

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE B
19 DECEMBER 2023**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 19 DECEMBER 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Sybil Spence and Penny Wagg

ALSO PRESENT

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

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

1/191223

NOTICE OF RECORDING/WEBCAST

The Chair to advise/meeting to note that this meeting will 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.

2/191223

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

Licensing Sub-Committee B - 19 December 2023

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

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/191223

Apologies were submitted on behalf of Councillors Saddak Miah and Adam Higgs and Councillors Sybil Spence and Penny Wagg were the nominated substitute Members.

LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 PREMISES LICENCE – APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS – PORTRAIT BAR, 70 HURST STREET, BIRMINGHAM, B5 4TD.

On Behalf of the Applicant

Mark Swallow – WMP (West Midlands Police)

On Behalf of The Premises Licence Holder

Raj Bahia – DPS (Designated Premises Supervisor)/Shareholder
Raj Lal – Shareholder

* * *

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

Mark Swallow, WMP requested as a preliminary point, that the meeting be held in private due to the serious nature of the incident and the fact that the matter was still a result of an on-going investigation. A weapon was discharged at the premises and people were injured as a result. In order that all parties can speak freely on the matter, he requested that the meeting be conducted in private.

Both Shareholders agreed with WMP's request.

At 1016 the Chair adjourned the meeting in order for the Members to deliberate the preliminary request submitted by WMP.

The Committee reconvened at 1021 hours and the Chair announced that the meeting would be held in private.

At this stage, 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 meeting went into private session.

EXCLUSION OF THE PUBLIC

4/191223

RESOLVED:-

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt Paragraph 3

The public were re-admitted to the meeting.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the short decision was announced at the meeting. A full written decision of the Sub-Committee was sent to all parties as follows;

5/191223

RESOLVED:-

That having considered the application made and certificate issued by a Superintendent of West Midlands Police under section 53A of the Licensing Act 2003, for an expedited review of the premises licence held by DXR Limited in respect of Portrait Bar, The Arcadian, 70 Hurst Street, Birmingham B5 4TD, this Sub-Committee hereby determines:

- that the licence be suspended, and
 - that Mr Rajvir Singh Bahia be removed as the designated premises supervisor
- pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application.

The Sub-Committee's reasons for imposing the two interim steps are due to the concerns which were expressed by West Midlands Police in relation to matters pertaining to serious crime, which had come to light as outlined in the Superintendent's certificate and application. Those documents were in the Committee Report.

The Sub-Committee determined that the cause of the serious crime originated from a style of management which had been incapable of upholding the licensing objectives. The style of management was the responsibility of DXR Ltd, as premises licence holder for the premises. One of the company directors of DXR Ltd was Mr Rajvir Singh Bahia. Mr Bahia was also the person named on the licence as the designated premises supervisor.

Mr Bahia attended the meeting, together with Mr Lal, a shareholder of the company. West Midlands Police also attended.

Licensing Sub-Committee B - 19 December 2023

The meeting was conducted in private session after the Sub-Committee considered an application made by West Midlands Police under regulation 14(2) of the Licensing Act 2003 (Hearings) Regulations 2005. The Police explained that the matter was a live police enquiry regarding a serious crime incident, namely the discharge of a firearm inside licensed premises. Two persons had been injured as a result. A Police investigation was ongoing to try to trace those involved in the incident.

The Police asked for the proceedings to be conducted in private, in the interests of fairness and so that all could speak freely in relation to the incident. Mr Bahia did not object to this course, and so the Sub-Committee conducted the meeting in private session.

Members heard the submissions of West Midlands Police, namely that the certificate, which had been issued by a Superintendent under s53A of the Act, related to an allegation of serious crime which had originated at the premises. The details were as per the documents in the Committee Report.

The Police summarised the investigation thus far. A person had brought a firearm into the Portrait Bar premises whilst it was open and conducting licensable activities. The firearm was then discharged inside the premises in the very early hours of Monday 18th December 2023, causing injury to two persons.

Two offences of wounding with intent to cause grievous bodily harm under s18 of the Offences Against the Person Act 1861 had been reported. This offence was classed as a serious crime under s81 of the Regulation of Investigatory Powers Act 2000, as the potential maximum sentence on conviction was life imprisonment. The incident therefore warranted the use of the s53A power, and the matter had been brought before the Sub-Committee for an Expedited Review hearing.

The Police view was that interim steps were required in order to deal with the causes of the serious crime whilst the criminal investigation was under way. It was the advice of the Police that a lack of management control had led to the incident. Overall, the Police had no confidence in the premises' ability to prevent further serious crime. It was therefore the Police's recommendation that the incident had been so serious, and the risk to the upholding of the crime prevention objective so grave, that specific interim steps were required.

The Police recommended that the correct course was to suspend the licence, for the reasons given in the Superintendent's certificate and application, and also to remove the designated premises supervisor. This was in the interests of guarding against the risks of further serious crime pending the full Summary Review hearing in 28 days' time.

The Sub-Committee then heard from the two persons representing the premises. They said that the event, which had begun on the Sunday night of 17th December and had continued into the Monday morning of 18th December, had been booked on the 15th December, and that they considered that they had ensured ample time to make proper arrangements for a "successful and safe gathering".

Licensing Sub-Committee B - 19 December 2023

On the night/early hours in question, the premises had had twenty members of staff on duty; of these, eight were security guards and five were bar staff. There had been 200 patrons attending for the event.

The security measures had comprised three separate “pat and wand” searches for each patron before being admitted to the premises. The door team had included very experienced security staff, and the team had been given instructions to check all patrons, as safety was of the utmost importance to the venue. However, the Members observed that despite this procedure, a firearm had found its way into the premises.

Portrait Bar had been operating for three to four years, they said, without incident. It had held “over 70 separate events over the year with no issues”, and considered itself a “safe and enjoyable environment”. Some £20,000 had been invested in recent months in the interests of improving safety at the venue. The additional steps included the introduction of more security protocols and training. Some of the new measures recommended by Police had been done, and others were still being implemented.

The company had been the licence holder since June 2023; Mr Bahia had been involved in the premises for three years, in an administrative role, and had been appointed as the Designated Premises Supervisor in September 2023. The venue itself had been operated as a bar premises for over 20 years. Those at the premises were actively engaging with the Police. They also assured the Sub-Committee that they were “committed to continuous improvement”, and would learn from the incident.

However, the Police observed that as the event had been booked on 15th December, this would have given sufficient time to conduct a risk assessment to guard against the risks of crime and disorder – but it appeared to the Police that either no risk assessment had been done, or one was done but not followed. The Sub-Committee noted this.

The Police advised the Sub-Committee that searching at the door was critical to preventing weapons from entering premises; however, despite the assurances given by those from the premises (namely that three searches were conducted of each patron), the Police informed the Sub-Committee that they had not been satisfied with what they had seen on CCTV recordings of the searches at the door of the Portrait Bar. It was the advice of the Police that the search regime was not as robust as had been suggested by those representing the premises. The Sub-Committee noted this.

The Police added that at the end of November 2023 they had held a meeting with Mr Bahia in which an action plan had been suggested by the Police, relating to various security measures. However, the measures had not been fully implemented, and as a result, in the early hours of 18th December a firearm had been brought into the premises and had been fired, injuring two persons.

The Police reiterated that for these reasons, the correct course was for the Sub-Committee to suspend the licence and remove the designated premises

Licensing Sub-Committee B - 19 December 2023

supervisor pending the full Review hearing. The Police assured the Sub-Committee that they would work with the premises in the intervening period.

Having heard all of the evidence, the Members were mindful of the Guidance issued by the Secretary of State under s182 of the Act, which advised them to only impose those steps which were necessary to guard against the risks of further serious crime. However, the starting point was that the Members were not confident that the company understood its responsibilities as licence holder, and moreover were not satisfied that there was proper management control of the premises.

The Police had observed that the offence had been committed in the presence of staff at the premises. The Police had advised in the application that the staff “were in a position of trust in the premises, with a duty to promote the safety of the public and to prevent crime and disorder, which they have failed to do”.

This was unacceptable and the Members were surprised that those from the premises had said that the security team included very experienced staff. The Sub-Committee considered that the inadequate security procedure was a significant risk to the upholding of the crime prevention objective.

The Sub-Committee agreed with the Police that at this stage it was not possible to have any trust in the management of the operation. The Members felt that they were not prepared to take any risks regarding the potential for further serious crime, pending the full Review hearing.

In deliberating, the Sub-Committee determined that there had been an allegation of serious crime, which was being investigated by Police. It was abundantly clear that the operation was not being run in accordance with the licensing objectives. Any instance of a weapon finding its way into licensed premises was extremely serious; moreover, on this occasion, a firearm had in fact been fired whilst the premises was open to the public and conducting licensable activities, and consequently two persons inside the premises had been injured.

Two offences under s18 had been reported. This was a clear risk to the prevention of crime and disorder objective. All in all, the management style seen at the premises was not at all the standard expected of premises licence holders in Birmingham.

The Sub-Committee was not satisfied that the licence holder company could be trusted to operate in a manner capable of preventing further serious crime. The Members noted in particular the Police comments regarding the unsatisfactory security checks and/or procedures which the Police had observed on the CCTV recordings. There was something of a contrast between the Police comments and the premises’ own account of the security checks, but as the Police were the experts in crime and disorder, the Sub-Committee accepted the Police’s advice.

The Sub-Committee considered the options of modification of the conditions of the licence, and exclusion of the sale of alcohol by retail from the scope of the licence, but did not consider that these would adequately cover the risks, given the seriousness of what had been described in the Superintendent’s certificate

Licensing Sub-Committee B - 19 December 2023

and application. Moreover, the Police had not recommended either of these as a satisfactory course for the Sub-Committee to take.

The correct way forward was therefore to suspend the licence pending the full Review hearing, as recommended by the Police. The Sub-Committee found the Police recommendation to be entirely the proper course given what had been described in the documents and in the meeting, and determined that it was both necessary and reasonable to impose the interim step of suspension of the licence to address the immediate problems with the premises, namely the potential for further serious crime.

The Sub-Committee further noted that it was the responsibility of the designated premises supervisor to ensure that alcohol sales were conducted in accordance with the licence. The Sub-Committee therefore determined that the removal of the designated premises supervisor was a very important safety feature, given that he had only recently been appointed as the individual responsible for the day to day running of the premises (in September 2023). Moreover, it was not clear to Members what previous experience he had in running a late night entertainment venue of this nature, as his previous role in the operation was in an administrative capacity.

The Members considered that Mr Bahia had fallen short of the standards expected of him - as both a director of the licence holder company, and as the designated premises supervisor, and that the style of operation described in the Superintendent's certificate and application was a significant risk to the upholding of the licensing objectives in Birmingham.

Under the current style of operation, a weapon had been fired inside the Portrait Bar, injuring two persons. Public safety was of paramount importance, and the Members considered that it was a danger to the public for the premises to continue to operate in the manner seen on the night in question. The Police had assured the Sub-Committee that they would work with the premises; the Members hoped that those at the premises would follow the advice they were given, ready for the full Summary Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the application made and certificate issued by a Superintendent of West Midlands Police, the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the written submissions made, and the submissions made at the hearing by West Midlands Police, and by those from the Portrait Bar.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours excluding non-working days.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.

Licensing Sub-Committee B - 19 December 2023

The meeting ended at 1114 hours.

CHAIR.....