

BIRMINGHAM CITY COUNCIL

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| LICENSING SUB-COMMITTEE C 6 MAY 2020 |
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 6 MAY 2020 AT 1500 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Nicky Brennan.

ALSO PRESENT

David Kennedy – Licensing Section
Bhapinder Nhandra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services
Phil Wright – Committee Services

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

NOTICE OF RECORDING/WEBCAST

- 1/060520 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) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/060520 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this 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 the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

- 3/060520 Apologies were submitted on behalf of Councillors Neil Eustace and Martin Straker-Welds and Councillors Nicky Brennan and Mary Locke were the nominee Members respectively.

**THE BRICKLAYERS ARMS, 218 ICKNIELD PORT ROAD, BIRMINGHAM B16
0EA – LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME
REDUCTION ACT 2006 – APPLICATION FOR EXPEDITED REVIEW OF
PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS.**

A certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003, an application for Review of Licence, a copy of Premises Licence and Location maps were submitted:-

(See document No. 1)

On Behalf of the Applicant

PC Abdool Rohomon – West Midlands Police (WMP)
Chris Jones – West Midlands Police (WMP)

On behalf of the Premises Licence Holder

Malcolm Ireland – Napthens of Blackburn Solicitors

The Chairman introduced the Members and officers present and prior to the commencement of proceedings the Chair asked if there were any preliminary points for the Sub-Committee to consider. No one indicated that they had any preliminary points.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy to outline the report.

Afterwards, the Chairman invited PC Rohomon to outline the Expedited Review application. At which stage PC Rohomon made the following points: -

- a) He would be highlighting what had happened and would also be referring to information that WMP had received previously in relation to the premises. PC Rohomon also stressed the importance of licensed premises following the Covid-19 guidelines and continuing to stay closed.
- b) On 2 May 2020 at 1500hrs WMP received a phone call via the 101 system. The caller indicated that The Bricklayers Arms were in fact open, despite the Covid-19 national lockdown, and that people were entering through a back gate in order to access the premises. Following the phone call, officers were despatched to the premises. Upon arrival, officers did discover a side gate, which was open. The officers went through the gate into the premises and found people inside. One person in particular had to be ushered out and was 'worse for wear' and not at all sober. Even more concerning, was when WMP were obtaining his details, he was a 64-year-old man. PC Rohomon concluded that it was an extremely worrying situation, given that the man was 64 years old, approaching the at-risk age category.

Licensing Sub-Committee C – 6 May 2020

- c) When officers entered the premises they found the premises was 'fit and ready' and clearly open for licensable activity. They discovered the gaming machines and television to be on and working and could smell smoke from cigarettes. Further, the officers also discovered glassware and beer cans around the premises.
- d) There were several people inside the premises and WMP were in the process of getting statements from them.
- e) That it was not the first time the premises had come to the attention of WMP. WMP had received several calls previously, however they had not been able to gain entry to the premises when officers had been despatched. WMP received a 999 call on 30 March 2020, the caller was concerned that she had been asked to go to The Bricklayers Arms even though licensed premises should have been closed.
- f) PC Rohomon clarified that the nation was in the middle of a Pandemic as a result of the Covid-19 outbreak and the Government had imposed lockdown measures to protect people. He stated that the premises opening during this lockdown was simply putting lives at risk; people were losing their lives as a result of Covid-19.
- g) The man who was ushered out of the premises stated he was not a family member and had only gone there to have a few cans of lager. PC Rohomon confirmed that his explanation was not deemed essential travel and nor was it a legitimate excuse. The premises was putting not only themselves at risk but also the wider public.
- h) That public nuisance was deemed serious crime; however, this was an unusual case.
- i) WMP had visited several premises during the lockdown period, of which the majority were stripped of their alcohol and clearly not operational. In complete contrast, this premises was well stocked with spirits and people were coming and going through a back gate.
- j) That they had requested CCTV from the premises but were yet to receive it.

The Chairman invited the Members of the Sub Committee to ask any questions and PC Rohomon gave the following answers:-

- a) The initial record from officers at the premises indicated that there were 3 people inside the premises at the time of the inspection by WMP.
- b) That WMP had received at least two phone calls regarding the premises being open during lockdown. PC Rohomon confirmed he was trying to point out that the premises had been caught only once, however there were at least three other records of the premises being open.

At this stage the Chair invited Mr Malcolm Ireland, on behalf of the PLH to make his representation and as such, Mr Ireland made the following points: -

- a) That the PLH was not directly involved with the day to day running of the premises and they only had limited exchanges with the tenant.
- b) The PLH was a responsible operator and they did not make any objection to WMP taking action.
- c) They had not yet had chance to investigate the matter and did not have any objection to an interim suspension in order to give them time to find out what had been happening.

Following the representation from Mr Ireland, both parties were invited to make a closing submission.

In summing up PC Rohomon made the following points: -

- That due to the severity of the incident, WMP were requesting a suspension. PC Rohomon confirmed he had already spoken to Mr Ireland about the suspension.

In summing up Mr Ireland made the following points: -

- That he had communicated what he needed to.
- His client was a responsible operator and they needed time to investigate what had occurred.
- They would work with WMP in order to take appropriate action.

At this stage the meeting was adjourned in order for the Sub Committee to make a decision and all parties left the meeting. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and decision of the Sub-Committee was sent out to all parties as follows: -

4/060520 **RESOLVED:-**

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Admiral Taverns Limited in respect of The Bricklayers Arms, 218 Icknield Port Road, Birmingham B16 0EA, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application

and

- that Jennifer Elizabeth Henry be removed as the Designated Premises Supervisor

Before the meeting began the Sub-Committee was aware of the *Health Protection (Coronavirus, Restrictions) (England) Regulations 2020* - in particular regulation 4 of these Regulations, requiring premises and businesses to close, and also Schedule 2, which confirms that the Regulations apply to pubs and bars. These Regulations have been in force since 26th March 2020.

Members heard the submissions of West Midlands Police, namely that on Saturday 2nd May 2020, the premises was discovered to be open and trading, in defiance of the national lockdown which had been imposed by HM Government during March 2020. Patrons were entering through the back door in order to buy and drink alcohol, play gaming machines, watch the television – all the usual activities which would have gone on in The Bricklayers Arms were it not for the national lockdown.

The Police explained that the premises' decision to open was an overt risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. The Covid 19 virus is a pandemic which has required all licensed premises to act responsibly and in accordance with the law, in order to save lives. It was therefore a flagrant public nuisance for any licensed premises to breach the lockdown to open to the public and conduct licensable activities.

The Sub-Committee determined that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises. There was a suggestion from the Police that their records of 999 calls indicated that, in addition to the trading discovered on Saturday 2nd May, there may have been other instances of the premises being open and trading, with patrons simply using the back door to enter. In order to prevent further serious crime, the Police asked that the licence be suspended pending the full review of the licence.

The premises licence holder's legal representative then addressed the Sub-Committee. The Members found his submissions very helpful. The premises licence holder did not object to the suspension, took the allegations seriously and intended to take a responsible attitude by cooperating with Police.

Having heard the premises' submission, the Sub-Committee determined that it was both necessary and reasonable to impose the interim step of suspension to address the immediate problems with the premises, namely the likelihood of further serious crime.

The Sub-Committee considered whether it could impose other interim steps, including modification of licence conditions, or exclusion of the sale of alcohol or other licensable activities. Obviously, these were not appropriate in the context of the national lockdown.

However the Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the lockdown in order to trade as usual. Therefore the risks could

only be addressed by the suspension of the Licence but also removal of the DPS, pending the full Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office in relation to expedited and summary licence reviews, and the submissions made by the Police and by the premises licence holder's representative at the hearing.

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.

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

Please note, the meeting ended at 1125.