

BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE B 16 JUNE 2015

**MINUTES OF A MEETING OF
LICENSING SUB COMMITTEE B
HELD ON TUESDAY 16 JUNE 2015
AT 1000 HOURS IN COMMITTEE
ROOM 1, COUNCIL HOUSE,
BIRMINGHAM**

PRESENT: - Councillor Lynda Clinton in the Chair

Councillors Nawaz Ali and Gareth Moore

ALSO PRESENT

David Kennedy, Licensing Section
Sanjeev Bhopal, Committee Lawyer
Gwin Pountney, Committee Manager

NOTICE OF RECORDING

1/160615

The Chairman to advised the meeting to note that members of the press/public may record and take photographs except where there are confidential or exempt items.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

2/160615

There were no apologies or nominee members.

**GUNMAKERS ARMS 92-93 BATH STREET, BIRMINGHAM, B4 6HG –
LICENSING ACT 2003 – PREMISES LICENCE REVIEW**

The following report of the Director of Regulation and Enforcement was submitted:-

(See document No. 1)

The following persons attended the meeting.

On behalf of the applicant

Mr M O'Brien – Premises Licence Holder
Mr R Halabrin – Designated Premises Supervisor (DPS)
Mr T Morrissey – supporting the DPS
Mr G Bird – supporting the DPS
Mr N Phillips – supporting the DPS

Making Representations in respect of the application

PC A Rohomon – West Midlands Police
M Williams – Trading Standards

Following introductions by the Chairman, the main points of the report were outlined by David Kennedy, Licensing Section and Members were advised that West Midlands Police had submitted further supporting information.

(See documents No.2 and No.3)

PC Rohomon, in presenting the case on behalf of the Police and in response to questions from Members, made the following points:-

- a) The Gunmakers Arms was a small premises, outside the main entertainment area of Birmingham, licensed until 1.00am all week.
- b) At 1.53am on 10 December 2014 the emergency services had received a call from the premises requesting the police and ambulance services. Upon arrival at the premises the ambulance services found a male who they declared immediately as deceased.
- c) The Police subsequently interviewed the DPS, Mr Halabrin, who made a statement to the effect that the male had arrived at the premises between 5.00pm and 6.00pm and had been drinking cider and shots throughout most of the night, but had also consumed half a litre of whisky in 20 seconds and had eventually got so intoxicated that he had passed out.
- d) He stressed that this was 'an extortionate amount of alcohol' for a person to drink within such a short space of time.
- e) Mr Halabrin had further stated that another patron and himself had taken the drunken customer outside to try and revive him and then taken him back in and then splashed water on his face.
- f) Following this, the customer had been put into the recovery position and Mr Halabrin and his colleague had gone out to eat for 30 minutes. Upon their return the customer appeared cold so they put him up against a radiator to warm him up but when this failed they had called an ambulance – who had pronounced him dead.
- g) Following an examination of the body by the coroner a blood sample had been taken which had shown 436mg per 100ml alcohol in the blood with the statement that any levels above 400mg could be fatal. This was consequently stipulated in the coroner's report as one of the causes of death – 'Acute

ethanolic intoxication’.

- h) Commented on the photos in the police evidence bundle, (which had only come to light at the inquest in March 2015 despite 2 visits by the police to the premises prior to this), showing the customer:
- with a 2/3rds full bottle of whisky in front of him
 - with a line of shots
 - in a clearly intoxicated state
 - totally unconscious
 - with wet clothing and a wet towel around his head (in December when the weather at night had been 3 degrees at night)
 - slumped against a wall with his body contorted

all demonstrating a complete lack of care for the customer.

- i) Another photo showed the bar with 3 clear bottles – which were later identified as 50% proof, with another photo showing the price list –although the DPS had stated that these were not sold to customers but given to them as gifts.
- j) That the DPS had gone out to eat and locked the premises leaving the customer intoxicated, alone and unable to call or let in the emergency services. Upon his return the customer had been cold but an ambulance had only been called after propping him up against radiator and failing to warm him up.
- k) Concluded that there had been ‘monumental failings’ by the DPS at the premises and the premises licence holder was also culpable due to his lack of management of, or intervention at, the premises.
- l) Due to their failings someone had died on the premises of alcohol poisoning as a result of being served a very high concentration of alcohol. They had failed in their duty of care to their customer to enjoy his night and go home safely.
- m) That prior to this event the Police had had very little involvement with this pub with no association to crime and disorder.
- n) That the only possible outcome for this review, in the interests of public safety would be for the licence to be revoked. The customer had drunk cider and then a substantial quantity of spirits within a short space but had been allowed to continue to drink. This had been exacerbated further by the DPS’ actions following the customer’s intoxication and his failure to call an ambulance.
- o) That the customer had not been found in the recovery position as his body had been moved upon the DPS’ return and there were no photos of this – the only evidence of this was the DPS’ statement.

Martin Williams, made the following points in respect of his representation and in

response to Members' questions:-

- a) Referred to his evidence at appendix 1 of the licensing report detailing 2 visits to the premises when non-duty paid bottles of spirits, spirits decanted from different bottles and plain unlabelled bottles containing spirits.
- b) That he had made 2 visits to the premises on 20 February 2015 and 1 April 2015 and the bottles of spirits pictured in the police evidence bundle had not been present.
- c) That he had only visited the premises twice in response to 2 complaints prior to this it had been every other year as the pub had had no previous history of complaints.
- d) That he had issued Mr Halabrin with a traders notice regarding the unlabelled spirits bottles which Mr Halabrin had signed. The note clearly stated that should his actions reoccur there was a possibility that his licence could be revoked. He was therefore very concerned when the same thing had occurred on the second visit.

Mr O'Brien, in presenting his case and in response to questions from Members, made the following points:-

- a) That he had bought the Gunmakers Arms as a buy to let investment. It had been 50 years old at this point and he had brought it up to the current fire regulations. He had subsequently had little to do with the daily management of the premises and the rent had been collected by an agent.
- b) He had ensured that his DPS, Mr Halabrin had completed his DPS training and had then taken over the running of the pub. Following this he had visited the premises on a fortnightly basis and had not seen anything untoward occurring.
- c) That whilst he did not defend the actions on the night of December 9, he had attended the meeting to keep his premises licence.
- d) He had complied with the Police throughout their investigations and had only found out about the incident following a meeting with the Police and Trading Standards on 12 February 2015 to discuss the coroner's results and had been very concerned about the alcoholic issues surrounding the death of a customer – he had formerly been advised by the DPS that the customer had had a 'health issue'.
- e) That he had tried to get the keys for the premises back from the DPS without success and had subsequently served a 28 day notice of evacuation upon him.
- f) This matter had caused great stress to himself and his family and there had been no previous history of crime/disorder or public safety at the premises. He stressed his disgust at the pictures presented in the Police evidence which he had not previously seen and expressed his sadness for

the family at the death of the customer.

- g) That whilst he understood his own responsibilities regarding public safety, he had felt as the DPS had been fully trained that he was fit for the role and there had been no previous issues with him. Furthermore on the occasions he had visited the premises everything had seemed to be running well.
- h) That the DPS had at one point changed the locks and locked him out of the premises for a period of three months and that they had a strained relationship. The situation had escalated since this event and he had been attempting to remove the DPS through the legal process and felt that there was no further action he could take.

Mr Halabrin in presenting his case and in response to questions from Members, made the following points:-

- a) That he felt responsible for some of the events on 9 December, but not and he felt very sad about the death on the premises of the customer whom he had often frequented the premises.
- b) That he seen the customer in the premises prior to this event getting drunk and then revived him. On this occasion he had earlier in the evening offered to put him into a taxi home but the offer had been refused.
- c) That he had lost control of events on 9 December but had tried his best to manage the situation.
- d) That he had taken photographs of the evening to show to the customer on the following evening regarding his drunken behaviour in order to restrain his drinking.
- e) That he had not served the whisky to the customer – it had been stolen by him whilst he had been away from this part of the bar and he had not removed the bottle from him as his behaviour had become more aggressive as he was becoming intoxicated at this point.
- f) That he had not insisted that the customer leave the premises after offering to get him a taxi as he had been a friend who visited the bar 4-5 times per week. However, he had poured some of the cider in front of him into the sink and not served him any further alcohol. Later on in the evening he had left him to fall asleep to awaken later to send home.
- g) That he had put the customer in the recovery position with an available exit when he went to get some food. He would have therefore been able to leave the premises if he had come around – but Mr Halabrin admitted that should the emergency services have been called, they would have been unable to get in.
- h) That whilst the customer had been drunk at the pub on previous occasions his behaviour had generally been loud and boisterous whilst on this

occasion he had become aggressive – particularly after he had drunk the whisky. It was possible however, that he had been drinking before he came into the pub.

- i) That he was keeping a record of the drinks taken by the customer to charge him for them the next day – this was normal practice for his regular customers, however they were not generally allowed to help themselves to drinks from behind the bar.
- j) That the licence should not be revoked as he had been very open about the events of 9 December and with regard to the unlabelled spirits he served at the bar, these were complimentary drinks for his customers. Furthermore he had learned from these events to move drinks away from the reach of intoxicated customers and to refuse them any further drinks and had become a more careful/cautious DPS.
- k) That the customer had vomited and urinated in the bar and he had cleaned it up using cleaning fluid and paper towels.
- l) That he had undertaken training for his role as Designated Premises Supervisor which included information on measures of alcohol – he had not been advised of this by the premises licence holder.
- m) That he had attempted to revive the customer using approximately ½ litre of cold water and whilst he had had no formal first aid training he had knowledge of the recovery position and that it required placing a person on their side.

Mr Morrisey in presenting his case and in response to questions from Members, made the following points:-

- a) That upon Mr Halabrin taking over the role as DPS at the Gunmakers Arms the pub had become a multi-cultural environment with a very good customer atmosphere and welcoming environment. – prior to this it had been in rack and ruin.
- b) That Mr Halabrin was a 'first class character' and treated all his customers like family.

Mr Bird in presenting his case and in response to questions from Members, made the following points:-

- a) That Mr Halabrin had made the pub a safe and welcoming environment with a large client base from all ethnic backgrounds. The customers had put together a petition with 78 signatures in support of Mr Halabrin, however this had been deemed inadmissible by Licensing Services.
- b) That he had observed the change in Mr Halabrin since these events and had seen him refuse drinks to customers where necessary and take their car keys to prevent them from driving home.

Mr Phillips in presenting his case and in response to questions from Members, made the following points:-

- a) That he had known the DPS for 4 years during which he had made a tremendous effort to build up the customer base and atmosphere. The pub was clean, warm and welcoming and he regarded Mr Halabrin as a friend and had had taken his family and friends to the pub frequently. It was also used by the Salvation Army for lunch refreshments.
- b) That Mr Halabrin had been the key holder for one of his customers and had fed him and ensured that he got home safely and had ensured that he was cared for when he was ill.
- c) That he had never seen Mr Halabrin take money for the non-duty spirits at the bar,
- d) That he had observed a deterioration in Mr Halabrin's mental state over the previous 6 months and seen his anguish over the death of a customer on the premises and his recognition that he had made a big mistake.

In summing up, PC Rohomon pointed out that it had been clear at the meeting that the premises licence holder did not understand his responsibilities with regard to the licensing act and objectives. He had treated the premises merely as an asset to make money and sell alcohol without any duty of care.

With regard to the DPS he had been in a position to save his customer but had allowed him to drink an extortionate amount of alcohol in a short space of time and had continued to let him carry on drinking. He had then proceeded to drench his customer with cold water and leave him alone in the pub while he went out – showing no duty of care in any of his actions. PC Rohomon stressed his sympathy for the family of the customer who had lost a family member due to the actions of the DPS and premises licence holder and asked for the premises licence to be revoked.

In summing up Mr O'Brien stressed that he had co-operated with the Police throughout their investigation, he felt he was innocent with regard to the events of 9 December and had actively tried to remove the DPS following the coroner's verdict in March and asked that the DPS be removed from the premises but that the premises licence be suspended, not revoked, in order that the premises could continue with a new DPS.

In summing up, Mr Halabrin admitted to his actions of 9 December and stressed that he would accept the decision of the Sub-Committee regarding the events of 9 December.

In summing up, Mr Bird expressed his scepticism of any Police intervention if Mr Halabrin had reported a drunken customer asleep on the premises. He stressed however that mistakes had been made and the events of 9 December had been sad for everyone concerned. However, lessons had been learned from this and changes of behaviour by the DPS had been noticeable. Therefore he requested that conditions be imposed on the premises and monitored by the Police, rather

than revocation of the premises licence.

In summing up, Mr Phillips stressed that prior to Mr Halabrin taking on the premises the pub had not really existed. Furthermore, he had had a very difficult 6 months following this event and had learned a lot of lessons and matured during this period - continuing to manage the pub well and being firmer with his refusals to drunken customers – and therefore emphasis should be placed on his level of care and consideration for his customers rather than his mistakes.

At 1245 hours the Chairman requested all present, with the exception of Members, the Committee Lawyer and the Committee Managers to withdraw from the meeting.

At 1431 hours, after an adjournment, all parties were recalled to the meeting and the decision of the Sub-Committee was announced as follows:-

3/160615

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Mr Thomas Martin O'Brien, in respect of the Gunmakers Arms, 92 -93 Bath Street, Birmingham B4 6HG upon the application of West Midlands Police, this Sub-Committee hereby determines to REVOKE the LICENCE, in order to promote the prevention of crime and disorder and public safety objectives in the Act.

The Sub-Committee's reasons for revoking the licence are due to concerns by West Midlands Police as Applicant for the Review and Trading Standards, Birmingham City Council in relation to:-

- 1) The circumstances giving rise to the death of a patron on the 10 December 2014; and;
- 2) A number of non-duty paid bottles of spirits on display and evidence that spirits had been decanted from some bottles to others on display on the optics, contrary to the General Food Regulations 2004 on the 20 February 2015 and again on the 1 April 2015, when three bottles of non-duty paid Jack Daniels, Jagermeister, and Martel Brandy were seized from the Premises.

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, that the licensing objectives would be properly promoted following any such determination.

The Sub Committee were particularly concerned about the Safety of the Public, given the sad and unfortunate events which took place on the 10 December 2014. These culminated in the death of a patron from the following causes of death:

- 1) Acute ethanolic intoxication and
- 2) Coronary artery atheroma/Chronic degenerative mitral valvar disease.

The Sub Committee had heard evidence that the patron had consumed an excessive amount of alcohol, directly from a bottle of Jack Daniels Whiskey in one go, in circumstances when there had been a clear management failing in prohibiting any such action from arising in the first place.

The actions of staff on duty on the night in question were then compounded, as a result of failing to ensure that the patron, (who had shortly afterwards become unconscious or fell asleep), had been provided with appropriate medical attention. Having viewed photographs of the events on the night in question, the Sub Committee were not convinced that the patron had been refused further alcohol after having consumed a significant amount of neat spirits.

The actions of the DPS demonstrated a complete lack of concern for his patron, as well as breaching the Licensing Act 2003, and the Guidance issued by the Home Office under Section 182 of the Act.

According to West Midlands Police, and the DPS, after he had passed out, the patron was initially propped up at a table within the Premises, and left alone to sober up. Shortly afterwards, it was the submission of West Midlands Police that the patron had been sprayed with a great deal of water, in order to bring him about. When this failed, the patron was placed on the floor, and left alone within the premises unaccompanied and unconscious, whilst the DPS closed the premises and went to eat some food. On his return the DPS checked the patron, and discovered he was cold, so placed him by the radiator. As a result of his failing to come around, an ambulance was called and it later transpired that the patron had died from the causes of death referred to above.

In relation to the prevention of Crime and Disorder, the Sub Committee were of the view that there were no compelling reasons to deviate from paragraphs 11.28 and 11.29 of the Guidance issued under Section 182 of Licensing Act 2003. There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These include the use of the licensed premises for the sale or storage of smuggled tobacco and alcohol as set out within the representation from Trading Standards. The Sub Committee determines that the crime prevention objective is being undermined, because having issued the DPS with a Seizure Notice on the 20th February 2015, a further seizure of non-duty paid alcohol took place on the 1st April 2015.

The Sub Committee had heard evidence from the Premises Licence Holder during the course of the hearing, and carefully considered the submissions made by both West Midlands Police and Trading Standards that they had sought nothing other than a Revocation of the Licence. Having heard all the submissions from all the representatives, it was clear that the Premises Licence Holder, had no understanding of how to properly promote the Licensing Objectives within the Act. There had been little or no communication between the DPS and the Licence Holder about how the premises were to be managed and run and the consequences to both as a result of breaching the Licensing Act 2003.

The Sub Committee also carefully noted the various representations made on behalf of the DPS, and how the actions of the DPS had restored the fortunes of the Premises in the 4 years he had been in charge, and the impact this had had

on the local and wider communities. However, the circumstances giving rise to the Review were considered so significant that these vastly outweighed these representations.

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 for review, the written representations received and the submissions made at the hearing by the applicant / premises licence holder / and other persons.

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.

04/160615 **OTHER URGENT BUSINESS**

There was no other urgent business.

The meeting ended at 1445 hours.

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CHAIRMAN