

# Statutory Licensing Sub-Committee

Minutes - 4 November 2020

## Attendance

### Members of the Statutory Licensing Sub-Committee

Cllr Alan Bolshaw  
Cllr Jonathan Crofts  
Cllr Keith Inston

### Premises Licence Holder

Johnny Jones  
Duncan Craig

Premises Licence Holder  
Barrister

### Review Applicant

Elaine Moreton  
Richard Phillips

Licensing Authority  
Senior Solicitor

### Responsible Authorities

Aimee Taylor  
Sgt Steph Reynolds  
Michelle Smith

West Midlands Police  
West Midlands Police  
Public Health

### Officers

Debra Craner  
Sarah Hardwick  
Donna Cope  
Greg Bickerdike  
Amitabh Singh  
Kirsty Tuffin

Section Leader Licensing  
Senior Solicitor  
Democratic Services Officer  
Licensing Lead (observing)  
Licensing Section Leader (observing)  
Democratic Services Officer (host)

*Item No.*    *Title*

**1        Apologies for absence**

There were no apologies for absence.

**2        Declarations of interest**

There were no declarations of interest.

**3        Licensing Act 2003 - Application for a Review of a Premises Licence in respect of Blossoms, 7 North Street, Wolverhampton, WV1 1RE**

An application for a Review of a Premises Licence in respect of Blossoms, 7 North Street, Wolverhampton, WV1 1RE, had been received from the Licensing Authority.

The Chair welcomed all parties to the hearing and invited all those present to introduce themselves. All parties did so. He outlined the procedure to be followed and all parties confirmed that they understood the procedure.

Debra Craner, Section Leader Licensing, provided an outline of the application. Richard Phillips, Senior Solicitor representing the Licensing Authority (Applicant), confirmed that the summary was accurate.

The Chair invited the Licensing Authority to present their application. Richard Phillips, Senior Solicitor representing the Licensing Authority, did so as per Appendix 3 of the report. He advised that the CCTV footage referred to within the application had been circulated to all parties prior to the Hearing and Members of the Sub-Committee confirmed they had viewed the CCTV footage.

Mr Phillips stated that there had been a flagrant disregard by the Premises Licence Holder (PLH) to uphold the Licensing Objectives, comply with the conditions of the licence and ensure that the premises were COVID-secure. He said that Council Officers had sought to assist the PLH to ensure that the premises were operating safely but this advice had not been followed and therefore, revocation of the premises licence was requested by the Licensing Authority.

The Chair afforded all parties present the opportunity to question the Mr Phillips in relation to his submission. Mr Phillips and Elaine Moreton, Licensing Authority, provided responses to questions asked.

The Chair invited the Premises Licence Holder to make representations.

Duncan Craig, Barrister representing the Premises Licence Holder, stated the following:

1. Times were challenging and mistakes had been made.
2. The premises had taken considerable steps towards compliance and had listened to the advice given to them.
3. Young people were hard to manage.

4. A Risk Assessment had been produced and revised to address concerns raised by Environmental Health.
5. The dangerous structure had been built by someone other than the PLH. When the Building Control Officer, Stuart Hitchcox, inspected the structure in August 2020 he commented that it did not appear unsafe but should be boarded up. This had been done but, in any event, the review application should not focus on this.
6. Measures taken to adhere with Covid requirements included making anti-bacterial hand gel, a designated toilet usher and PPE available, updating the fire risk assessment and emergency plan, reducing capacity, servicing air conditioning, creating pod bubbles, a booking system, a one way system and QR system and ensuring regular cleaning.
7. Capacity had never been exceeded.
8. They had not been able to successfully prevent patrons dancing.
9. There had been social distancing at the premises with tables set out which is clearly shown in the video footage.
10. It was more difficult to manage vertical drinking, groups of more than six people and dancing.
11. Loud music had been an issue at the beginning of the Bank Holiday weekend, but action had been taken to ensure the music level was lower on the Sunday.
12. The video footage submitted prior to the Hearing showed that tables were available at the premises and the external area had been boarded up. The footage further showed that Environmental Health had stated over the Bank Holiday weekend that if the premises failed to comply with requirements, a closure notice would be served but this was not actually served until the end of the weekend.
13. Regarding the alleged breach of Conditions, a female SIA door supervisor had been present on the premises throughout the Bank Holiday weekend and had simply failed to sign in which was a requirement under conditions. There had been staff on site who had received personal licence training but had not obtained a Personal Licence.
14. Demand for the Bank Holiday weekend had been overwhelming and queues developed outside the premises of people who had not pre-booked or who had not arrived with their pre-booked party. The premises should not be penalised because of the amount of people that turned up.
15. The premises did not have a history of non-compliance and this had occurred over one weekend only.
16. Revocation of the Premises Licence was not a proportionate response to the alleged breaches.
17. The Licensing Sub-Committee could consider the removal of Johnny Jones (PLH) as DPS but to not to take his business as a result of issues which occurred over one weekend.

*The Sub-Committee adjourned at 12:50 hours for lunch.*

*The Hearing reconvened at 13:25 hours.*

The Chair invited all parties present to question Mr Craig in relation to his submission. Mr Craig and Johnny Jones (PLH) provided the following responses to questions asked:

- The CCTV requested by officers had not been specified and had been recorded over.
- All staff had been briefed on the procedures but there had been a restructure and staff had been overwhelmed on the night.
- Following the Bank Holiday weekend, the PLH accepted that he could not operate safely.
- There had been staff on site who had received personal licence training but had not obtained a Personal Licence.
- The PLH had been on the premises most of the time.
- The documents requested by officers had not been on site as the premises was closed.
- The event on 21 August 2020 had been a private party.
- The door staff did their best but there had been failings with the booking system.
- The premises had listened to advice given and had taken steps to make the premises compliant. They made mistakes but had not ignored their responsibilities.

*The Sub-Committee adjourned at 15.10 hours for a comfort break.*

*The Hearing reconvened at 15:20 hours.*

The Chair invited West Midlands Police to make representations. Aimee Taylor did so as per Appendix 5 of the report

The Chair afforded all parties present the opportunity to question West Midlands Police in relation to its submission. Miss Taylor responded to questions asked.

The Chair invited Public Health to make representations. Michelle Smith, Principal Public Health Specialist, did so as per Appendix 4 of the report.

The Chair invited all parties present to question Public Health in relation to its submission. No questions were asked.

The Chair invited all parties present to make their final address.

Public Health, West Midlands Police, Barrister representing the PLH and the Senior Solicitor representing the Applicant all made a final statement.

In accordance with Regulation 26(2) of The Licensing Act 2003 (Hearings) Regulations 2005 the authority must make its determination within the period of five working days beginning with the day or the last day on which the hearing was held and Regulation 28 provides that notification of that decision must be forthwith.

The Chair advised that in consideration of the Regulations outlined, this meeting of the Sub-Committee would close, a decision would be made within the next 5 working days and all parties would be notified forthwith following the making of the decision.

Resolved:

At the hearing to review the Premises Licence held on 4 November 2020, the Statutory Licensing Sub-Committee had carefully considered all representations,

listened to those who had spoken at the hearing and considered all the evidence presented.

The Licensing Sub-Committee heard from Richard Philips, Solicitor for the applicant, that:

1. The City of Wolverhampton Council's Environmental Health department had received information that on 21 August 2020 an event had taken place at Blossoms. Video footage of this event had been provided and demonstrated a severe lack of compliance with the Covid guidelines for licensed premises.
2. There was an outdoor space on the first floor shown being used within this footage. On 25 August 2020 a Building Control Officer, Stuart Hitchcox, sent the premises licence holder (PLH)/designated premises supervisor (DPS), Johnny Jones a letter stating the area was potentially dangerous. This was not directly connected to licensing but indicated that the premises were not safe for patrons.
3. On 25 August 2020 the Service Lead – COVID Business Compliance for the Council (Covid Officer) met with the PLH/DPS to address Covid related concerns including capacity, dance floor areas, management of social distancing and test and trace. A positive attempt had been made to complete the necessary documentation that was legally required, and the Covid Officer continued to provide extensive advice over coming days to enable the PLH to achieve compliance.
4. On the 28 and 29 August 2020, the premises were visited by the Covid Officer, a Senior Licensing & Compliance Officer, and Officers from West Midlands Police. On 28 August 2020 at 22:35 hours serious concerns with social distancing, dancing (which was not permitted pursuant to The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020), and vertical drinking on both the ground and first floors were identified together with a lack of social distancing in the queue outside the premises and loud music inside forcing people to shout.
5. The PLH was not on site whilst the visits were conducted. Therefore, Covid concerns were raised with the Manager, who confirmed she was not aware of the requirements concerning such matters, had not been briefed by the PLH/DPS, nor had sight of the COVID premises risk assessment. The Covid Officer briefed the Manager and two SIA Door Supervisors, and they all agreed to manage and implement safe measures.
6. On 29 August 2020 at 00:15 hours the officers re-attended unannounced, and upon entry to the premises noted that the DJ set on the first floor had been turned off. The manager and an SIA member advised that they had proactively made the decision to turn off the music as they were unable to manage social distancing, dancing, vertical drinking and singing.
7. West Midlands Police had raised concerns that safety measures were not being implemented over continuous days, namely the evenings of the 29 and 30 August 2020. Police Sergeant Marc Bullas and Police Constable Paul Bishop of West Midlands Police have provided witness statements regarding the visits to the premises.
8. On 2 September 2020 the Covid Officer sent a warning letter to the PLH in relation to visits to the premises.
9. On 3 September at approximately 14:35 hours the Covid Officer, the Senior Licensing & Compliance Officer and Licensing & Regulatory Officer, West

Midlands Police, met with the PLH at the premises in order to obtain CCTV footage from the Bank Holiday weekend and conduct a premises licence compliance inspection. CCTV footage was viewed during this meeting however was not available for officers to take from the premises. Council officers confirmed that it was clear what video footage was being requested. The request for CCTV footage from the premises was still outstanding. A condition of licence requires the premises to install and maintain a comprehensive CCTV system and they must be able to produce/download/burn CCTV images upon request by a Police Officer or an authorised officer of the Licensing Authority.

10. The Covid Officer viewed CCTV footage from the early hours of the 30 and 31 August 2020, and observed a lack of social distancing, vertical drinking, overcrowding to the upper floor area, dancing, and high volumes of people to the bar areas. The CCTV footage demonstrated a complete lack of management to prevent the spread of COVID 19 by others.
11. During this visit, breaches of premises licence conditions were identified, and a trader's notice left with the PLH for the breaches to be addressed. The breaches included:
  - Female SIA door supervisor not signed in on Friday 28/08/2020 even though one female was required.
  - The PLH was currently the only person with a personal licence when conditions require at least one Personal Licence Holder would be on the premises when it was open for licensable activity.
  - Incident log had not been provided when conditions provide a paginated incident log shall be kept at the premises for at least 12 months and made available on request to any Responsible Authority.
  - Staff training record had not been shown when conditions provide documented records of training completed should be kept for each member of staff and be made available for inspection upon request of any Responsible Authority.
12. On 3 September 2020 the PLH was sent a notification of the direction to close the premises with immediate effect from 4 September 2020 at 18:00 hours. This direction is reviewed at least every seven days and was made in accordance with The Health Protection (Coronavirus restrictions) (England)(No3) Regulations 2020. The Council felt compelled to serve a closure direction upon the premises and could only do so because the actions of the premises caused a serious and imminent threat to public health, the direction was necessary to prevent, protect against, control or provide a public health response to the actions of the premises and the closure had to be proportionate.
13. On 10 September 2020 the PLH was sent a further notification of directions confirming the first direction to close the premises would be replaced, and a further direction would come into effect from the 11 September 2020 at 18:00 hours and have effect until the 9 October 2020 at 18:00 hours. The premises had now voluntarily closed.
14. Multiple breaches of Covid regulations are a relevant consideration when determining whether public safety had been upheld.
15. There had been a flagrant disregard by the PLH to uphold the licensing objectives, comply with the conditions of the licence and ensure that the premises were COVID-secure. Visitors to the premises were exposed needlessly to unnecessary risk during a health pandemic. The Council's

- officers had sought to assist the PLH to remedy defects and ensure that the premises were operating safely. This advice had not been followed.
16. The premises had produced a risk assessment but failed to continually assess the risk. Staff training was poor, as was the availability of records on the evenings of the visits and there had been multiple breaches of licence conditions.
  17. There was no confidence in the premises to do what they must do to fulfil the Licensing Objectives of the prevention of crime and disorder and public safety. The Section 182 Guidance (Licensing Act 2003) was clear that the review procedure and its outcome could be used as a deterrent to promote compliance more widely across the city.
  18. In the circumstances revocation of the premises licence was requested.

The Sub-Committee heard from the Premises Licence Holder, represented by Duncan Craig (Counsel) that:

1. These were challenging times and mistakes had been made.
2. Young people were harder to manage but the premises had taken considerable steps towards compliance.
3. The dangerous structure had been built by someone other than the PLH. When the Building Control Officer, Stuart Hitchcox, inspected the structure in August 2020 he commented that it did not appear unsafe but should be boarded up. This had been done but, in any event, the review application should not focus on this.
4. A Risk Assessment had been produced which was also revised to address concerns raised by Environmental Health.
5. Measures taken to adhere with Covid requirements included: making anti-bacterial hand gel, a designated toilet usher and PPE available; updating the fire risk assessment and emergency plan; reducing capacity; servicing air conditioning; creating pod bubbles; a booking system; a one way system and QR system and ensuring regular cleaning.
6. They had not successfully prevented patrons dancing.
7. There had been social distancing at the premises with tables set out which was clearly shown in the video footage.
8. It was more difficult to manage vertical drinking, groups of more than six people and dancing.
9. Loud music had been an issue at the beginning of the Bank Holiday weekend but evidence showed that the music level was lower on the Sunday.
10. Reference was made to video footage which showed tables were available at the premises and the external area was boarded up. The footage further showed that Environmental Health had stated over the Bank Holiday weekend that if the premises failed to comply with requirements, a closure notice would be served but this was not actually served until the end of the weekend.
11. With regard to alleged breach of Conditions, a female SIA door supervisor had been present on the premises throughout the Bank Holiday weekend who had simply failed to sign in which is a requirement under conditions. There were staff on site who had received personal licence training but had not obtained a Personal Licence.
12. Queues developed outside the premises of people who had not pre-booked or who had not arrived with their pre-booked party.

13. A staff training record and Incident Report form had been provided with the review papers.
14. The premises had listened to advice. They have made mistakes but had not ignored responsibilities. They had not ignored what needed to do. They had taken steps to make the premises compliant.
15. Revocation of the Premises Licence was not a proportionate response to the alleged breaches. The Licensing Sub-Committee could remove the PLH as DPS but were asked not to take his business as a result of issues which occurred over one weekend.

The Sub-Committee heard from West Midlands Police (as Responsible Authority) that:

1. They supported the Licensing Authority's request for a review of the premises in relation to the prevention of crime and disorder and public safety.
2. They had significant concerns regarding these premises particularly in relation to their failure to comply with Covid Regulations and breach of licence conditions witnessed by police officers who attended the premises.
3. Revocation of the premises licence was recommended.

The Sub-Committee heard from Michelle Smith, Public Health (as Responsible Authority), that

1. Public Health supported the Licensing Authority request for a review of the premises in relation to the prevention of crime and disorder and public safety.
2. As a Responsible Authority, they expect any business licensed to sell alcohol to act responsibly at all times and promote the key objectives of the Licensing Act 2003.
3. Due to the numerous reported failings to comply with the licensing conditions, and promote the Licensing Objectives, in addition to the public health risks associated with the non-compliance with The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020), offers no reassurance to Public Health that the business was operating in adherence with the Licensing Act.

The Licensing Sub-Committee accepted that the dangerous structure was not directly a licensing matter and therefore limited weight had been given to this in decision making.

The Licensing Sub-Committee were satisfied, on the balance of probabilities, that there was evidence that there had been several significant breaches of licence conditions and a serious failure to comply with requirements of the Covid Regulations. These actions did not promote the Licensing Objectives.

Therefore, based upon the evidence presented and having regard to the application, the relevant representations made, guidance issued under section 182 of the Licensing Act 2003 and the Council's own Licensing Policy, the Sub-Committee decided to revoke the licence in accordance with Section 52 of the Licensing Act 2003.

This was considered an appropriate and proportionate action for the promotion of the prevention of crime and disorder; and public safety Licensing Objectives.

Written notice of the determination would be given to the holder of the licence, the applicant, and any other person who made relevant representations.

An appeal could be made to the Magistrates' Court against the decision, by the applicant, the holder of the premises licence, or any other person who made a relevant representation, within 21 days from the date of receipt of written notice of this decision.