

**Minutes of the Licensing Sub-Committee 4
Tuesday, 5th March, 2024 at 10.00am
In the Council Chamber
at the Council House, Priory Road, Dudley**

Present:

Councillor J Clinton (Chair)
Councillors S Keasey and E Taylor

Officers:

N Slym – Assistant Team Manager (Neighbourhood Services) (Directorate of Environment), S Wright – Solicitor and K Malpass – Democratic Services Officer (Directorate of Finance and Legal).

1. **Apology for Absence**

An apology for absence from the meeting was submitted on behalf of Councillor A Taylor.

2. **Appointment of Substitute Member**

It was reported that Councillor E Taylor had been appointed as substitute member for Councillor A Taylor for this meeting of the Sub-Committee only.

It was noted that due to the change in Membership of the Licensing and Safety Committee approved at Full Council on 26th February, 2024, Councillor S Keasey had been appointed to replace Councillor J Cowell for the remainder of the 2023/24 municipal year.

3. **Declarations of Interest**

No Member made a declaration of interest in accordance with the Members' Code of Conduct.

4. **Minutes**

Resolved

That due to the absence of Members that considered the Minutes of the meeting held on 2nd May, 2023, the minutes be approved at the next meeting of Licensing Sub-Committee 4.

5. **Application for Expedited Licence Review – Bar One, Lower Ground Floor, Plaza Mall, 76 King Street, Dudley**

A report of the Director of Environment was submitted on an Application for Expedited Licence Review, Bar One, Lower Ground Floor, Plaza Mall, 76 King Street, Dudley.

The following persons were in attendance, at the meeting: -

Bar One Representatives

Miss C Mahlung – Premises Licence Holder (PLH)

Mr Salmon – Partner of PLH

Mr H Thomas – Solicitor

West Midlands Police Representatives

Ms J Sarginson – Barrister

Ms K Turley

Ms D Jenkins

Mr B Reader

West Midlands Fire Service Representatives

Mr N Aston-Baugh

Ms M Grainger – Observing

Mr D Read – Observing

Also in attendance

M Smith – Local Democracy Reporting Service

Under the provisions of Section 53C of the Licensing Act 2003, it was compulsory that determination of the application for an Expedited Licence Review of Bar One, Lower Ground Floor, Plaza Mall, 76 King Street, Dudley was concluded out at the hearing. In view of the additional documentation received from West Midlands Police, it was proposed that the premises would operate as a Restaurant and Bar, together with pre-booked private functions. Therefore, the hearing was delayed to enable the Solicitors representing Bar One and West Midlands Police to agree on a new operating schedule to include conditions which would be presented to the Sub-Committee for consideration.

Following introductions, all parties confirmed that they had received the documentation in relation to the application.

S Wright, Solicitor advising the Sub-Committee confirmed that under Regulation 14(1) of the Licensing Act 2003, the hearing would proceed in public session.

The Assistant Team Manager (Neighbourhood Services) presented the report on behalf of the Council and in doing so indicated that the PLH had produced a modified operating schedule, which had been agreed by West Midlands Police changing the use of the premises from a Nightclub to a Bar and Restaurant.

J Sarginson, Barrister representing West Midlands Police then presented the case on behalf of the Police and in doing so expressed gratitude to Members for allowing additional time for a modified operating schedule to be produced. In view of the proposed change of use of the premises to a bar and restaurant, reduced operating hours and the conditions that had been included as part of the operating schedule, together with the removal of the current Designated Premises Supervisor (DPS), the Police were satisfied with the new proposal put forward.

N Aston-Baugh, representative of West Midlands Fire Service indicated that he was satisfied with the proposed new operating schedule, however, suggested that the condition relating to the fire risk assessment to be conducted and implemented at the premises was unnecessary and should be removed as it duplicated legislation.

Mr H Thomas, Solicitor representing Bar One then made comments on behalf of the PLH and in doing so also expressed gratitude to Members for allowing additional time for a modified operating schedule to be produced. It was reported that the PLH accepted the severity of the incident and Members were assured that the premises would be managed effectively in line with the modified operating schedule. Members were urged to approve the operating schedule as amended with the removal of the condition relating to a general risk assessment as agreed by all parties.

In expressing concern in relation to the way in which the premises had previously been managed, Councillor S Keasey queried the absence of a condition which provided assurances that professional Security Industry Authority (SIA) Companies would only be used for special events. In responding, Mr Thomas outlined the legislation in relation to employing door security supervisors and whilst it was essential that an appropriate security company was employed for pre-booked special events, an SIA registered Company was not necessary, particularly should the new DPS hold an authorised SIA Licence.

In referring to the proposed conditions to be added to the premises licence, a request was made to amend Condition No. 11 to the following wording:

- (11) The premises licence to be suspended for 21 days to enable compliance with conditions above or until such later time as those conditions are complied with up to a maximum of 3 months.

S Wright provided legal advice and all parties confirmed that they had received a fair hearing and sufficient opportunity to present their cases. All parties then withdrew from the meeting to enable the Sub-Committee to determine the application.

Having made their decision, the meeting was reconvened, and the Solicitor outlined the decision.

Resolved

- (1) That, following careful consideration of the information contained in the report submitted and as presented at the meeting, the premises licence in respect of Bar One, Lower Ground Floor, Plaza Mall, 76 King Street, Dudley, be suspended for twenty-one days to enable compliance with conditions below or until such later time as those conditions are complied with up to a maximum of 3 months.
- (2) That the current Designated Premises Supervisor be removed.

- (3) That the Premises Licence be amended to include the following conditions.

Recorded Music	Sunday – Thursday	12:00 – 23:00
	Friday – Saturday	12:00 – 23:30
Late Night Refreshment	Friday – Saturday	23:00 – 23:30
Supply of Alcohol	Sunday – Thursday	12:00 – 23:00
	Friday – Saturday	12:00 – 23:30

- (1) Save for Condition 3 below, the premises shall operate as a restaurant and bar. In the restaurant area (as delineated on the deposited plan yet to be submitted) alcohol shall not be sold or supplied, otherwise than for consumption by persons who are seated in the premises and bona fide taking substantial table meals there, and provided always that the consumption of alcohol by such persons is ancillary to taking such meals. In the bar area (as delineated on the deposited plan) alcohol may be consumed by diners and non-diners.

For the purpose of this condition ‘Substantial Table Meal’ means – a meal such as might be expected to be served as the main midday or main evening meal, or as a main course at either such meal and is eaten by a person seated at a table, or at a counter or other structure which serves the purposes of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure servicing the purposes of a table.

- (2) Alcohol may be consumed throughout the premises by persons attending a pre-booked and bona fide private function or event to which members of the public are not admitted (for example weddings, christenings, wake’s etc).
- (3) Save for pre-booked and bona fide private functions when regulated entertainment may be permitted, background only music will be played at the premises.
- (4) The premises licence holder/DPS to provide a written risk assessment for all private functions to West Midlands Police no later than 7 days before the event (or such lesser time as may be agreed in writing with West Midlands Police).

- (5) There shall be no events at the premises that are organised, promoted or advertised by an external promoter (i.e. by an individual/organisation not directly related to the management of the premises).
- (6) Door supervisors shall be employed by the premises based upon a risk assessment carried out in relation to the following factors:
 - a. Type of event taking place
 - b. Expected attendance
 - c. Special occasion (New Year, Halloween, Local events etc)
- (7) Persons under the age of 18 years will not be permitted to remain in the premises after 22:00 hours, save for guests attending bona fide private events upon notice to West Midlands Police as per Condition 2 above.
- (8) The premises shall be re-named Tropical Cove Caribbean Seafood Restaurant & Bar.
- (9) Premises licence holder to submit fresh plans of the premises during the period of the suspension to delineate the bar and restaurant areas in agreement with West Midlands Police Licensing Officers.
- (10) The premises licence holder to submit an up to date fire risk assessment to the Fire Safety Officer during the period of suspension of the licence and before re-commencement of licensable activities.
- (11) The premises licence to be suspended for 21 days to enable compliance with conditions above or until such later time as those conditions are complied with up to a maximum of 3 months.
- (12) Interim steps to remain in place until this substantial decision becomes binding.
- (13) Notices shall be prominently displayed at all exits requesting patrons to respect the needs of local residents and businesses and leave the area quietly.

- (14) The premises licence holder shall ensure that any patrons smoking outside the premises do so in an orderly manner and are supervised by staff so as to ensure that there is no public nuisance.
- (15) CCTV will be installed at the premises and will record all incidents inside and immediately outside the premises for a minimum of 28 days. CCTV will cover all areas of licensable activity and will include all exits and entrances where searching takes place. The smoking area will also be covered by CCTV.
- (16) A member of staff employed at the premises when it is open for licensable activity will be trained in the operation of the CCTV system. They will be able to download any footage at the request of the Police and any other Responsible Authority within 24 hours of the request, and the venue will provide their own USB and/or disc for this purpose.
- (17) A member of staff on duty at the venue will carry out daily checks when the premises are open for licensable activity, that the CCTV system is in working order. This check will be recorded in a separate book and signed and dated by the checker.
- (18) Any CCTV hard drive that is damaged or broken will be retained at the premises for a minimum of 28 days and available upon request by the Police or any other Responsible Authority.
- (19) Door Supervisors on duty will display on their outer sleeve at all times an up to date/relevant SIA Badge. All Door Supervisors will be required to wear high visibility jackets when outside the premises and appropriate dress when inside. All Door Supervisors will be required to sign in/out every shift; this must include their badge number and full name, and these details must be retained by the premises for a 6 month period and disclosed to any Responsible Authority upon request.
- (20) All door staff will at all times wear a Body Worn Camera when door staff are employed at the premises and they will be recording at all times. The bodycams will be checked prior to any tour of duty that they are in working order and replaced as soon as practicable if faulty. The PLH/DPS will be able to download the BWC for viewing and production to any of the Responsible Authorities upon request within 24 hours of the request.

- (21) Save for the external smoking area, no drinking vessels, including purchased bottles of any type, will be permitted outside the venue.
- (22) No persons will be allowed entry inside the venue when wearing a cap, hoodie or any other item that will obscure full facial recognition on CCTV cameras.
- (23) The Police will be called if an incident arises that the Door Staff are unable to diffuse.
- (24) An Incident log shall be kept at the premises; and made available on request to an authorised officer. It must be completed within 24 hours of the incident and will record the following:
 - (a) all crimes reported to the venue
 - (b) all ejections of patrons
 - (c) any complaints received concerning crime and disorder
 - (d) any incidents of disorder
 - (e) all seizures of drugs or offensive weapons (to be kept in a safe and reported to Police)
 - (f) any faults in the CCTV system
 - (g) any refusal of the sale of alcohol
 - (h) any visit by a relevant authority or emergency service.
- (25) No under 18's allowed inside the premises after 22:00hrs any night of the week.
- (26) The venue must retain on the premises door staff profiles, which includes photo ID other than their SIA badge and a utility bill which must not be dated later than 6 months previously. The Licence Holder shall ensure that such profiles are made available for inspection by the Police or local authorities at any time and kept in a secure location. If any door supervisors leave the premises, the profile shall be retained on the premises for at least three months, following their departure.
- (27) The premises shall implement and put into practice a drugs policy for the venue.
- (28) The premises shall implement and put into practice a search policy for the venue.

- (29) A refusal book, detailing all refusals of the sale of alcohol, is to be kept on the premises, detailing the time and date of refusal and the reasons for the refusal. The book will be kept on the premises and handed to any Responsible Authority on request.
- (30) Challenge 25 proof of age scheme shall be enforced upon entry to the premises where the only acceptable forms of identification are recognised photographic identification cards, such as a driving licence, passport or proof of age card with the PASS Hologram.
- (31) All staff to receive training and refresher training every 6 months on their responsibilities under the Licensing Act 2003. The training is to be documented and made available to an authorised officer of a responsible authority upon request.

The premises were informed on their right of appeal.

Reasons for the Decision

On 7th February 2024 West Midland Police made an application for the review of the premises licence under section 53A of the Licensing Act 2003. The premises are known as **of Bar One, Lower Ground Floor, Plaza Mall, 76 King Street, Dudley DY2 8NZ.**

On 9th February 2024 three Members met to consider under Section 53B of the Act, whether it was necessary to take interim steps pending the determination of a review of the premises licence.

The step taken was to suspend the licence. That was to take effect immediately.

The Sub-Committee are now considering a final review of the premises licence under Section 53C and also a review of the interim steps under section 53D. The Sub-Committee have once again had regard to Part 12 of the Section 182 Guidance.

Final Review under Section 53C of the Licensing Act 2003

The Sub-Committee have considered the powers as set out in the paragraph 19 of the report.

The Sub-Committee have considered all the papers before them and have listened to the representations.

The Sub-Committee's Solicitor has provided legal advice, which was given before parties retired.

In making the decision, the Sub-Committee have had regard to the Section 182 Statutory Guidance.

The Sub-Committee note they must carry out the functions under the Licensing Act with a view to promoting the licensing objectives.

The Sub-Committee have taken such steps as they consider appropriate for:

- The prevention of crime and disorder and
- Public safety.

The Sub-Committee note the representations put forward by all parties.

In this matter the Licence Holder and her Solicitor and the Police Officers and their Barrister spent most of the morning drafting conditions that were acceptable to both parties and the West Midlands Fire Service. The Sub-Committee particularly note that what is proposed is that the premises shall operate as a restaurant and bar, together with pre-booked private functions.

The conditions, which include a reduction in the hours, have been submitted to the Sub-Committee and have considered each condition in detail.

At the hearing the Fire Service representative suggested that condition relating to the general risk assessment was unnecessary. All parties agreed and that was removed.

The steps the Sub-Committee have decided to take are as follows:

- Modify the conditions of the licence.
- Remove the designated premises supervisor from the licence.

The Sub-Committee are therefore content to accept the new conditions.

The Licence Holder, Police and Fire Service have a right of appeal against the final review decision.

An appeal must be commenced by notice of appeal to the Black Country Magistrates' Court, Dudley within a period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision which is being appealed.

Review of Interim Steps under Section 53D of the Licensing Act 2003

The Licensing Authority's determination does not have effect until the end of the 21-day period given for appealing the decision, or until the disposal of any appeal that is lodged.

The Sub-Committee is required to review the interim steps and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or if they should be modified or withdrawn.

In conducting a review of the interim steps, the Sub-Committee have the power to take any steps that were available to them on 9th February, 2024.

The Sub-Committee have decided that the suspension of the current licence must remain in place until Condition 11 has been met.

To be clear with regard to the suspension, the Sub-Committee's Lawyer discussed this with the Lawyer for the Licence Holder and Condition 11 was amended slightly and in agreement with all parties. The Sub-Committee accepted that slight amendment to ensure that there are appropriate and proportionate safeguards in place at all times.

The Licence Holder and Police have a right of appeal against the review of the interim steps.

An appeal must be commenced by notice of appeal to the Black Country Magistrates' Court, Dudley within a period of 21 days beginning with the day on which the appellant was notified by the Licensing Authority of the decision which is being appealed.

6. Questions Under Council Procedure Rule 11.8

There were no questions to the Chair pursuant to Council Procedure Rule 11.8.

The hearing ended at 2.10pm

CHAIR