BIRMINGHAM CITY COUNCIL

LICENSING
SUB-COMMITTEE A
13 JANUARY 2025

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 13 JANUARY 2025 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair.

Councillors Maureen Cornish and Ziaul Islam.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Shilpa Manek – Committee Services

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

****

1/070125 **NOTICE OF RECORDING/WEBCAST**

The Chair advised the meeting that the meeting would 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.

2/070125 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at the meeting.
If a disclosable pecuniary interest was declared, a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they had been granted a dispensation.
If other registerable interests were declared, a Member may speak on the matter only if members of the public were 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 was a 'sensitive interest', Members did 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 was set out via http://bit.ly/3WtGQnN. This included, at Appendix 1, an

interests flowchart which provided a simple guide to declaring interests at meetings.

3/070125 **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

Apologies had been received from Councillor Sam Forsyth and Councillor Diane Donaldson was the nominated substitute.

LICENSING ACT 2003 – PREMISES LICENCE – REVIEW – 1 REA COURT, 40 TRENT STREET, BIRMINGHAM, B5 5NL

On Behalf of the Applicant

Duncan Craig – Applicant's Agent
Mihaly Iveszics – Applicant
Kerry Cotes – Agent's assistant

On Behalf of Those Making Representations

Lisa Woodward – Licensing Enforcement

On Behalf of Licence Holder

Chris Turner – Licence Holder
Danny McShane
Giles Halton
Michael Younis

* * *

The Chair introduced the Members and Officers present and asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were made.

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 the Chair invited the applicant and his agent to make their presentation. The following points were made: -

a) The Agent informed the Sub-Committee that due to the increase in noise levels, he had advised the applicant to apply for the review licence option. The applicant did not want the licence revoked.

b) Over the last 12 months, the style of operation had changed, and the entertainment was very loud causing vibration of building. The agent advised that they were seeking to remove the regulated entertainment in line with live and recorded music. It was stated that the building was not suitable for music.

c) The Sub-Committee were shown a clip of the loud noise levels but this was not very clear.

d) The agent commented that the applicant was absolutely sure that the noise was from the premises and not any other near-by clubs. The applicant was aware that there would be noise but it was now the level of noise that was the concern.

The Sub-Committee were informed that the applicant resided at the premises next door to the club.

At this stage the Chair invited the Licensing Enforcement Officer to make their presentation. The following points were made: -

- An inspection had been carried out at the Premises.
- There was no DPS for the premises since 30 November 2024.
- They had met with Mr Turner (licence holder) and Mr Whittle (suggestive DPS) to discuss a number of breaches. These included no DPS in place, no CCTV and alteration of layout as in licence.
- Since the was no named DPS, alcohol could not be sold at premises.
- The premises on the licence was supposed to be a micro-brewery and was now trading as a music venue.
- Mr David Whittle had made an application to be the DPS in 2023, this had been returned unprocessed as he had nominated himself as the DPS. Mr Whittle was very experienced but was never the named DPS.

The Licensing Enforcement Officer made the recommendations that the DPS be removed and the premises licence be revoked as there was no confidence that the licence holder was capable of following the licensing objectives.

At this stage the Chair invited the Licence Holder to make their presentation.

The following points were made: -

- The premises had been going since 2018.
- The licence holder was unaware the Mr Whittle was not the named DPS, his contract had now been terminated.
- A week after the meeting, all conditions had been adhered to.
- There were failings but when these came to light, actions were taken and the licence holder directly engaged with the applicant and the noise was kept to a limit at subsequent events.
- A short presentation was shown about the premises and all the events available.
- The building was suitable for music as it was tin but had three layers of insulation and brick built on roof.
- There had been no complaints to date.

- The licence holder would have made sensible solutions if the applicant had discussed with them first.

The Chair invited all parties to make brief closing submissions.

The Licensing Enforcement Officer had no further closing submissions.

The Agent commented that the applicant had approached Mr Whittle but had been dismissed. The applicant had never had any issues except for over the last 12 months. The applicant was sure that the noise was not from any other club and no weight could be given to the noise readings shown by the licence holder. There was a clear lack of compliance. No steps had been suggested by the licence holder.

The licence holder commented that he had removed Mr Whittle and the large sound equipment and suggested to engage with environmental health to set volume limits but the space was a community space.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and a full written decision was sent to all parties as follows;

4/070125 **RESOLVED**

That, having reviewed the premises licence held under the Licensing Act 2003 by Halton Turner Brewing Company Limited, in respect of premises at 1 Rea Court, 40 Trent Street, Birmingham B5 5NL, upon the application of Mr Mihaly Iveszics of Birmingham Central Backpackers, this Sub-Committee hereby determines that:

1. The licence be revoked, and
2. David Whittall be removed as the designated premises supervisor

in order to promote the licensing objectives in the Act of the prevention of crime and disorder and the prevention of public nuisance.

The licence holder company, being Halton Turner Brewing Company Ltd, was represented in the meeting by the company director and others from the premises. Mr Iveszics of Birmingham Central Backpackers had brought the Review before the Sub-Committee. He attended the meeting in person, represented by counsel. Counsel explained that in bringing the Review, it was not the applicant's intention that the licence should be revoked. The Sub-Committee noted this.

The Sub-Committee's reasons for revoking the licence were due to the concerns expressed by Licensing Enforcement of Birmingham City Council, who had made written representations following the submission of the application by Mr Iveszics. Licensing Enforcement also attended the meeting.

All three persons who attended made their submissions, as outlined fully in the Committee Report. The Sub-Committee heard from counsel for the applicant

first. The applicant had been having significant problems with the premises at 1 Rea Court, namely the emanation of noise from that building, especially at night.

The applicant was not looking for revocation of the licence. However, his position was simply that the 1 Rea Court building, when it was licensed, had originally been licensed as a micro-brewery, yet in the last 12 months the style of operation had changed significantly.

The applicant considered that the building was not fit for the provision of regulated entertainment; to use it for this style of activity created a significant nuisance to his property (Birmingham Central Backpackers), and to the people staying there. He himself lived there as well.

Counsel observed that the only way that the Sub-Committee could disallow regulated entertainment from a premises licence would be following a Review of the licence. The applicant wanted to see live and recorded music removed from the scope of the licence. Counsel had suggested a condition that would deal with that.

This suggestion had been made by counsel on the basis that the building was not of a suitable design to properly contain any form of amplified music. Some video clips were played to the Sub-Committee of a view from the applicant's premises, looking out onto the 1 Rea Court building, and the noise of amplified music emanating from 1 Rea Court. Counsel confirmed that the noise was interfering with the applicant’s right to enjoy his own premises.
Counsel again remarked that the premises was not suitable for the provision of regulated entertainment. He reiterated that the applicant was not looking for revocation of the licence; he simply wanted the nuisance to stop, and considered that the only way that that could happen was by removing regulated entertainment from the scope of the licence.

Counsel had noted that the licence holder had made reference to the nearby Lab 11 nightclub premises as a possible source of the noise nuisance. However, counsel confirmed that the applicant was certain that the noise was “absolutely not” emanating from Lab 11. He also pointed out that Lab 11 had doors and a lobby which acted as sound attenuation, whereas 1 Rea Court was an entirely different style of building.

Counsel had suggested to the company director that the licence holder could adopt noise attenuation measures, and thereafter could apply to vary the licence; provided the measures were done satisfactorily, then Mr Iveszics would not object. Counsel said that the objection related solely to the noise, which was “making the windows and walls shake and resonate”.

Counsel had met the director of the licence holder company and noted that the director had been content to allow somebody else to essentially operate the venue, even though his company was the licence holder, and it was ultimately his responsibility as the company director to ensure that the licence was operated responsibly. The Sub-Committee noted this and was concerned that this style of management placed the licensing objectives at risk.

Counsel considered that the only way that the noise nuisance could be controlled was by removing regulated entertainment from the scope of the licence under section 177A of the Licensing Act 2003. The applicant was happy for the premises to operate as a micro-brewery as per the terms of the licence as it had originally been granted, and to sell alcohol by retail, but felt that the building was "just not suitable" to provide regulated entertainment and that this should be removed from the scope of the licence.

The Sub-Committee then heard from the Licensing Enforcement officer. The officer made submissions as per her document in the Committee Report. She confirmed that when the premises licence was first granted it had been on the basis that the premises would be a micro-brewery venue. Since the premises had been operated by David Whittall, it appeared that the main use of the premises had become as a music venue, whether that be live or recorded music. This was in complete contrast to when it was first licensed. The conditions which formed part of the licence had been suitable for micro-brewery use, not music venue use. The Sub-Committee agreed that the new use was not a satisfactory style of trading and considered that the change in the operating style placed the licensing objectives at risk.

An inspection at the premises had been conducted by Licensing Enforcement, and numerous failings had been found. All of the matters identified had constituted offences under the Licensing Act 2003 due to non-compliance with the conditions attached to the premises licence. The Sub-Committee found this completely unacceptable.

There had been "virtually non-existent" management of the premises by the director of the licence holder company, and the premises had failed to comply with the majority of its conditions of licence. Most worryingly of all, it appeared that the premises had been carrying on licensable activities for over 12 months without a designated premises supervisor. The Sub-Committee took a dim view of this and considered that it created a significant risk to the upholding of the licensing objectives.

Licensing Enforcement confirmed that they did not have any confidence that the licence holder was capable of promoting the licensing objectives at 1 Rea Court, in particular the prevention of crime and disorder and the prevention of public nuisance. Accordingly, the recommendation of Licensing Enforcement was that the premises licence should be revoked and the designated premises supervisor removed. The Sub-Committee noted this.

The Sub-Committee then heard from those representing the licence holder company – principally the company director. He accepted that he was "fairly hands off", but did not accept that he was not in charge or not in control.
He said that he had always employed designated premises supervisors who were responsible and competent; however, he had come to realise that a recent recruit had not fitted this description, and as a result, the company had terminated its arrangement with that individual. The last event run by that person had been on New Year's Eve 2024, and the person had already removed the sound equipment that he had installed at the venue.

The director accepted that failings had been found in the inspection, but assured the Sub-Committee that the appropriate steps to remedy matters had been taken. He was also engaged directly with the applicant Mr Iveszics, and had made sure that during the subsequent events held at the venue (ie after the complaint was submitted), that “the noise was kept to a minimum, although it was still loud”. The Sub-Committee was not reassured by this remark.

The director had noted that counsel for the applicant had felt that a variation of the licence was the way forward, but the director disagreed, saying that this was not the case. He said that the premises had “always had events even when it was running as a brewery”, and some of those had been “large amplified sound events”. He felt that it was important to retain the licence for the community as the premises showcased lots of businesses.

He and the others from the premises then outlined the style of operation and events put on, including the community events. One person from the premises accepted that “some of the things have probably been way too loud”. The Sub-Committee noted this.

The director and associates felt that much of the nuisance was noise emanating from the Lab 11 nightclub premises. They stated that they had attempted to adopt some soundproofing measures at 1 Rea Court and stated that there were three layers of noise insulation in the roof. They had taken some decibel readings, and considered that the readings from Lab 11 were higher. They thought that Environmental Health ought to come and set some sound levels.

They pointed out that other venues in the neighbourhood were operating to late hours and in a manner which created noise emanation. They asked the Sub-Committee to note their concern that revocation, or even variation, of the licence, would be “a detriment to any business that opens up in the future in Birmingham”. They considered that the noise issue was created by the other venues which were “just as loud, if not louder” than 1 Rea Court.
When deliberating, the Sub-Committee noted that the applicant had brought the Review on the grounds of public nuisance (noise disturbing all those at his building, late at night).

The Sub-Committee considered that the starting point was that the premises had been granted a licence as a micro-brewery, and the licence conditions reflected a micro-brewery style of operation. It appeared that the premises had instead begun operating as a music venue. This was an entirely different style of operation, which the licence conditions had not been designed to cover. This style of operation was not acceptable.

The Sub-Committee agreed with all the points made by the Licensing Enforcement officer. The inspection had found numerous unacceptable failings. The Sub-Committee considered that for any licensed premises to operate without a designated premises supervisor for 12 months had put the licensing objectives at very grave risk; as such, the Sub-Committee took a very dim view of it.

The Members agreed with the Licensing Enforcement officer’s assessment that it was quite clear that there were management issues at the premises such that it

was impossible to have any confidence in the licence holder company or the staff at the premises.

The Sub-Committee looked at all options when making its decision, and placed particular emphasis on the need to ensure that it had confidence that the premises would not undermine the licensing objectives.

Counsel had suggested that the way forward was simply to adopt measures to disallow live and recorded music. However, the Sub-Committee was not at all confident that this type of action would be sufficient. The Members had noted that the director himself had admitted that his style was “hands off”. Numerous breaches of condition had been found during the inspection, and the Licensing Enforcement officer had confirmed that she had no confidence in the licence holder to operate responsibly.

After scrutinising the evidence carefully, and hearing the submissions in the meeting, the Members shared the concerns of Licensing Enforcement. The evidence presented by Licensing Enforcement in the Report and during the meeting had been more than sufficient to confirm that the premises was operating in a manner which undermined the licensing objectives. Nothing in the operating style described in the meeting had inspired confidence. The failings noted by Licensing Enforcement had been numerous.

The Members gave consideration to modifying the conditions and/or imposing a suspension of the licence. However, the Members were not at all satisfied, given the evidence submitted, that the licensing objectives would be properly promoted following any such determination, or that the premises would operate responsibly if these sanctions were to be imposed.

The evidence had shown a complete disregard for the law by the licence holder. The findings had shown a lack of professional supervision and control by the licence holder and its director, and in short the licence holder had demonstrated that it was incapable of upholding the licensing objectives.
All in all, the Members had no confidence in the licence holder to meet the standard expected of licence holders in Birmingham. The premises had been licensed as a micro-brewery, not a music venue. A cavalier attitude to the licensing objectives had been taken. The Members felt it was important for the Sub-Committee to reassure the local community that there would be consequences for licence holders whose premises were found to be trading irresponsibly and not in accordance with the conditions on the premises licence.

After scrutinising all the evidence, the Sub-Committee determined that the breaches discovered by Licensing Enforcement were indeed so serious that they could not be tolerated. A determination to revoke and to remove the designated premises supervisor would follow the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003, and was an entirely proportionate sanction given that the premises’ style of operation seriously undermined the prevention of crime and disorder, and the prevention of public nuisance, objectives in Birmingham.

There were no compelling reasons to depart from the Guidance on this occasion. To take some other course (other than revocation and removal of the designated premises supervisor) ran the risk of sending a message that breach of licence conditions was not a serious matter, or that there would be no consequences for doing so, which the Sub-Committee was not prepared to do.

The business was not being run in accordance with the licence. The licence had been granted to cover use as a micro-brewery premises. All parties, including the company director himself, had agreed that the current style of operation was not that of a micro-brewery, but of a music venue – indeed, those from the premises had remarked that the events offered by the premises had been "large amplified sound events" and "some of the things have probably been way too loud".

This style of operation was not covered by the licence conditions. The Sub-Committee therefore resolved to revoke the licence and to remove the designated premises supervisor.

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 application for Review, the written representations received and the submissions made at the hearing by the applicant via his counsel, by Licensing Enforcement, and by the company director and others representing the licence holder company.

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 appeal is determined.

The Meeting ended at 1132 hours.

Chair……..