

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE A 4 APRIL 2019

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE A
HELD ON THURSDAY 4 APRIL 2019
AT 0930 HOURS IN ELLEN PINSENT
ROOM, COUNCIL HOUSE, BIRMINGHAM**

PRESENT: - Councillor Barbara Dring in the Chair

Councillors Bob Beauchamp and Mike Leddy.

ALSO PRESENT

David Kennedy, Licensing Section
Parminder Bhomra, Committee Lawyer
Sarah Stride, Committee Manager

NOTICE OF RECORDING

1/040419 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

2/040419 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests arising from any business discussed at the meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item.

Any declarations will be recorded in the Minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/040419 No apologies were submitted.

**LICENSING ACT 2003 PREMISES LICENCE (SUMMARY REVIEW) PRIVA, 23
ESSEX STREET, BIRMINGHAM, B5 4TR**

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 the Applicant for the Summary Review

Police Constable Ben Reader – West Midlands Police

Those making representations

Daniel Rowe - Licence Holder

Frank Fender - Agent for the Licence Holder

Following introductions by the Chair, David Kennedy, Licensing Section, introduced the report.

Police Constable Ben Reader explained due to the on-going criminal investigations, has requested that the CCTV be shown in private session with the licence holder and his agent present but not the press.

The Chair and members agreed to the request under Regulation 14(1)(2) The Licensing Act 2003 (Hearings) Regulations 2005.

EXCLUSION OF THE PUBLIC

That in view of the on-going criminal investigation (Regulation 14(1) (2), The Licensing Act 2003 (Hearings) Regulations 2005) the public be now excluded from the meeting.

The representative from the press left the meeting.

On behalf of West Midlands Police PC Reader showed the CCTV footage to Members.

READMITTANCE OF THE PUBLIC

At 1015 hours the press officer was recalled to the meeting.

On behalf of West Midlands Police PC Reader advised that Mr Fender wished to discuss a number of issues that were not included in the original hearing because he and the licence holder were unable to attend.

He confirmed that all SIA numbers of the security personnel involved on the night in question had now been provided by the licence holder and an incident report had also been forwarded to the Police. All checks were now complete and it was ascertained that the man in the black shirt was not an employee of Priva but was an SIA doorman from a different venue who had turned up to talk to a friend on the door at Priva and had become involved in the altercation.

PC Reader confirmed that all conditions have applied since the last hearing and no fights or anti-social behaviour had occurred on the premises since 3 March 2019 and the licence holder wanted the venue to commence trading as soon as

possible. PC Reader confirmed that 9 conditions have been put forward by the licence holder and his agent to mitigate any altercations in the future and they have been agreed by West Midlands Police. The premises had been closed since the last hearing.

In response to a question raised by the Chair, PC Reader confirmed that he was satisfied that all persons involved in the altercation were SIA security and that their badges had been checked.

In a follow up question from the Chair he confirmed that all SIA personnel involved will be investigated and the licences of those involved in the altercation will be suspended. The Security Industry Authority (SIA) had viewed the CCTV footage and had taken the offence very seriously.

Mr Fender addressed the Sub-Committee and stated that at the last hearing the decision had indicated that there had been a breach of licence and he asked PC Reader to expand on this issue.

PC Reader confirmed that he now had all the relevant information that was required and that he was satisfied that no breach of licence had taken place.

Mr Fender continued and stated that the events that happened on the evening of 3 March 2019 was unforgiveable behaviour. The level of violence that took place was, in his opinion, appalling. The licence holder was also appalled and wanted those responsible to be prosecuted. He pointed out that Mr Rowe did not have any involvement whatsoever in the events that took place on the evening in question and neither did he encourage such behaviour.

Priva is a late night bar and after party venue. Many customers are staff from other venues that attend after their work shift had ended. Mr Rowe had become the premises licence in 2014. In June 2014 he extended his licensing hours to 4am and then again in January 2015 to 8am which the current licence allowed. This was completed and agreed in conjunction with West Midlands Police. Mr Rowe had been the premises licence holder at Priva for 5 years.

He confirmed that he and Mr Rowe had viewed the CCTV footage and Mr Rowe had been informed of the expedited review of the Priva premises. He explained that he himself and Mr Rowe were unable to attend the original hearing because it was short notification and neither was available to attend on that day. However, both were extremely concerned and will be taking the matter further. Both understood that since the last expedited review hearing the licence for Priva had been suspended and that this was their first opportunity to explain their version of events.

Mr Fender confirmed that no explanations could justify the attack on the individual that happened further down the road from Priva. The Somalian gentleman concerned was not a customer of Priva. He was seen on CCTV starting outside Priva and preying on individuals to steal from them. He stole a neck chain from another young man which started the fracas. He questioned whether it was right for the door staff from Priva to intervene and claimed that they were 'damned if they do and damned if they don't' due to insurance limitations. Some SIA door staff had claimed that their insurance will not pay out

if they leave the venue premises which is the reason why a lot of SIA door staff do not intervene.

Mr Fender pointed out that the Police report had stated that Mr Rowe was at the location and had witnessed the incident but in fact Mr Rowe was in fact inside the premises closing down the venue when the door staff left the premises and ran down the street to intervene in the fracas. Mr Rowe was alerted to the fight and went outside and shouted at the door staff to return but he was ignored. He then walked down the street and instructed them to return to Priva which they then did so. He examined the male that had been attacked before walking back to Priva and instructed the SIA door staff to remove their jackets and not return to Priva. Mr Rowe had dismissed the SIA door staff.

Mr Fender stated that the young male that had his neck chain stolen by the Somalian had tried to enter Priva but was refused because he was wearing trainer shoes that are not the dress code for Priva. The young man then walked down to Rileys and was accosted by the Somalian who was assaulted and tried to seek refuge in Priva which the door men allowed. The door staff from Rileys did not intervene or assist at any point. The person that was seen running from Priva was not a Priva employee but was a visitor and a friend of an SIA doorman at Priva.

Mr Fender confirmed that Mr Rowe had employed his own in house door staff at Priva which he now realised was a mistake that he had made. Mr Rowe himself was registered as an SIA front line door man himself and knew the rules and regulations that that position held. He immediately dismissed the in house door man on his return to Priva and asked them not to return.

Mr Fender concluded that no other representations had been made by any other statutory bodies or interested parties and that he and Mr Rowe were happy to impose any further conditions that the Committee felt should be necessary.

Mr Fender listed the following proposed conditions/modifications to the premises licence for Priva that had previously been agreed in conjunction with West Midlands Police:

1. No 'in-house' security staff shall be employed at the premises.
2. Security staff at the premises shall be provided by a recognised security company which must be approved by the Security Industry Authority (SIA) under the SIA's 'Approved Contractor Scheme'.
3. Security staff at the premises shall not cover their faces at any time, in such a manner whereby only part of their faces can be seen by customers.
4. All security staff employed at the premises shall wear body cameras for the duration of their duty. The body cameras must be capable of recording images and audio at all times.
5. (existing CCTV condition to be amended, adding the following: 'These requirements also apply in respect of the body cameras worn by security staff').
6. The premises shall adopt a policy in respect of managing the area immediately outside the premises. The policy shall include a restriction on the number of smokers outside the premises at any one time, a restriction on customers taking drinks outside the premises and requesting drivers of

vehicles not to park immediately outside the premises. Security staff employed at the premises shall be trained in respect of this policy and be expected to implement such a policy to the best of their ability.

7. The premises shall operate a last entry time of 04.30hrs on any given day, whereby no new customers shall be admitted to the premises after this time.
8. Licensable activity at the premises shall cease at 06.00hrs on any given day.
9. The premises shall be closed by 06.30hrs on any given day.

In response to questions raised by Members Mr Fender advised the Sub-Committee that SIA door men cannot stop cars parking outside the premises but they can do so within the best of their ability. They could ask people to voluntarily move along. Taxi's parked outside the premises for customer use can cause problems and minor disruptions if a non-taxi vehicle parked on the double yellow lines outside the premises.

He agreed that the events that occurred on 3 March 2019 were unforgiveable but it was the first incident that had occurred outside Priva within three and a half years. A revocation to Mr Rowe's licence will cause a loss of livelihood and was disproportionate.

In employing new door staff Mr Rowe will liaise with a recognised security company in conjunction with West Midlands Police.

Mr Rowe confirmed that the CCTV footage was taken using a City Council camera and that on returning to Priva after checking that the individual was alright he instructed his partner to call the Police straight away and she called the Police from the Priva venue.

Summary

PC Reader stated that he was surprised that the licence holder did not attend the first hearing but that had now been explained. New evidence had since been provided and West Midlands Police were satisfied with the explanation.

Mr Fender noted the comments made by PC Reader. If the agreed conditions were in place by 3 March 2019 then he felt that the incident would not have happened. Mr Rowe did not want the incident to repeat itself in the future. The decision from the hearing should be an appropriate and proportionate sanction. A revocation would be disproportionate. Mr Rowe did not want his licence to be revoked as his livelihood would be put at risk. Mr Rowe was more than prepared to adopt the new conditions.

At 1133 the meeting was adjourned to discuss the decision. All parties with the exception of Members, the Committee Lawyer and the Committee Manager left the meeting.

At 1221 the meeting was reconvened and all parties were invited back and the decision of the Sub-Committee was announced as follows:-

4/040419

RESOLVED

That having reviewed the premises licence held under the Licensing Act 2003 by MR DANIEL ROWE in respect of PRIVA, 23 ESSEX STREET, BIRMINGHAM, B5 4TR, following an application for an expedited review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines that the licence:

REMAIN SUSPENDED

until West Midlands Police force are satisfied that the licensee can comply with the 9 proposed conditions submitted during the hearing.

The Sub Committee listened carefully to the submissions made by both West Midlands Police and the agent for the premises licence holder regarding the serious disorder that had occurred and in respect of the on-going meaningful dialogues since suspension of the premises licence.

The Sub Committee were pleased to see that good progress had been made since the previous hearing between both parties and that a root and branch review had been undertaken by the licensee's agent which resulted in targeted conditions being offered as an addition to the current robust conditions on the licence.

Members acknowledged Priva was managed well in light of the previous expedited review in 2015 with a good security company contracted for its services, but noted with some concern the licensee's business led decision to employ in-house door supervisors had the opposite untended effect of jeopardising the business through want of better cost savings and friendly customer services. The appalling behaviour of in-house security personnel had undermined the licensee's short lived plans and more importantly the licensing objectives.

Members were agreeable to the proposed conditions (including the amended version of condition 8 to read "All licensable activities") having heard the agent's rationale for presenting them but were mindful of the WMP comments in respect of conditions 6 to 9 and considered it would be appropriate for the suspension to remain in force until the licensing unit of West Midland Police are satisfied the licensee can comply with those new proposed conditions.

The Sub Committee deliberated specifically condition 6 regarding the adoption of a policy in respect of managing the area immediately outside the premises as to whether it could be modified further to include liaison with the local authority over the use of barriers on the pavement, and banning customers from taking drinks outside the premises in order to promote public safety, prevention of public nuisance and crime and disorder. However, members appreciated these two specific issues were not pertinent to the cause of disorder but nevertheless preferred further consideration is given to the points raised in the creation of an external 'sterile area' as indicated by the licensee's agent.

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 by the Secretary of State, the application and certificate

Licensing Sub-Committee A – 4 April 2019

issued by West Midlands Police under Section 53A of the Act, the written representations and the submissions made at the hearing by the police constable, the premises licence holder and his agent.

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.

5/040419

ANY OTHER URGENT BUSINESS

There were no matters of any other urgent business.

The meeting ended at 1224 hours.

.....
CHAIRMAN