

# BIRMINGHAM CITY COUNCIL

**LICENSING  
SUB-COMMITTEE C  
WEDNESDAY 22  
FEBRUARY 2023**

## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 22 FEBRUARY 2023 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Sam Forsyth in the Chair;

Councillors Diane Donaldson and Izzy Knowles.

### **ALSO PRESENT**

David Kennedy – Licensing Section  
Joanne Swampillai – Legal Services  
Katy Townshend – Committee Services

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

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### 1/220223 **NOTICE OF RECORDING/WEBCAST**

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site ([www.civico.net/birmingham](http://www.civico.net/birmingham)) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

### 2/220223 **DECLARATION OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are 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 is a 'sensitive interest', Members do 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 is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an

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

Councillor Sam Forsyth declared that she knew Mr Duncan Craig in a professional capacity.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/220223 Apologies were submitted on behalf of Councillors Iqbal and Wagg and Councillors Donaldson and Knowles were the nominated substitute Members, respectively.

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**MINUTES**

4/220223 The Minutes of the meeting held on 11 January 2023 1000 hours were confirmed and signed by the Chair.

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**LICENSING ACT 2003 PREMISES LICENCE – REVIEW – S.A.T.  
CONVENIENCE STORE, 29 HUNTERS ROAD, LOZELLS, BIRMINGHAM, B19  
1DP.**

**On Behalf of the Applicant**

Paul Ellson – TS (Trading Standards)

**On Behalf of the Premises Licence Holder**

Duncan Craig – Barrister, Citadel Chambers  
Tesfu Asmelash – PLH (Premises Licence Holder)  
Mr Abraham ChiChi Ne – Translator (Language - Tigrinya)

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The Chair introduced the Members and officers present and the Chair asked if there were any preliminary points for the Sub-Committee to consider.

After various discussions with all parties, Duncan Craig informed the Committee that he had been formally instructed to request for the meeting to be held in private due to the on-going criminal proceedings.

All parties agreed.

Following a short adjournment to seek legal advice, the Committee resolved that the hearing would be held in private to ensure that no sensitive material ended up in the public domain and subsequently hindering the criminal proceedings.

At this stage, the Chair outlined the procedure to be followed at the hearing and invited David Kennedy to present his report. David Kennedy, Licensing Section, outlined the report.

At this stage the public were excluded from the hearing.

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**EXCLUSION OF THE PUBLIC**

5/220223

**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.

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

6/220223

**RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Tesfu Asmelash, in respect of S.A.T. Convenience Store, 29 Hunters Road, Lozells, Birmingham B19 1DP, upon the application of the Chief Officer of Weights and Measures, this Sub-Committee hereby determines:

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A. That the licence be suspended for a period of two weeks, in order to promote the licensing objectives in the Act of the prevention of crime and disorder and the protection of children from harm, and in order to give the licence holder sufficient time to make proper arrangements regarding implementation of the additional conditions (as below), and for the premises to prepare for safe trading

B. That the conditions of the licence shall be modified by the addition of those conditions proposed by counsel for the premises licence holder and agreed by the applicant (see below)

C. That the conditions of the licence shall be further modified by the removal of some of the existing conditions, as proposed by counsel for the premises licence holder and agreed by the applicant (see below)

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**Conditions to be added to the licence:**

**GENERAL**

1. Alcoholic drinks in open containers may not be removed from the premises.

**CCTV**

2. A digital Closed Circuit Television System (CCTV) will be installed

and maintained in good working order and be correctly time and date stamped.

- i. The system will incorporate sufficient built-in hard-drive capacity to suit the number of cameras installed.
- ii. CCTV will be capable of providing pictures of evidential quality in all lighting conditions, particularly facial recognition.
- iii. Cameras will encompass all ingress and egress to the premises, the immediate area outside the frontage of the Premises and all areas where the sale/supply of alcohol occurs.
- iv. The system will record and retain CCTV footage for a minimum of 28 days.
- v. The system will record at all times when the Premises are open.
- vi. The system will incorporate a means of transferring images from the hard-drive to a format that can be played back on any desktop computer.
- vii. The Digital recorder will be password protected to prevent unauthorised access, tampering, or deletion of images.
- viii. There will be at all times, when the premises is open, a member of staff on duty with access to the CCTV system who is trained in the use of the equipment.
- ix. Upon receipt of a request for a copy of CCTV footage from Police, or Officers of any other Responsible Authority, the member of staff will produce the footage within 24 hours, or less if urgently required for investigations of serious crime.
- x. CCTV footage must be made available to be viewed by West Midlands Police or an Officer of a Responsible Authority upon request or during an inspection.

#### **INCIDENT BOOK**

3. An incident book must be kept at the Premises and maintained up to date (no later than 24 hours after the incident) at all times and will record the following:

- i. Time date and details of all incidents/complaints of crime and disorder or anti-social behaviour
- ii. All crimes reported to the venue
- iii. Any faults in the CCTV system, searching equipment or scanning equipment
- iv. Any visit by a responsible authority or emergency service

The incident book must be kept at the premises and made available to West Midlands Police or an Officer of a Responsible Authority on request, or during an inspection.

#### **REFUSALS REGISTER**

4. A refusals register must be kept at the Premises and maintained up to date at all times recording the date time, type of product refused, reasons for every refusal to sell alcohol or any other age restricted product to a customer and the name and signature of member of staff refusing the sale.

5. The refusals record must be made available to West Midlands Police or an Officer of a Responsible Authority on request, or during an inspection.

6. The Premises Licence Holder or the Designated Premises Supervisor must monitor the Refusals Register every month and must

sign and date the Refusals Register when this has been completed, or if the Refusals Register is electronic the check and date and time of the check must be clearly recorded.

**TRAINING**

7. Training in relation to the Licensing Objectives and the conditions on the premises licence, Challenge 25, under age sales, sales to adults on behalf of minor (proxy sales), sales to intoxicated persons, refusals registers and incident records must be provided and undertaken by all members of staff (whether paid or unpaid) before he / she makes a sale or supply of alcohol and at least every six months thereafter.

8. Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained, date, time and content of the training. The record must be signed by the member of staff who has received the training, the Designated Premises Supervisor, the Premises Licence Holder or external training providers.

9. Documented training records must be kept at the premises and made available to West Midlands Police or an Officer of a Responsible Authority on request, or during an inspection.

**THE PREVENTION OF PUBLIC NUISANCE**

10. Deliveries to the premises will only take place between 09:00 and 18:00.

**PUBLIC SAFETY**

11. The Licence Holder shall ensure that all emergency lighting is checked on a weekly basis. Entrances, exits and passageways shall be kept clear.

12. The premises' Fire Risk Assessment will be made available to any officer of a responsible authority upon request.

13. The Licence Holder shall ensure that the maximum number of persons on the premises at any one time shall not exceed the number agreed with West Midlands Fire Service.

**THE PROTECTION OF CHILDREN FROM HARM**

14. The premises licence holder shall adopt the Challenge 25 scheme and appropriate signage will be placed at the entrance to the premises. The premises will operate a policy whereby any person attempting to buy age-restricted products who appears to be under 25 will be asked for photographic ID to prove their age. The ID that will be accepted is a passport or driving licence with a photograph.

15. The premises licence holder shall display Challenge 25 posters in prominent positions within the premises, including at the point of sale and the entrance to the premises.

**Conditions to be removed from the licence:**

- All staff will be provided training on the four Licensing Objectives and Challenge 25 including appropriate age verification
- All training will be recorded and each member of staff will sign and date the training records along with the person who has provided the training
- The training records will be kept on site and made available for the responsible authorities to view
- Refresher training will be provided every 6 months

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- The premises licence holder shall install and maintain CCTV cameras which will cover both inside and outside the shop. CCTV will be recording at all times the premises are open for any licensable activities and images will be held for a minimum of 28 days and made available immediately on request by any of the Responsible Authorities. The Premises License Holder will ensure that a trained member of staff will be on duty and be available to download the CCTV to any of the Responsible Authorities
- An incident log will be maintained
- All deliveries will be conducted during daytime to control noise nuisance
- All deliveries will be received during daytime prior to 6pm to control noise nuisance. In conjunctions with the steps proposed for the prevention of crime and disorder objectives, the premises licence holder and staff will at all times remain responsible for the prevention of public nuisance in and around the premises
- A Challenge 25 policy will be strictly followed by all staff
- The Designated Premises Supervisor and staff will at all times remain aware of their responsibilities, including that alcohol shall not be sold to anyone under the age of 18 years. Staff on duty will be trained and made aware of a Challenge 25 policy and the requirements and the need to demand an acceptable form of age ID
- A refusals register will be maintained and signed off by the DPS every six months, this will be made available to the responsible authorities upon request
- The premises licence holder shall ensure there is strong management and security procedures in place which encompasses the four licensing objectives
- The premises licence holder will fully support any directives received from the authorities
- Floor staff will conduct physical sweep inside the premises to remove hazardous objects/waste as deemed necessary by the premises licence holder
- The Designated Premises Supervisor will arrange to monitor levels from both inside and outside the premises and remedial action will be taken as appropriate

The meeting was conducted in private session after the Sub-Committee considered an application made by counsel for the premises licence holder under regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005. Counsel noted that an investigation by Trading Standards was under way, and considered that in the circumstances it was best to hold the meeting in private. The officer from Trading Standards supported the application for the entire hearing to be held in private. The Sub-Committee therefore agreed to hold the meeting in private session.

The Sub-Committee's reasons for imposing the sanction of suspension together with additional conditions were due to concerns expressed by Trading Standards. An officer from Trading Standards attended the meeting to address the Sub-Committee. The licence holder also

attended, with an interpreter, and was represented in the meeting by counsel.

The officer from Trading Standards made submissions relating to the failed test purchase which had happened on the 25th October 2022 - exactly as described in the Committee Report. The test purchase operation had been carried out to check the sale of e-cigarettes or “vapes” to underage persons, namely those under 18 years of age.

The officer had seen the proposed new conditions submitted by counsel for the licence holder in advance of the meeting. The recommendation from Trading Standards was for a suspension of the licence and a retraining of all those working at the premises. It appeared to the officer that the licence holder had become overwhelmed, and that there had perhaps been language difficulties leading to a failure to understand the responsibilities relating to sales of age-restricted products; for this reason the officer considered that retraining would be the correct course. The premises was a small family business, and a suspension would give time for the retraining and for a period of reflection which would enable the premises to reopen and trade safely.

Counsel for the licence holder then addressed the Sub-Committee. Counsel had noted an increase in reports of issues with sales of age-restricted items, such as vape products; such sales were not a licensable activity. Moreover, he had observed from the News that even national supermarket chains had experienced confusion over the requirements when selling vape goods.

Since January 2023, the premises’ management had been making improvements to the operating style; these were shown in the photographs included in the Committee Report. However, counsel acknowledged that language difficulties had perhaps been a reason for the problems. It was acknowledged that the employee who had made the sale of an age-restricted product to a minor had shown a degree of carelessness.

Counsel had drafted the new conditions as he considered that, of the existing conditions, only some served any purpose. The new CCTV condition was much more precise and enforceable; the same was true regarding training, the incident book and the refusals book. Some of the other conditions on the licence were vague, so these had been tightened up – for example, deliveries would now be conducted between stated hours. There were also conditions relating to the public safety objective, and a Challenge 25 requirement.

Counsel had also identified other conditions which he felt ought to be removed from the licence due to being vague and unenforceable. This would tidy the licence up in order that it would be clear, precise and enforceable.

Counsel accepted that there should be a period of suspension, and requested that this should be for two weeks. Some steps had already been taken, as per the photographs in the Report, and Trading Standards had said that the failure had not been catastrophic. Two weeks would be sufficient to carry out the training, which would be conducted by a professional trainer.

Counsel observed that there was therefore an agreed position between Trading Standards and the licence holder – namely to suspend the licence and to impose new conditions; he therefore considered that it would be unnecessary to take any further steps, such as the removal of the designated premises supervisor. The premises was the licence holder's first business, and since January 2023 he had been doing his best to implement the improvements; the licence holder apologised for the failed test purchase and was keen to continue towards ensuring that he could trade safely. The four members of staff at the premises would be retrained; the person who had made the underage sale was not employed at the premises.

In summing up, Trading Standards agreed with all that counsel had said and approved of the redrafting of the licence conditions which were now clear and direct. Counsel directed the attention of the Members to paragraph 9.43 of the Guidance issued under s182 of the Act in reminding them that any determination should be evidence based, justified and proportionate. The licence holder had not come to the attention of the Sub-Committee before, and the underage sale had simply been due to carelessness.

When deliberating, the Sub-Committee was aware that under paragraph 11.20 of the Guidance issued under s182 of the Act it should seek to establish the cause of the concerns that the representations identified, and that the remedial action taken should generally be directed at those causes, and should always be no more than an appropriate and proportionate response to address the causes of concern that had instigated the Review.

Bearing this in mind, the Sub-Committee reflected carefully on the guidance given in paragraph 11.20 when making its decision. The Members carefully reviewed the submissions of Trading Standards. The recommendation of Trading Standards had been the adoption of the new conditions, and a period of suspension. The Sub-Committee considered this to be a sensible course to ensure that the premises could uphold the licensing objectives, and felt that it was important that there should be sufficient time for the licence holder to get everything in order properly, with the assistance of an independent trainer, before resuming trading with all the new measures in place.

The Sub-Committee therefore resolved that a suspension of the licence for two weeks would give proper time for all the conditions, in particular the training of all staff including the licence holder, to be implemented. Thereafter, the premises could reopen safely.



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The Sub-Committee considers the conditions, and the two-week suspension to give sufficient time to implement the measures, to be appropriate, reasonable and proportionate (as per paragraph 11.20 of the Guidance issued under s182 of the Act) to address the concerns raised by Trading Standards.

In addition to the above conditions, the relevant mandatory conditions under the Licensing Act 2003 will continue to form part of the licence issued.

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 Trading Standards and by counsel for the premises licence holder.

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.

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### **GAMBLING ACT 2005 – LICENSED PREMISES GAMING MACHINE PERMIT – TWELTH MAN, 17 HOLLIES CROFT, EDGBASTON, BIRMINGHAM, B5 7QN**

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The Chair introduced the Members and officers present, outlined the procedure to be followed at the hearing and invited David Kennedy to present his report. David Kennedy, Licensing Section, outlined the report.

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

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7/220223

#### **RESOLVED:-**

That the application by Stonegate Group on behalf of The Craft Union Pub Company Limited, for the variation of a Licensed Premises Gaming Machine

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Permit in respect of Twelfth Man, 17 Hollies Croft, Edgbaston, Birmingham B5 7QN, be granted.

The Sub-Committee deliberated the application put forward by the applicant company. The Sub-Committee considered the likely impact of the application, and concluded that by granting this application, the three licensing objectives contained in the Act will be properly promoted.

The application was to operate a total of five Category C Gaming Machines within an alcohol licensed premises. Licensing Enforcement had confirmed that they had not found any issues after carrying out a site visit. The Sub-Committee therefore granted the variation as requested.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Principles, the Guidance issued under section 25 of the Gambling Act 2005 by the Commission, the application for a Licensed Premises Gaming Machine Permit, and the written representations received.

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**Meeting ended at 1131 hours.**

CHAIR.....