

BIRMINGHAM CITY COUNCIL

LICENSING
SUB-COMMITTEE A,
MONDAY 9 SEPTEMBER,
2024

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 9 SEPTEMBER, 2024 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Ziaul Islam and Maureen Cornish.

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)

1/090924 **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 meeting You Tube site (www.youtube.com/channel/UCT2kT7ZRPFCXq6_5dnVnYlw) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

2/090924 **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.

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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

3/090924 No apologies were submitted.

LICENSING ACT 2003 PREMISES LICENCE – REVIEW – TANIOSKA, 235 HIGH STREET, ERDINGTON, BIRMINGHAM, B23 6SS.

4/090924 The following report of the Director of Regulation and Enforcement was submitted:-

(See document no. 1)

On behalf of the Applicant

Chris Jones – WMP (West Midlands Police)

Those Making Representations

Christine McCullough – LEO (Licensing Enforcement Officer)

Councillor Gareth Moore – Local Ward Councillor

The Premises Licence Holder/Representative did not attend.

* * *

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

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

The Chair then invited the applicant to make their submission, Chris Jones on behalf of WMP made the following points: -

- a) That WMP had visited the premises in relation to an incident on Erdington High Street. As part of their enquiries they visited Tanioska.

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- b) The premises was open and trading. The officers reported that the staff were disruptive and would not cooperate with WMP; CCTV was requested but they could not provide it.
- c) Further, it was a condition of licence that all staff were to be trained to use the CCTV system to ensure that CCTV could be made available upon request.
- d) A member of staff walked to the rear of the shop and closed the door to a stock room. The officer had to force entry to the stock room and found several boxes and suitcases containing illicit tobacco products and vapes. (Photos were in the evidence bundle pages 15-19).
- e) The officer attempted to speak with the premises licence holder and requested that he attended the premises. He did not attend.
- f) The items found were seized by officers.
- g) Martin Williams, an Officer of Weights and Measures viewed the items and in his expert opinion the conclusion was that all the products seized were illegal.
- h) The business was sold and the premises licence holder removed himself as the designated premises supervisor and applied to surrender the licence and transfer it to someone else.
- i) Two new applications for the transfer of the licence to a new person were submitted. WMP objected to both those applications.
- j) WMP were concerned that the sale of the business was supposed to have happened some three months prior to the discovery of the illicit stock that was found at the premises and yet the licence had not been transferred to the new owner.
- k) WMP had no confidence in the premises licence holder or the new applicant to uphold the licensing objectives.
- l) WMP requested that the licence be revoked.

The Chair then invited Christine McCullough, LEO to make her presentation. On behalf of Licensing Enforcement she made the following statements: -

- a) That she carried out an inspection of the premises on 6 August 2024, after the review of the licence had already been submitted. Therefore, she expected the premises licence holder to have 'upped his game'.
- b) Upon arrival, she requested to speak with the premises licence holder. The staff phoned him but the man who then attended was not the premises licence holder but instead stated he was the business owner and had purchased the business some months before. Then after a few minutes he changed his story and said he was going to purchase the business but was waiting on the outcome of the review.

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- c) Alcohol was on display and being sold.
- d) There were a number of non-compliances: the premises licence was not on display and failed to be produced, no refusals register, no staff training records, no incident book, the CCTV timings were incorrect.
- e) When checking the CCTV to establish if the premises were operating in line with their operating hours, it could not be established as the timings on the CCTV were so far out.
- f) The business was sold on 7 March 2024, yet the old premises licence holder and designated premises supervisor were the only person listed on her records.
- g) The alleged incident took place on 6 June 2024, the sale of business was some 3-4 months prior.
- h) She did not form the opinion that the business was operating in accordance with the Licensing Act 2003.
- i) The person at the premises during the visit asked how he could extend the licence to 24 hours which was concerning considering the premises was under review.
- j) She had no confidence in the management of the premises and their ability to operate in accordance with the licence and therefore requested that the licence be revoked and the designated premises supervisor be removed.

The Chair then invited the local Councillor to make their case. Councillor Gareth Moore made the following points: -

- a) That he represented the Erdington High Street ward and was aware of the challenges in the area.
- b) There were around 300 retail units in the area which generated a lot of traffic.
- c) The crime and anti-social behaviour in the area was concerning.
- d) That it was important to ensure Erdington was a safe and welcoming place to visit.
- e) They were cracking down on crime and drugs, street drinking and businesses engaging in criminal activity.
- f) Illicit goods were found at the premises and it was not the case that those types of products were found by accident.
- g) He recommended that the licence be revoked as it was the only way to resolve the criminal activity taking place and also ensure the High Street was a safe place for residents to visit. He also advised the Committee that he concurred

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with the views expressed by the responsible authorities who had made representations.

The Chair invited Christine McCullough on behalf of Licensing Enforcement to make a closing submission, she made the following closing statements: -

- That she would have expected the business to have made an extra effort to comply due to the review that was on-going.
- There was a complete lack of understanding of the Licensing Act 2003, lack of compliance with the licence and therefore she requested that the licence be revoked and the designated premises supervisor be removed.

The Chair then invited Councillor Gareth Moore, Local Ward Councillor to make a closing submission. He made the following closing statements: -

- That the representations both verbal and written suggested that the only course of action was to revoke the licence.

The Chair then invited the applicant to make a closing submission. Chris Jones, WMP made the following closing statements: -

- That WMP had no faith in the premises licence holder/designated premises supervisor or the new applicant to operate the business in a way that promoted the licensing objectives, especially crime and disorder and public safety.
- WMP requested that the licence be revoked.

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

5/090924

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Sulaiman Mahmudpour, in respect of Taniaska, 235 High Street, Erdington, Birmingham B23 6SS, upon the application of West Midlands Police, this Sub-Committee hereby determines that:

- the Licence be revoked, and that
- Sulaiman Mahmudpour be removed as designated premises supervisor

in order to promote the licensing objectives in the Act of the prevention of crime and disorder and public safety.

The Sub-Committee's reasons for revoking the licence were due to the concerns expressed by West Midlands Police, who had brought the Review before the Sub-Committee. Their application was supported by Licensing Enforcement of Birmingham City Council, and also by the local Ward Councillors. All three were represented in the meeting. However, the premises licence holder (who was also

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the person named on the licence as the designated premises supervisor) did not attend and was not represented.

All three persons who attended made their submissions, as outlined fully in the Committee Report. The Police explained that Mr Mahmudpour as the premises licence holder was the person responsible for the breaches observed at Tanioska in June 2024 – namely the discovery of illicit cigarettes, tobacco and vapes at the premises, when it was open to the public and trading. The Members examined the photographs of the seized products, which were in the Committee Report. Trading Standards of the City Council had confirmed that the goods were illicit and could not legally be offered for sale to the public. The Sub-Committee noted this.

There were also other issues of concern; staff had been “extremely obstructive” to Police, and had refused to hand over CCTV footage. The Sub-Committee looked askance at this. The Police had also found the management arrangements at the premises to be completely unsatisfactory; the Police documents in the Committee Report detailed the various attempts to transfer the licence, to vary the designated premises supervisor, and to surrender the licence. All of these applications had been rejected by the licensing authority as they had not been completed correctly.

During the investigation, suggestions had been made by those acting for the premises that the business had been sold in March 2024 and Mr Mahmudpour had relinquished all responsibility at that point. The suggestion was that the person who had taken over was responsible - yet there had been no transfer of the licence. The licence was eventually surrendered in August 2024.

The Police took a dim view of the fact that the supposed sale of the business had been some three months before the discovery of the illicit stock, yet the licence had not been transferred to the new owner. The Sub-Committee noted this.

The Police remarked that, due to the illicit stock discovered at the premises and the unsatisfactory management arrangements, they had no confidence in either Mr Mahmudpour or the new applicant (ie the new business owner) to uphold the licensing objectives or to operate the premises safely. The Sub-Committee noted this.

An officer from Licensing Enforcement then made submissions, as per the documents in the Committee Report. She supported the application brought by West Midlands Police. She had been unamused to note that at an inspection she conducted in August 2024, which was some two months after the discovery of the illicit stock, there remained numerous failures of compliance ranging from the CCTV time and date programming, to training, to record keeping (as explained in her documents in the Committee Report).

Moreover, she noted that no satisfactory explanation had been given regarding the management arrangements at the premises. A person who met her at the premises told her that he had bought the business and that his solicitor had “handled the paperwork” for the sale. When the officer told this person that no transfer had been received and the premises licence was still in the name of Mr

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Mahmudpour, the person then stated that he was going to buy the business, but was waiting to find out the outcome of the Review of the licence before he committed to the deal.

Later in the conversation the person asked the officer how to get a licence to sell alcohol across 24 hours; the officer considered that this question showed that he was in fact the person in charge. The Sub-Committee noted this.

The officer had not been happy about the person applying to transfer the premises licence into his name. He had changed his story about owning the business twice within one conversation. He had then refused to sign a traders notice when the officer asked him to, stating that it was Mr Mahmudpour's business, and that Mr Mahmudpour was responsible. The Sub-Committee agreed that this was entirely unsatisfactory.

The Licensing Enforcement officer stated that she, like the Police, had no confidence Mr Mahmudpour. The discovery of the illicit stock by Police had been in June 2024, yet it had not led to any improvements by the time of her inspection two months later. She confirmed that the various failings had been very serious – especially the breach of the CCTV condition, which had meant that the CCTV evidence was of no use to the Police (as it had shown the wrong date and time).

She confirmed that she did not believe that the Tanioska premises could operate in accordance with the Act, and remarked that the illicit products had been “the tip of the iceberg” in terms of what had been discovered later. The Sub-Committee noted this. Her recommendation was to revoke the licence and to remove the designated premises supervisor.

The Sub-Committee then heard from the local Ward Councillor. He explained that the premises was on Erdington High Street, an area facing numerous challenges regarding the high levels of crime and antisocial behaviour. These issues were a concern to businesses on the High Street, to local residents and also to visitors. He wanted a safe and welcoming place for people to come and shop. He felt that it was important to deal with crime taking place in the local area.

He had been concerned to hear of the illicit stock which Police had found at the shop whilst it had been open and trading. He wanted to ensure that all the businesses on the High Street were fully compliant with the law, and not engaging in criminal activity. He was involved with Action Days regarding the High Street, which happened on a bimonthly basis, and which looked at licensed premises because of local concerns around street drinking.

Having heard about the operating style of Tanioska, he felt that it was clearly not being run in line with the licensing objectives given the illicit goods that were found. Moreover, he felt that there was “clear intent behind what was happening at these premises” in terms of the failure to trade in accordance with the law.

He saw no other way to address the issues other than via a revocation of the premises licence. He felt that revocation would be “the only genuine way to resolve the criminal activity that had been taking place”. He confirmed that he

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fully endorsed the Review application, and concurred with the views expressed by the officers representing the Police and Licensing Enforcement, both of whom had recommended revocation of the licence.

The Sub-Committee noted that the premises licence holder had not attended the meeting and was not represented, and there was therefore no opportunity to hear from him or to ask questions.

When deliberating, the Sub-Committee agreed with all the points made by the two responsible authorities and the Ward Councillor. The initial issue had been the discovery of illicit goods. The Sub-Committee considered that for any licensed premises to be involved with illicit products, and/or goods of unknown provenance, put the licensing objectives at very grave risk; as such, the Sub-Committee took a very dim view of it. The Members agreed with the Ward Councillor's assessment that it was quite clear that there were management issues at the premises.

Following on from this, given the discovery of illicit goods in June, it was completely unsatisfactory that the Licensing Enforcement officer had then found various continuing breaches two months later. The officer had commented that she had expected more of an effort to comply; the Members agreed with this.

There had been an inconsistency in the version of events put forward by the person at the shop, who initially told Licensing Enforcement that he had bought the business, and then said that he was going to buy the business. The Police had advised the Members that neither Mr Mahmudpour, nor the new owner/new applicant, inspired confidence; the Members agreed with this.

Both of the responsible authorities had observed that they had no confidence whatsoever in Mr Mahmudpour to uphold the licensing objectives. After scrutinising the evidence carefully, and hearing the submissions in the meeting, the Members shared these concerns. The evidence presented by the Police in the Report and during the meeting had been more than sufficient to confirm that the premises was operating in a manner which undermined the licensing objectives. Thereafter, a Licensing Enforcement officer who attended months later found that no effort to improve had been made.

The Sub-Committee looked at all options when making its decision, and placed particular emphasis on the need to ensure that it had confidence that the premises would not engage in, and encourage, criminal activity; as the Ward Councillor had noted, criminal activity affected not only consumers, but also respectable local businesses in Erdington.

The Members were also aware of the need to consider whether they had confidence that the premises could uphold not only the licensing objectives generally, but also its own licence conditions, as nothing in the operating style described in the meeting had inspired confidence. The failings noted by Licensing Enforcement had been numerous.

The Members gave consideration to modifying the conditions and/or imposing a suspension of the licence. However, the Members were not at all satisfied, given

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the evidence submitted, that the licensing objectives would be properly promoted following any such determination, or that the premises would operate within the law if the determination was to impose these sanctions. None of the three persons who had made submissions in the meeting had recommended any course other than revocation of the licence.

The evidence had shown a complete disregard for the law by the licence holder. The operation had been managed in a way that was not merely irresponsible, but also illegal. The findings had shown a lack of professional supervision and control by Mr Mahmudpour as the licence holder, and in short he had demonstrated that he was incapable of upholding the licensing objectives.

All in all, the Members had no confidence in Mr Mahmudpour to meet the standard expected of licence holders in Birmingham. Staff at the premises were obstructive to Police, and had not been trained. A cavalier attitude to the licensing objectives had been taken. The Members felt it was important for the Sub-Committee to reassure the local community that there would be consequences for licence holders whose premises were found to be trading in illicit goods. Public safety was of paramount importance.

After scrutinising all the evidence, the Sub-Committee determined that involvement with illicit goods was indeed so serious that it could not be tolerated. A determination to revoke and to remove the designated premises supervisor would follow the Guidance issued by the Secretary of State under section 182 of the Licensing Act 2003, and was an entirely proportionate sanction given that the premises' style of operation seriously undermined the prevention of crime and disorder, and public safety, objectives in Birmingham.

There were no compelling reasons to depart from the Guidance on this occasion. To take some other course (other than revocation and removal of the designated premises supervisor) ran the risk of sending a message that the discovery of illicit goods was not a serious matter, or that there would be no consequences for illegal activities, which the Sub-Committee was not prepared to do.

The business was not being run in accordance with the licence. The Sub-Committee therefore resolved to revoke the licence and to remove Mr Mahmudpour as designated premises supervisor.

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, by Licensing Enforcement and by the local Ward Councillor.

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.

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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.

The meeting ended at 1008.

Chair.....