

BIRMINGHAM CITY COUNCIL

LICENSING SUB – COMMITTEE A 19 JULY 2018

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON THURSDAY, 19 JULY 2018 AT 1000 HOURS, IN THE ELLEN PINSENT ROOM, COUNCIL HOUSE, VICTORIA SQUARE, BIRMINGHAM.

PRESENT: - Councillor Barbara Dring in the Chair;

Councillors Martin Straker Welds and Bob Beauchamp.

ALSO PRESENT

David Kennedy – Licensing Section
John B Murphy – Legal Services
Phil Wright – Committee Services

NOTICE OF RECORDING

1/190718 The Chairman advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

DECLARATIONS OF INTERESTS

2/190718 Members were reminded that they must declare all relevant pecuniary and non pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting.

No declarations of interest were made.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/190718 There were no Nominee members.

MINUTES

4/190718 That the Minutes of the last meeting held on 11 April 2018 were confirmed and signed by the Chair.

**LICENSING ACT 2003 PREMISES LICENCE (REVIEW) – ARABIAN NITES,
PART OF 52-68 BISSELL STREET, DIGBETH, BIRMINGHAM, B5 7HP**

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

(See document No. 1)

The following persons attended the meeting.

On behalf of West Midlands Police

Mr J Rankin – Barrister acting on behalf of West Midlands Police
PC Rohomon – West Midlands Police

The Chair made introductions and outlined the procedure to be followed. She enquired whether there were any preliminary points that need to be raised. The Sub-Committee was advised that West Midlands Police wished to rely on some photographs which had been redacted from the documentation. It was requested that that part of the meeting be held in private.

The Sub-Committee was also advised that an unsolicited email had been received from Sarah Clover, Barrister, indicating that it would be wrong in law for the Authority to review the licence as it had been surrendered and therefore could not be revoked. It was highlighted that Ms Clover had not indicated that she had been instructed by the Premises Licence Holder or that it had formally disclosed to West Midlands Police. The Sub-Committee were further advised that it was normal practice for the Authority to continue to review the licence as it could be reinstated after 28 days of surrender. West Midlands Police confirmed that the review should continue.

At 1008 hours the meeting was adjourned to allow members to consider the preliminary points and all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdrew from the meeting.

At 1010 the meeting reconvened and everyone re-entered the meeting.

The Chair indicated that the Sub-Committee had noted the contents of the email which was not a formal submission and did not wish to make any further comment. The meeting would continue. The Sub-Committee was agreeable for West Midlands Police to present some of their evidence in private.

David Kennedy, Licensing Section, made introductory comments relating to the report and indicated that there was a further option available to the Sub-Committee which was to remove the Designated Premises Supervisor. He added that the Authority had been advised that the wording on the Closure Order was inaccurate in that the grounds on which the Closure Order had been made should only refer to 'use of the premises has been associated with the occurrence of disorder or serious nuisance to members of the public'.

On behalf of West Midlands Police Mr Rankin made the following points:

- a) The error on the Closure Order did not distract from the fact that the Sub-Committee should be reviewing the Licence as the Court had undertaken their duty to inform the Authority of the closure.
- b) The application for a Closure Order was made by West Midlands Police following a shooting at the premises on 26 May 2018. A firearm was discharged from the basement area of the premises up the stairwell. As a result an innocent bystander was injured when the bullet hit a zip on his jeans and he also received an injury to his chest.
- c) The victim self-presented himself at Heartlands Hospital who advised the police. Having spoken to him the police were able to confirm that an incident had taken place at the premises.
- d) On the 29 May 2018 the police applied for a Closure Order at the Magistrates Court. During the hearing the operator of the premises, Mr A Alawi showed footage from CCTV cameras via an app on his mobile phone that showed the premises apparently closed on 26 May 2018 at the time of the incident. Whilst the footage showed that the premises closed and in darkness the evidence from first responding police officers indicated that members of the public had been leaving the premises.
- e) Towards the end of the hearing on 29 May a mystery witness appeared at court pertaining to be the victim. As he was not let in to the court he sent a note through to the court which the barrister representing Arabian Nites read out. The note indicated that the original injured person was not in fact injured and he wished to withdraw his statement. The court did not grant a Closure Order.
- f) PC Rohomon then investigated the incident relating to mystery witness and having been told by security that the person attending Court on the 29 May was an Asian male aged about 16 with no discernable accent he knew it was not the same as the original victim who was 25, of Afro-Caribbean descent and had a strong Jamaican accent. .
- g) The police reapplied for a Closure Order on 3 July 2018 which was successful as the police were able confirm that the premises were open and that the victim was not the person who had come to court previously. The police however had had difficulty obtaining the correct CCTV footage as the equipment had been removed.
- h) At the hearing on 3 July 2018 the police referred to photographs taken from the CCTV footage which were redacted in the documentation before the Sub-Committee.

Mr Rankin therefore requested that the meeting go in to private so that he may make reference to the photographs.

EXCLUSION OF THE PUBLIC

At 1025 hours it was-

5/190718

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.

Arabian Nites, Part of 52-68 Bissell Street, Digbeth, Birmingham, B5 7HP

At this stage in the meeting having considered some evidence in private the public were readmitted to the meeting.

Mr Rankin continued to present the case for West Midlands Police by making the following points:-

- i) On the 31 May 2018 West Midlands Police sought to recover the CCTV footage of the night of the incident but were delayed at the door despite them having a warrant. Access to the premises was denied by the landlord, Mr Rafiq, who claimed that it was up to the owner to let the police in. It became apparent that the police were being deliberately prevented from gaining entry and a forced entry was made. The three hard drives to the CCTV equipment were missing and officers present were of the opinion that they been removed hastily. At Court on 3 July the premises brought an electrician to explain that he had removed the equipment and that there was nothing suspicious about it. When asked when the equipment had been returned it was explained it was 20 minutes after police had left. Again this was a deliberate attempt to obstruct the police.
- j) The police were able to show that an large party type of event had taken place at the premises and access had possibly been obtained via the premises known as Arthouse. Whether the owner of Arabian Nites was aware or not, the Landlord of the whole building had lost control of it use.
- k) It was not the first time an alleged shooting had taken place at the premises which was causing a public nuisance. West Midlands Police were seeking the revocation of the licence.

Responding to questions from Members of the Sub-Committee Mr Rankin and PC Rohomon made the following points:-

- a) The difficulty of in obtaining CCTV footage was a comprehensive break of condition and why a warrant was needed. It prevented the police on the night of the incident from having evidence that anything had happened. It was only later that because of the strange happening at the first court hearing that police were able to eventually obtain the footage.

Licensing Sub-Committee A – 19 July 2018

- b) The premises had attempted to prevent the closure by suggesting the premises were closed at the time of the incident and by possibly getting someone to turn up at court pretending to be the victim.
- c) The premises had claimed that some of the previous issues had been as a result of them being a victim of a racketeering operation but would never make a formal statement to allow the police to investigate.
- d) The premises licence was held by QR Holdings Ltd, Mr Rafiq was the landlord of the whole building and Mr A Alawi leased that part of the building's ground floor and basement known as Arabian Nites.
- e) When the police were trying to retrieve CCTV footage Mr Rafiq was dealing with officers face to face in the building but would not allow access to Arabian Nites.

Mr Rankin indicated that he did not wish to sum up as he believed the case spoke for itself.

At 1058 hours the Sub-Committee adjourned and the Chairman requested that all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting.

At 1215 hours all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

6/190718

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by QR Holdings Ltd, in respect of Arabian Nites, Part of 52-68 Bissell Street, Digbeth, Birmingham, B5 7HP, 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 and public safety objective(s) in the Act:

The Sub-Committee's reasons for revoking the licence are due to concerns by West Midlands Police in relation to:

On 19 July 2018, the Committee noted that the Premise Licence holder was not represented at the hearing. An unsolicited email was received by BCC from a barrister at 1655 hours on 18 July 2018, purportedly on behalf of the Premise Licence holder. The Committee noted that the email did not state that the barrister was instructed on behalf of Premises Licence holder.

The Committee was mindful of the 4 statutory Licensing Act 2003 objectives, and in particular, objective (1) the prevention of crime and disorder and objective (2) public safety. The Committee was also mindful of the Revised Guidance issued under section 182 of the Licensing Act 2003, issued April 2018. The Guidance states at para 11.20 that the Committee

should establish the cause of the concerns that the representations identify. The Committee also noted that the Guidance at para 11.27 recommends that criminal activity that may arise in connection with the licensed premises should be treated particularly seriously.

In the absence of any representations by the Licensed Premises holder, the West Midlands Police offered evidence in public, and after representations, further evidence to the Committee in private.

The Committee heard that following the discharge of a firearm in the Licensed Premises on 26 May 2018, a member of the public received an injury from a ricocheted bullet. The Police attended quickly but needed to return later to secure CCTV evidence. The Police encountered such difficulties that they eventually had to return to the Licensed Premises and force entry with a Search Warrant. The Police were unable to recover the CCTV from the relevant time, from the Licensed Premises owing to it having been removed from the Licensed Premises. The conditions of the licence required the Licensee to make available the CCTV images to the police in such an instance. The Police eventually secured a Closure Order at the Birmingham Magistrates' Court on 3 July 2018.

Having heard the above evidence, which the Licensed Premises holder did not challenge, and taking into account the statutory Licensing Objectives together with the Guidance, the decision of the Committee is to revoke the licence.

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, 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 written and oral representations made at the Hearing by West Midlands Police and the legal representative as a result of the issue of the Closure Order made by the Magistrates' Court.

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 disposed of.

Under Section 168(7) the premises must remain closed (but the licence otherwise in force) until the relevant time. The relevant time is the end of the period given

for appealing against the decision, of if the decision is appealed against, the time the appeal is disposed of.

7/110418 **OTHER URGENT BUSINESS**

There were no matters of urgent business.