

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 28 JUNE 2023

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 28 JUNE 2023 AT 1330 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Sam Forsyth in the Chair;

Councillors Zafar Iqbal 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)

1/280623 **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.

2/280623 **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

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interests flowchart which provides a simple guide to declaring interests at meetings.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/280623 No apologies were submitted.

MINUTES

4/280623 That the Minutes of the meeting held on 7 June 2023 at 1000 hours were noted, and the Minutes as a whole were confirmed and signed by the Chair.

**LICENSING ACT 2003 – SUMMARY REVIEW – VELVET MUSIC ROOMS,
GROUND FLOOR, CUMBERLAND HOUSE, 200 BROAD STREET,
LADYWOOD, BIRMINGHAM, B15 1SU.**

On Behalf of the Applicant

Mark Swallow – West Midlands Police (WMP)

On Behalf of the Premises Licence Holder

Heath Thomas – Solicitor
Danielle Hadley – Director
Eilish Collins – General Manager
Steve Emmison – Designated Premises Supervisor (DPS)
Martyn Green – Security Compliance Officer
Abdool Rohomon – Expert Witness
Mike Olley – Westside BID Manager

* * *

Following a delay due to a MS Teams outage issue the meeting started at 0215 hours.

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

Mark Swallow, on behalf of WMP, requested that the Committee allow him to screen some CCTV footage from the toilets. However, he further requested that this evidence be screened in private due to the on-going investigation and sensitivity around the footage.

Heath Thomas, on behalf of the PLH company did not object to the application submitted by WMP and also wished to screen CCTV footage in private, he therefore requested that the whole hearing be held in private.

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Following a short adjournment to consider the requests submitted by the representatives of WMP and the PLH company, the Chair announced that the whole hearing would be held in private, particularly to ensure consistency and to allow Cllr Iqbal an opportunity to comment on/speak freely regarding the footage. The other Members were present at the Interim Steps hearing which was held in private and the Committee wanted to ensure Cllr Iqbal was not disadvantaged. Therefore, the Chair announced that the meeting would be held in private.

There was further discussion regarding who should be present during the private session and Heath Thomas outlined the present parties roles on behalf of the PLH company. He added that it was important that all witnesses remained in the private session in the interests of fairness.

Following a short adjournment, the Chair advised that all parties on behalf of the PLH company would be permitted at the private session.

David Kennedy, Licensing Section, outlined the report.

The Chair then advised that the private session would start, and all parties moved over to the separate private Teams session.

At this stage the Members, officers and other parties joined a separate MS Teams meeting which was held privately.

EXCLUSION OF THE PUBLIC

5/280623

RESOLVED:-

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

The public were readmitted into the meeting.

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;

6/280623

RESOLVED:-

That, having reviewed the premises licence held under the Licensing Act 2003 by Sugar Leisure Ltd in respect of Velvet Music Rooms, Ground Floor, Cumberland House, 200 Broad Street, Ladywood, Birmingham B15 1SU, following an application for an expedited review made by a Superintendent on behalf of the Chief Officer of West

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Midlands Police, this Sub-Committee hereby determines that:

- the conditions of the premises licence shall be modified by way of the adoption of all those conditions proposed by West Midlands Police at pages 43 and 44 of the Committee Report published on CMIS [see below]
- the interim steps which were imposed at the Sub-Committee meeting of 7th June 2023 shall be modified, in that they shall be replaced with all those conditions proposed by West Midlands Police at pages 43 and 44 of the Committee Report published on CMIS, and thereafter shall remain in place pending the determination of any Appeal

The Sub-Committee also requires the premises to re-submit the licence holder's evidence bundle in such a redacted form that it can be published on CMIS without delay, and by 16.15 hours on 29th June 2023 at the latest.

The conditions proposed by West Midlands Police at pages 43 and 44 of the Committee Report published on CMIS are as follows:

- On Fridays and Saturdays or on any evenings where promoted events take place from 21.00hrs all customers/artists/DJs to be searched on entry. This search to include metal detection. No search means no entry
- On Fridays and Saturdays or on any evenings where promoted events take place from 21.00hrs premises to operate an ID scanner. All customers will be required to provide ID to satisfy the scanning requirement. No ID or ID not accepted then no entry
- All staff will be trained in (crime) scene management. This training will be documented and signed by the trainer and trainee. These training records to be made immediately available to any of the responsible authorities on request
- The premises security risk assessment for deployment and numbers will be made available to any of the responsible authorities immediately on request
- All door staff to wear either a hi-visibility coat, jacket or tabard
- The premises to ensure that door staff will wear body cams. There will be a minimum of 50% of door staff on duty who wear a body cam. These cameras will record throughout the tour of duty with images & audio, be downloadable and be made available to West Midlands Police on request. Images will be kept for a minimum of 31 days
- Door staff to sign on and off duty. Each entry will include their full SIA licence number. This documentation to be made immediately available to any of the responsible authorities on request and kept on the premises for a minimum of 2 months
- Premises to keep a profile of all door staff to include a copy of their SIA licence, photographic ID (or if photographic is not available then a copy of a utility bill, no older than 3 months). These profiles to be kept on the premises for a minimum of 2 months after the last shift
- The premises will have a staff member on duty that is first aid trained
- The premises will have a bleed kit available on site

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- The premises will maintain an incident register. Each incident will be signed off by the DPS or their nominated deputy. The incident register will be made available to any of the responsible authorities on request

The Sub-Committee's reasons for the determination were due to the concerns which were expressed by West Midlands Police in relation to matters pertaining to serious crime and/or serious disorder, which had come to light as outlined in the Superintendent's certificate and application. The Sub-Committee accepted the advice of the Police that the risks of further serious crime and/or serious disorder could only be managed satisfactorily via the adoption of the Police's suggested conditions.

The Police were represented at the meeting. The licence holder company was represented by its solicitor. The director of the licence holder company also attended the meeting, accompanied by several others (who were either from the Velvet Music Rooms or supporting it).

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 view the CCTV evidence in public could prejudice an ongoing criminal investigation; in addition, one of the three Members had not been part of the panel for the Interim Steps meeting on 7th June 2023, and had therefore not seen the CCTV at all. The Police therefore asked for the Sub-Committee to go into private session to view the CCTV.

The solicitor for the premises remarked that the premises also had CCTV recordings which it wished to show in private session, and suggested that the best course was to hold the entire meeting in private session. He confirmed that the entire party associated with the premises had all viewed the CCTV and/or had close involvement with the preparations for the Sub-Committee meeting.

The Sub-Committee considered that the proper course was to hear all of the evidence and submissions in private session. This was to ensure that all three Members had a proper opportunity to be able to see the evidence and comment freely on it, and to ensure that the licence holder company was able to properly address the Police submissions without the need to avoid mentioning those parts of the evidence shown in private. This would ensure fairness to all parties.

The meeting therefore went into private session and Members heard the submissions of West Midlands Police, namely that the certificate, which had been issued by a Superintendent under s53A(1)(b) of the Act, related to an allegation of serious crime and/or serious disorder which had happened at the premises in the early hours of Monday 5th June 2023.

The Police summarised the investigation thus far – exactly as detailed

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in the Report. The incident had been the subject of a crime report for wounding, per s18 of the Offences Against the Person Act 1861. A criminal investigation was under way. CCTV from inside the premises was played to the Sub-Committee.

The Police felt that the breakdown of the security arrangements at the premises was the central issue which had led to the incident. The risk assessments for operation on the night had either not been followed, or had been completely inadequate; a weapon of some kind had found its way into the premises and had then been used to commit a wounding. The person responsible had then left the premises; enquiries were ongoing.

The Police felt that the only suitable remedy was the adoption of suitable conditions onto the premises licence. These had been submitted in advance of the meeting and were in the Committee Report. The offence was very serious as it had been aggravated by the use of a weapon and had been committed by persons who were in the premises when it was carrying out licensable activities.

The Police observed that at the meeting of the 7th June 2023, the interim steps proposed by the Police had been approved by the Sub-Committee. Since then, the premises had operated with the new conditions in place, and the Police had observed that as a result there had been no issues. The Police had been invited to view the premises' CCTV, which had not been available at the time of the previous meeting.

The situation in the period since the previous meeting had cemented the Police view that the risk assessments for the event on the night in question had been completely inadequate, and that the search regime had not worked. The Police therefore requested that their conditions (proposed in the Committee Report) should be adopted permanently onto the licence; in addition, the interim steps should also be replaced with these proposed conditions, and thereafter maintained pending the determination of any Appeal.

Regarding the hosting of promoted events, the Police confirmed that their request was that all events where the external promoter was either independent of the venue, or acting in concert with the venue, should be included. However, the Police were aware that the licence holder company had not agreed the proposed conditions, and had instead submitted its own suggested conditions.

The Sub-Committee then heard from the licence holder company, via its solicitor. Six witness statements had been submitted in advance of the meeting; the Members confirmed that they had read these. The solicitor introduced the party of six persons from the premises, which comprised: the director of the licence holder company; the general manager of the venue; the designated premises supervisor; the compliance officer; an expert witness (retired West Midlands Police

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Licensing officer); and the chief executive of the Westside Business Improvement District group.

The incident had happened on a Sunday night into the early hours of Monday morning. The solicitor explained that the issue at the instant hearing was operation on Fridays and Saturdays, whereas at the previous meeting the interim step measures had included controls for Thursday and Sunday as well.

The solicitor said that the Police were now satisfied that the premises' standard operation did not give rise to crime and disorder; the Sub-Committee noted that the current "standard operation" was with the Police's recommended interim steps in place.

The solicitor directed the attention of the Members to the Guidance issued by the Secretary of State under s182 of the Act. He reminded the Members that the course recommended therein was to seek to establish the causes of the risk of serious crime and/or serious disorder; remedial action should then be directed at these. Regarding the causes, the premises' view was that in the last ten years there had been no evidence of any crime or disorder.

The solicitor observed that paragraph 9.37 of the Guidance advised the Sub-Committee to focus the hearing on the steps considered appropriate to promote the crime prevention objective that had given rise to the application and avoid straying into undisputed areas. The Sub-Committee accepted this.

He further reminded them that paragraph 9.43 of the Guidance recommended that the determination should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it was intended to achieve. The Sub-Committee noted this.

He also observed that paragraph 10.10 of the Guidance dealt with proportionality and stated that decision making should be tailored to the size, type, location and characteristics and activities taking place at the premises concerned. The Sub-Committee accepted this.

On this point, the solicitor went on to remark that the representative of the Westside Business Improvement District considered that the Police's proposed conditions were "a complete replica" of those which had been imposed onto the licence of an unrelated premises on Broad Street, following a summary review hearing for that premises. He reminded the Members that conditions should not be standardised; nor should the summary review process be used to bring in a general policy which did not take into account the specific premises in question. The Sub-Committee accepted that this was the correct approach to take when making their determination.

The premises' own CCTV recordings were played which gave what the

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solicitor called a good flavour of the style of entertainment offered at the Velvet Music Rooms; he observed that much of it would not appeal to the “aged under 25” market. Operation on a typical Friday night was shown. The solicitor noted that the clientele was a more mature age group aged 30 and upwards; he asked the Sub-Committee to consider the age profile of the patrons when determining whether it was appropriate to require that they should be subjected to an ID scanner, a knife arch and a search process.

He observed that there had been no evidence whatsoever to demonstrate that the premises gave rise to concerns, and led the Members through the statements made by those from the premises.

The general manager described the style of trading, including on Fridays and Saturdays. The afterparty-style event which had happened on the night in question had been an entirely different event from the premises’ usual style of operation, but it had not been a last-minute booking. The designated premises supervisor had been aware of it, and moreover it had been the third event hosted for that promoter (the previous events had passed off without problems). The third event had been risk-assessed in the same way, and for externally-promoted events there were door staff, a barrier, a pat-down search process and a knife arch.

The solicitor asked the Sub-Committee to consider “what was the actual failure by the Velvet Music Rooms”, noting that the Police had not said where the operation had fallen down, and had not given any evidence that the incident had been dealt with in a poorly-managed way. He asked the Sub-Committee to reflect on the statement of the general manager, as she had set out everything that had happened.

The licence holder’s statement explained all the plans put in place for the event and remarked that the “afterparty” style had been a world away from the premises’ usual style of trading; she also described the effects of the interim step measures on the premises’ operation since the last hearing. She further commented that many bladed articles were not metal and therefore would not in fact trigger the arch.

The Sub-Committee then heard from the company director herself who remarked that the premises offered live music and sports broadcasts; both of these had a half-time interval. At a recent showing of a sports event, some patrons who went outside at half-time found themselves unable to re-enter as the time for the conditions to apply had been reached. On another occasion, complaints had arisen from over-60s patrons who had found themselves unable to enter as they did not have any ID on them; this had caused offence to those older patrons, the director said.

The expert witness then addressed the Sub-Committee and assured the Members that he was a highly experienced person with wide knowledge of all aspects of both the licensing regime and the City

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Centre entertainment areas. He had dealt with the premises during a previous review of its licence (which had been brought in 2012) by narrowing down the root causes to ensure that it did not happen again; as part of this he had examined the premises' standard operating procedures to ensure that they were not disproportionate.

In the instant matter he had reviewed CCTV footage from before the incident, and had viewed the premises' trading style across 7 days of the week; from this he had seen that there was no difference to the style of operation of previous years following the 2012 incident. No action had been necessary in the intervening years, as there had been no risks to the licensing objectives. The scenes shown on the recordings were very uniform every day, and the expert asked the Sub-Committee why Friday and Saturday should be such a concern, as he felt that to take that view was not supported by the evidence.

The expert had drafted conditions regularly in his previous role, and was well aware that they had to be appropriate, proportionate and reasonable. He therefore commended his own draft conditions for the instant premises to the Sub-Committee, assuring the Members that they were "much more stringent" and "not a broad-brush approach"; he noted that the company director had approved them because she knew that they would control the risks properly.

The expert had concerns about the interim steps imposed at the last meeting, in terms of whether they were necessary. There had been no adverse incidents since 2012, and that occurrence had itself been an isolated event. The day to day operation, and the premises' patrons, were similar across the week, but the patrons were perhaps slightly younger on Saturdays.

All at the premises felt that there were no overt risks to the licensing objectives which justified the suite of conditions proposed by the Police. They were particularly worried about existing business arrangements, such as services they offered to a local hotel's guests, and the potential effects of the proposed conditions on these arrangements.

The expert concluded by urging the Sub-Committee to observe the CCTV recording of the night of the incident and to note that it was entirely unlike a normal evening's trading at the Velvet Music Rooms. This was echoed by the solicitor, who also observed that the expert had very thoroughly and comprehensively reviewed all of the CCTV before making his submissions and drafting his suggested conditions.

Regarding the rest of the party representing the premises, the solicitor remarked that although the designated premises supervisor had been on annual leave on the night in question, he had selected suitable security personnel. The chief executive officer of the Business Improvement District knew the night-time economy well, as he had held that position since 2005. He worked closely with the premises and

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was not happy about the approach taken by West Midlands Police. In particular, he was dissatisfied with the proposed Police conditions.

Indeed, this view was shared by all of those at the premises, who had their doubts about whether they were appropriate measures. The solicitor reiterated the point that non-metal knives would not be caught by the knife arch, and went on to ask the Sub-Committee to “go back to the start” when making their decision by considering the licensing objectives and the Guidance issued under s182 of the Act that they should address the root cause of the problem.

He pointed to the “real evidence” relating to the way that the premises had been trading, and repeated that every Friday and Saturday night’s operation, for the period of a month before the incident, had been described to the Sub-Committee. Sundays and Thursdays were no longer an issue, even in the eyes of the Police. Since 2012, there had been no evidence of any risk of crime and disorder of any kind – yet the Police had taken the view that an incident could happen on any night of the week, without looking at what the solicitor called “the real evidence”.

He said that all at the premises vehemently opposed the proposal that the Police conditions should apply to every Friday and Saturday; they took the view that the measures were only necessary for externally-promoted events. The premises was volunteering its own stringent conditions, “having vetted the risk ourselves” (said the solicitor). He said that there had been no evidence of search failure, or any failure to deal with the incident properly.

All at the premises felt that their “normal trade with normal customers” was completely removed from the one-off afterparty-style event which had been the cause of the trouble on the night in question. The solicitor urged the Sub-Committee to reflect on the witness statements put forward by the premises and to consider the CCTV evidence very carefully as it showed what really happened during usual operation, namely that it was in stark contrast to the externally-promoted event which had given rise to a summary review hearing.

He commended the premises’ suggested conditions as a reasonable and proportionate way to deal with the matter which would follow the s182 Guidance, and asked that the Sub-Committee should apply measures only to externally-promoted events.

However, having heard all of the evidence, the Members were confident that only the course proposed by the Police was satisfactory, and accepted that only the Police’s course would be sufficient to ensure that the risk of any further serious crime and/or serious disorder was removed.

The Sub-Committee carefully reviewed the Guidance issued under s182 of the Act, and considered the modification of the conditions

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proposed by the Police to be reasonable, proportionate and targeted to address the concerns which had been raised by the Police in the certificate - in particular the likelihood of serious crime and/or serious disorder.

The Members agreed with the Police that the days and times were not really the issue, as problems could occur at any time. Before the night in question, the premises had felt that there were no issues, and therefore the Members tended to agree with the comment from the Police that this had perhaps caused the premises to “sleepwalk into it” (as the Police had put it). Certainly the risk assessment had failed, because there had been a serious incident with a weapon which had resulted in a wounding; it was entirely possible that this type of serious crime and/or serious disorder could happen again.

The Sub-Committee agreed with the Police remark that those at the premises “would not acknowledge that it could happen again”. This was a significant worry to the Members; when reading the documents which had been submitted by the premises it was striking that the company was concerned about the effects on the business arrangements rather than keeping its focus solely on the risks of further serious crime and/or serious disorder.

The director’s remark that the Police proposals were “unworkable” did not inspire any confidence whatsoever that she was willing to take advice from West Midlands Police, who after all were the experts in dealing with crime and disorder, in order to ensure there was no further serious crime and/or serious disorder at the premises.

The Police had remarked that those at the premises were “not alive to the threat” (of the risk of further serious crime and/or serious disorder); having heard directly from the director during the meeting, the Sub-Committee agreed that this did appear to be the case.

Submissions made by the director that a requirement to show ID had somehow caused offence among older patrons, and that therefore such a requirement was not altogether reasonable, were not persuasive at all; nor were they something that reassured the Members about the approach that was being taken by the director in the aftermath of a very serious incident in which a weapon had been brought into her premises and used in a violent incident.

Similarly, the assurance from the solicitor that those from the premises had “vetted the risk ourselves” was quite unpersuasive given that what had happened on the night had occurred despite the risk assessment. All in all, the Members considered that the licence holder company would benefit greatly from taking the common-sense approach of accepting the advice of West Midlands Police; such a course would also be the best way to follow the Guidance issued under s182 of the Act.

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The Police had said that their conditions had been drafted to assist the premises; the Sub-Committee agreed with this, finding that the Police conditions were proportionate and tailored to those aspects where problems could occur. A mix of ages had been seen among the patrons shown on CCTV, and the Members observed that younger persons were part of the clientele. In any event, whilst it was perhaps more likely that younger persons created a higher risk to the crime prevention objective, the Police had observed that those over 25 could also carry weapons on occasion, and/or be a danger to the crime prevention objective in some other way. The Members agreed that this was undoubtedly correct.

Regarding the alternative conditions suggested by the premises, the Sub-Committee determined that they were not suitable. The Police had noted that the premises' suggested conditions leaned heavily on risk assessments, yet on the night in question this approach had failed; the Sub-Committee agreed with this.

Whilst deliberating, the Sub-Committee agreed with the Police that the suggestions made by the licence holder company did not adequately cover the risks. Any incident where a weapon had found its way into licensed premises was very serious, and the correct course was that which had been recommended by the Police as the experts in the prevention of serious crime and/or serious disorder.

In the instant meeting, submissions had been made by the premises about the use of non-metal weapons such as ceramic knives. However, the Sub-Committee agreed with the Police that the regime appropriate for the Velvet Music Rooms should include a search by hand. The Members noted in particular that the Police had said that to not acknowledge the importance of searches by hand would be "a stupidity" which would increase the level of risk; the Members agreed that this was the case.

The Sub-Committee determined that premises had not foreseen on the night that an incident could happen, and that the Police were therefore correct that it could happen again. The Police conditions had been drafted specifically to address this, and were the only way to guard against the risk of further serious crime and/or serious disorder; the Sub-Committee considered that they were entirely reasonable and proportionate to address the potential for further serious crime and/or serious disorder.

The Sub-Committee therefore resolved to modify the conditions in the terms proposed by the Police, to replace the interim steps with the new conditions, and to maintain the interim steps pending the determination of any Appeal. In addition to the Police 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.

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In reaching this decision, the Sub-Committee has given due consideration to the City Council’s Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the application and certificate issued by West Midlands Police under s53A of the 2003 Act, and the submissions made by West Midlands Police, and by the licence holder company via its solicitor and others, at the hearing.

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, save for the maintenance of the interim step conditions as modified by the Sub-Committee during today’s meeting, 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.

Please note the meeting ended at 1645 hours.

CHAIR.....