

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C

WEDNESDAY, 15 DECEMBER 2021 AT 10:00 HOURS
IN ON-LINE MEETING, MICROSOFT TEAMS

Please note a short break will be taken approximately 90 minutes from the start of the meeting and a 30 minute break will be taken at 1300 hours.

A G E N D A

1 **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 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 **DECLARATIONS OF INTERESTS**

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

3 **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3 - 30

4 **MINUTES**

To confirm and sign the Minutes of the meeting held on 11 August 2021.

To confirm and sign the Minutes of the meeting held on 15 September 2021.

31 - 46

5 **RENEWAL AND VARIATION OF STANDARD CONDITIONS OF SEX ESTABLISHMENT LICENCE CZ BIRMINGHAM, 84 HURST STREET, BIRMINGHAM B5 4TD**

Report of the Interim Assistant Director of Regulation and Enforcement.
N.B. Application scheduled to be heard at 10:00am.

6 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 11 AUGUST 2021

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 11 AUGUST 2021 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Diane Donaldson and Mary Locke.

ALSO PRESENT

Shaid Yasser – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/110821 **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 Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2/110821 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/110821 Apologies were submitted on behalf of Cllrs Nicky Brennan and Neil Eustace and Cllrs Phil Davis and Diane Donaldson were the nominated substitute Members.

**LICENSING ACT 2003 PREMISES LICENCE – GRANT – AL URUBA CAFÉ,
391A COVENTRY ROAD, SMALL HEATH, BIRMINGHAM, B10 0SP.**

On Behalf of the Applicant

Mr Siddique - Representative
Mr Sharif - Applicant

Those Making Representations

No one making representations attended the meeting.

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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 Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Shaïd Yasser, to outline the report.

The Chair invited the applicant or their representative to make their submissions, at which stage Mr Siddique, made the following points: -

- a) That it was a 24 hour operation for a coffee shop.
- b) The local community required the service to fit in with their social activities.
- c) Many nurses and doctors used the store and worked late hours.
- d) It would be indoors, with no outdoor seating and the managers would work 12 hour shifts to cover the 24 hour period.
- e) The waste built up over the 30 day fasting period.
- f) His client closes the shop and goes off to provide community services and then people were fly tipping and putting up stalls without the consent of the landlord which was the reason so much waste built up.
- g) It wasn't due to the shop being open as over that period of time the premises was closed.
- h) He had spoken to his client and asked him if he would consider reducing the hours and his response indicated that he would.

The Members asked questions and Mr Siddique gave the following responses: -

- a) They had a commercial waste contract in place with wheelie bins.
- b) The waste was not an issue on a weekly basis, it was just over the 30 days of fasting when illegal stalls were along the parade and fly tipping occurred. They did not clear up after themselves.
- c) The premises did contact the Council and had taken time to get it sorted.
- d) His client also organised a skip to get it all moved.
- e) His client was senior priest in the mosque and was doing night prayer.
- f) The issue was occurring when he was not at the premises.
- g) The street vendors had gone.
- h) They did not have permission for the stalls.
- i) All deliveries were carried out in the day time.
- j) All staff were first aiders and received training.
- k) There were no issues in the area in terms of violence.
- l) Adjacent to the premises is single story shops, there was no residential properties above the shops. There was no residential properties that would be impacted in the immediate vicinity.

The Chair then invited the applicant or their representative to make a closing submission.

Mr Siddique on behalf of the applicant made the following closing statements: -

- That they wanted to provide a coffee shop with 24 hour service in order to cater for the local community.
- It had been requested by customers due to night time shifts and earlier breakfasts.
- There is no issues with ASB in the area.
- It would provide a comfortable environment for customers to sit.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was announced and a copy of that decision was sent to all parties as follows;

That the application by Mohammed Sharif, Director of Al-Uruba Café Limited, for a premises licence in respect of Al-Uruba Café, 391a Coventry Road, Small Heath, Birmingham B10 0SP, be granted.

Those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued, together with the following additional conditions as agreed between the applicant and West Midlands Police:

1. Staff are to be trained in their responsibilities under the Licensing Act 2003 prior to being allowed to work in the cafe. 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
2. Staff are to receive documented refresher training every six months. These records are to be made available to any of the responsible authorities on request
3. Between the hours of 2300 and 0500 no persons under the age of 18 years will be allowed into the premises unless accompanied by a person aged 18 years or older
4. 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
5. The premises will maintain an incident log and a refusals register. Both will be made available to any of the responsible authorities on request
6. No alcohol will be either supplied, sold or consumed on the premises

The proposal was to operate as a 24-hour coffee shop, offering late night refreshment to 0500 hours. Mr Sharif's representative stated that there was local demand for this service from shift workers of all kinds, such as doctors and nurses. The operating style would be to offer coffee and food, for night shift workers and/or early breakfast, but not alcohol. Two managers would cover the 24 hours of operation between them.

Members carefully considered the written representations made by two other persons, but were not convinced that there was an evidential and causal link between the issues raised and the effect on the licensing objectives. The Planning department of the City Council made representations about the proposed hours. The objection related to loss of amenity for buildings in the vicinity, such as dwellings; however, Mr Sharif's representative confirmed that the immediate neighbouring properties were businesses, and not residential.

An organisation campaigning against waste issues had also made written representations about the problem of flytipping and litter in the vicinity. However, Mr Sharif's representative confirmed that the flytipping and litter had been created by street vendor style operators who had set up stalls in Coventry Road during Ramadan, and not by Mr Sharif; the Al-Uruba Café had a proper commercial waste contract in place.

The other potential issues had been satisfactorily covered by conditions suggested by West Midlands Police; Mr Sharif had accepted these.

The Sub-Committee deliberated the operating schedule put forward by the applicant and the likely impact of the application, including the agreed conditions, and concluded that by granting this application, the four licensing objectives contained in the Act will be properly promoted. The premises would be a useful service for local shift workers in the Coventry Road area. The proposal to have two managers meant that there would be proper cover across the 24 hours of operation. As a result, there was little likelihood of any significant risk to the licensing objectives arising from the operation.

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 a premises licence, the written representations received, and the submissions made at the hearing by the applicant via his representative.

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.

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 15 SEPTEMBER 2021
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 15 SEPTEMBER 2021 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Nicky Brennan in the Chair;

Councillors Mary Locke and Diane Donaldson

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Katy Townshend – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

9/150921 **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 Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

10/150921 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

11/150921 Apologies were submitted from Cllr Neil Eustace and Councillor Diane Donaldson was the nominated substitute Member.

**LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION
ACT 2006 - APPLICATION FOR EXPEDITED REVIEW OF PREMISES
LICENCE: CONSIDERATION OF INTERIM STEPS - BAMBU, 1ST FLOOR
KOTWALL HOUSE , WROTTESLEY STREET, CHINATOWN, BIRMINGHAM,
B5 4RT.**

On Behalf of the Applicant

Mark Swallow – WMP (West Midlands Police)

On Behalf of the Licence Holder

Duncan Craig – Barrister, Kings Chambers
Kadir Ahmed – PLH (Premises Licence Holder)

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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 Chairman then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy, to outline the report.

The Chair invited the applicant to make their submissions, at which point Mark Swallow of WMP made the following points: -

- a) The premises operated as a nightclub between Sunday and Thursday each week.
- b) They operated extended hours Friday-Sunday.
- c) Friday 10th September an incident occurred and subsequently two Section 18 wounding's being reported to WMP. One person received a stab wound to the right shoulder and hand and then the second person received a stab wound to the hip.
- d) There was another person arrested for affray who was engaged in a fight outside the premises.
- e) Officers were outside Bambu and flagged down by a member of the public who said he didn't feel well. He had cuts to his shoulder and right hand. The incident occurred on the dancefloor inside the premises.
- f) Officers attempted to enter the premises and there was a large disorder on the staircase. Officers were forced outside the premises because it was so ferocious.
- g) One person was arrested, and officers were forced to use spray.

- h) The officers found another male with stab injuries inside the premises.
- i) Both injured males were taken to the QE hospital, but their injuries were not life threatening.
- j) Police recovered knives and a wallet.
- k) There was blood found inside the premises and an open first aid kit.
- l) No call was made to WMP or the ambulance service.
- m) The fire exits in the premises were blocked.
- n) Officers stated that staff had not been forthcoming when questioned.
- o) The DPS (Designated Premises Supervisor) was spoken to by officers, he stated he was not at the premises at the time of the incident.
- p) The premises was being used for a private party and the list of attendees was seized by officers.
- q) Conditions were imposed on the licence back in 2019, including conditions that all events must be risk assessed, and that everyone must be searched by security who would be required to wear bodycams. WMP were concerned that despite those conditions knives still made it into the premises and serious injuries and a mass disorder occurred.
- r) The enquiries made by police resulted in unsatisfactory responses from those working at the premises.
- s) The licence holder had failed to promote the licensing objectives and as a result people had been the victim of unprovoked and vicious attacks.
- t) The management failings had contributed to serious assault taking place and WMP wished to bring this to the attention of the Licensing Committee.

Members asked questions and Mark Swallow, WMP gave the following responses: -

- a) The security persons on duty held the SIA badges.
- b) All persons entering the premises (staff and attendees) should be searched upon entry into the premises.

The chairman then invited the Licensing Holder, or their representative to make their case, at which stage Duncan Craig made the following points: -

- a) That he received a call on Monday about an incident that happened at the premises Friday/Saturday. The premises had already been in contact with WMP – the DPS emailed WMP on Saturday evening.

- b) He followed that with a phone call to WMP and spoke directly to Mark Swallow yesterday (Tuesday).
- c) That he wasn't clear what WMP were asking the Sub Committee to do in regards to the licence, however he was not instructed to oppose that.
- d) The premises wanted to work with WMP and assist them in anyway they can.
- e) There were a number of misapprehensions within the review application fundamental to the conduct of the premises. The premises could not have done anything more reasonably than they did on that Friday night.
- f) The first aid kit was used to administered first aid to a doorman.
- g) Further, the head doorman who was known to WMP got further reinforcements when the incident occurred – it was not correct that they didn't inform the police and the CCTV footage would prove that.
- h) That his client witnessed a significant part of the incident that happened near to the dancefloor. One of the persons involved in that incident was asked to leave the premises by his client and the head doorman – at that stage it was not apparent that he had injuries to his shoulder. The CCTV footage would show the head doorman talking to him and there was no suggestion that he was wounded.
- i) The man left the premises and took his shirt off at which stage a female operative saw he had a cut to his shoulder and immediately doormen approached police officers on the street and told them what had happened. Those officers attended the premises, one of which was Sgt Wheeler. The premises didn't phone the police as they were already attending the premises. It was reasonable that anyone would assume the matter was being adequately dealt with. The CCTV and discussions with officers on the ground would confirm that.
- j) The CCTV had been seized and the attendance list had been given over to officers willingly. The premises were content for the police to take the hard drive.
- k) His client also asked police if staff should leave or stay at the premises, he also asked the Sgt whether he should close the premises. The officer said he could do what he wanted. They stopped selling alcohol at 0218 hours and people were asked to leave which led to the second incident where people didn't like being asked to leave.
- l) His client gave the keys to an officer on Saturday so they could get into the premises.
- m) The picture painted on the review application was simply wrong, fundamentally wrong in fact.

- n) During the second incident the IP (injured person) was involved in an altercation and fell onto some broken glass and sustained a cut to his side, it did not involve a knife. Mark Swallow had the CCTV footage for that incident too.
- o) That he had visited the premises and the upstairs of the property was empty and not operating currently. The fire exit there was blocked off which actually assisted safety.
- p) The risk assessment was done and sent to WMP.
- q) He confirmed that every person entering the premises was searched and CCTV would further confirm that.
- r) That he invited a greater degree of precision in relation to where the knives were found.
- s) If he wanted to get a knife into the Crown Court over the road, he knew he could. People can get knives into premises despite the premises best efforts.
- t) The searches were thorough and comprehensive.
- u) That he thought the police were asking the Committee to suspend the licence and he would not be opposing that, but he wanted his client's case to be heard.
- v) His client was adamant he had done everything he could, and Mr Craig agreed with him.
- w) There was no delay in the police being notified of the incident (he said he would call Mark Swallow later to discuss this further).
- x) The points raised needed proper investigation as it had a huge bearing on the conduct of the premises and the promotion of the Licensing Objectives.
- y) He knew the Committee would suspend the licence and he would not oppose that.
- z) He would speak with WMP to find a way forward.

The chairman then invited questions from Members at which stage Mr Duncan Craig gave the following responses: -

- a) He fell onto the floor and glass was already on the floor – they thought it was a smashed bottle.
- b) The incident at the bar someone had already been arrested for.
- c) There was no suggestion anyone had been bottled.

- d) There was a previous review, but the licence was transferred earlier this year. The licence holder had not been involved with the premises previously to that.
- e) It was a private birthday party, everyone was aware that gang nominals can book things as birthday parties even when they are not, but there was nothing to suggest that this was the case here. The police would do enquiries in relation to that but there had not been a moody atmosphere before. The incident came out of nowhere.
- f) There was 400 people inside the premises, all invitees and the police had the invite list. There was mix of 60% males and 40% females.
- g) Upon entry 2 door staff were referencing and ticking off names against the invite list. There was no ID in that sense.

Mr Ahmed then answered some questions from Members:-

- a) A female operative then searched all female handbags and 3-4 door staff were carrying out searches of all persons (full body searches).
- b) In the Arcadian there was a St Johns Ambulance service and they were called.
- c) In his experience it was probably quicker to go out and find the police than call them.
- d) The police officers were about 10 meters away and they spoke to Sgt Wheeler.

The Chair then invited the parties to make a closing submission.

Mark Swallow, representative of WMP made the following closing statements: -

- That he had listened to Mr Craig's submissions and would look into the issues.
- That he would invite the Committee to suspend the licence, which was a proportionate response to the incident of serious crime – Section 18 wounding's.
- Someone had been arrested for affray and was being interviewed.
- 2 knives had been recovered from the scene; one was found outside the premises discarded in a drain along with a wallet, the other was found inside the premises near the dancefloor upstairs.
- They did approach officers, but they did not phone the police. They were inside the premises and ejected someone from a major disorder – you would have thought they would have just phoned the police rather than go outside and try find police on the off chance they would be there to speak to. It was the IP who approached officers – not staff.

- That it was not acceptable.
- 2 knives got into the premises and were used as weapons which was not acceptable. People suffered serious injuries.
- There was a first aid kit open which appeared to be used to treat the injured persons, Mr Craig stated it was used to treat door staff. But that wasn't reported to WMP. They didn't know the extent of the injuries for that person.
- The licence should be suspended pending the full review.

In summing up, Duncan Craig, on behalf of the PLH made the following points: -

- The doorman had a cut to his finger. Minor cut to his finger.
- The police were approached a couple of minutes after the incident took place, approximately 3 minutes. It was not like the premises had been hanging around.
- There was some follow up from Dave Gregory and he would speak positively about the premises working with them.
- That he would cooperate with the police and try and find a way forward.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was announced and a copy of that decision was sent to all parties as follows;

12/150921

RESOLVED:-

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Arcadian Wrotesley Entertainment Ltd in respect of Bambu, 1st Floor Kotwall House, Wrotesley Street, Birmingham B5 4RT, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application, and
- that Jasdeep Kaul be removed as the Designated Premises Supervisor

Members heard the submissions of West Midlands Police, namely that the certificate issued by Superintendent Fox under s53A(1)(b) of the Act related to two instances of wounding under section 18 of the Offences Against the Person Act 1861 which had happened at the premises. There had also been an outbreak of disorder, and an arrest for affray had been made.

The evidence was that on the day in question it was poor management control which had led to the incident. The Police recommended that the Sub-Committee

should impose the interim step of suspension of the licence, pending the full review hearing.

The Sub-Committee then heard from the company which held the licence, via its counsel. The licence holder did not oppose the suspension of the licence, and stated an intention to cooperate with the Police in their investigation. The director of the licence holder company had recently taken the premises on, but did not have any previous experience of running licensed premises.

In deliberating, the Sub-Committee determined that the failure to uphold a safe style of operation had led to an outbreak of serious crime, and agreed with the Police that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises.

The Sub-Committee found the Police evidence relating to the s18 wounding incidents to be alarming, and not something that inspired the slightest confidence in the operating style at Bambu. The Sub-Committee determined that it had no confidence in the management to ensure safe operation. All in all, the Sub-Committee considered the licence holder to have failed to take its responsibilities seriously.

The Sub-Committee determined that it was both necessary and reasonable to impose the interim step of suspension to address the immediate problems with the premises, namely the likelihood of further serious crime.

The Sub-Committee considered whether it could impose other interim steps, including modification of licence conditions, but considered that this would offer little to address the real issue, which was the lack of proper management control shown by the licence holder, which was a significant risk to the upholding of the licensing objectives.

However, the Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature, given that it was this individual who was responsible for the day to day running of the premises. Therefore, the risks could only be properly addressed first by the suspension of the licence, and secondly by the removal of the designated premises supervisor, pending the full Review hearing.

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, and the submissions made by the licence holder via its counsel, and by West Midlands Police, at the hearing.

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.

BIRMINGHAM CITY COUNCIL

**LICENSING
SUB-COMMITTEE C
17 NOVEMBER 2021**

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 17 NOVEMBER 2021 AT 1200 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Diane Donaldson in the Chair;

Councillors Phil Davis and Mary Locke

ALSO PRESENT

Shaid Yasser – Licensing Section
Joanne Swampillai – Legal Services
Mandeep Marwaha – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

1/171121 **NOTICE OF RECORDING/WEBCAST**

The Chair 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.

2/171121 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/171121 Apologies were submitted from Cllr Nicky Brennan with Cllr Diane Donaldson as nominee Member. Also, apologies submitted from Cllr Ward with Cllr Phil Davis as nominee Member.

LICENSING ACT 2003 PREMISES LICENCE – REVIEW LUCKY FOOD AND WINE, 58 JEROME ROAD, SUTTON COLDFIELD, B72 1SR

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

Chris Jones – West Midlands Police (WMP) Licensing

On Behalf of the Licence Holder

Mr Duncan Craig – Citadel Chambers representing Mr Sanmuganathan Rusikumar - Premises Licence Holder (PLH) & Designated Premises Supervisor (DPS).

Those Making Representations

Paul Ellson – Birmingham Trading Standards, Enforcement Officer
Sharon Watts – Birmingham City Council, Licensing Enforcement Officer
Sue Arnold - Resident

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The Chair introduced the Members and officers present and explained the hearing procedure.

The Chair asked if there were any representations to be withdrawn at this stage. No representations were withdrawn by WMP, Trading Standards and BCC, Licensing Enforcement.

The Chair queried if there were any preliminary points for the Sub-Committee to consider. No preliminary points were made.

The Chair continued to explain the hearing procedure prior to inviting the Licensing Officer, Shaid Yasser, to outline the report.

Shaid Yasser made introductory comments to the documentation and gave a brief overview to the case. The Sub-Committee were advised of the options available for a decision.

The Chair invited the applicant to make their submissions.

Chris Jones made the following points on behalf of the applicant (WMP):-

- a) Friday 20th August 2021 – He had received an email by a local Neighbourhood Officer, PC Bird (pages 4 & 5 of WMP evidence).
- b) He provided an outline to this email:
 - i) He stated, PC Bird had conducted a joint visit with Trading Standard Officers on Monday 16th August 2021 at Lucky Wine & Food, 58 Jermone Road.
 - ii) The visit took place after a member of the public had informed that the premises had sold their 15-year-old daughter alcohol. As a result, she had been hospitalised due to drinking the vodka which she had purchased from the premises.
 - iii) The child's bank transactions were also attached to the email. (page 6 of WMP evidence).
 - iv) This indicated three purchases at the store on three separate occasions - WMP were told they were for alcohol however, the attachments did not indicate the details of the purchases, only the total amount.
 - v) PC Bird outlined information around the visit on the 16th August with Trading Standards.
 - vi) In addition, Trading Standards had received another complaint from a parent approximately 2 weeks prior to this visit. This also stated their underage child had been sold alcohol by the premises.
 - vii) PC Bird detailed the breach on the premises licence – the refusals book had not been filled in correctly and in full.
- c) Statements were provided by PC Bird (pages 7 & 8 of WMP evidence) and a statement from the child's father (pages 9 & 10 of WMP evidence).
- d) He added, at this stage, PC Bird was unable to obtain a statement from the child concerned due to poor health and being in hospital.
- e) He informed the Sub- Committee, PC Bird had explained the reason for the visit to the PLH/DPS – in summary, a 15-year-old girl had purchased bottles of Vodka on three separate occasions.
- f) The PLH/DPS dismissed this by saying, *"some-one else must have come into the shop for her."*
- g) The PLH/DPS understood the Challenge 25 Policy – anyone who looked under 25 should be asked for ID.
- h) The statement from the child's father, (page 9 & 10 of WMP evidence), was taken over the phone by PC Bird which outlined the age of his daughter, physical and mental health.
- i) The statement explained his daughter purchasing the alcohol and it gave the details of the purchases including details of entries on his daughter's

bank statements. The father included how the alcohol had affected his daughter's life.

- j) The statement indicated details of how his daughter self-harmed on 6th June after drinking vodka in her room. She had purchased this from Lucky Food & Wine. At this stage, she disclosed she had a problem with drinking.
- k) The father informed that his daughter specifically went to Lucky Food & Wine to buy alcohol as *'it was the place to get alcohol to get drink'*.
- l) As a result, the father had visited the shop himself to speak to the owner. There was a male behind the counter and identified himself as the owner. Once the child's father confronted him about selling alcohol to his 15-year-old daughter, the same male immediately denied being the owner.
- m) A month later, following this, PC Bird was able to take a statement from the child who had purchased the alcohol. This statement was taken over the phone as the child remained in Huntercombe Hospital – This was a specialist unit for young people diagnosed with severe or complex mental health conditions, and require intensive, intrusive in-patient treatment.
- n) He informed the Sub-Committee, this statement was taken over the phone where a nurse acted as the child's appropriate adult (page 11 & 12 of WMP evidence).
- o) He read out the child's statement taken over the phone by PC Bird. Key points highlighted from the statement:
 - i) Saturday 5th June 2021 - The child went to the Lucky Food & Wine to purchase alcohol and presented a fake Medical ID to the man behind the counter – (which she obtained online indicating she was 18 years old).
 - ii) The man behind the counter said, *"I have never seen one of these before, you can have it this time, but not next time"* and sold the alcohol.
 - iii) She described the male – Asian, older looking, tall, medium-skinny build, virtually no hair but not quite bald.
 - iv) Next day, 6th June, she the vodka in her room - purchased from Lucky Food & Wines. She damaged her arms by self-harming. She was confronted by her parents about the purchasing the alcohol.
 - v) The girl had stated, she had a lot drinking issues and the alcohol was being purchased from Lucky Food & Wines.
 - vi) As a result, she was taken to hospital and since then she had been to three different hospitals to help with her mental health.
 - vii) She mentioned she had purchased the alcohol from Lucky Food & Wine two weeks prior too which was in line with the bank statements provided.
 - viii) Saturday 22nd May 2021 – The child went to Lucky Food & Wines on her own where the fake medical ID was presented again.

- ix) The man behind the counter said, “*You can have it this time but next time you need a proper ID like a driving licence*” and sold the vodka to her.
 - x) This was the same male who served her on Saturday 5th June 2021.
 - xi) Saturday 29th June 2021 – The child brought some alcohol from the Lucky Food & Wines on her own. Again, the fake medical ID was presented and the male in the shop said, “*That’s fine*” – and sold the alcohol. However, this male was different to previous person. He was in his 30’s, bigger built, with short hair.
- p) The child’s bank statement indicated three purchases from the Lucky Food & Wine;

Transactions:

- Monday 22nd May - £7.98 (Saturday 22nd May purchase) – small bottle of vodka;
 - Tuesday 1st June - £17.99 (Saturday 29th May purchase) – large bottle of Absolute vodka.
 - Monday 7th June - £16.78 (Saturday 5th June purchase) – large bottle of Smirnoff vodka.
- q) The girl had indicated in her statement, other under 18’s had purchased alcohol and cigarettes from Lucky Food & Wine before.
- r) He referred to the two different types of Challenge 25 Policies (pages 13 & 14 of WMP evidence) – both indicated acceptable forms of ID.
- s) He highlighted there was no mention of a medical ID of being acceptable – this would not have hologram or UV feature. Only photographic, pass bearing hologram and date of birth would be acceptable like a driving licence.
- t) He informed the staff were aware of the Challenge 25 Policy, however on all three occasions, they had ignored the policy.
- u) He referred to a map indicating the proximity to the school (attached within the WMP evidence pack). People under 18 had purchased alcohol and cigarettes from this shop.
- v) WMP were concerned around the premises profiting over the licensing objectives of selling alcohol to a vulnerable underage girl.

There were no questions raised by the Sub-Committee.

The Chair invited Paul Ellson, Birmingham Trading Standards to make his representations.

Paul Ellson made the following points on behalf of Trading Standards:-

- a) He appraised the Sub-Committee on the history of this premises and the dealings it had with Trading Standards.

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- b) 16th March 2020 – Trading Standards received a complaint from a customer stating their 15-year-old daughter had been served Echo Falls wine and had become drunk. It stated the premises was well known to sell alcohol to minors in the local area.
- c) As a result, the PLH/DPS was sent a warning letter by an officer.
- d) 6th May 2020 – The PLH/DPS was telephoned by that officer. He was reminded to use the refusals book on the premises.
- e) The person who the officer spoke to in the shop, blamed the adults for purchasing the alcohol for the minors and resupplying them outside of the premises.
- f) He found this highly unlikely as this was a small local shop in a residential area where there was a camera outside the premises. This could have happened once, however, steps should have been taken to ensure this did not happen.
- g) 2nd November 2020 – Trading Standards received a complaint from WMP - allegations were being made against the premises – they were not checking ID before selling to minors.
- h) 11th December 2020 – The premises was visited by an officer. This was a relative (nephew) /employee of the PLH/DPS and he was informed of the matter and advised was given by the officer.
- i) The relative (nephew) /employee of the PLH/DPS, blamed the adults for purchasing the alcohol and resupplying this to minors outside the shop.
- j) The refusals log was checked by officers and it was noted this had not been filled in since September 2020. No challenges had been undertaken since that date.
- k) 13th May 2021 – Trading Standards received another complaint from WMP that throwdown - category 1 firework had been supplied to children 7-9 years old. These products were age restricted and could not be sold to anyone under the age of 16.
- l) 26th May 2021 - In response to this complaint, Paul Ellson visited the premises, where the licence holder indicated he was unaware of the age restrictions – Trading Standards understood this as it was an unusual piece of legislation for the product. However, the packaging clearly stated – do not sell to anyone under the age of 16.
- m) He provided guidance on fireworks and underage sales (including alcohol, tobacco sales) and reminded to use the refusals log.
- n) 9th June 2021 – Trading Standards received another complaint from a consumer that his 15-year-old daughter had been sold vodka from the

premises and ended up in hospital. The vodka had been purchased using a bank card. The complaint was followed up by WMP officer (PC Bird).

- o) 30th July 2021 – Trading Standards received another complaint from a consumer. Her 15-year-old son had been sold alcohol and vaping products (E-cigarettes) – with an age restriction 18 years and over.
- p) 16th August 2021 – A joint visit was arranged with Paul Ellson (Trading Standards) and WMP officers to discuss both matters. The PLH/DPS was on the premises and the situation was explained. It appeared the PLH/DPS ignored the information and blamed the adults for resupplying alcohol to the child concerned.
- q) The PLH/DPS was made aware a card sale had been made in the shop however, the PLH/DPS still refused to accept the sale had taken place. A series of questions around the sale was raised by Mr Ellson and the PLH/DPS stated “no other persons worked in the shop”. Later it transpired, at least two other individuals worked in the shop, both family members.
- r) The PLH/DPS stated he regularly challenged customers coming into the shop but did not have time to enter details into the refusals log.
- s) Trading Standard and WMP officers were in the shop for at least 45 minutes, and only 4 people entered during this time, therefore this indicated there was enough time to fill in any challenges into the refusals log.
- t) This was a small local shop with limited stock – mainly sells alcohol. Paul Ellson checked the refusals log and there had only been three entries since the 9th June 2020 visit by officers. None of these were entered by the PLH/DPS but his employees. The refusal log was being used however, not maintained.
- u) A full guidance pack and relevant information was shared with the PLH/DPS. The PLH/DPS reaction was of contempt and showed little understanding of the law despite having several visits and letters. The PLH/DPS chose to ignore them and exercise a complete lack of control on the licenced premises.
- v) Paul Ellson felt the PLH/DPS had breached and continued to breach all four licensing objections and ignored all the constraints and concerns raised by the Authorities.

The Chair invited Sharon Watts, BCC Enforcement to make her representations.

Sharon Watts made the following points on behalf of BCC Enforcement :-

- a) 7th June 2021 – Licensing Service had received a complaint from a member of the public stating on 29th May 2021, their daughter who was 15 years old had been able to purchase vodka on three separate occasions from Lucky Food & Wine.

- b) She informed this had only come to light when the parent had checked their daughters bank statements.
- c) 9th June 2021 – She visited the premises and carried out a licensing act inspection. The DPS/PLH was on site whilst the inspection took place.
- d) As part of the Premises Licence conditions, Condition 2b, it stated CCTV should be retained for a period of 31 consecutive days.
- e) The PLH/DPS was asked for evidence of the recording for 31 days, he was unable to do so.
- f) She informed the PLH/DPS, he was in breach of one of the conditions on his licence and gave him 7 days to rectify the non-compliance. He was issued with a Traders Notice confirming the advice given.
- g) 2nd August 2021, she revisited the premises - (2 months after the initial visit in June). At this visit, Sharon requested to see the CCTV footage and to see if it was recording for a minimum of 31 consecutive days (requirement under the conditions of the licence).
- h) The PLH/DPS was only able to show the recordings for 28 days – this was still in breach of the conditions on his licence and not compliant. As a result of the non-compliance, the PLH/DPS was invited to the Enforcement offices to be interviewed under caution.
- i) 7th September 2021 – Interview under caution took place.
- j) As a result of the interview, Sharon Watts had no confidence the PLH/DPS upholding the licensing objectives.
- k) 23rd September 2021, WMP requested for the premises licence for Lucky Food & Wine to be reviewed hence representations of non-compliance were presented at this meeting.
- l) She felt the PLH/DPS had breached to all four licensing objectives protecting children from harm and prevention of crime and disorder.

The Chair invited Sue Arnold, Resident to make her representations.

Sue Arnold made the following points: -

- a) She had attended the meeting today to support Lucky Food & Wines.
- b) During the lockdown, the shop was a goldmine to residents and the service was professional.
- c) She added, the PLH/DPS was a hard-working person and a man of principle.

There were no questions raised by the Sub-Committee.

At this juncture, the Chair invited Mr Craig to make his representations.

Mr Craig made the following points on behalf of PLH/DPS: -

- a) He had visited the premises on 11 November (Thursday), approximately 1600 hours and he could not speak to the PLH/DPS as it was so busy – children were coming in after school and other customers. As he couldn't speak to the PLH/DPS, he rescheduled the visit for 13 November (Saturday) lunchtime. The PLH/DPS had to close the shop in order to have a conversation with Mr Craig. This was a busy shop in a local residential area.
- b) The PLH/DPS had been at the premises for 5 years.
- c) He referred to his visit at the shop. 25-30% of the shelf space had alcoholic products, long narrow shop, one room (possibly a former house).
- d) He observed the PLH/DPS reaction to serious matters – i.e. the PLH/DPS had the tendency to smile back and that was his reaction to the matter - (possibly smiling nervously, mannerism displayed). The PLH/DPS was taking this situation seriously and disputed comments made by the responsible authorities as this was his business and life.
- e) He referred to Paul Ellson's point around the PLH/DPS misleading him about his wife working – she was not an employee but helped sometimes in the shop when required.
- f) He reflected on the evidence from WMP and Trading Standards – this sat hand in hand.
- g) He drew an analogy to a separate case. He compared this situation to a case related to a massage parlour where complaints were being received however, the complaints should have been in reference to another business in the same building – there was confusion or was it a malicious act. The evidence was not verified and the judge said "I don't know who this person is and no means of verifying who they are" – In relation to Lucky Food & Wine, a statement had been taken, no officer from WMP had met the individual, no officer from WMP had met the father therefore, do not know what the girl looks like, circumstances of hospitalisation, number of options that had not been investigated.
- h) He referred to the witness statement on page 12 of WMP evidence, and prices and purchases – "on my bank statement....." – The PLH/DPS concedes there were two prices in operation for Glens Vodka only. A new batch marked up at £7.89 and sold at £7.49 at times.

The other two products referred to in the evidence were incorrect.

- (Odd price £16.78 for a bottle) when the actual price of Smirnoff Red was £14.99 70cl and Absolute Blue - £20.99.
- 2 out of 3 prices do not accord with logic.

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- i) He referred to the fake medical ID – this had not been verified. No testing had taken place around what the person had said. This person was not representing themselves at this sub-committee to give their account - (Limited evidence - than if a test purchase had been undertaken).
- j) He noted there were several complaints to Birmingham City Council which should have been tested.
- k) He referred to the Lucas warning – in which a judge gives to the jury if it was found a defendant had been lying in the course of the investigation or in court. Witnesses may lie for many reasons i.e. shame, humiliation, misplaced loyalty, panic, fear, distress, confusion and emotional pressure which he requested the sub-committee to consider as this girl may have been in trouble with her parents.
- l) He invited the Sub-Committee to question and consider the girls motive as there was no overwhelming evidence to support the allegations – no fail test purchases.
- m) He had checked with Paul Ellson if this had been undertaken at the premises. Paul Ellson had confirmed fail test purchases had not taken place anywhere.
- n) He agreed the PLH/DPS had breached some areas of his licence conditions but not by much. He was amazed an interview had taken place under caution in relation to the breach of the CCTV (i.e. breach of recording for only 28 days rather than 31 days – this was not a catastrophic breach than not to have a recording at all).
- o) He agreed the PLH/DPS had a lack of compliance to the refusal register however, since the visit in August this was being complied with.
- p) He was grateful for the awareness on the fireworks legislation.
- q) He referred to the joint visit on 16th August – PC Bird and Paul Ellson – they undertook an extensive search of the shop – noted, no illicit alcohol or cigarettes were found at the premises.
- r) There were breaches in respect of refusals, CCTV and he suggested a suspension was a proportionate step as there were gaps in the evidence.
- s) The relative/ employee of the PLH/DPS fits the description to the Glens sale - nephew of the PLH/DPS.
- t) He referred to appendix 3 (pages 7 – 11) – read out statements from residents in support of the premises.
- u) He mentioned the PLH/DPS did not accept selling alcohol anyone underage and had no recollection of the girl concerned. Anyone under the age of 25 was checked for ID.

There were no questions raised by the Sub-Committee.

In summing up, Paul Ellson made the following points: -

- He noted comments made by Mr Craig however, there seemed to be an established concept that this premises was a place to go to get underage alcohol.
- He was concerned the possible actions within the shop may have detrimental effect on the lives of people living in the area. The shop provided community service however, there were concerns around the number of complaints trading standards had received and how they were being addressed. Something had to be done because a reputation had been established where people can obtain alcohol.
- Noted the actions the PLH/DPS had already taken in the shop however, his reactions were not what trading standards officers had expected – very dismissive at the beginning.
- The PLH/DPS had not recorded the challenges against the selling of alcohol in the refusals log – this had to be addressed.
- Once a reputation of a business had been affected, it was hard to get this reputation back.
- He recognised a lot of shops had offered support to residents during the lockdown including this premises however, complaints were still being received up until this period.
- After the last incident no further complaints had been received so something had changed.

In summing up, Sharon Watts made the following points: -

- She referred Mr Craig's comments around the breach of the CCTV conditions. She added, on two occasions, the PLH/DPS was committing an offence by breaching the licence conditions albeit insignificant Mr Craig thought they were.
- The PLH/DPS was given advice on the first occasion and following that, the non-compliance should have been rectified. If this had been rectified, there would not be a need for further enforcement action. The advice was ignored, and 2 months later when a revisit was carried out, the PLH/DPS was still not compliant, therefore the matter was escalated.
- She had concerns that the objectives on the licence would not be upheld by the PLH/DPS.
- Trading Standards had received several complaints from different people around selling alcohol to minors and this would need to be investigated as to why people were making these complaints.

At this juncture, it was noted Sue Arnold had left the meeting therefore unable to make closing submissions.

In summing up Chris Jones made the following points in support of the application:-

- He referred to Mr Craig's comment around the people who gave the statements had not been met in person – currently statements for any offence were routinely taken over the phone by officers. Physical meetings were not taking place.
- He referred to the bank statements which do not give the detail of the purchases. It was noted, vodka was purchased from the person who gave the statement however, there could have been other items making the total amounts.
- The statement of the child wasn't taken until 3rd September and purchases were made in June.
- WMP had no confidence in the PLH/DPS was promoting the licensing objectives especially around protecting the children from harm, prevention of crime and disorder and public safety.
- The premises had repeatedly sold alcohol to a vulnerable 15-year-old girl – it was known within her peer group as a place to get alcohol.
- The premises had a challenge 25 Policy which was disregarded by the staff. A fake medical card was accepted even though saying, "they haven't seen a ID like this before,....you can have it this time but not next time...bring proper ID".
- PC Bird had indicated that during the joint visit with Trading Standards, the PLH/DPS did not realise the seriousness of the situation – which was similar to what the father had stated in his statement. When the father confronted the PLH/DPS, he denied he was the owner.
- The premises had systematically sold a 15-year-old alcohol which breached licensing conditions and mandatory conditions.
- The 15-year-old girl self-harmed after purchasing alcohol from this premises which fits in with her bank statements.
- The 15-year-old girls stated she had a drink problem and wanted to get help and this is why she told her parents, WMP and made statements of where she purchased the alcohol.
- She stated, "it was due to the Lucky selling me that I have been able to obtain alcohol which subsequently meant she went into hospital for her mental health."
- WMP requested for the Sub-Committee to consider revoking the licence from this premises.

In summing up Mr Craig made the following points: -

- He confirmed it relative (nephew) /employee of the PLH/DPS who the father of the child confronted and not the PLH/DPS. Therefore, it was correct for the relative (nephew) /employee to say he was not the owner.
- He referred to WMP highlighting there could have been other items purchased in the shop. This was a statement taken by WMP and they should have questioned if other items were bought at that time.
- He accepted statements being taken over the telephone however, there was no way of filtering out any short comings.

- He noted there were various complaints coming from different sources – however, we don't know this? it could be one person making all the calls – no way of establishing this – motive? this was pure speculation.
- He disagreed with BCC Enforcement that the Section 136 had been breached.
- He questioned the evidence as there were gaps – do not know what the girl looks like, mental state, about her father etc – speculating.
- In the absence of other evidence to support what's been said in the statements it was less than likely that what was in the evidence was correct.
- He therefore requested for the Sub - Committee not to revoke the licence and suggested a period of suspension.

The Chair thanked all parties for their attendance.

At this stage the meeting was adjourned in order for the Sub-Committee to make a decision and all parties left the meeting.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and the decision of the Sub-Committee was sent out to all parties as follows;

3/171121 **RESOLVED:-**

That, having reviewed the premises licence held under the Licensing Act 2003 by Sanmuganathan Rusikumar, in respect of Lucky Food and Wine, 58 Jerome Road, Sutton Coldfield B72 1SR, upon the application of West Midlands Police, this Sub-Committee hereby determines the licence be suspended for a period of fourteen days in order that Mr Rusikumar should take the opportunity to review all practices and procedures, refresh training for all staff, and thereafter resume trading in a manner which is capable of upholding the licensing objectives in the Act.

The Sub-Committee's reasons for suspending the licence are due to concerns raised by Licensing Enforcement relating to compliance with conditions – specifically the failure to retain CCTV recordings for the required number of consecutive days, and failure to maintain a refusals register at the time of inspection. The Sub-Committee considered these matters to be at the middle of the scale in terms of failure.

Submissions were also made by West Midlands Police relating to suspicions about underage sales; however, the Sub-Committee did not find that the evidence presented was sufficient for it to make any determination on the issue of possible underage sales. It was not comparable with the usual standard of 'underage sale' evidence brought before the Sub-Committee, namely test purchases witnessed by Trading Standards officers.

Counsel for the licence holder confirmed that it was not accepted that any underage sales at all had been made, as the shop had a Challenge 25 policy in force. Moreover the Sub-Committee noted the numerous letters of support for the licence holder, submitted by local residents. One such resident even attended the

meeting in person, to confirm her support for the shop directly to the Sub-Committee. This was highly unusual in any Review hearing, and Members considered that these representations showed that the shop was a valued community resource. It was striking that some of the letters confirmed in writing that the shop did in fact verify customers' ages when selling alcohol by retail.

Accordingly the Sub-Committee felt quite unable to follow the Police recommendation to revoke the licence, and instead agreed with counsel for the licence holder that the matter could be dealt with by way of a suspension of the licence. The Members considered that 14 days would be sufficient for the licence holder to review and refresh all aspects of his operating style, such that he could reopen again as a 'fresh start' for the shop.

The Sub-Committee gave consideration as to whether it should modify the conditions of the licence or remove the Designated Premises Supervisor, but was not satisfied, given the limited evidence submitted, that this was necessary.

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 counsel for the premises licence holder and by those making representations.

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.

Please note, the meeting ended at 1350.

BIRMINGHAM CITY COUNCIL

**REPORT OF THE INTERIM ASSISTANT DIRECTOR OF REGULATION &
ENFORCEMENT TO A SUB COMMITTEE OF THE LICENSING AND PUBLIC
PROTECTION COMMITTEE**

LICENSING SUB COMMITTEE C

15 DECEMBER 2021
BORDESLEY & HIGHGATE

CZ BIRMINGHAM, 84 HURST STREET, BIRMINGHAM B5 4TD
RENEWAL AND VARIATION OF STANDARD CONDITIONS OF SEX
ESTABLISHMENT LICENCE

1. Summary

- 1.1 An application has been received for the simultaneous renewal and variation of standard conditions attached to the sex shop licence granted in respect of CZ Birmingham, 84 Hurst Street, Birmingham B5 4TD.
- 1.2 As no objections have been received the renewal element of the application is effectively granted under delegated authority to officers.
- 1.3 However, the application also seeks to vary the standard conditions attached to the existing licence which can only be considered and determined by a Licensing Sub Committee in accordance with our existing scheme of delegations.
- 1.4 There is a statutory requirement for applicants to advertise in the local press and post notices on the premises giving passers by the opportunity to comment or object within a specific time period.
- 1.5 No objections have been received within the statutory time period.
- 1.6 The options available to the authority when considering a request to vary terms, conditions or restrictions on or subject to which a licence is held are outlined in paragraph 5.3 of this report.

2. Recommendation

- 2.1 The Committee is required to consider the requests to vary the standard conditions as outlined in paragraph 3.3. and to determine the requests in accordance with the options available detailed at paragraph 5.3 of the report.

Contact Officer: David Kennedy, Principal Licensing Officer
Telephone: 0121 303 9896
E-mail: david.kennedy@birmingham.gov.uk

3. Background

- 3.1 Libertybelle UK Limited T/A Clone Zone has applied for the simultaneous renewal and variation of standard conditions attached to the sex shop licence granted in respect of CZ Birmingham, 84 Hurst Street, Birmingham B5 4TD and has complied with the statutory requirements. See Appendix 1.
- 3.2 The current sex shop licence permits the following hours of operation: 11.00am – 9.00pm (Monday – Sunday) and 10.00am – 4.00pm (Sunday except Easter Sunday) with the premises to remain closed on Christmas Day & Easter Sunday. See Appendix 2.
- 3.3 The applicants request to vary the standard conditions is summarised below and seeks to permit:
 - 3.3.1 Trading on Good Friday and Easter Sunday as all other shops of our size can do without restrictions;
 - 3.3.2 Trading up to midnight instead of 9.00pm. This would only be used for special events such as Pride weekend.
- 3.4 A copy of Birmingham City Council's Standard Conditions for Sex Shops is attached at Appendix 3 with the relevant conditions highlighted for ease of reference.
- 3.5 In accordance with Paragraphs 18(1), (2) and (3) of Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 the holder of a sex establishment licence is entitled to apply to the appropriate authority to vary terms, conditions or restrictions on or subject to which the licence is held.

4. Consultation

- 4.1 The legislation requires the applicant to advertise applications in a local newspaper, post a notice outside of the premises for a period of 21 days and serve notice of the application to the Chief Officer of Police.
- 4.2 In addition upon receipt of an application the Licensing Section consults with the relevant Local Policing Unit, the Licensing Enforcement Team and also notifies the appropriate Ward Councillors.
- 4.3 Representatives from West Midlands Police and the Licensing Enforcement Team have confirmed that they have no objections to either the renewal or variation of the licence.
- 4.4 No objections have been received within the statutory consultation period.

5. Determination of the Application to vary sex shop licence conditions

- 5.1 Libertybelle UK Limited T/A Clone Zone have been invited to attend the meeting in support of the application to vary the standard conditions of licence as detailed at Paragraph 3.3 above.
- 5.2 As no objections have been received the renewal element of the application is effectively granted under delegated authority to officers.
- 5.3 Under the above mentioned legal provisions of the 1982 Act, the appropriate Authority may:
- 5.3.1 make the variation specified in the applications;
 - 5.3.2 make such variations as they think fit; or
 - 5.3.3 refuse the variation applications

6. Implications for Resources

- 6.1 There is a right of appeal against the Committee's decision to the Magistrate's Court and from there to the Crown Court. If such an appeal were successful in either Court, the costs of any such proceedings could be awarded against the Council. Any appeal made to the Court must be made in writing within 21 days from the date that the decision is made known to the applicant.

7. Implications for Policy Priorities

- 7.1 The report complies with the City Council's Policies relating to Sex Establishments and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

8. Public Sector Equality Duty

- 8.1 No specific implications have been identified.

INTERIM ASSISTANT DIRECTOR OF REGULATION & ENFORCEMENT

Background Papers: Nil

From: David Edwards
Sent: 11 October 2021 15:44
To: Licensing
Cc:
Subject: Libertybelle U.K. ltd trading as Clone Zone 84 Hurst Street, Birmingham. S.E.L. Renewal.

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Emma,

Thank you for your email of 8/10/21.

1/ Regarding the above application we would like to be able to trade on Good Friday and Easter Sunday as all other shops of our size can do without restrictions.

2/ we would like the ability to trade up to midnight instead of 9.00pm. This would only be used for special events such as Pride weekend.

Hopefully this won't be a problem in the light of the fact we have never had an objection to our renewal applications over the last 20 years. We have never had a complaint about the content of the shop and we no longer sell anything that is age restricted.

I look forward to hearing from you soon.

Kind regards,
David Edwards,
Director,
Libertybelle U.K. Ltd.

Sent from my iPad

SEX 1.22

Fair Processing Statement – Any personal data held by Birmingham City Council in relation to your application for a Licence to use a premises, vehicle, vessel or stall as a Sex Establishment, will be held in full compliance with the legal obligations as set out in the Data Protection Act 1998. This is in accordance with the Council's Privacy Policy; a copy is available on the Council's website: www.birmingham.gov.uk/privacy. To protect the public fund we may also use the information you have provided on this form to prevent and detect fraud. We may share this information for the same purposes with other Council Departments and organisations for example, other councils and the police.

BIRMINGHAM CITY COUNCIL

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
PART II (CONTROL OF SEX ESTABLISHMENTS)

Application for a Licence to use any Premises, Vehicle, Vessel or Stall as a Sex Establishment

Application details:

Is this licence for Grant ☐ Renewal ☒ Transfer ☐ 6 months ☐ 12 months ☒

Is the application being made by an individual on behalf of a partnership or body corporate?
Yes ☒ No ☐

Full Name of Applicant (ie the individual, body corporate or unincorporated body). If the applicant is an individual, please also give any former names LIBERTYBELLE UK Ltd.
T/A CLONE ZONE - C2 BIRMINGHAM.

Permanent Residential Address of Applicant (if an individual) or registered or principal office (if a body corporate or unincorporated body) REG OFFICE 30B SPICE QUAY
SHAD THAMES, LONDON SE1 2YA

If Applicant is an individual please give details:

Date of Birth N/A Place of Birth N/A

Date Became Resident in the UK or E.U Member State N/A

National Insurance Number or E.U Member State Equivalent. N/A

Telephone Number (during normal office hours) .

Name and address to which correspondence to be sent (if different from above)

DAVID EDWARDS

Has the applicant a financial interest in the business which is the subject of this application?

Yes ☒ No ☐ If "yes" to what extent 100%

Is the whole business owned by the applicant? Yes ☒ No ☐

Premises details:Under what name is, or will the premises be known C2 BIRMINGHAMIf Application is in respect of a premises please give full address
84 HURST STREET, BIRMINGHAM B5 4TDAre the whole of the premises described above to be used under the licence? Yes ☒ No ☐

If no, please state:

a) which part of the premises is to be used for the purposes of the licence

N/A

b) the use to which the remainder of the premises are to be put

N/A

c) the names of those responsible for the management of the remainder of the premises

N/A

If the applicant's interest in the premises is a leasehold one, please state:

a) whether a head-lease or a sub-lease Head-lease ☒ Sub-lease ☐

b) the name and address of the landlord and of the superior landlord where applicable

L.C.P. L.C.P. HOUSE, THE PENNSNEY ESTATEKINGS WINFORD, WEST MIDLANDS DY1 7NFc) the length of the unexpired term 4 YEARSIs the application in respect of a sex shop or a sex cinema? Sex Shop ☒ Cinema ☐

Is the application in respect of premises or a vehicle, vessel or a stall?

Premises ☒ Vehicle ☐ Vessel ☐ Stall ☐If application is in respect of a vehicle, vessel or stall, please state where it is to be used as a sex establishment N/AAre the premises, vehicle, vessel or stall in use as a sex establishment at the date of this application? Yes ☒ No ☐

What means are to be taken to prevent the interior of the premises being visible to passers by?

THE WINDOWS + ENTRANCE ARE SCREENED OFF FROM THE STREET

Give details of the times during which it is proposed to open the premises:

i) Days of the week: MONDAY to SUNDAYii) Hours of the day: 11.00 AM - 9 PM

SEX 1.22

If the applicant is a body corporate or an unincorporated body, complete the table in respect of each of the Directors, the Company Secretary or other persons responsible for the management of the body. In the case of a partnership, details of all the partners must be given.

Name (in full): Mr/Mrs/Miss/Other	Date of Birth	Address of permanent residence throughout six months immediately preceding this application	Date became resident of United Kingdom or other E.U member state
DAVID RAYMOND EDWARDS			
SEAN PATRICK DURACK			

If the applicant is a company, what type of company is it (e.g., public or private, limited by share or guarantee, etc.)? LIMITED BY SHARE

In which country is the company incorporated? UK

What is the date of incorporation of the company? 21/12/08

Please give details of the person who is to be responsible for the management of the premises in the absence of the licence holder:

First Name ANDREW GRAHAME Surname GAVIN

Former Name (if any) —

National Insurance Number or E.U Member State Equivalent —

Permanent Address: —

Date of Birth: — Place of Birth: —

Has any person named at any place in this application been associated in any way with any other application for a licence for a sex establishment? Yes ☒ No ☐

If "yes" give full details: SEE LIST

SEX 1.22

Does the applicant or any persons named in this form have any Convictions/Cautions? Yes ☐ No ☐

If so, please give details below:

Convictions:

Forenames	Surname	Former Name (if any)	Court	Date	Offence	Penalty or Sentence
N/A.						

Cautions:

Forenames	Surname	Former Name (if any)	Offence	Date of Caution	Where caution administered
N/A.					

(If necessary, please continue on a separate sheet)

Is there in force against the applicant or any of the persons whose names appear in this application form a disqualification from holding a licence for a sex establishment under the Local Government (Miscellaneous Provisions) Act, 1982? Yes ☐ No ☒

If "yes" give full details:

Please disclose any Forfeiture Order made under the Obscene Publications Act 1959 made in respect of articles seized from premises where the applicant or any person named in this form was carrying on business.

N/A.

Is there any further information which the applicant would wish the Council to take into account when considering this application?

DECLARATION: I declare that the details in this application are true to the best of my knowledge and belief and acknowledge that if there are any omissions or incorrect statements of a serious nature this may result in the application being refused. I further declare that I have read and agree to abide by the conditions of Licence for a Sex Shop/Sex Cinema made by Birmingham City Council in accordance with Section 2 Schedule 3 of the Local Government (Miscellaneous Provisions) Act 1982 should my application be granted.

APPLICANTS ARE INFORMED THAT ANY PERSON WHO, IN CONNECTION WITH AN APPLICATION FOR THE GRANT, RENEWAL OR TRANSFER OF A LICENCE, MAKES A FALSE STATEMENT WHICH HE KNOWS TO BE FALSE IN ANY MATERIAL RESPECT OR WHICH HE DOES NOT BELIEVE TO BE TRUE, IS GUILTY OF AN OFFENCE AND LIABLE, ON SUMMARY CONVICTION, TO A FINE NOT EXCEEDING £20,000.

Signature

Name of Signatory DAVID RAYMOND EDWARDS

Designation of Signatory DIRECTOR

List of all Clone Zone Licensed Shops.

Clone Zone
36-38 Sackville Street,
Manchester,
M1 3WA.

Clone Zone
84 Hurst Street,
Birmingham,
B5 4TD.

Clone Zone
35 Old Compton Street,
Soho
London,
W1D 5JX.

Clone Zone
266 Old Brompton Road.
Earls Court.
London
SW5 9HR.

From: David Edwards
Sent: 17 October 2021 12:51
To: Licensing
Cc:
Subject: Change to registered office

Dear Licensing Officer,

Please note as from the date of this email the following change,

The registered office of Libertybelle U.K. Ltd is now, Clone Zone, 36-38 Sackville Street, Manchester, M1 3WA.

Please update your records for our Sex Establishment License.

Kind regards,
David Edwards,
Director,
Libertybelle U.K. Ltd.

Sent from my iPad

BIRMINGHAM CITY COUNCIL



Sex/Est:
LN/000032727

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982
SECTION 2 - SCHEDULE 3 - CONTROL OF SEX ESTABLISHMENTS

SEX ESTABLISHMENTS LICENCE

The Birmingham City Council hereby GRANT

Libertybelle UK Ltd T/A Clone Zone

of 30B Spice Quay, Shad Thames, London, SE1 2YQ

a licence to use any premises, vehicle, vessel or stall as a:-

Sex Shop

at premises known as **CZ Birmingham**

at **84 Hurst Street, Birmingham, B5 4TD**

for **12** calendar months commencing **18th October 2020** for the following times:

11:00am – 09:00pm (Monday – Sunday)
To be closed Christmas Day and Easter Sunday

This licence is granted subject to the attached conditions.

Date: 28th January 2021

S. A. Garner.

FOR INTERIM ASSISTANT DIRECTOR REGULATION AND ENFORCEMENT

General Licensing Regulation & Enforcement
P.O. Box 17831
BIRMINGHAM
B2 2HJ

BIRMINGHAM CITY COUNCIL

LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1982

SECTION 2 AND SCHEDULE 3
(Licensing of Sex Establishments)

CONDITION OF LICENCE FOR A SEX SHOP

INTRODUCTION

1. In these conditions "The Council" shall mean the Birmingham City Council and all enquiries concerning this licence shall be directed to General Licensing Regulation & Enforcement, P.O. Box 17831, Birmingham, B2 2HJ. Telephone 0121 303 9896.
2. These conditions are imposed by the Council pursuant to its powers under paragraph 13 (1) of Schedule 3 to the above Act and apply to all premises licensed as a "Sex Shop" as defined by the Act save and insofar as they do not conflict with any special conditions forming part of the Licence nor with the provisions of the Act itself.
3. These conditions are only applicable to a "Sex Shop" as defined. Separate conditions exist in relation to a "Sex Cinema" (as defined by the above Act).

OPENING HOURS

1. The licensed premises shall not be open nor used for the purposes for which the licence is granted except between the hours of 9 am and 6.30 pm on any weekday (including Saturday).
2. The licensed premises shall not be so open or used at all on Sundays, Good Friday, Christmas Day or any other general or public holiday.

WINDOW, FASCIA BOARD ADVERTISEMENT AND DISPLAYS

1. The interior of the premises shall not be visible to passers-by and to that intent the licence holder shall obscure all windows and doors in a manner satisfactory to the Council.
2. The windows, doors fascia board, walls and all external parts of the premises including the roof shall not contain any form of writing, sign or display save for:-
 - (a) The address of the premises
 - (b) The Licensed name of the premises (as explained in paragraph 4 hereof)

- (c) The form of warning notice required to be displayed by virtue of the provisions of Section 1 (6) of the Indecent Displays (control) Act 1981
 - (d) A notice stating the opening hours of the establishment
 - (e) In the case of a Licence granted to a body corporate:-
 - (i) If the Licence name is not the same as the full name of the body corporate then such corporate name and;
 - (ii) If the premises are also the body's registered office for the purposes of the companies Acts then an indication in a form acceptable to the Company that such is the case.
 - (f) The wording "PRIVATE SHOP" or "ADULT SHOP" but no other indication as to the nature of the business carried on at the licensed premises.
3. The lettering used in respect of such permitted items:-
- (a) Shall be of such colour and style as may be approved by the Council.
 - (b) In the case of the permitted items 'a', 'b', 'c', and 'e' the lettering used shall not exceed one foot in height for each letter, provided also that if different sizes of letters are used in respect of different items, that used in respect of item 'f' shall not exceed the height of any other lettering.

LICENSED NAME

1. The Council at the time of granting the licence in respect of the premises appoint a name referred to as "The Licensed Name" by which it is intended that the premises shall be known and the licence holder shall ensure that the premises are known solely by that name and by no other, save as provided for by paragraph 2 below.
2. An application in respect of a change of licence name shall be made to the Council in writing not less than 28 days prior to the proposed change and the Council shall have an absolute and unfettered discretion to allow or refuse such change.

EMPLOYEES AND MANAGEMENT STAFF

1. The Licence holder shall at all times keep and maintain at the licensed premises a written record of the names, addresses, and dates of birth of all persons employed within the licensed premises whether upon a full or part basis and shall upon request by an authorised Officer of the Council make such records available for inspection to them.
2. The Licence holder shall at all times provide the Council with written notification as to the names, addresses and dates of birth of such person or persons (whether employees or otherwise connected with the business) who have authority to manage the premises in the licence holder's absence.

CHANGE OF LOCATION AND ALTERATIONS TO PREMISES

1. In the case of licensed premises which are a vessel or stall the licence holder shall not move the licensed vessel or stall from the location specified in the licence unless he shall first give the Council not less than 28 days notice in writing of such intended removal and the Council may require him to lodge such written application as it may deem appropriate and pay such fee as it may deem reasonable in respect of such application provided that this requirement shall not apply to a vessel or stall which habitually operates from a fixed location but which is regularly moved (whether under its own propulsion or otherwise) from another place such location as is specified in the licence and which is not used for the purposes for which the licence is granted and any other location than that which is specified.
2. In the case of a business conducted from fixed premises no alteration of any kind shall be made to the interior or the exterior of the premises including any change in the permitted signs displayed thereat or in the manner in which the windows and doors are obstructed unless the licence holder shall first obtain the written consent of the Council.

RESPONSIBILITY OF THE LICENCE HOLDER

The Licence holder or any person purporting to act upon his behalf shall be responsible for ensuring compliance with these and any special conditions of the licence and will be held responsible for any breach thereof.

VARIATION OF CONDITIONS

The Council may at any time waive, modify or vary these conditions or impose additional conditions in any particular case.

