

BIRMINGHAM CITY COUNCIL

LICENSING
SUB-COMMITTEE,
MONDAY 15 JANUARY,
2024

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY, 15 JANUARY, 2024 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Mary Locke and Penny Wagg

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Andrew Evans – Solicitor rep BCC
Louisa Nisbett - Committee Services

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

1/150124A **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 meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/150124A **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.

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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.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/150124A An apology was submitted on behalf of Councillor Phil Davis and Simon Morrall. Councillor Diane Donaldson and Penny Wagg were the nominee Members.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW PORTRAIT BAR, THE ARCADIAN, 70 HURST STREET, BIRMINGHAM, B5 4TD

4/150124A The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On Behalf of the Applicant

Mark Swallow, West Midlands Police

On behalf of the premises licence holder

Sarah Clover from Kings Chambers
Carl Moore, Licensing Consultant from C.N.A Risk Management
Raj Bahia Director of DXR LTD, the Premises License Holder

Those Making Representations

L&C Commercial Ltd
Piers Warner TLT Solicitors

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

There being no points to consider the main points of the report were outlined by Bhapinder Nandra, Licensing Section.

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In making representations Mark Swallow WMP made the following points with regards to the application and in response to questions from Members:-

- a) Portrait is a licenced premises situated at the Arcadian Centre the Premises licence holder is DXR Limited.
- b) At Approximately 0035 hours on Monday 18 December 2023, when the premises were open an incident occurred involving a firearm being discharged and causing injury to other persons.
- c) West Midlands Police requested an expedited review held on 19 December resulting in the premises licence being suspended and the designated premises supervisor removed.
- d) A further appeal hearing was held on the 22 December 2023 and a decision made to uphold the original interim steps and a hearing on 9 January 2024 resulted in the lifting of the interim steps as well as conditions agreed between the applicant and West Midlands Police being put in place together with a new Designated Premises Supervisor, Mr Bennett being appointed.
- e) There have not been any issues since then and Mark Swallow, WMP recommended that consideration be given to the adoption of those conditions and the appointment of the DPS.

In making representations Piers Warner, Acadian informed that his only concern was to ensure that any conditions etc. added to the licence was taken seriously.

In making representations on behalf of the Premises against the application, Sarah Clover made the following points with regards to the application and in response to questions from Members:-

- a) She was aware that Councillors were aware of the background of the case and this had been repeated today.
- b) This full review was mandatory. The conditions had been put forward and imposed as interim steps at the hearing on 9 January as suggested and agreed between the licensee, Mr Carl Moore and Mark Swallow, WMP.
- c) It was requested that these be lifted as interim steps and imposed as full conditions on the premises licence and the interim steps be lifted. The appointment of Mr Bennett as DPS is through a separate application process.
- d) The partnership working on this case was worth noting by all parties and she hoped it would be of reassurance to the Arcadian. Carl Moore was one of the valuable licencing consultants in the city. She hoped the conditions would resolve any issues.

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During the summing up both sides had nothing to add. It was felt that the proposals of the conditions were a proportionate and effective response to the issues.

At 1243 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting to conduct the deliberations in a separate private session

After an adjournment and at 1309 hours, all parties were recalled to the meeting and the short decision was announced. A full written decision of the Sub-Committee was sent to all parties as follows;

5/150124A **RESOLVED:-**

That having reviewed the premises licence held under the Licensing Act 2003 by DXR Limited in respect of Portrait Bar, The Arcadian, 70 Hurst Street, Birmingham B5 4TD, following an application for an expedited review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines to modify conditions on the Premises licence in accordance with the agreement previously reached between the Premises Licence Holder and the Police and set out in a list of Proposed Conditions attached to this decision notice.

The Sub-Committee was satisfied having heard representations from the Police, the Premises Licence Holder through its counsel Miss Clover, and other interested parties, that the licensing objectives would be adequately promoted going forwards by the addition of the long list of new and amended conditions previously agreed and imposed at an interim steps hearing on 9th January 2024.

The Sub-Committee noted that the Premises had been closed for some time following the incident on 18th December 2023 allowing a suitable break in trading over the festive period. It was permitted to re-open when interim steps imposed on 19th December 2023 and maintained on 22nd December 2023 were lifted. These interim steps were suspension of the licence and the removal of Mr Bahia as Designated Premises Supervisor.

It was clear to the Sub-Committee that the premises had used the opportunity of closure to reflect and engaged appropriately with the Police during this period. The Premises also changed DPS with a Mr Bennet becoming the new DPS as a result of an application made to vary the DPS.

The Sub-Committee was content to accept the advice of the Police as their main source of advice on crime and disorder. The Police confirmed that the causes of the incident on 18th December 2023 had been considered, analysed, and taken into account in agreeing the new conditions. The Sub-Committee was satisfied that there had been appropriate efforts to work in partnership. The recommendation of the Police was that the new conditions be adopted and added to the licence.

The new conditions were individually and collectively scrutinised and considered appropriate, reasonable and proportionate to any continuing risk to the licensing objectives, in particular any repeat of the serious crime and disorder that led to the Expedited Review.

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The interim steps previously imposed, namely the new conditions and removal of the DPS Mr Bahia are formally lifted and the new agreed conditions imposed on the licence.

In addition to the above conditions, those matters detailed in the operating schedule and 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 2003 Act, the Guidance issued by the Home Office in relation to expedited and summary licence reviews, the application and certificate issued by West Midlands Police under Section 53A of the 2003 Act, the written representations, and the submissions made at the hearing by the Police, and the premises licence holder and a solicitor for the landlords of the Arcadian, L&C Commercial Ltd.

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.

The meeting ended at 1310 hours.

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Chairman