

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 12 APRIL 2023
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 12 APRIL 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Zafar Iqbal and Izzy Knowles.

ALSO PRESENT

Bhapinder Nandhra – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

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

1/120423 **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 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.

2/120423 **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

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

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/120423 Apologies were submitted on behalf of Councillors Penny Wagg and Councillor Izzy Knowles was the nominated substitute Member.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW – GREAT WESTERN HOTEL, 10 YARDLEY ROAD, ACOCKS GREEN, BIRMINGHAM, B27 6EB.

On Behalf of the Applicant

Chris Jones – WMP (West Midlands Police)
Ben Reader – WMP

On Behalf of the Premises Licence Holder

Richard Taylor – Solicitor
Joanne Hipkiss – Licensing Manager

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

Chris Jones, on behalf of WMP made an application that should the Committee wish to see the CCTV footage, then it should be screened in private due to the on-going live investigation.

The PLH representative advised that they had no objection to the application and that the parties were in an agreed position, they were not intending to dispute the facts.

After a short adjournment to consider the request the Chair advised that the hearing would be held in private due to the on-going live investigation and to ensure fairness to both parties. Councillor Iqbal also needed to view the CCTV footage.

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. Bhapinder Nandhra, Licensing Section, outlined the report.

At this stage the Members, officers and other parties joined a separate MS Teams meeting which was held privately.

EXCLUSION OF THE PUBLIC

4/120423

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.

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

5/120423

RESOLVED:-

That having reviewed the premises licence held under the Licensing Act 2003 by EI Group PLC in respect of Great Western Hotel, 10 Yardley Road, Birmingham B27 6EB, following an application for an expedited review made by a Superintendent of West Midlands Police, this Sub-Committee hereby determines that:

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- the designated premises supervisor [DPS] is removed
 - the interim step of suspension of the licence, imposed at the Interim Steps meeting of 17th March 2023, is lifted
 - the nine conditions which were agreed between the licence holder company and West Midlands Police in advance of the meeting shall be adopted both as a modified interim step and as the substantive decision following the review of the licence. Those nine agreed conditions are as follows:
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- i. The premises will not carry out any licensable activity until the premises licence holder has influence over the operation of the premises and is in a position to promote the licensing objectives, together with liaison with the DPS. Any recommencement of licensable activity at the premises is to be confirmed via an email to West Midlands Police Central Licensing Team, from the premises licence holders. This confirmation will be sent a minimum of 48 hours prior to the recommencement of any licensable activity on the premises
- ii. The DPS or their nominated person will check the CCTV system daily, to ensure it is working and recording. This check to be documented, timed, signed and dated by the person checking. This documentation to be made immediately available to any of the responsible authorities on request
- iii. CCTV will be installed/updated to the specifications and recommendations of West Midlands Police. CCTV will record throughout the whole of the licensable activity, store recordings for a

minimum of 28 days, show the correct time & date stamp and be downloadable. CCTV to be made immediately available to any of the responsible authorities on request

iv. The premises will have a written vulnerability policy. All staff working in the premises while it is carrying out licensable activity will be trained in this policy, prior to their first shift. Training records will be dated and signed by the trainer and trainee – unless held electronically. These training records will be made immediately available to any of the responsible authorities on request

v. All staff (with the exception of personal licence holders) will be trained in their responsibilities under the Licensing Act 2003 and Challenge 25 policy, prior to their first shift. Training records will be dated and signed by the trainer and trainee – unless held electronically. These training records will be made immediately available to any of the responsible authorities on request

vi. The DPS and duty managers will be trained in (crime) scene management. There will always be a member of staff on duty at the premises who has had this training. These training records will be made immediately available to any of the responsible authorities on request. Training records will be dated and signed by the trainer and trainee – unless held electronically

vii. The premises will keep an incident book and record all instances of crime, disorder, ejections and ASB at the premises, whether the emergency services are contacted or not. This report to be completed as soon after the incident as possible but at the latest at the end of licensable activity for that day. This log will be signed off weekly by the DPS, unless held electronically. This log will be made immediately available to any of the responsible authorities on request

viii. A refusals log will be kept on the premises. All refusals of the sale of alcohol will be recorded. This log will be signed off weekly by the DPS, unless held electronically. This log will be made immediately available to any of the responsible authorities on request

ix. The premises will operate a Challenge 25 policy. Only photographic ID with a hologram logo will be acceptable under this policy. Prominent signage will be displayed within the premises at the bar serving area(s) regarding this policy

The Sub-Committee's reasons for this determination were due to the recommendation from 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. The Sub-Committee had determined at the Interim Steps meeting of 17th March 2023 that the cause of the serious crime was likely to have originated from an operating style which had failed to uphold the licensing objectives.

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. West Midlands Police stated that an agreed position had been reached between the parties, but reminded the Sub-Committee of the ongoing criminal investigation, and of the CCTV

evidence showing the violent incident inside the premises. The solicitor for the licence holder company confirmed that the parties had indeed arrived at an agreed position, and observed that the CCTV had been played at the Interim Steps meeting.

However, one of the three Members in the meeting had not been part of the panel for the Interim Steps meeting. The Sub-Committee therefore decided to hold the meeting in private session so that the CCTV could be played for the third Member to see the incident, and in order that questions could be asked. The CCTV was played twice (the second time with the Police commenting on what was shown).

Members then heard the submissions of West Midlands Police, namely that the criminal investigation was ongoing. The Police had spoken to the DPS, and had also spoken to those at the premises licence holder company. They had found those at the company to be “honest and transparent”.

The Police therefore did not have concerns with the venue; however, due to the ongoing legal dispute between the licence holder company and the tenant of the premises, the licence holder was unable to influence the operation of the premises, as there was no working relationship between the licence holder and the tenant. Accordingly, the Police had held discussions with the licence holder company to agree suitable conditions, such that the licence could remain in force and the premises could reopen in due course.

The Police had noted that the licence holder company intended to invite the Sub-Committee to remove the DPS; the Police confirmed that they did not object to this course, as it was important that the licence holder company should have influence over the DPS. Once proper arrangements were in place, the Police would be content that trading could resume with the agreed conditions added to the licence. The Police also confirmed that they felt that the interim step of suspension imposed on 17th March 2023 should be lifted.

The Sub-Committee then heard from the solicitor acting for the licence holder company. He remarked that the Expedited Review process had only been necessary because the licence holder company had no relationship with the tenant, due to the ongoing litigation. Conditions had been agreed with the Police, and in addition the licence holder company requested that the Sub-Committee remove the DPS as “an extra insurance”. The licence holder company also volunteered an undertaking that it would not specify a new DPS until it had recovered the premises and transferred the licence to a new tenant. The solicitor requested that the Sub-Committee lift the suspension so that the venue could reopen once a new operator was in place.

The solicitor directed the attention of the Sub-Committee to paragraph 11.20 of the Guidance issued by the Home Office under s182 of the Act, which recommended that Sub-Committees should seek to

establish the cause or causes of the concerns; thereafter the remedial action taken should generally be directed at the causes, and should always be no more than an appropriate and proportionate response to address the causes of concern that had instigated the Review. The solicitor said that the 'cause' in the instant matter was the fact that the licence holder company could not impose its will on the tenant, due to the ongoing legal dispute.

The solicitor also reminded the Members of the recommendation in paragraph 9.43 of the Guidance - namely that "their determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve". He remarked that the only proportionate thing to do was to impose the agreed conditions, which would have the effect of ensuring that the venue could not trade until the licence holder company had regained control following the conclusion of the legal dispute.

The solicitor concluded by remarking that any other disposal, in particular the revocation of the premises licence, would serve only to punish the licence holder company when the current circumstances, namely the ongoing litigation with its tenant, were a matter completely beyond the licence holder company's control.

In deliberating, the Sub-Committee determined that there had been a serious crime incident, which was being investigated by Police. However, the Police had not found the licence holder company to be in any way unsatisfactory, and instead had recommended that the licence conditions be modified so that the premises could resume trading once the necessary arrangements had been made.

The Sub-Committee reflected carefully on the solicitor's comments about the Guidance issued under s182 of the Act, and found that the imposition of the agreed conditions was the proper course. The Sub-Committee also determined that it was correct to remove the DPS, and to lift the suspension which had been imposed as an interim step at the last meeting. The Members agreed with the parties that this course was the most reasonable and proportionate way to deal with the matter, and which followed the Guidance issued under s182 of the Act.

The Sub-Committee agreed with the solicitor that revocation of the licence would be a draconian punishment, which would not have taken into account the fact that the Police had declared that the licence holder company had not been any cause for concern to them - indeed, the Sub-Committee noted that the Police had remarked that those at the licence holder company had been open, honest and transparent in all their dealings with the Police. The Sub-Committee was therefore confident that the course that had been agreed between the parties was the correct way forward.

The Sub-Committee noted the voluntary undertaking given by the

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licence holder company during the meeting – namely that it would not specify a new DPS until it had recovered the premises and transferred the licence to a new tenant. The Sub-Committee therefore considered it prudent to adopt the agreed conditions both as a modified interim step and as the substantive decision following the review of the licence.

In addition to the agreed 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 latest version of the Guidance issued under section 182 of the Licensing Act 2003 by the Secretary of State, the application and certificate issued by West Midlands Police under section 53A of the Licensing Act 2003, the written representations, and the submissions made at the hearing by West Midlands Police, and by the solicitor acting for the licence holder company.

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, save for the imposition of the agreed conditions as a modified interim step, 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 determination of the appeal.

Please note the meeting ended at 1117 hours.

CHAIR.....