CITY OF WOLVERHAMPTON COUNCIL

Licensing Sub-Committee

Minutes - 22 January 2016

Attendance

Chair Cllr Alan Bolshaw (Lab)

Labour

Cllr Ian Claymore
Cllr Rita Potter

Conservative

Employees

Carl Craney	Democratic Support Officer
Sarah Hardwick	Solicitor

Item No. *Title*

1 **Apologies for absence**

No apologies for absence had been received. The meeting was opened but immediately adjourned until 10:40 hours due to technical difficulties with the ICTS equipment and also to allow additional time for the Premises Licence Holder to arrive as he had failed to arrive at the appointed time.

2 **No Declarations of interest**

No declarations of interest were made relative to items under consideration at the meeting.

3 **Licensing Act 2003 - Application for an Expedited Summary Review of a Premises Licence in respect of The Harp Inn, Walsall Street, Eastfield, Wolverhampton**

In Attendance
For the Premises
Garnett McClean – Premises Licence Holder
Asata Dalila – Employee

Responsible Authority
Sgt Jake Flannigan – West Midlands Police
PC Mitch Harvey – West Midlands Police
ADS Lee Price – West Midlands Police

The Chair, Cllr Alan Bolshaw, explained the reasons for the adjournment, the purpose of and the procedure to be followed at the meeting and introduced the parties.

The Section Leader (Licensing) outlined the report submitted to the meeting which had been circulated to all parties in advance.

Sgt Flannigan outlined the application for an expedited summary review of the premises licence due to the opinion of the West Midlands Police that the Premises Licence Holder and Designated Premises Supervisor, Mr Garnett McClean had demonstrated an obvious and deliberate failure to uphold the conditions on the premises licence or sufficiently uphold the licensing objectives and cited a serious incident of crime and disorder that had taken place at the premises during the early hours of Saturday 16 January 2016. Mr Garnett McClean advised that he had no knowledge of weapons being on the premises on the day in question. The Chair, Cllr Alan Bolshaw reminded Mr McClean of the procedure to be followed at the meeting and that there would be opportunities for him to present his case and make rebuttals later in the meeting. The Sub Committee then viewed CCTV footage of part of the incident.

4 **Exclusion of press and public**

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act, 1972 the press and public be excluded from the meeting during the following item of business as it involves the likely disclosure of exempt information falling within paragraph 7 of Schedule 12A to the Act relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.

5 **Licensing Act 2003 - Application for an Expedited Summary Review of a premises licence**

The Sub Committee viewed further CCTV footage of the incident which had occurred at The Harp Inn in the early hours of Saturday 16 January 2016. ADS Lee Price indicated various known gang members and nominal who were present at the premises during the incident. He drew to the attention of the Sub Committee that the incident and subsequent actions had been viewed by the Bar and Security Staff and reported that no attempt had been made by the Staff to alert the emergency services.

The Chair, Cllr Alan Bolshaw invited those present to indicate if they wished to re-view any of the CCTV footage. Asata Delila requested that the footage from 03:25 to 03:29 hours from Camera 9 be replayed. The CCTV footage for this time period was replayed. Asata Delila drew to the attention of the Sub Committee that a further Security Guard had entered the room during this period. The Chair, Cllr Alan Bolshaw, reminded Ms Delila of the procedures to be followed at the meeting and that she and the Premises Licence Holder would have an opportunity to make a presentation in due course.

The Chair, Cllr Alan Bolshaw, enquired as to the age profiles of the various gangs. ADS Lee Price and Sgt Jake Flannigan explained the composition of the various gangs and the gang “elders” were not necessarily older in age terms but may have been members of the gang longer than others. Referring to the CCTV footage ADS Lee Price indicated that Mr McClean, the Premises Licence Holder, had encouraged one of those present to step down from the covered Pool table on which he was standing. He also drew attention to the apparent tension in the room from the various body movements and gesticulations which were made. The Chair, Cllr Alan Bolshaw, commented that those present who were understood to be members of gangs from Birmingham appeared to be drinking but not causing trouble. ADS Price advised that in his experience any incident involving two gangs was likely to escalate with revenge or retribution involved.

The Chair, Cllr Alan Bolshaw enquired whether it was a matter of grave concern to the West Midlands Police if there was an argument or incident between two gangs. ADS Price advised that gang violence and violence in a public place was treated very seriously by West Midlands Police as it often resulted in injuries being suffered by innocent members of the public who were not associated with the perpetrators. He commented that no action had been taken by the Bar or Security Staff to protect members of the public who were present at the time of the incident.

Mr McClean commented that, as far as he was concerned, this was not a gang fight but two individuals having a confrontation. Sgt Flannigan opined that gang related

stabbings often resulted often led to revenge attacks. ADS Price advised that what had started out as a one on one incident was likely to lead to a gang versus gang confrontation. Mr McClean commented that from his perspective all those present at the premises were customers and he had no way of knowing whether the customers were members of a gang(s). Asata Delila enquired why statements had not been taken from the staff present during the incident. Sgt Flannigan advised that the relevant CCTV footage had only been received on 21 January 2016. Ms Delila enquired why statements had not been taken in connection with the expedited Hearing. ADS Price reminded the Sub Committee that it was for the Premises Licence Holder to respond to the allegations and not for the Police to assist him in that regard.

Ms Delila referred to comments made by West Midlands Police during the viewing of the CCTV footage and in particular to “Bottles being in hands”. She advised that the lights had been turned on at approximately 03:25 hours when it was considered that there was an air of tension in the premises and to enable the Security Staff to check on what was happening. At 03:27 hours she advised that the Door Supervisor was not in a position to intervene as he would be unaware as to whether those present were carrying knifes or similar weapons. She advised that she had not seen the alleged knife but she had attempted to see what was being passed about and which had subsequently dropped to the floor. The Security Officer had made similar attempts but to no avail. She and the Security Officer were assessing the situation.

Mr McClean drew to the attention of the Sub Committee his actions on the CCTV footage when the customer who had committed the offence was leaving the premises. He had stood at the door until such time as the offender was clear of the premises. He had also manned the door to prevent customers leaving or entering the premises. He reiterated his earlier comment that he was unaware as to whether the customers were gang members. He advised that he had only been the Premises Licence Holder for a month at the time of the incident and was now potentially faced with losing his licence. The Police had not been called to the incident as only one punch had been thrown and the two customers involved had left the premises separately.

Cllr Rita Potter enquired whether Mr McClean was aware that gang members patronised the premises. Mr McClean responded that they were all customers as far as he was concerned. Sgt Flannigan asked Ms Dalila if had had been looking actively for a weapon. She responded that she had been attempting to see what the customer had in his pocket. Sgt Flannigan asked her if she had considered contacting the Police with regard to her suspicions. She replied that, at the time, she had not thought about contacting the Police. Sgt Flannigan enquired how long she had been employed at the premises. She advised that she had been employed at the premises for a period of approximately 18 months. Sgt Flannigan enquired whether during that time she had any experience of fights and/ or use of weapons such as knives at the premises. She responded in the affirmative. Sgt Flannigan enquired whether she was aware that the many of the customers on the night in question were members of gangs. She responded in the affirmative. Sgt Flannigan enquired of Mr McClean how long he had been employed at the premises. Mr McClean advised that prior to being the Premises Licence Holder he had been employed at the premises for about one year as a Door Supervisor. Sgt Flannigan referred to the motif on the leather jacket of one of the customers “NWB – Ride or Die” and asked if either Ms

Delila or Mr McClean knew what this term meant. Both replied that they had no knowledge of the term.

6 **Re-admission of public and press**

Resolved:

That the public and press be re-admitted to the meeting.

7 **Licensing Act 2003 - Application for an Expedited Summary Review of a Premises Licence**

Sgt Flannigan reported that the investigation into the assault was on-going and was being treated as a serious crime incident. He referred to the separate breach of the conditions of the Premises Licence i.e. allowing Isaac Green and Afiyah Delila on the premises and drew to the attention of the Sub Committee the CCTV footage which indicated clearly both being present.

At this juncture Mr McClean asked whether it was possible for the meeting to be adjourned in view of the health condition of his wife. The Chair, Cllr Alan Bolshaw explained that this would not be possible as this was an Expedited Summary Review and needed to be concluded that day. Sarah Hardwick, Senior Solicitor advised that it was not necessary for the Premises Licence Holder to be present. The Chair, Cllr Alan Bolshaw, advised Mr McClean that he could leave the meeting if he so wished. Mr McClean enquired whether it would be permissible for Ms Delila to make representations on his behalf. The Chair, Cllr Alan Bolshaw, confirmed that this would be acceptable if it was Mr McClean's wish. Mr McClean confirmed this to be the case and left the meeting advising that he would return as soon as possible.

Sgt Flannigan referred to an interview which had taken place on 20 January 2016 with Mr McClean when it had been claimed by Mr McClean that he did not know the names of the bar staff employed at the premises. Furthermore, he had confirmed that he was aware of the breach of licence conditions and was complicit in the breach. He had referred to the incident as a "one off event" this was not accurate as two persons who were not allowed on the premises were present. Sgt Flannigan suggested that the history with the previous Premises Licence Holder was all still relevant. The Chair, Cllr Alan Bolshaw, enquired whether the premises were receiving undue attention from West Midlands Police. ADS Price advised that the Police would concentrate on any premises were breaches of the law were likely to occur. He reminded the Sub Committee that the history of incidents at the premises had been confirmed by Ms Delila.

Ms Delila commented that it was inappropriate to refer to incidents which had occurred when the premises had been under the jurisdiction of a previous Premises Licence Holder. The Chair, Cllr Alan Bolshaw asked whether the Police agreed that Mr McClean was in a difficult position as he was only trying to please his employer who was the previous Premises Licence Holder. Sgt Flannigan acknowledged the position in which Mr McClean found himself but reminded the Sub Committee that public safety was paramount and took primacy over other considerations.

Ms Delila referred to previous presentations and confirmed that Mr McClean would not necessarily be aware of the names of the bar staff. Furthermore, her mother, Afiyah Delila, had only been present at the premises on the evening in question because there was a staff shortage. She advised that the Consent Order had not been explained properly to Mr McClean by his Solicitor and he did not have a copy. During his time as Premises Licence Holder there had not been any negative presence of Police at the premises. She informed the Sub Committee of the efforts which were being made by Mr McClean to improve the premises including the installation of a knife arch and the provision of staff training. She opined that it was not possible to discriminate which customers were permitted to use the premises and bar staff would not know all gang members. On the night in question the customers all appeared to be well behaved and Mr McClean had dealt with the incident to the best of his ability.

The Chair, Cllr Alan Bolshaw questioned whether in the opinion of Ms Delila, Mr McClean was up to the task of being the Premises Licence Holder given that he had not had due regard to the conditions on the licence. Ms Delila responded that Mr McClean had only been the Premises Licence Holder for a month. She advised that whilst Friday and Saturday nights were often busy the premises were frequented by regular customers throughout the week. The Chair, Cllr Alan Bolshaw repeated his question as to whether Mr McClean was up to the task of being the Premises Licence Holder. Ms Delila confirmed that, in her opinion he was and that the incident had been unfortunate. Cllr Ian Claymore commented that Mr McClean was not new to the premises. Ms Delila confirmed that he had been employed previously at the premises for approximately 12 months as a Security Guard. Cllr Rita Potter referred to Mr McClean's previous experience and asked Ms Delila whether it was possible that he could change the premises or whether he would continue to run it as it had been operated previously. Ms Delila commented that she believed that he could change it as he had a closer relationship with the customers.

The Chair, Cllr Alan Bolshaw referred to the Consent Order and the suggestion that it had not been properly explained to Mr McClean. He reminded the Sub Committee that the Order contained three specific conditions which were not unduly difficult to comprehend. Ms Delila responded that it was a four page document.

At this juncture Mr McClean returned to the meeting.

The Chair, Cllr Alan Bolshaw commented that it was not an unreasonable expectation that the Premises Licence Holder would understand the terms of the Consent Order. ADS Price advised the Sub Committee that there had been no changes in the style of management at the premises and on the familial links between Ms Delila and the persons named in the Consent Order. He commented that it had been suggested that there had been no negative Police presence at the premises during the time that Mr McClean had been the Premises Licence Holder. He suggested that as the Police had not been called to this incident similar incidents could have occurred during the previous month. Ms Delila acknowledged the point being made but commented that this incident was between two individuals and the actions of Mr McClean had prevented the incident escalating. ADS Lee sought clarification as to whether Ms Delila thought that the night in question was an example of acceptable behaviour with only one incident occurring and a knife being

present on the premises. Ms Delila commented that the CCTV footage only showed the actions and procedures but was not comprehensive.

PC Harvey commented that on the night in question three Security Staff were on duty. He enquired how many had valid Security Industry Association (SIA) registration. Mr McClean commented that four security staff were on duty on the evening with three having SIA registration with the remaining being an internal employee who was not registered. In response to a further question Mr McClean explained that the internal employee was not remunerated. Sgt Flannigan drew to the attention of the Sub Committee the requirement of the Premises Licence that after 22:00 hours SIA registered door supervisors, one of which should be female should be employed at the premises. On the night in question there were no female door supervisors on duty. He suggested to Mr McClean that he was being selective as to which licensing conditions he complied with.

ADS Lee referred to an earlier comment made on behalf of Mr McClean that “it was not possible to discriminate between customers”. He suggested that this was an integral part of the role of a Premises Licence Holder and cited the use of dress codes in some establishments to assist with this. Ms Delila responded that it was not possible to classify customers by way of their dress. She enquired whether it was being alleged that the premises attracted gangs. ADS Lee confirmed that to be his opinion and also that it was the responsibility of the Premises Licence Holder to determine who was permitted to enter the premises.

Mr McClean advised that he had put his trust in Ms Delila and that she was an excellent member of the Bar Staff. With regard to the contents of the Consent Order, his Solicitor had been in a rush and not in a position to explain the contents or implications. He accepted that the two persons named in the Order as being prohibited from the premises he was aware that the terms of the Order had been breached as could be demonstrated by the evidence shown to the Sub Committee. He explained that Mr Green collected his mail from the premises and also assisted with cleaning duties. Ms Delila explained that the staff door that had used by Mr Green was also a means of access to his living premises with the other means of access being locked during opening hours.

The Chair, Cllr Alan Bolshaw, enquired of Mr McClean whether he was a fit and proper person to be the Premises Licence Holder or whether he was contemptuous of the conditions on the Licence. Mr McClean responded that he was a fit and proper person and possessed an SIA registration, he had succeeded in not allowing the offending individual to re-enter the premises, that he had no knowledge of a weapon being on the premises. The Police had attended the premises, had been allowed full access and he had co-operated with the enquiries. He opined that he was doing the job to the best of his abilities.

The Chair, Cllr Alan Bolshaw, sought clarification as to whether Mr McClean was employed by Mr Green and whether he had sufficient strength of character to comply with the Licence conditions rather than the wishes of Mr Green. Mr McClean confirmed that he did have sufficient strength of character to comply with the License conditions albeit that, on the night in question, he had requested Afiyah Delila to work at the premises due to staff shortages.

Cllr Ian Claymore questioned Mr McClean as to why he had not taken the Consent Order away to consider before signing up to its contents. Mr McClean explained that he had been informed that it needed to be submitted, duly signed, that night. Furthermore, he had not had a copy of the Order until 20 January 2016 when a copy had been provided to him by the Police. The Chair, Cllr Alan Bolshaw, enquired whether, given his previous service at the premises, his new role had been explained to him. Mr McClean advised that he had been supposed to meet PC Mitchell Hewitt at Wednesfield Police Station prior to commencing his new role but had not received any form of briefing before taking over responsibility.

The Chair, Cllr Alan Bolshaw enquired whether any form of induction had been offered. Mr McClean advised that he had just been handed the keys to the premises by Mr Green. Ms Delila advised that a meeting had also been held with the Security Staff when details of those former customers who were no longer allowed on the premises had been outlined. The Chair, Cllr Alan Bolshaw, challenged this statement inasmuch that it previously been stated that all customers were treated equitably. Mr McClean explained that this did not apply to known gang members.

The Chair, Cllr Alan Bolshaw, enquired if Mr McClean was merely operating the premises on behalf of Mr Green. Mr McClean suggested that the previous history of the premises still appeared to be relevant in the view of the Police. The Chair, Cllr Alan Bolshaw, enquired whether Mr McClean was aware of the previous history of the premises. Mr McClean responded that he was aware of some parts only of the previous history. The Chair, Cllr Alan Bolshaw, enquired whether Mr McClean had been offered the position of Premises Licence Holder. Mr McClean advised that he had been interested previously in acquiring the premises. The Chair, Cllr Alan Bolshaw, asked if he had approached Mr Green following the suspension of the Licence with a view to taking over the premises. Mr McClean explained that he had been willing to take over responsibility for the premises without the involvement of Mr Green.

Sgt Flannigan enquired of Mr McClean whether he was familiar with the conditions on the Premises Licence and whether, in fact, had seen it prior to this meeting. Mr McClean replied that had he had not. Sgt Flannigan enquired whether Mr McClean believed that the conditions on the Premises Licence were flexible in implementation. Mr McClean advised that all conditions needed to be complied with. Sgt Flannigan asked why, in that case, Mr McClean had requested Afiyah Delila had been asked to work on the night in question. Also, why no female Security Staff were employed on the night in question. Mr McClean advised that he was unaware of that particular requirement of the Licence. ADS Lee enquired whether Mr McClean had sufficient knowledge in order to satisfy the conditions of the Licence. Mr McClean advised that he had sufficient knowledge in some but not all respects.

Sgt Flannigan sought confirmation that Mr Green lived at the premises and whether he had any other residences. Mr McClean advised that he was not aware of any other residences occupied by Mr Green. Sgt Flannigan enquired whether the premises were still in the ownership of Mr Green. Mr McClean responded that he paid rent for the premises to Mr Green. Sgt Flannigan enquired as to the responsibility for the payment of Council Tax, Utility Bills etc. Mr McClean advised that he was seeking to make arrangements to take over responsibility for such bills.

The Senior Solicitor sought confirmation that the staff door was a means of access to the living premises and whether or not this was the only means of access to the living premises. Ms Delila confirmed that there was an alternative means of access albeit that it was kept secured during opening hours.

The Chair, Cllr Alan Bolshaw, enquired of Mr McClean whether or not he had a full understanding of the conditions of the Licence of which he was the Premises Licence Holder. Mr McClean responded that he had misunderstood or misinterpreted the terms of the Consent Order.

Ms Delila, in summing up on behalf of the Premises Licence Holder, reminded the Sub Committee that Mr McClean had only been the Premises Licence Holder for a relatively short time and that given his personal circumstances he had made best endeavours to improve the reputation of the premises. Mr McClean commented that the incident in question was an isolated occurrence. He was unaware that gangs were present and had no way of knowing who were in such gangs. He advised that he did the job to the best of his ability and accepted that he had allowed Afiyah Dalila to work at the premises on the night in question owing to staffing shortages.

Sgt Flannigan commented that Mr McClean was a polite, respectable gentleman of good character but in an impossible position in the middle of a family affair. He was not aware of the Licence conditions and, it could be argued that there was no need for him to be given that he was not responsible for management of the premises. He opined that the premises was frequented regularly by gangs, a fact which had been acknowledged by Ms Delila who had also accepted that the premises had a bad reputation and that a weapon had been in circulation on the night in question. He suggested that Mr McClean was either unable or not competent to be the Premises Licence Holder and if permitted to continue in that position it would be likely to result in the death of a person.

At this juncture the meeting was adjourned.

8 **Exclusion of the public and press**

Resolved:

That, in accordance with Section 100A (4) of the Local Government Act, 1972 the press and public be excluded from the meeting during the following item of business as it involves the likely disclosure of exempt information falling within paragraph 7 of Schedule 12A to the Act relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.

9 **Deliberations and decision**

The meeting re-convened with all parties with the exception of the Senior Solicitor and Democratic Support Officer having withdrawn. The Senior Solicitor advised the Sub Committee of the options available in determining the application.

10 **Re-admission of press and public**

Resolved:

That the public and press be re-admitted to the meeting.

11 **Announcement of decision**

The parties returned to the meeting and the Senior Solicitor read out the decision of the Sub Committee as follows:
An application was received from the West Midlands Police on 21 January 2016 for an Expedited Summary Review of The Harp Inn, Walsall Street, Eastfield, Wolverhampton. The review application cited serious crime and disorder associated with the premises.

The Chief of Police has provided a certificate under Section 53A (1) (b) of the Licensing Act 2003, stating that, in his opinion, the premises are associated with serious crime and disorder and requesting that interim steps be applied to the premises licence pending a full review hearing. This premises were subject to a review of the Licence in September 2015. Additional conditions were agreed by way of Consent Order following an appeal to the Magistrates Court.

We have heard from West Midlands Police that:
1. There is a history of issues at this premises;
2. The Chief Officer believes that there has been a deliberate failure to uphold licence conditions, more particularly, in relation to a condition agreed in the said Consent Order which states:

- Isaac Green and Afiya Dalila be excluded from the premises at all times including outside licensable hours, unless by prior agreement with West Midlands Police. CCTV footage from 16 January 2016 shows clearly the presence of Isaac Green and Afiya Dalila on the premises whilst it is operating under the licence. Afiya Dalila is seen clearly working behind the bar.

3. A serious incident occurred at the premises in the early hours of the morning on 16 January 2016. The Licensing Sub Committee was shown CCTV footage of the incident. In brief, a man was punched inside the premises. General unrest followed and the victim appeared to produce a weapon.. Staff at the premises witnessed the altercation but failed to call any of the emergency services. An investigation into the assault is on-going.
4. Those individuals involved in the altercation are known to be rival gang members. There were a number of known gang members in the premises. The Police take gang violence very seriously as innocent members of the public often get caught up in this.
5. Police have confirmed that the assault is likely to fall within Section 47 of the Offences Against the Persons Act and, if convicted of this offence it attracts a penalty of up to five years imprisonment and is, therefore, a serious offence.
6. New management is linked clearly to the old management regime. Mr McClean is not familiar with his licence conditions and has not seen the licence – but why would he when the previous management are clearly running the premises which could result in further violence.

Home office guidance relating to Section 53A of the Licensing Act 2003, summary reviews, states that a serious crime constitutes an offence for which a person could reasonably be expected to be sentenced to imprisonment for three years or more and it involves the use of violence. We have heard from the West Midlands that the relevant offence for this assault would attract a sentence of up to five years imprisonment.

Therefore, the Sub-Committee is satisfied that a serious crime has occurred on the premises. Serious Disorder is to be given its plain ordinary meaning and as such the Licensing Sub-Committee is satisfied that serious disorder has occurred on the premises.

The Sub-Committee has heard from and on behalf of the Premises Licence Holder that:

1.) staff had observed tensions at the premises on 16 January 2016 but believed that Security Staff on site had the matter under control and so did not call the emergency services. Staff did not recognise patrons in the premises as gang members and said it would not be easy to identify them;

.2.) Afiyah Dalila had been working behind the bar on 16 January 2016 as she had been passing through the premises and other staff needed assistance but it is accepted that this is a breach of Premises Licence conditions;

3. The premises Licence Holder admitted that he had not seen the Premises Licence and was not familiar with the conditions upon it. Even though he had only been the Premises Licence Holder since December 2015 he had been at the premises on and off for a period of 12 months.

Based on the evidence presented, consideration has been given to whether it is appropriate to take interim steps pending determination of the review and, in accordance with Section 53 (B) (3) (d) of the Licensing Act 2003, the decision of the Licensing Sub-Committee is to suspend the premises licence pending the full review hearing.