

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE C 17 APRIL 2019
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**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE C
HELD ON WEDNESDAY 17 APRIL 2019
AT 0930 HOURS IN COMMITTEE ROOM A,
COUNCIL HOUSE EXTENSION, MARGARET
STREET, BIRMINGHAM**

PRESENT: - Councillor Mike Leddy in the Chair

Councillors Olly Armstrong and Neil Eustace

ALSO PRESENT

Bhapinder Nandhra, Licensing Officer
Joe Millington, Committee Lawyer
Errol Wilson, Committee Manager

NOTICE OF RECORDING

1/170419 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

2/170419 Members were reminded that they must declare all relevant and 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 to be recorded in the minutes of meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/170419 There were no Nominee members.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW
ETIQUETTE, UNIT B202 – B204 ARCADIAN CENTRE, HURST STREET,
BIRMINGHAM, B5 4TD

The review of the premises licence was required following an application for expedited review on 21st March 2019, under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006):-

(See document No. 1)

The following persons attended the meeting.

On behalf of the Premises Licence Holder

Wayne Tracey – New Premises Licence Holder
Mr Duncan Craig – Barrister for the Premises Licence Holder
Ms Jo Kinsella and Harriet Moloney – Landlord Support
Piers Warne – Landlord's Solicitor

On behalf of West Midlands Police

PC Abdool Rohomon – West Midlands Police

* * *

The Chairman made introductions and outlined the procedure to be followed and enquired whether there were any preliminary matters.

Mr Bhapinder Nandhra, Licensing Section, made introductory comments relating to the documents submitted.

PC Rohomon on behalf of West Midlands Police (WMP), made the following points:-

1. Since this serious incident, there has been a change in the holder of the premises licence and designated premises supervisor.
2. The transfer of the business to Mr Wayne Tracey was a positive step in overhauling the nature and style of the premises.
3. That it would not be necessary to show the CCTV footage to the Sub-Committee again as it would be of no benefit. The licence was held by another company and not Mr Tracey.
4. That he had formal discussions with Mr Tracey (he was not the premises licence holder at this point).
5. The management plan was not submitted until Mr Tracey spoke with WMP. The management plan was then submitted by Mr Tracey and WMP was satisfied with it.

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6. That he had known Mr Tracey for a long time on a professional level and that they had mutual respect for each other.
7. That he was proposing to the Sub-Committee (with a few minor tweaks) that the conditions offered and agreed and submitted to the Sub-Committee could be signed.
8. That the company had not traded since the interim steps hearing. WMP was happy with the management plan and WMP felt that it was fit and proper for the suspension of the licence to be lifted.
9. That the Sub-Committee could take reassurance in what the company was planning to do. That documentations and all legal paperwork was shown to WMP and WMP was happy with what was progressed and presented going forward.
10. WMP was had confidence in what had been proposed going forward. The previous managers of the premises had now left and the premises were under new ownership.

There were no questions from the Sub-Committee members

PC Rohomon stated that the interim steps suspension could be lifted and could include the new conditions and that WMP had no reason to believe they would not.

On behalf of the premises, Mr Duncan Craig, made the following points:-

- a) That Mr Tracey did all the ground work and based on his observation it was a good partnership working with the authorities.
- b) That he echoed PC Rohomon's comments that Mr Tracey was one of the best operators in the city. Mr Tracey had an amazing track record and that it was clear from the decision to lift the interim steps that he had a good track record.
- c) That Mr Tracey had been proactive and co-operated fully with West Midlands Police to address concerns relating to the crime and disorder objective and had developed a constructive professional relationship with WMP.
- d) That it was highly unfortunate that the disorder took place in the premises at the time when he was not the premises licence holder.
- e) That Mr Tracey had put himself forward as the Designated Premises Supervisor (DPS) and WMP was happy with the progress and the process.
- f) That a comprehensive management plan was in place covering various matters including door staff, policies, undertakings etc. Section 20 steps taken – conditions agreed to in the premises.

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- g) That the last condition in his email of the 16th April 2019 to licensing should read the previous DPS would not be involved in the management **or** control of the licensed premise.
- h) That the management plan be submitted to WMP on the 18th April and that no licensing activities to be undertaken until the management plan was submitted
- i) That the landlord was present at the hearing today and it was not often that a landlord would support the PLH.

At this juncture, Mr Craig invited Piers Warne, Landlord for the premises to address the Sub-Committee.

Mr Warne stated that he was in attendance at the hearing to respond to any questions regarding the change in operation going forward. He added that he had an interest in promoting the licensing objectives and that everything will operate as set out by the new PLH

Mr Craig continued

- j) That the interim steps clarified that this had been lifted and supplanted with the conditions they had agreed and no other measures were appropriate. Mr Tracey thanked WMP and the landlord for their support.
- k) Mr Craig commented that this was a good example of the trade and authorities working together in the interest of the licensing objectives and public safety.

In response to questions, Mr Tracey made the following statements: -

- That the rebadging of SNOBS management had already been put into practice and that they would be operating upstairs on Sunday and from this weekend.
- All operations would be put in place.
- That the management plan dated 17 April 2019 will be submitted to WMP on the 18th April 2019.

In summing up, PC Rohomon of West Midlands Police stated that there was nothing else to add.

In summing up Mr Craig, on behalf of the premises, stated that there was nothing else to add.

At 1008 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1035 hours, the meeting was reconvened and all parties were invited to rejoin the hearing. The decision of the Licensing Sub-Committee C was announced as follows:-

4/170419

RESOLVED:-

That having reviewed the premises licence held under the Licensing Act 2003 by **Living Leisure Limited** in respect of **Etiquette, Unit B202 – B204, Arcadian Centre, 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

The interim step of suspension is lifted and the conditions of the Licence are hereby modified in accordance with the agreement between the parties, in order to promote the prevention of crime and disorder and public safety objectives in the Act

MODIFY CONDITIONS

That the conditions of the premises licence be modified as follows, in order to promote the prevention of crime and disorder and public safety objectives in the Act:

1. The use of the premises will be subject to the management plan, dated 17th April 2019, and signed by West Midlands Police (Birmingham Licensing Department) and premises licence holder.
2. Any amendments to this plan, to be subject to notification (via email or in writing) to West Midlands Police (Birmingham Licensing Department). Amendments will require authorisation from West Midlands Police to become part of the plan.
3. Door staff at the stairs separating the two rooms to be wearing body worn CCTV cameras, to be operational at all times the premises is open for licensable activity.
4. Mr Pouria Azarian not to be involved in the management or control of the licensed premises.

The Sub-Committee's reasons for imposing these agreed conditions relate to submissions by West Midlands Police concerning matters which came to light at the premises on 18th March 2019 as outlined in the Chief of Police's certificate and application.

On this date, an extremely serious incident of disorder occurred at the premises, during which violence was used. The Sub-Committee has previously determined the cause of the serious crime and serious disorder originated from various patrons of the premises, exacerbated by poor security measures in place. Two injured patients required urgent medical assistance as a result of the disorder.

The Sub-Committee has previously expressed its concern at the lack of care and assistance shown towards victims, in particular one male who lay unconscious next to the stairwell in front of security staff for a considerable period of time. The incident revealed a lack of control by security staff and the DPS at the time. Nothing was done to control and contain the serious disorder or alert the emergency services.

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On 29th March 2019, the Sub-Committee determined that the Licence should remain suspended until such time as the previous DPS ceased to have any involvement with the premises and West Midlands Police had approved a revised operating manual. On that date, the Sub-Committee recognised that the transfer of the business to Mr Wayne Tracey was a positive step in overhauling the nature and style of the premises. The Sub-Committee recognised Mr Tracey's extensive track record of running a successful and well-established licensed venue in the city.

Since this serious incident, there has been a change in the holder of the premises licence and designated premises supervisor. The previous DPS, whom the Sub-Committee found to have been fully responsible for the lack of control over the incident on 18th March 2019, has no further involvement in the management or control of the licensed premises.

The Sub-Committee considered carefully submissions on behalf of West Midlands Police, which were positive about Mr Tracey's knowledge and experience in this sector. The Sub-Committee noted that Mr Tracey had been proactive and co-operated fully with West Midlands Police to address concerns relating to the crime and disorder objective and had developed a constructive professional relationship with West Midlands Police.

The Sub-Committee also carefully considered representations made on behalf of Mr Tracey, which described a well-regarded operator consistent with the representations of West Midlands Police. The operational plan, developed through discussion with West Midlands Police and put forward with their approval, was described as comprehensive. In addition, the Sub-Committee carefully considered representations on behalf of the landlord of the premises, which were supportive of Mr Tracey's intentions for the future trading.

Since the imposition of interim steps at the previous hearing, the Sub-Committee noted the efforts made by the premises licence holder to comply with the conditions of suspension, and to improve the operating conditions at the premises as above. The agreed conditions ensure that the previous DPS will continue to have no involvement in the management or control of the licensed premises. The management plan has been approved by West Midlands Police, who have confidence in the new licence holder and DPS. The management plan, subject to which the premises must operate, was drafted with input from West Midlands Police.

The Sub-Committee considers the agreed conditions imposed to be appropriate, reasonable and proportionate to address concerns raised in particular the likelihood of serious crime and or serious disorder.

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 application and certificate issued by West Midlands

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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 their legal representative and other persons, namely the representatives of the landlord.

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.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW THE SUTTON TAP, 67 SOUTH PARADE, SUTTON COLDFIELD, BIRMINGHAM, B72 1QU

The review of the premises licence was required following an application for expedited review on 21st March 2019, under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006):-

(See document No. 2)

The following persons attended the meeting.

On behalf of West Midlands Police

PC Deano Walker – West Midlands Police

On behalf of the Premises Licence Holder

The holder of the premises licence did not attend and did not make any representations. The proposed transferee of the premises licence did not attend or make any representations.

* * *

The Chairman made introductions and outlined the procedure to be followed and enquired whether there were any preliminary matters.

PC Deano Walker on behalf of West Midlands Police explained to the Sub-Committee that it would be necessary to show CCTV in Private. This was due to the following:-

- ❖ That there was an on-going criminal investigation.
- ❖ That the CCTV was sensitive material and not in the public domain.

Mr Bhapinder Nandhra, Licensing Section, made introductory comments relating to the documents submitted.

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PC Deano Walker on behalf of West Midlands Police, made the following points:-

- a) That on Saturday 16 March 2019 at 0326 hours a call was received from the Designated Premises Supervisor (DPS) advising that a disorder was taking place.
- b) Police arrived at 0336 hours and saw a lot of people, but no issues were reported when WMP arrived. The police left without making any arrest.
- c) On the 23rd March 2019 another disturbance took place at the premises and WMP recovered CCTV from the premises and Grace Church Shopping Centre.
- d) Police reviewed the CCTV and noted that there was a large disturbance taking place and the footage was sent to WMP. There was a lot going on during the CCTV recording.
- e) The incident started at 0318 hours, but WMP did not receive the call from the DPS until 0326 hours.
- f) There were periodic fights between customers resulting in a huge fight between 20 persons which had spilled out onto the road. The fighting and disorder occurred around the main entrance to the pub as well as in the road.
- g) Customers were thrown to the floor and kicked in the head whilst others were jumping over the security barriers and attempting to get back into the pub. It was clear that the incident had begun in the pub.
- h) A group of males were seen punching and kicking another male to the head, he made an attempt to get away, but was chased into the road where he was again knocked to the ground with a punch and was repeatedly kicked in the head. He was unconscious.
- i) At 0321 hours the barriers were pulled away from the smoking area and were used as missiles and thrown at the pub.
- j) At 0323 hours two males were seen attacking a car that was parked on the road in front of the pub, whilst at the same time fighting had again broken out near the entrance of the pub.
- k) A hooded male picked up one of the barriers and launched it at the parked car whilst another kicked the car before it sped off. The car involved was seen to turn around and speeding erratically back along South Parade and customers began to attack it again.
- l) At the previous hearing, CCTV footage showed door staff allowing customers to inhale nitrous oxide from balloons inside the venue and it showed the same door staff bursting them as they left the venue. These same door staff was still employed at the premises.

At this juncture, the Chairman advised that the public would now be excluded from the meeting.

EXCLUSION OF THE PUBLIC

5/170419

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.

At this stage in the meeting having viewed the CCTV footage in private the public were readmitted to the meeting.

PC Walker continued:-

- a) That WMP had requested an expedited review. On Wednesday 10th April 2019, WMP was made aware of another incident that occurred at the premises after the Sub-Committee had suspended its licence.
- b) Officers attend the premises at 0301 hours following a report of disorder and found 6 to 7 people stood outside and one male with a bloody nose.
- c) Officers entered the premises and found the brother of the DPS/licence holder. Officers observed signs that a disorder had taken place, there was blood stained tissues on the floor and a strong smell of cannabis in the room.
- d) Nitrous Oxide canisters along with balloons were found on the floor and officers had observed cash in the till and customers had confirmed that alcohol was being sold.
- e) PC Walker then drew the attention of the Sub-Committee to WMP incident log on pages 21 – 22 of the evidence bundle.
- f) WMP was astonished that with the licence being revoked, that another incident had occurred as the premises had customer attacked and injured and the emergency services were not called.
- g) Member of staff was supplying nitrous oxide which was the same door staff from a previous incident. The DPS called WMP 8 minutes after the incident had started.
- h) The door supervisor duty log on pages 14 -16 of WMP evidence bundle stated that *'group of males kicked off outside ... police called all okay'*, which was not the case.
- i) The PLH had offered to undertake various improvements which had not being done – no CCTV, no dress code and no new drugs search policy. The licence was revoked by the Sub-Committee.
- j) As per an email to Licensing from Capita on the 3rd April 2019 it was noted that Santander UK PLC owned the freehold interest in the premises.
- k) It was further noted that neither the Sutton Tap nor the licensee had any legal right to occupy the premises and action was being commenced to recover possession of the premises.
- l) That the PLH/DPS still had no control and that the venue was synonymous for drunken crime, disorder, drug use and anti-social behaviour. That he had never seen such disregard for the licensing objectives in his 10 years of service.
- m) WMP was requesting that the licence be revoked for a second time.

Mr Joe Millington, Committee Lawyer, stated that the facts were relatively clear.

WMP was aware of the application for a transfer of the premises licence and had served evidence on the old and potential new PLH.

The Chair enquired whether the PLH had any legal right to occupy the premises given the email from Capita.

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Mr Millington advised that the licensing officer had received information albeit out of time, but that the Sub-Committee need not be troubled by this today. This was a relevant factor to be taken into account.

The Chairman stated that the licence was previously revoked, but that the PLH had made an appeal to the Magistrate's Court. Since awaiting the review of the licence another incident had occurred at the premises regarding the summary review and last week another incident involving 6-7 individuals on the 10th April 2019. Three serious incidents had taken place between the first and today's hearing.

The first incident took place in January 2019 and the licence was revoked in February 2019. The PLH appealed the decision to revoke the licence. Since the appeal was lodged a serious disorder had taken place.

In summing up PC Walker, on behalf of WMP, stated that the CCTV footage that was shown in private for WMP. They had not worked with the PLH/DSP and there had been no dialogue with them at all.

Mr Millington enquired whether WMP was asking for revocation and for interim steps to remain in force. PC Walker confirmed that this was the request.

At 1440 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Manager to withdraw from the meeting.

At 1444 hours, the meeting was reconvened and all parties were invited to rejoin the hearing. The decision of the Licensing Sub-Committee C was announced as follows:-

6/170419 **RESOLVED:-**

That having reviewed the premises licence held under the Licensing Act 2003 by **DG Entertainment Ltd** in respect of **The Sutton Tap, 67 South Parade, Sutton Coldfield, Birmingham, B72 1QU** following an application for an expedited review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines:

The Licence is REVOKED, with the interim step of suspension to remain in place until the end of the period for appealing against this decision, or the determination of any appeal made

In order to promote the prevention of crime and disorder, public safety, and the prevention of public nuisance objectives in the Act.

REVOKE LICENCE

The Sub-Committee's reasons for revoking the licence are due to concerns by West Midlands Police in relation to an incident of serious crime and disorder, involving the use of violence by a large number of people, on 16th March 2019.

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This premises licence was previously revoked following an application for review. The premises licence holder pursued an appeal against that decision to revoke and was permitted thereby to continue to operate pending appeal against that earlier decision to revoke.

The incident forming the subject of the instant review of the premises licence under section 53A of the Licensing Act 2003 occurred with that appeal pending. The Sub-Committee has heard representations on behalf of West Midlands Police and has viewed CCTV footage of the incident. The footage depicts violence and public disorder involving a large number of individuals, originating from within the licensed premises, and spreading across the street.

The Sub-Committee observes with concern that this disturbance, which involved the use of violent punches and kicks against members of the public, continued for 8 minutes before a call was made to West Midlands Police. This is despite the presence of door staff at the time. The Sub-Committee also considered carefully the representations made on behalf of West Midlands Police that these same door staff were employed at the premises prior to the first decision to revoke the licence and remain employed despite assurances from the licence holder. The door staff failed to co-operate adequately with police on the night or assist in identifying any offender. No CCTV footage was made available from within the premises.

The Sub-Committee accepts the representations of the experienced officer of West Midlands Police that the operation of these premises demonstrates a total disregard for any of the licensing objectives. At a hearing on 22nd March 2019, this licence was made subject to interim suspension. Despite this, West Midlands Police (licensing) report a further incident of crime and disorder on around 6th/7th April 2019, which came to their attention on 10th April 2019. Officers attended the premises and found 6 to 7 people stood outside and one male with a bloody nose, blood stained tissues were observed on the premises floor, a strong smell of cannabis was present in the premises, and nitrous oxide cannisters and balloons lay on the floor. There was cash in the till and customers confirmed payment for alcohol, despite the suspension in force. The premises licence holder was not present, but his brother was on the premises.

The holder of the premises licence did not attend and did not make any representations. The proposed transferee of the premises licence did not attend or make any representations.

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 application and

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certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 and the written representations and the submissions made at the hearing by the police.

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 save for the interim step of suspension 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.

OTHER URGENT BUSINESS

7/170419 There was no urgent business.

Meeting ended 1446 hours.

Chairman