

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE B 16 JANUARY 2024</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON TUESDAY 16 JANUARY 2024 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Diane Donaldson in the Chair;

Councillors Izzy Knowles and Penny Wagg

### **ALSO PRESENT**

David Kennedy – 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)

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### 1/160124 **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.

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### 2/160124 **DECLARATION OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix 1, an interests flowchart which provides a simple guide to declaring interests at meetings.

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**APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/160124 Apologies were submitted on behalf of Adam Higgs and Saddak Miah and Councillors Izzy Knowles and Penny Wagg were the nominated substitute Members.

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**LICENSING ACT 2003 - REPRESENTATIONS BACK AGAINST INTERIM STEPS IMPOSED – HNDRX, HOLLOWAY HEAD, BIRMINGHAM, B1 1QP – LICENSING NUMBER 1952 – AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 - APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS**

**On Behalf of the Applicant**

PC Ben Reader – West Midlands Police  
Chris Jones – Licensing Team, West Midlands Police

**On Behalf of Those Making Representations**

Dorian Chan – Mao Wah Limited (Premises License Holder)  
Councillor Yvonne Mosquito – In support of the License Holder

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

At this juncture, the Committee Lawyer advised the Chair to check the reason for Council Mosquito attending. Councillor Mosquito confirmed she was in attendance to support her constituent, Dorian Chan.

At this juncture, PC Ben Reader made the following points:

- Matters would be discussed in relation to the previous hearing which took place on Friday.
- The previous hearing took place in private session due to the ongoing criminal investigations.
- There was no change since the criminal investigation since the hearing.
- The private session was granted therefore WMP would be asking for this to go into private session again to discuss any matters related to the Police Operation at the premises.

Councillor Mosquito queried if she was able to ask questions for clarification.

The Chair indicated questions can be asked at the appropriate time.

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The Chair queried with WMP representatives if Councillor Mosquito invited to the private session.

PC Reader did not want to exclude anyone necessary however, he was unsure of Councillor Mosquitos role as she was not legally representing the premises or the License holder. He suggested to seek advice from the Committee Lawyer if this would be appropriate for the Councillor to be in the private session or remain in the public session.

At this juncture, Councillor Mosquito confirmed she would not be present in the private session.

The Chair explained the Committee Members, Committee Lawyer and Committee Manager would deliberate and see if the meeting will be held in private session.

At this stage, the Chair outlined the procedure to be followed at the hearing and invited the Licensing Officer to present his report. David Kennedy, Licensing Section, outlined the report.

The Committee Lawyer advice the Chair that Councillor Mosquito had given her views that she would not be part of the private session however, Mrs Chan had not given her thoughts on this matter.

Mrs Chan sought clarity who the private session attendance referred to. The Chair advised Mrs Chan would be invited to the private session however, her view was required to Councillor Mosquitos attendance to the private session. Mrs Chan was content with Councillor Mosquito making a decision on this matter.

At this juncture, the Chair referred back earlier points made for the Committee Members, Committee Lawyer and Committee Manager would deliberate and see if the meeting will be held in private session.

Councillor Mosquito indicated if the meeting involved Dorian Chan she would like to be present to support her.

The Committee Lawyer sought steer from WMP in their views on this matter.

In response, PC Reader suggested the decision was for the Councillors however, he was unsure if the capacity of Councillor Mosquito as she was not representing the license holder and she was not the license holder. Sensitive matters related to the operations would normally take place between the responsible authorities, license holder and their leal representatives.

In recent cases, other responsible authorities had to leave the session as they were no privy to the sensitive information that would be disclosed. He suggested the Councillors get legal advice on the matter to make this decision.

The Committee Lawyer asked if WMP representative explain what was the evidence that would be discussed in private sessions and why should Councillor Mosquito not be able to see it.

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In response, PC Reader referred to the decision notice from Friday's meeting was held in private and there was a rationale in why the decision was taken in private. The same matter would be discussed, and other issues may be raised by the license holder that would not be for the public domain. Normally, the private session would be limited to legal advice and premises licence holder.

At 1026 hours, the meeting was paused, and the Committee Members, Committee Lawyer and Committee Manager moved into a private meeting for deliberations.

At 1037 hours, the meeting resumed, and the Committee Members, Committee Lawyer and Committee Manager returned to the public meeting.

The Chair advised after deliberating with the Committee, the Committee had made a collective decision to hold the hearing in private and exclude Councillor Mosquito from the private hearing.

A link to the private hearing was set up by the Committee Manager.

Councillor Mosquito confirmed she was going to leave the meeting as she had other commitments at 11am.

At 1039 hours, the meeting was paused, and the Committee moved into a private session to hear the remainder of the hearing.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in a separate private session and the decision of the Sub-Committee was sent to all parties as follows (a short version was read out in the public meeting);

4/16/01/2024

### **RESOLVED:-**

That, having considered the representations made under section 53B of the Licensing Act 2003 on behalf of Mao Wah Ltd, the premises licence holder for HNDRX, 89 Holloway Head, Birmingham B1 1QP, in respect of the interim steps which were imposed at the Sub-Committee meeting of 12<sup>th</sup> January 2024, this Sub-Committee hereby determines that, in order to address the risk of further serious crime:

- the interim step of suspension of the licence, which was imposed on the last occasion, is lifted
- the licence conditions are modified by the adoption of a new condition (which was agreed between the parties at today's meeting) as an interim step, namely that the premises shall not trade without the permission of West Midlands Police
- the interim step of the removal of Parmjit Singh as the designated premises supervisor, which was imposed on the last occasion, will remain in place pending the review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application.

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The Sub-Committee's reasons for the decision regarding the interim steps which were originally imposed at the meeting of 12<sup>th</sup> January 2024, were due to the representations made by both the licence holder company and by West Midlands Police during the meeting.

The licence holder company was represented by a manager at the meeting. The local Ward Councillor attended to support her local constituent (ie the manager). West Midlands Police also attended.

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 there had been no change in the criminal investigation. The matter remained a live police enquiry regarding a serious crime incident. The Police asked for the proceedings to be conducted in private.

The Sub-Committee asked for clarification as to whether the Police required the local Ward Councillor to leave, as well as the public. The manager had said that she would like the Ward Councillor to remain. The Police said they did not look to remove persons unnecessarily, but asked the Sub-Committee to seek advice from the Committee Lawyer in this regard. The Committee Lawyer asked the nature of the evidence which the Police did not wish the Ward Councillor to see. The Police said that the evidence would relate to the same issues as last time and stated that the evidence could not be in the public domain.

The Sub-Committee noted that the Ward Councillor had attended to support a constituent, and not as a representative or to act for the company in any capacity. The Sub-Committee therefore excluded the public, including the Ward Councillor, and conducted the meeting in private session with only the Police and the company manager in attendance.

The licence holder, via the manager who had attended, then addressed the Sub-Committee to explain the background of the ongoing issues relating to the lease arrangements at the site. She stated that the licence holder company was not involved with the activities which had been described in the Superintendent's certificate and application; instead, it was simply the landlord, and had no adverse history.

The HNDRX licence was not trading. Trading had been conducted at the 89 Holloway Head site under a licence which was entirely separate from the HNDRX licence. This other licence was held by another person, not Mao Wah Ltd. The Sub-Committee was aware of this.

The unsatisfactory activities which had formed the subject of the Superintendent's certificate and application were therefore entirely the responsibility of a separate licence holder. The manager informed the Sub-Committee that the Police now understood that the two licence holders were not linked. The Sub-Committee noted this.

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The manager confirmed that she agreed with the Police that the designated premises supervisor should be removed, and said that she had tried to do this herself, but Parmjit Singh had not been available to sign the relevant document.

However, regarding the suspension, she asked that this should be lifted, as she agreed that a condition not to trade without the permission of the Police should be adopted. The Sub-Committee noted this.

In response to Member questions, the manager confirmed that the licence holder company did not intend trading to start under its licence any time soon. The manager remarked, “it will be at least two years”.

The Chairman then asked the manager if she was in agreement with the Police now regarding the adoption of a suitable condition, as this had not been the case at the last meeting. The manager confirmed that she was.

The Sub-Committee then heard from West Midlands Police, who said that the manager’s submissions regarding the licence holder’s failed attempt to remove designated premises supervisor had not been correct. The Police remarked that it had been the manager’s own error in submitting an incorrect form, and moreover the company had had ample opportunity to remove Parmjit Singh years ago in any event, but had not in fact done so. The Sub-Committee noted this.

The Police advised that they supported the course which had been adopted by the Sub-Committee at the last meeting, and expressed surprise that the manager had decided to make representations against the interim steps without speaking to the Police first. The Police were particularly dissatisfied that whilst the manager had stated that the licence holder would not trade under the lease for two years, the holder of the other premises licence for the 89 Holloway Head site held a set of keys.

The Police stated that they did not want the premises to trade, and advanced a suggestion that the representations had been made by the licence holder company for reputational reasons, but then left the decision entirely to the discretion of the Sub-Committee.

The Members asked for clarification as to what the Police recommendation was, and whether, if the suspension were to be lifted, the Police recommended the adoption of the same condition as had been proposed at the last Sub-Committee meeting.

The Police replied that they did not want the premises to trade and were concerned that the other licence holder could become involved. They reminded the Members that on the last occasion the Sub-Committee had considered that the proposed condition was not sufficient.

At this point the Committee Lawyer asked for clarification of the Police position. In response to this, the Police advised that under the current interim suspension of the licence, the premises could not trade; if that position were to change, the Police would want some safeguards, particularly in view of the fact that the other

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licence holder held keys to the site. The Police felt that the company's motivation for the representations had been image and reputational risk.

The Police had understood the Sub-Committee's decision on the last occasion and the rationale for it. However, their view was that if the manager wished to discuss the issues with them, they would do so. The Sub-Committee noted this.

In summing up, the manager stated that she felt that the issuing of the Superintendent's certificate and application regarding HNDRX had been "a mistake because they did not know that two licences were in force; they thought that the landlord [ie HNDRX] was trading". She was confident that the Police now understood that the landlord and tenant were totally separate, and that HNDRX "had been nothing to do with it".

She confirmed that those at the company were upset and felt that the suspension would damage the company's reputation. She felt that the company as landlord was being punished for the actions of its tenant. The tenant had been trading under his own licence, and could not use the landlord's licence. She confirmed that the company was keen to work with the Police to ensure that no-one could trade from the site.

Having heard all of the evidence, the Members were mindful that the manager had now accepted the condition proposed by the Police at the last meeting. This was a significant change from the position at the last meeting. The manager had also accepted that the interim step of removal of the designated premises supervisor, imposed on the last occasion, should be maintained pending the full Summary Review hearing.

The Sub-Committee was of course primarily concerned with the likelihood of a further serious crime incident, pending the full Summary Review hearing. The original incident which had given rise to the Expedited Review application had been a very serious criminal matter, in which there were suspicions of some type of drug supply operation being conducted at the site of licensed premises; public protection was therefore the first priority.

However, having heard all of the representations at the instant meeting, the Sub-Committee was satisfied that to lift the suspension, and instead to substitute an agreed condition requiring Police permission before trading, was an appropriate course which would not create any increased risk of any further serious crime incident pending the full Summary Review hearing.

The Sub-Committee was therefore satisfied that the interim step of suspension could be lifted, as it was accepted that there was no increased risk of further serious crime. The Members resolved to adopt the condition which had been proposed by the Police at the previous meeting, as the licence holder company now agreed that the condition should be adopted. The removal of the designated premises supervisor was also the subject of agreement between the parties, and therefore remained in place.

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The Members considered that the correct way forward in the interim period, before the Summary Review hearing, was for the licence holder to cooperate with the Police, and to take whatever course was guided by the Police.

In reaching this decision, the Sub-Committee has given due consideration to the application made under s53B by the licence holder, the certificate issued earlier by a Superintendent of West Midlands Police, the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Act, the written submissions made, and the submissions made at the hearing by the manager representing the licence holder company, and by West Midlands Police.

All parties are advised that the premises licence holder may make further 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 excluding non-working days.

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

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CHAIR