

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE B
1 AUGUST 2023**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE B HELD ON TUESDAY 1 AUGUST 2023 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Saddak Miah and Julien Pritchard.

ALSO PRESENT

Bhapinder Nandhra – 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)

1/010823

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.

2/010823

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

3/010823 Apologies were submitted on behalf of Councillor Adam Higgs and Councillor Julien Pritchard was the nominated substitute Members.

MINUTES

4/010823 The Public section of the minutes of the meetings held on 20 June 2023 at 1000 hours were noted.

LICENSING ACT 2003 PREMISES LICENCE – REVIEW – G&G WINES, 16 CHURCH ROAD, NECHELLS, BIRMINGHAM, B6 5UP.

On Behalf of the Applicant

Ben Reader – West Midlands Police (WMP)

On Behalf of The Premises Licence Holder

Adrian Curtis – Solicitor

Mrs Randhawa – Wife of premises licence holder (PLH)

* * *

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. Bhapinder Nandhra, Licensing Section, outlined the report.

At this stage the chair invited the applicant to make their presentation and Ben Reader, WMP made the following points: -

- a) That a 13yo female was found with a vape at school. When challenged about where she purchased it she told her family that she got it from G&G Wines and had been numerous times on her way back from school to purchase vapes.
- b) Ben Reader arranged to visit the premises with the neighbourhood team and attended the premises on the 2nd June 2023. Neither the designated premises supervisor (DPS) or premises licence holder (PLH) were present but there was a man there running the premises who stated the PLH/DPS were his Aunt and Uncle. He was working and running the shop on his own.

At this stage Ben Reader requested to screen the body cam footage but did not request that it be shown in private. After discussions amongst the parties the

Chair requested that the footage be shown in private in order to not prejudice any criminal proceedings.

EXCLUSION OF THE PUBLIC

5/010823

RESOLVED:-

That in view of the nature of the business to be transacted which includes exempt information of the category indicated the public be now excluded from the meeting:-

Exempt information under Schedule 12A of the Local Government Act 1972.

Following the submissions made in private the public were re-admitted to the meeting.

Ben Reader, WMP continued with his submissions and made the following points: -

- a) That the lack of knowledge was disappointing. The amount of products recovered that exceeded the legal limit clearly showed that the PLH was not upholding the licensing objectives.
- b) The vapes were 3500 puffs, and the legal limit is 600. They were found under the counter in a draw.
- c) WMP served paperwork and later the PLH/DPS attended the premises. They spoke with him, and he was very defensive.
- d) Neither the PLH nor DPS were able to recite the licensing objectives when asked by WMP. They also couldn't operate the CCTV system; no challenge 25 signage and he didn't know what a challenge 25 policy was.
- e) They had no confidence that the premises were operating lawfully or that they could uphold the licensing objectives, in particular protecting young people.

Members asked questions and Ben Reader, WMP gave the following responses:
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- a) There were multiple breaches at the premises and a complete lack of knowledge.
- b) WMP had no confidence in the operation of the premises and asked the Committee to consider all options available to them.
- c) The premises was situated in a small row of shops, in a primarily residential area not far from Villa Park. The premises would be particularly busy on match days.

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- d) He didn't know if there were hostels in the area, but if there were that would cause further concerns.
- e) The challenge 25 posters were not in situ when he visited the premises. When questioned about it the PLH said they operated a challenge 18 policy, but he had never heard of that before.

At this stage the Chair then invited the PLH/representative to make their case. Adrian Curtis, acting on behalf of the PLH made the following points: -

- a) That the PLH was in hospital as he was having a stent fitted after having a heart attack. They were going to make an application for an adjournment but due to the PLH's anxiety and stress they thought they would proceed.
- b) The premises had been trading for over 4 decades.
- c) The shop served the local community.
- d) It was completely denied that the knife and hockey stick were in the premises to be used as weapons. The items were his fathers.
- e) The person in the shop at the time didn't know what they were and certainly didn't think they were weapons. The man knew where the emergency button was.
- f) The PLH spends most of his time there, sometimes eating his dinner there. He smoked and used the paper cups himself. They did not sell single cigarettes, they were the PLH's cigarettes.
- g) The cigarettes were not there to be sold.
- h) Illegal vapes were found under the counter and the majority that were on display were not illegal.
- i) The rep came to the premises and gave them some sample vapes which they stored under the counter. They didn't know the guidelines regarding the number of puffs for vape products.
- j) They had submitted an evidence bundle of documents showing the changes they have made, including new challenge 25 notices.
- k) The shop had been trading without issues for 40years.
- l) Mr Curtis had given them advice and recommended that they do the level 2 personal licence training which they had completed and passed. The nephew had also completed and passed the course.
- m) The premises had undergone a complete overhaul. They had purchased a refusals book.
- n) They had previously passed two under-age test purchases for lottery tickets.

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- o) The premises had not come to the attention of WMP before.
- p) The single cigarettes were the PLH's and were open in a plastic container behind the counter. He had done that for years.
- q) The hockey stick was his fathers, and the knife was behind the counter but not used for a weapon.

Members asked questions and Adrian Curtis and Mrs Randhawa gave the following responses: -

Mrs Randhawa: -

- a) That the challenge 25 policy meant that if someone looked under 25 she would request for photo ID and if they couldn't provide it they would be refused the sale.
- b) That she sometimes took food to her husband whilst he was working in the shop.
- c) That she knew her customers well, they were like family. She would help them if they needed it.

Adrian Curtis: -

- a) That they had completely overhauled the premises and the personal licence training had been completed by the PLH/DPS. They had implemented a challenge 25 policy, refusals book and welcomed WMP to come visit.

The Chair invited closing submissions and Ben Reader, WMP made the following statements: -

- That the PLH denies the evidence submitted by WMP.
- It was impossible that all the excuses given by the PLH regarding the plastic cups, single cigarettes, weapons behind the counter and vapes were all plausible given how many issues there were at the premises.
- The initial reason for the review application submitted by WMP was due to the illegal vapes found under the counter when WMP visited the premises on the back of intel received about vapes being sold to minors at the premises.
- The manner in which the premises is operating was a huge concern.

Then Adrian Curtis was invited to make a closing submission on behalf of the PLH, he made the following closing statements: -

- That they had accepted that there was a lack of training and knowledge and had rectified that.

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- They welcomed WMP to come and visit the premises again and see the new operation.
- The general opinion of Ben Reader was that the excuses were implausible, but they had been trading for 40 years without issue or concern.
- The premises was a community store.
- They had carried out a complete overhaul of the operation at the premises.
- It was their submission that it was appropriate to fully condition the licence.
- The licence had no conditions attached to it currently and that needed updating.
- They had passed test purchases before.
- He invited the Committee to implement strong conditions on the licence. Suspension/revocation was not required.

Mrs Randhawa added that she was sorry for what happened and needed to continue trading as it was their livelihood.

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;

6/010823 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Gurnaik Singh Randhawa in respect of G & G Wines, 16 Church Road, Nechells, Birmingham B6 5UP, upon the application of West Midlands Police, this Sub-Committee hereby determines:

- A. That the licence be suspended for a period of one week, in order to give the licence holder sufficient time to make proper arrangements regarding implementation of the additional conditions (as below), and for the premises to prepare for safe trading
- B. That the conditions of the licence shall be modified by the addition of conditions (see below), as suggested by the solicitor for the premises licence holder, in order to promote the licensing objectives in the Act of the prevention of crime and disorder, public safety and the protection of children from harm

Conditions to be added to the licence:

CCTV

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- A digital Closed Circuit Television System (CCTV) will be maintained in good working order and be correctly time and date stamped
- The system will record and retain CCTV footage for a minimum of 28 days
- The system will record at all times when the premises is open and conducting licensable activities
- There will be, at all times when the premises is open and conducting licensable activities, a member of staff on duty with access to the CCTV system who is trained in the use of the equipment
- CCTV footage must be made available to be viewed by West Midlands Police or an officer of a responsible authority upon request

REFUSALS REGISTER

- A refusals register must be kept at the premises, and maintained such that it is up to date at all times, recording the date, time, type of product refused, and the reason(s), for every refusal to sell alcohol or any other age restricted product to a customer, and give the name and signature of the member of staff refusing the sale
- The refusals record must be made available to West Midlands Police or an officer of a responsible authority on request
- The premises licence holder or the designated premises supervisor must monitor the refusals register every month and must sign and date the refusals register when this has been completed

TRAINING

- Training in relation to the upholding of the licensing objectives, the conditions on the premises licence, Challenge 25, underage sales, sales to adults on behalf of minors ("proxy sales"), and the use of the refusals register, must be undertaken by each member of staff (whether paid or unpaid) before he/she is permitted to conduct the sale of alcohol, and such training shall be refreshed at six-monthly intervals
- Documented training records must be completed in respect of every member of staff and must include the name of the member of staff trained, date, time and content of the training. The record must be signed by the member of staff who has received the training, the Designated Premises Supervisor, the Premises Licence Holder (and if relevant, the external training provider)
- The documented training records must be kept at the premises and made available to West Midlands Police or an officer of a responsible authority on request

THE PROTECTION OF CHILDREN FROM HARM

- The premises licence holder shall operate the Challenge 25 scheme, namely a policy whereby any person attempting to buy age-restricted products who appears to be under 25 will be asked for photographic ID to prove their age such as a passport or driving licence bearing a photograph, or the sale will be refused
- The premises licence holder shall display Challenge 25 posters in prominent positions within the premises, including at the point of sale

In addition to the above conditions, the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

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The Sub-Committee's reasons for imposing the sanction of suspension together with additional conditions were due to concerns expressed by West Midlands Police. The Sub-Committee noted from the Report that it was West Midlands Police who had brought the application for the review of the licence, due to a recent visit to the shop in response to suspicions about the sale of a vape product to an underage person. Full details of this were in the Report.

The licence holder could not attend in person but was represented at the meeting by his solicitor; the designated premises supervisor (wife of the licence holder) also attended the meeting.

The playing of the Police bodycam footage (recorded during the initial visit that took place on the 2nd June 2023) was shown in private session after the Sub-Committee decided to exclude the public from that particular part of the hearing as the public interest in so doing outweighed the public interest in that part of the hearing taking place in public. Neither party objected to this course. During the playing of the bodycam footage the Sub-Committee observed the style of operation seen on the day of the visit.

West Midlands Police then addressed the Sub-Committee on their findings - exactly as described in the Committee Report. The Police's main concerns were around staff training and lack of knowledge around the licensing objectives, a stock of illegal vape products, a stock of single cigarettes, and unsuitable items found behind the counter (a kitchen knife and an old hockey stick). The Police were also worried about a stock of disposable cups behind the counter, as they had found that other premises sometimes gave these out to customers purchasing alcohol to drink on the street rather than at home.

Thereafter, discussions had been held with those at the premises. The Police noted that whilst the licence holder and designated premises supervisor were aware that they could not sell age-restricted products to under 18s, they had not been able to name the four licensing objectives. They had stated to Police that they had not undergone any training for a considerable time. The licence holder had confirmed that he could not operate the CCTV system by himself, and had therefore left all dealings with the CCTV to his son. His answers about Challenge 25 were also unsatisfactory. All in all, the Police, who were the experts in crime and disorder, did not have confidence in the premises to uphold the licensing objectives.

The Members asked the Police for their views on the appropriate course to take. The Police replied that having seen "the multitude of breaches at the premises and then the complete lack of knowledge around the licence", the Sub-Committee ought to consider all options, as per the Committee Report.

The Police said that whilst they did not wish to lead the Members, they felt that what had been observed at G & G Wines had created "the most serious lack of confidence" in the style of operation. However, the Police stopped short of giving a recommendation as to the appropriate course of action.

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The Sub-Committee then heard from the solicitor representing the licence holder. The premises' background was that it had been trading for over four decades and was a well-known local shop which served the community. In the past, they had offered a wide range of different products including fresh fruit and fresh vegetables.

The kitchen knife had been behind the counter since the days when they had been chopping and serving fruit to customers; whilst they no longer offered that, the kitchen knife had remained there. It was completely denied by the premises that the knife was behind the counter in order to be used as a weapon. The solicitor observed that the person manning the till during the Police visit had known nothing about either the knife or the hockey stick, and had definitely not been advised to use them as weapons.

The premises also denied that there was anything sinister about the stock of paper cups, which were used by the licence holder himself for his own drinks whilst working. The same was true of the stock of single cigarettes behind the counter, which were the licence holders own to smoke; the premises completely denied that they had ever sold single cigarettes to customers.

The solicitor acknowledged that a small quantity of illegal vapes had been found under the counter but asked the Sub-Committee to note that the majority of vapes in the shop were legal and above the counter. He further remarked that the premises had not knowingly sold the illegal vapes. A sales representative had come to the shop and had given some samples, which the licence holder had put under the counter. They had not been put on a display stand like the other, legal, vape products. As a result of the Police visit, those at the premises had now familiarised themselves with the regulations governing the sale of vape products.

Regarding the Police comments about inadequate training, the premises acknowledged that the person behind the till at the time of the Police visit had not had sufficient training, particularly regarding the licensing objectives, but directed the Sub-Committee's attention to the evidence in the bundle of documents submitted in advance of the meeting, which was in the Report. The bundle of documents outlined the work that had been done to improve standards at G & G Wines.

The solicitor observed that the shop had traded without any issues for over 40 years, and had operated under an old-style Justices' Licence (Licensing Act 1964), which had been converted in 2005. The solicitor had advised both the licence holder and designated premises supervisor to undertake the Level 2 personal licence holder training; the two certificates in the Report confirmed that this had been completed by both of them. In addition, the person who had been at the till during the Police visit had also passed the Level 2 course for personal licence holders, said the solicitor.

Everyone involved with the sale of alcohol at the shop therefore had up to date training; they all understood the Challenge 25 policy and the importance of being vigilant about potential underage sales. Also in the Report were photographs to show that notices had been placed around the store regarding Challenge 25. All

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at the premises were fully aware of the importance of the Challenge 25 requirements.

Regarding underage sales in general, the solicitor directed the attention of the Members to the documents from Camelot in the Committee Report, namely the two letters of congratulations for passing their underage test purchases (occasions when the company had sent an underage person into the shop to buy a lottery ticket, and the sale had been refused).

Moreover, there had been “a complete overhaul in the last few weeks of the processes followed at the store”, said the solicitor. A refusals book had been created for immediate use, and an order placed for a proper refusals book of the type widely used at licensed premises. In future, all stock would be purchased from a Cash and Carry rather than from any sales representative, which would avoid any further illegal vape products finding their way into the premises.

The solicitor reminded the Sub-Committee that the licence holder and the shop were very well known in the community, and had not come to the attention of the Police before, across 40 years of trading. He repeated that the shop had not knowingly been selling to underage persons, and asked the Sub-Committee to reflect on whether, if underage sales were truly a problem at the premises, some issues would have come up during the 40 years prior to the instant matter.

The current position was that with the overhaul of the operating style, the successful completion of the highest level training possible for personal licence holders, the adoption of the Challenge 25 policy, and the implementation of the refusals register, the premises was confident that it could promote the licensing objectives properly.

In summing up, the Police accepted that there had been a lawful excuse for the kitchen knife behind the counter, and remarked that that was why the person behind the till had not been arrested for possessing an offensive weapon. Leaving that issue aside though, the Police found many of the explanations given in the meeting to be “implausible”, and reiterated that the manner in which the shop had been operating was causing concern.

However, the solicitor reminded the Members that the relevant issue was the additional work which had been undertaken as a result of the Police visit. The premises had accepted the Police comments about the lack of training and lack of knowledge, and had resolved this immediately via undertaking additional qualifications.

The solicitor invited the Police to return to the premises to examine the new style of operation. He reminded the Members that 40 years was a long time to have been trading, and if G & G Wines were genuinely an unsatisfactory premises, it would surely have attracted the attention of both the Police and the City Council at an earlier stage in its trading history.

When deliberating, the Sub-Committee was aware 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

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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.

Bearing this in mind, the Sub-Committee reflected carefully on the guidance given in paragraph 11.20 when making its decision. The Members carefully reviewed the submissions of the Police, and noted that the Police had not made a specific recommendation as to the course to be adopted.

The Sub-Committee accepted that the premises was a hub of the community as it had been there for so long. The Sub-Committee also agreed that it was more than likely that a genuinely unsatisfactory operating style would have been discovered earlier in the 40-year history of trading.

The solicitor had stated that the correct course was to consolidate the complete overhaul of the operation which had begun in recent weeks, by placing conditions onto the licence to ensure the promotion of the licensing objectives. The Sub-Committee determined that this was the correct course, and resolved to modify the conditions by adding new conditions to cover the areas of concern.

The solicitor stated that a suspension of the licence was not required; however, on this point, the Sub-Committee did not agree with him. Instead, the Members felt that a short period of suspension would enable the premises to finalise all arrangements, ready for a fresh start in a week's time. The Members considered that good progress had been made in bringing the operation up to the standard expected, and a one-week suspension would give time for all matters to be dealt with, which would enable the premises to reopen and trade safely.

The Sub-Committee considered this to be a sensible course to ensure that the premises could uphold the licensing objectives, and felt that it was important that there should be sufficient time for the licence holder to get everything in order properly, before resuming trading with all the new measures in place.

The Sub-Committee therefore resolved that a suspension of the licence for one week would give proper time for all the new conditions to be implemented. Thereafter, the premises could reopen safely.

The Sub-Committee considers the conditions, and the one-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 West Midlands Police.

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 for the premises licence holder (together with the designated premises supervisor).

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

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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.