It was abundantly clear that the operation was not being run in accordance with the licensing objectives. Any instance of violence or outbreak of disorder in licensed premises was extremely serious.

The Sub-Committee was not satisfied that the licence holder company could be trusted to operate in a manner capable of preventing further serious crime. This was a clear risk to the prevention of crime and disorder objective. All in all, the management style seen at the premises was not at all the standard expected of premises licence holders in Birmingham.

It was therefore necessary and reasonable to impose interim steps to address the immediate problems with the premises, in particular the likelihood of serious crime and/or serious disorder, and to promote the prevention of crime and disorder objective in the Act. The Sub-Committee was mindful that the Guidance issued by the Secretary of State deemed the Police to be the experts in dealing with crime and disorder. The Police had advised the Sub-Committee that the wholly inadequate style of management described in the Committee Report was a significant risk to the upholding of the crime prevention objective.

In reaching its decision, the Members considered the representations made by Mr Esmaili, who represented the licence holder company, but were not satisfied that any proposals were made which properly addressed or remedied the issues identified by the Police.

The Sub-Committee considered the other options of modification of the conditions of the licence, and exclusion of the sale of alcohol by retail from the scope of the licence, but did not consider that these would adequately cover the risks, given the seriousness of what had been described in the Superintendent's certificate and application. The Police had given a firm recommendation.

The Members, having had regard to the representations of the parties, considered that it was suspension of the licence which was necessary to address the totality of issues brought to their attention by the Police. Furthermore, the Sub-Committee agreed with the Police that a hiatus would be of benefit - in order that the breaches of the existing conditions, and the new proposals, could be examined before the full Summary Review hearing.

The correct way forward was therefore to suspend the licence pending the full Summary Review hearing, and to remove the designated premises supervisor. The Sub-Committee considered suspension to be entirely the proper course given what had been described in the certificate and application, and determined that it was both necessary and reasonable to impose the interim step of suspension of the licence to address the immediate problems with the premises, namely the potential for further serious crime.

The Sub-Committee further noted that it was the responsibility of the designated premises supervisor to ensure that alcohol sales were conducted in accordance with the licence. The Sub-Committee therefore determined that the removal of the designated premises supervisor was a very important safety feature. Moreover, it was a course which had been endorsed by the Police. The Members had heard nothing from Mr Esmaili which had persuaded them that he was a suitable person to continue in such a responsible role.

The Members considered that Mr Esmaili had fallen far short of the standards expected of any designated premises supervisor, and that the style of operation described in the Superintendent's certificate and application was a very significant risk to the upholding of the licensing objectives in Birmingham. The designated premises supervisor was therefore removed pending the full Summary Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the application made and certificate issued by a Superintendent of West Midlands Police, the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the written submissions made, and the submissions made at the hearing by West Midlands Police and by the designated premises supervisor who confirmed that he was authorised to represent the licence holder company.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours excluding non-working days.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.