



BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE - C

WEDNESDAY 6 JULY 2022

That, having reviewed the premises licence held under the Licensing Act 2003 by Tunnel Club Birmingham Ltd in respect of Tunnel Club, 27 Water Street, Birmingham B3 1HL, upon the application of West Midlands Police, this Sub-Committee hereby determines that:

1. The conditions suggested by West Midlands Police and amended by the Sub-Committee (as follows) shall be adopted
2. The licence shall be suspended for a period of six weeks in order to give the licence holder sufficient time to make proper arrangements regarding implementation of the conditions

The conditions suggested by West Midlands Police in advance of the meeting were amended by the Sub-Committee as follows:

- The premises will operate a dispersal policy; this will be made immediately available to any of the responsible authorities on request
- The premises will operate a vulnerability policy which will be made available to any of the responsible authorities on request. As part of this policy the premises will have a safe space for vulnerable people
- Staff internal and external are to be trained on the Licensing Act 2003 and on vulnerability issues by an external qualified training provider prior to being allowed to undertake work at the premises. All training is to be documented and signed by the Premises License Holder and the trainee. All training records are to be made available to any of the responsible authorities on request
- Staff internal and external are to receive documented refresher training every six months
- A refusals log will be maintained at the premises. Each entry will be signed off by the Designated Premises Supervisor or their nominated deputy. The log will be made immediately available to members of the responsible authorities on request. Each week the entries will be examined and signed off by the Premises License Holder or their nominated deputy
- An incident log will be maintained at the premises. Each entry will be signed off by the Designated Premises Supervisor or their nominated deputy. The log will be made immediately available to members of the responsible authorities on request. Each week the entries will be examined and signed off by the premises license holder or their nominated deputy
- CCTV that is approved by West Midlands Police will be fitted in the premises. Images will be retained for a period of at least 31 days and will be made available to any of the responsible authorities to view or copies produced on request. If for any reason the CCTV hard drive needs to be replaced the previous/old hard drive will be kept on site for a minimum of 31 days and made immediately available to any of the

responsible authorities on request. The CCTV will be checked to ensure that it is working each day prior to licensable activity taking place. The time of the check, the identity of the person carrying this out and the result of it will be recorded in the incident log

- The premises will deploy door staff when trading as informed by the risk assessment. Door staff will sign on and off duty. The premises will keep a profile of all door staff which will include a copy of their SIA licence and photographic ID (if photographic ID is not available then a utility bill no older than 3 months will be acceptable). The signing in & out sheets and profiles will be kept on the premises for a minimum of 3 months and made immediately available to any of the responsible authorities on request. Door staff will wear a fluorescent coat, jacket or waistcoat while on duty at the premises. Door staff will remain on duty until all the customers have dispersed and this will form part of the premises dispersal plan

- The numbers of door staff will be risk assessed by the premises. This risk assessment will be made available to any of the responsible authorities immediately on request

- All door staff will wear bodycam whilst on duty. The bodycam will be checked to ensure it is working by the premises license holder or their nominated deputy and the result of this check will be recorded along with the identity of the checker in the premises incident log. Bodycam footage will be retained for 31 days and be made available to any of the responsible authorities on request

- All door staff deployed will be SIA(ACS) approved

- Any ejection from the premises or interaction with a person deemed vulnerable will be supervised by the Designated Premises Supervisor or their nominated deputy. The circumstances of the ejection or interaction will be recorded in the incident or refusals log for the premises and be signed off by the Designated Premises Supervisor or their nominated deputy. Each week the entries will be examined and signed off by the premises license holder or their nominated deputy. The refusals and incident registers will be made available to any of the responsible authorities on request

- When carrying out licensable activity the premises will deploy a drugs dog on an ad hoc basis following risk assessment by the Premises Licence Holder, to interact with all staff, customers and other persons that enter the premises

- The premises will have a drugs policy

- Half-hourly walkthroughs of the premises and its curtilage will be carried out by the Premises License Holder, the Designated Premises Supervisor or their nominated deputy. The identity of the person conducting this and the result will be recorded in the premises incident book and signed off by the Premises License Holder each week

- The CCTV will be monitored constantly by a nominated person who will be responsible for informing the Premises License Holder, Designated Premises Supervisor or their nominated deputy of incidents or situations of concern. All observations reported will be recorded in the premises incident log and signed off each week by the Premises License Holder or their nominated deputy

- A member of staff fully trained in First Aid shall be on duty at the premises at all times that the premises is conducting licensable activities and a current First Aid certificate shall be displayed at all times in a prominent place. All staff shall undertake basic First Aid training and a record of such training shall be kept. The basic First Aid training shall be refreshed at intervals

- The current Designated Premises Supervisor shall undergo further training as recommended by West Midlands Police

- If the premises proposes to change the security provider then prior to doing this the premises will consult with West Midlands Police

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; the Police explained that to hear the evidence in public would undermine an ongoing investigation process. The solicitor for the premises did not object to this course, and therefore the Sub-Committee agreed to hold the meeting in private.

The Police outlined the background to the Review application, as detailed in the Report. The application had been brought following two incidents earlier in the year. The Police concerns were principally around underage entry to the premises, availability of controlled drugs, and lack of care for vulnerable persons. The Police considered that the premises had fallen far short of the standard required and that these failings undermined the licensing objectives - namely the prevention of crime and disorder, and public safety.

The Police explained that in advance of the meeting they had suggested conditions which would enable the premises to uphold the licensing objectives, but had been displeased to find that the premises had asked for these to be amended. The Police had considered the proposed amendments to be "inadequate and fanciful", and had therefore drafted a document of conditions. These had been reviewed by the premises, who had suggested amendments. The Police found these amendments unacceptable, remarking that the premises' amendments "removed the checks and balances" which the Police had wanted to see. The Police further noted that it appeared that the premises did not wish to implement any measures which involved a cost; the concern for the Police was that this was potentially placing profit above public safety.

As a result of this, the Police confirmed that they now had no confidence in the premises licence holder and designated premises supervisor to uphold the licensing objectives. The concern was that the licence holder did not have any desire to change his practices. The Police advice to the Sub-Committee was therefore to revoke the licence and to remove the designated premises supervisor.

The Sub-Committee then heard from the solicitor for the premises, who reminded the Sub-Committee that under paragraph 11.20 of the Guidance issued under s182 of the Act it should seek to establish the cause of the concerns that the representations identified, and that the remedial action taken should generally be directed at those causes, and should always be no more than an appropriate and proportionate response to address the causes of concern that had instigated the Review.

Whilst two particular recent incidents had been highlighted in the Report, the solicitor observed that the management were experienced people who had operated successfully for years without the premises attracting the attention of the Police at all, and definitely not for any issue relating to underage entry, drugs, or care of the vulnerable. The designated premises supervisor accepted that he had perhaps not had proper sight of what was going on during the night of the second incident, but was keen to remedy this. The security manager was a person with a good reputation, although the Sub-Committee noted from the documents in the Report that there were some problems with the other security personnel.

Regarding the Police comments about lack of care for vulnerable persons, the premises did not accept the Police view that they had not assisted a young female whilst she was awaiting an ambulance; it was the view of the premises' management

that they had indeed done so, and had waited with her and escorted her to the ambulance. The solicitor remarked that suggestion that there was some unwillingness to either change or to cooperate with Police was not correct. Moreover, there had not been any breach of condition.

The solicitor invited the Sub-Committee to look at the licence holder in terms of whether he was looking to protect the vulnerable, if he was doing anything about underage entry, and if he was making staff aware of drug issues. The solicitor observed that the licence holder was in fact doing these things, and remarked that it was disingenuous to suggest that the premises was placing profit above public safety; the conditions suggested by Police involved a level of expense that was entirely out of the ordinary and were not the “proportionate response” recommended by the s182 Guidance . The solicitor cautioned the Sub-Committee over using “a sledgehammer to crack a nut” when making their decision.

Bearing this in mind, the Sub-Committee reflected carefully on the guidance given in paragraph 11.20 when making its decision. The recommendation of the Police had been immediate revocation, and the removal of the designated premises supervisor; however the Members noted the representations made on behalf of the management of the premises, relating to their willingness to change and cooperate. The Sub-Committee therefore resolved to permit the licence holder to retain the licence, and looked instead at the proposed conditions.

Many of the proposed conditions were uncontroversial, and the Sub-Committee therefore adopted these. However, some had been the subject of argument during the meeting from both sides. The Sub-Committee therefore examined these carefully, with a view to creating a suite of conditions which was no more than an appropriate and proportionate response to address the causes of concern that had instigated the Review.

There had been discussion over the use of SIA(ACS) approved security staff. The premises’ representative remarked that he felt that ACS status was not necessary as it was a voluntary scheme operated by the SIA. However the Police advised that whilst the scheme was indeed voluntary, it was the only Government-recognised scheme, and ensured that persons were of a higher standard; the Police felt that this was the type of “check and balance” that was required to ensure that the operation could run safely.

The Sub-Committee agreed with this. Whilst the security manager was a reputable person, there were question marks over how some of the security personnel had behaved whilst on duty. The Members observed from the Report that the security manager himself had remarked on the behaviour of the door staff and confirmed that he did not find it acceptable. The licence holder had made similar comments in the Report. Given these comments from those at the premises, the Sub-Committee considered that it was important that the management should show willingness to be guided by the Police regarding the use of SIA(ACS) approved security staff. Members also added a requirement that any change of security company was to be discussed with the Police first.

Regarding the use of a drugs dog to interact with all staff and patrons, the premises’ solicitor had stated that it was disproportionate to require this on each night of licensable activity, and remarked that the cost of so doing would be prohibitive. The Sub-Committee agreed that to demand this as a permanent condition for all times of

conducting licensable activities was not reasonable, and therefore redrafted this to be a requirement only on an ad hoc basis (following risk assessment by the Premises Licence Holder).

Regarding the requirement for a CQC qualified paramedic to be on duty during licensable activities, the premises' solicitor again remarked that compliance with this would be prohibitively expensive; the Sub-Committee tended to agree with that. The Members therefore looked for a more proportionate measure which would be sufficient to enable the premises to uphold the public safety objective, and amended the condition to require not a paramedic but a member of staff fully trained in First Aid, and a requirement that the relevant First Aid certificate would be displayed at all times in a prominent place. As a further reasonable measure, the Sub-Committee decided to require all staff to undertake basic-level First Aid training.

Regarding the removal of the designated premises supervisor, the Sub-Committee was not sure that this was a proportionate measure. The Police had stated that he was unsuitable, but the Members did not consider that they had been shown overwhelming evidence of that. The Sub-Committee therefore determined that the designated premises supervisor should remain, subject to completion of training – the training to be as recommended by the Police.

These conditions had been imposed principally to ensure that the premises could uphold the licensing objectives, but also to assist the management in regaining the trust of the Police. The management had confirmed that they were willing to cooperate with Police, and the Sub-Committee felt that it was important that there should be time for them to get everything in order before resuming trading with the new measures in place.

The Sub-Committee therefore imposed a six week suspension of the licence, such that the premises could comfortably put everything in place and reopen safely. The Sub-Committee considers the conditions, and the six-week suspension to give sufficient time to implement the measures, to be appropriate, reasonable and proportionate (as per paragraph 11.20 of the Guidance issued under s182 of the Act) to address the concerns raised by Police.

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 Licensing Act 2003 by the Secretary of State, the application for Review, the written representations received and the submissions made at the hearing by West Midlands Police and by the solicitor to the premises licence holder.

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 determined.