

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 8 JANUARY 2024

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 8 JANUARY 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke 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)

1/080124

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.

2/080124

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

3/080124 Apologies were submitted on behalf of Councillor Simon Morrall and Councillor Penny Wagg was the nominated substitute Member.

**LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW –
ACAPELLA (FORMERLY TRADING AS FREDERICK’S), REGENT HOUSE,
FREDERICK STREET, BIRMINGHAM, B1 3HR.**

On Behalf of the Applicant

Mark Swallow – WMP (West Midlands Police)

On Behalf of The Premises Licence Holder

Duncan Craig - Barrister

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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.

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 chair invited the applicant to make their presentation and Mark Swallow, on behalf of WMP made the following points: -

- a) At approximately 0300 hours on Sunday 10 December 2023 the premises was open and trading with patrons inside.
- b) An incident occurred where a handgun was produced and discharged inside the premises. A person received a gun shot wound to the leg, patrons left a short time later.
- c) The premises did not contact WMP.
- d) WMP submitted an expedited review which was heard on 12 December 2023 and the Committee resolved to suspend the licence and remove the DPS (Designated Premises Supervisor).
- e) On 29 December 2023 the PLH appealed the decision and resulted in the interim steps being lifted and modified with agreed conditions and revised hours.
- f) The premises had been operating under those times and conditions since that hearing with no issues.

- g) WMP requested that those conditions and times be adopted as the final summary order.
- h) The other issue was that the Committee agreed that the PLH be reinstated as DPS until this hearing where it would be reconsidered. The alternative DPS was still awaiting their personal licence at the previous hearing, however she had not completed her course and applied to Worcester City Council which could take some time. The alternative DPS would also need to apply to BCC to be appointed as DPS; WMP had carried out their checks and had no objection to that application.
- i) He requested that the Committee used a pragmatic approach and reappointed Mr Ozdemir as the DPS until the alternative DPS was approved.

The Members asked Mark Swallow (WMP) how long it would take for the DPS application to be approved. WMP advised that he was unable to give a time frame, but it usually took a few weeks.

The Chair then invited the PLH/representative to make their case and Duncan Craig, Counsel on behalf of the PLH made the following points: -

- a) That the new DPS had her personal licence certificate and the DPS application was already in progress and would be submitted today.
- b) That he had a good working relationship with Worcester City Council so he would chase the application with them, and request that it be fast tracked.
- c) His client was not aware of a firearm being discharged in the premises, which is why no call was made to WMP.
- d) There was a suggestion that the blood at the scene was cleared up, that was incorrect.
- e) The PLH had cooperated with WMP throughout their investigations.
- f) They had reached an agreed position with WMP and requested that the Committee adopted that position.

Members asked questions and Mr Ozdemir gave the following responses: -

- a) That the staff inside the premises had closed the premises and stopped the music, they were escorting people outside and when they heard two 'bangs' they assumed it was firework noise. People outside the premises then started running back inside and they were panicking. They did not call the police as they did not realise a gun was fired.
- b) The new proposed DPS already worked at the premises and they had a good relationship. She was not working on the night of the incident as she was ill.

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The Chair then invited WMP to make a closing submission and Mark Swallow made the following closing statements: -

- That WMP had worked closely with WMP in an extremely difficult process, however they had put forward a pragmatic approach to deal with the issues.
- That the Committee put in place the steps from 29th December 2023 with the caveat in relation to the DPS as per original application.

Duncan Craig then made the following closing statements: -

- That he agreed with what WMP had said.
- They had an agreed position and asked the Committee to follow that.

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;

4/080124

RESOLVED:-

That having reviewed the premises licence held under the Licensing Act 2003 by Seyhmus Ozdemir in respect of Acapella (formerly trading as Frederick's), Regent House, Frederick Street, Birmingham B1 3HR, following an application for an expedited review made on behalf of the Chief Officer of West Midlands Police, this Sub-Committee hereby determines:

1. That the conditions of the licence be permanently modified via the adoption of those conditions which were imposed at the Sub-Committee meeting of 29.12.23, these modified conditions to remain in place pending the determination of any Appeal
2. That the hours shall be reduced as per the agreed hours imposed at the Sub-Committee meeting of 29.12.23
3. The modified condition relating to 'Customer Control' (dealing with the lowering of music levels by a certain time, and cessation of the sale of alcohol by a certain time) shall reflect the reduced hours imposed at the Sub-Committee meeting of 29.12.23
4. That Mr Seyhmus Ozdemir be reinstated as designated premises supervisor

The Sub-Committee's reasons for imposing these agreed conditions are due to submissions made at the meeting by West Midlands Police in relation to the serious crime incident at the premises which had led to the application for expedited review. The Police explained the background to the matter, exactly as per the documents in the Committee Report.

The premises had reopened under the modified conditions imposed at the last hearing, and was now trading satisfactorily. The Police recommendation was therefore that the set of modified conditions and the revised timings should be adopted as the summary order.

The Police observed that a Personal Licence application was in progress for another person who had been suggested by the premises as a potential new designated premises supervisor; however, that process had not yet been completed. Counsel for the licence holder also remarked that the premises hoped that the Personal Licence application would soon be completed. The Sub-Committee noted this.

The Sub-Committee then heard from counsel regarding the serious crime incident. The licence holder had not been aware of a firearm being discharged at the material time; this was why nobody from the premises had called the Police. As soon as the licence holder was made aware of the incident, he had gone to the premises, and thereafter had assisted the Police fully in their inquiries.

Regarding the scene itself, there had been a previous suggestion that someone had perhaps tried to clear the scene up before the arrival of the Police; counsel confirmed that this was not in fact correct. The premises had been keen to cooperate properly – for example, CCTV footage had been released to the Police to assist the investigation.

Counsel asked the Sub-Committee to note that throughout the aftermath of the incident, the licence holder had been “as cooperative as he reasonably could be in the circumstances”, and that this had reassured the Police that the agreed position was the correct course to take - namely that those interim steps that were modified at the last meeting should be imposed as a permanent feature of the premises licence. The licence holder also agreed that the hours modification (imposed at the last meeting) should become a permanent change to the licence.

Counsel observed that the Police had confirmed that the licence holder had been cooperating satisfactorily, and that the premises was operating safely. Regarding practical steps, the premises had arranged for four bodyworn cameras to be available for use, and had been liaising with local taxi firms due to the concerns that the Police had expressed around dispersals.

All in all, counsel felt that the Sub-Committee should feel reassured that the premises had engaged with the process properly, and had worked together with the Police diligently, such that an agreed position had been reached. Regarding a potential change of designated premises supervisor, which had been discussed between the parties in recent weeks, counsel reminded the Sub-Committee that the licence holder would have a duty manager on the staff in any event, as per the licence conditions.

The licence holder then addressed Member questions directly to assure them that he had done his utmost to cooperate with the Police. When summing up, the Police agreed with the licence holder that this had indeed been the case. The Police added that it had been “a difficult process” for those at the premises, as it had been a “root and branch reform of the processes they have in place to ensure the licensing objectives are promoted”.

When deliberating, the Sub-Committee noted the efforts being made by the premises licence holder to cooperate with the Police and to implement all of their

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recommendations. The Police had confirmed that the recent resumption of trading had not seen any further serious crime incident, or any risks to the licensing objectives generally. The agreed position between the parties was therefore based on the satisfactory trading which had been going on since the lifting of the suspension at the last meeting.

Both parties had agreed that the correct course was to adopt the modified conditions, and reduced hours, onto the licence, and to reinstate Mr Ozdemir as designated premises supervisor. The Sub-Committee agreed with this. The Sub-Committee considers the agreed conditions adopted to be appropriate, reasonable and proportionate to address concerns raised - in particular the likelihood of serious crime.

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 Police under section 53A of the 2003 Act, the written representations, and the submissions made at the hearing by West Midlands Police, and by the premises licence holder via his counsel.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003 there is a right of appeal against the decision of the Licensing Sub-Committee 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 maintenance of the interim steps as modified at the Sub-Committee meeting of 29.12.23, 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 determined.

The meeting ended at 1122 hours.

CHAIR.....