

Dated 20th September 2018

O.HINES LIMITED

ANGELA BENT

DRAFT TENANT AGREEMENT

Of premises known as

THE HARP INN

WALSALL STREET

WOLVERHAMPTON

WV1 3LP

Draft Particulars

Date of Lease 20th September 2018

Landlord O Hines Ltd
The Unit
3/4 Wesley St
Dudley
DY1 1TS

Tenant Angela Bent

Property The Harp
Walsall St
Wolverhampton
WV1 3LP

Term Commencement Date 20th September 2018

Term Expiry Date 19th September 2019

Rent £1000 pcm ?

Rent Commencement Date 20th September 2018

Deposit Nil

Trade Tie(in outline only) Free of Tie

Insurance rate £0

Landlords Signature

Tenant Signature

Date

Interest Rate 1% below the published base rate of the Landlord's Bank from time to time

Inventory means all loose fittings furniture furnishings and equipment and other articles on the Property and used or intended or available for use by the Tenant for the Business (other than the landlord's fixtures fittings plant and machinery) which are part or parts of the Property as defined in this Agreement including any articles from time to time acquired or provided by the Tenant in performance of its obligations pursuant to clause 6

Landlord means the Landlord specified in the Particulars and where the context requires includes its successors in title assigns agents servants and nominees

Landlord's Bank means any UK clearing bank which the Landlord may reasonably nominate

Landlord's Current Price List means the price list for the time being of the Landlord or the Nominated Supplier

Landlord's Inventory means the part or parts or whole of the Inventory from time to time owned by the Landlord

Licensing Act means The Licensing Act 2003

Liquidated Damages means a sum payable to the Landlord in respect of any Specified Beers or Specified Non-Beer Drinks sold from or found at the Property which have not been purchased from the Landlord in accordance with the terms of the Schedule such sum to be calculated in proportion to the fraction the volume in imperial 36 gallon barrels in which such Specified Beers or Specified Non-Beer Drinks has been so sold from or found multiplied by £100

Nominated Supplier means any person firm or corporate body nominated by the Landlord to supply goods and/or drinks (whether as its agent or otherwise) to the Tenant

Particulars means the page at the beginning of this Agreement headed "Particulars"

Personal Licence means a licence under the Licensing Act which authorises an individual to supply alcohol to members of the public from the Property

Premises Licence means a licence under the Licensing Act which authorises the use of the Property for the carrying on of one or more licensable activities as defined in the Licensing Act

Property means the Property specified in the Particulars

Rating Charge means such sum as shall be determined by the Landlord as representing a fair and proper portion of the Rating Services

Rating Services means the services provided by the Landlord or its agent for advice given and negotiations undertaken with the District Valuer for agreeing the rateable charges for the Property as shall be notified to the Tenant in writing

Specified Non-Beer Drinks means drinks of the types set out in Part 3 of the Schedule

Tenant means the Tenant specified in the Particulars

Term means a term of five Calendar Months and twenty five days from and including the Term Commencement Date subject to termination in accordance with clause 11.7

Term Commencement Date means the date specified in the Particulars

Termination of the Term means expiry by effluxion of time or termination by any other means whatsoever (including without limitation forfeiture, disclaimer or surrender)

Trade Licences means any permit licence certificate or order of whatsoever nature required whether mandatory under any legislation or otherwise which relates to the trade carried on in the Property (including without limitation the sale of alcoholic liquor public entertainment music or dancing or the use of Amusement or Vending Machines) including without limitation a Premises Licence or Personal Licence

VAT means value added tax or any tax of a similar nature which may be substituted of it or levied in addition to it

1.2 In this Agreement unless there is something in the subject or context inconsistent therewith:

- (a) Any obligation to pay money refers to a sum exclusive of Value Added Tax (VAT) and VAT chargeable is payable in addition;
- (b) Any reference to an Act of Parliament refers to the Act as it applies at the date of this Agreement and any later amendment or re-enactment of it;
- (c) The headings and index in this Agreement are for convenient reference only and have no effect upon the meaning of this Agreement;
- (d) Whenever there is more than one Tenant all their obligations can be enforced against any or all of the tenants;
- (e) Where two or more persons are respectively included in the expressions the Landlord and the Tenant the covenants expressed to be made by the Landlord and the Tenant respectively shall be deemed to be made by such persons jointly and severally;
- (f) words importing one gender shall be construed as importing any other gender and any reference to a person or persons (but not an individual) shall include a body or bodies corporate;
- (g) references to any right of the Landlord to have access to the Property shall be construed as extending to any superior landlord and any mortgagee of the Property and to all persons (including agents professional advisors contractors workmen and others) authorised by the Landlord or any superior landlord or mortgagee (where any superior lease or mortgage grants such rights of access to the superior landlord or mortgagee) and as being exercisable with or without plant machinery materials and vehicles);
- (h) any covenant by the Tenant not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person;

- (i) the expression the "Landlord" shall include its successors in title and the reversioners for the time being immediately expectant on the determination of the Term; and
- (j) the expression the "Tenant" shall include its successors in title and personal representatives.

2 Demise Term and Rent

2.1 In exchange for the obligations undertaken by the Tenant the Landlord lets the Property to the Tenant for the Term the Tenant agreeing to pay by direct debit or by such instalments at such frequency on such days and in such manner as the Landlord may from time to time otherwise reasonably require:

- (a) the Rent and the Insurance Rent monthly in advance on the first day of each Calendar Month save in respect of the period from the Term Commencement Date to the end of the Calendar Month in which the Term Commencement Date falls or such other date as the Landlord may require which shall be paid on the date of this Agreement;
- (b) by way of further rent all sums due from the Tenant to the Landlord in respect of the goods and drinks supplied to the Tenant by the Landlord and/or Nominated Suppliers payable in accordance with clause 5.3 and the Schedule;
- (c) within 14 days of written demand the premium or other payment incurred or to be incurred by the Landlord (or at the Landlord's discretion the Landlord's standard charges) for or in relation to the provision of any servicing costs and/or maintenance contract or contracts for the cellar cooling systems & beer raising equipment together with the Landlord's reasonable administration fee;
- (d) within 14 days of written demand a sum equal to all costs incurred by the Landlord or to be incurred by the Landlord (or at the Landlord's discretion the Landlord's standard charges) in the provision of such services or facilities which the Landlord from time to time reasonably considers appropriate (including without limitation works undertaken by the Landlord at the Property in compliance with its statutory obligations and any fixed gas or electrical installation inspections which the Landlord reasonably deems necessary for the Property) together with the Landlord's reasonable administration fee;
- (e) within 14 days of written demand the Rating Charge; and
- (f) (if applicable) VAT on the Rents and on any other sums payable under this agreement.

3 Benefits and Burdens

3.1 The Property is let with the benefit of all rights of way water air drainage passage of gas electricity and support and also rights to use and maintain sewers drains pipes wires and cables for those services and any other rights enjoyed by occupiers of the Property and which are needed in order to use the Property for the use allowed as exist at the date of this Agreement.

3.2 The Property is let subject to the following exceptions and reservations (so far as may be relevant):

- (a) the right to run water gas electricity communications and waste through the sewers drains pipes wires and cables which are now or may within the term of this Agreement be in upon or under the Property and also all rights of light air and support in respect of any adjoining premises belonging to the Landlord;
- (b) all rights used and enjoyed in connection with any neighbouring premises to from over or through the Property as exist at the date of this Agreement;
- (c) the right at reasonable times and upon giving reasonable notice (except in cases of emergency when no notice shall be required) to enter upon the Property to lay inspect repair clean alter renew and make connections with such sewers drains pipes wires and cable or any of them making good any damage caused to the Property in the exercise of this right;
- (d) the right for the Landlord to enter the Property at any time for all purposes relating to the obligations of the parties to this Agreement;
- (e) the right for the Landlord to attach fix or erect or to permit the attachment fixing or erection of hoardings signs or advertisement on or within the Property provided that such hoardings signs and advertisements shall not materially adversely affect the Tenant's trade from the Property and for the avoidance of doubt the Landlord shall retain any income attributable to such hoarding sign or advertisement;
- (f) the right of support which the Property gives or might in the future give to any adjoining buildings.

4 Tenant's Covenants (Payment of Monies)

The Tenant covenants with the Landlord:

4.1 Pay Rent

To pay the Rents on the dates and in the manner specified in this Agreement.

4.2 Pay Outgoings

To pay promptly to the authorities to whom they are due all existing and future rates taxes duties charges assessments impositions and outgoings relating to the Property including any which are imposed after the date of this Agreement (other than any taxes arising from any dealing with the reversion to this Agreement of the receipt of the Rents (other than VAT payable on them)) and in the event that such rates taxes duties charges assessments impositions and outgoings are attributable to other premises of the Landlord in addition to the Property to pay to the Landlord within 14 days of written demand by way of further rent such proportion of such rates taxes duties charges assessments impositions and outgoings as are attributable to the Property as shall be reasonably and properly determined by the Landlord (whose decision shall be final and binding on the Tenant (save in the case of manifest error)).

4.3 Pay Deposit

- (a) to pay the Landlord the Deposit when this Agreement is signed:

- (b) the Landlord may draw on the Deposit and all interest that accrues to it in payment to the Landlord of any amount due to it arising out of the default by the Tenant of any of its obligations under this Agreement or otherwise;
- (c) the Tenant covenants that if the Landlord draws on the Deposit the Tenant shall following receipt of a written demand pay to the Landlord an amount equal to the sum so withdrawn;
- (d) at the Termination of the Term and when all Trade Licences have been transferred to the Landlord or its nominee the money held by the Landlord under this clause 4.3 shall be repaid by the Landlord to the Tenant together with an amount equal to the interest accrued to the Deposit at the Interest Rate in respect of the period since the date of the receipt of the Deposit but only after deduction by the Landlord of such sum as it shall consider necessary to meet all or any of the moneys obligations and liabilities which may then be due owing or incurred by the Tenant to the Landlord whether actual or contingent and whether alone severally or jointly or otherwise and until all contingent liabilities have been fully discharged and satisfied the Landlord may retain such moneys as the Landlord in its absolute discretion may consider necessary to meet such obligations or liabilities.

4.4 Pay Interest

To pay interest on any monies owed by the Tenant to the Landlord which are paid after becoming due at the rate of 4% above the base rate of the Landlord's Bank.

4.5 No Set Off

Not to reduce any payment of Rents payable to the Landlord by making any deduction from it or setting any sum off against it.

4.6 Rates and Local Taxes

- (a) immediately upon receipt to give to the Landlord any notice which concerns rates taxes or outgoings relating to the Property;
- (b) not to make any applications or representations to any rating or other local authorities concerning rates and taxes and outgoings relating to the Property.

5 Tenant's Covenants (Conduct of Business)

The Tenant covenants with the Landlord:

5.1 Conduct Of Business

- (a) to use the Property as a licensed Public House for the purposes of carrying out the Business and to use all best endeavours to promote and develop the said use;
- (b) to keep the Property open as a licensed Public House and to supply food and non-alcoholic beverages from the Property during such hours as the Landlord might reasonably require;
- (c) at all times to reside at the Property or with the prior consent of the Landlord (which

- (d) to ensure that all food alcoholic liquors and non-alcoholic beverages are served in an appropriately fresh and proper manner and in compliance with all appropriate hygiene requirements and regulations;
- (e) at the expense of the Tenant to ensure that all waste and refuse on and from the Property is collected retained and disposed of in the manner and at the frequency from time to time required or approved by the local or other competent authority;
- (f) at all times to do all things as may be required to comply with any order or direction of any statutory authority having power to issue such order or direction to an occupier of any property and to give immediate notice to the Landlord of any complaint or any notice whatsoever received from any statutory or public authority;
- (g) not without the Landlord's prior written consent (which need not be given) to install operate or allow at the Property any Amusement or Vending Machine;
- (h) to keep the Property illuminated in accordance with usual practice within the licensed house trade or in accordance with any reasonable directions of the Landlord;
- (i) not to change the name of the Property or the telephone numbers serving the Property or act in any way that may serve to reduce the residual goodwill in the Property;
- (j) the Tenant shall permit the Landlord and/or all those authorised by the Landlord to install at the Property such equipment for the keeping raising and dispense of beers and other drinks or in connection therewith as they require and this shall include without limitation fluid-flow monitoring equipment (which may include the installation of a telephone line) and not to interfere with or bypass any such equipment together with the right to draw upon the electricity supply at the Property;
- (k) to give the Landlord access to such part of the Property where Specified Beers are kept and to permit the Landlord to take samples of any Specified Beers (the Landlord paying usual retail prices for such samples).

5.2 Protection of Trade Licences

- (a) Not to transfer or surrender or attempt to do so or allow to lapse any of the Trade Licences nor take any steps to have the Trade Licences removed to any other premises.
- (b) Not to do or suffer to be done on the Property or elsewhere nor omit or suffer to be omitted any act whereby the Tenant shall render itself liable to conviction before a Court of any offence relating to the Property or its use (including any matter relating to the sale supply display storage or handling of any products or in about the Property) or whereby any Trade Licence may be breached or be liable or revocation or suspension by the Relevant Licensing Authority (as defined by the Licensing Act) pursuant to a review of any Trade Licence or otherwise to give immediate notice to the Landlord of any complaint or warning from the Licensing Justices Police Customs & Excise or any Relevant Licensing Authority or other authority in respect of the Property.
- (c) To observe and perform any undertakings given to or regulations made by the Licensing Justices or Relevant Licensing Authority for the purposes of the Trade Licences or any conditions imposed (or operating schedule contained in) in the Trade

Licences and not to give any further undertakings or accept or volunteer any conditions relating to the Property or Trade Licences.

- (d) all times to conduct business on the Property in an orderly manner so that the renewal of the Trade Licences may not be refused or the removal or transfer of them prejudiced or endangered.
- (e) To apply in accordance with the provisions of the Licensing Act and in the manner prescribed by the Licensing Act for both:
 - (i) A Premises Licence in the name of the Tenant which there is nominated a Designated Premises Supervisor; and
 - (ii) A Personal Licence.
- (f) To ensure that each application for both the Premises Licence and the Personal Licence is submitted to and approved by the Landlord prior to its submission to the Relevant Licensing Authority.
- (g) To keep the Landlord informed at all times of the progress of the Tenant's application for each of a Premises Licence and a Personal Licence and to comply with representations and requirements of the Landlord in connection with each such application.
- (h) To provide a copy to the Landlord of the Personal Licence and the Premises Licence (including the operating schedule) confirming the identity of the Designated Premises Supervisor.
- (i) To procure that the Designated Premises Supervisor holds the Personal Licence at all times.
- (j) Not to make any application to the Relevant Licensing Authority for any variation to the Premises Licence without obtaining the prior written consent of the Landlord.
- (k) If required at any time by the Landlord the Tenant shall make an application for and pursue a variation of the Premises Licence in such form and manner as the Landlord shall require.
- (l) Not to attempt to surrender or cancel either the Premises Licence or the Personal Licence at any time without obtaining the prior written consent of the Landlord.
- (m) If the Tenant receives a notice from the Relevant Licensing Authority at any time or times indicating that the Relevant Licensing Authority wishes to review the terms of the Premises Licence and/or the operating schedule the Tenant will immediately notify the Landlord in writing and shall comply with such requirements and recommendations as the Landlord shall determine.
- (n) Not to change the identity of the Designated Premises Supervisor without obtaining the prior written consent of the Landlord.
- (o) To notify the Landlord on each occasion the Tenant makes any application to the Relevant Licensing Authority for a temporary event and to keep the Landlord informed of the outcome of each and every such application.

- (p) At the expiration or sooner termination of this Lease:
- (i) To provide all necessary consents (including any required from the Designated Premises Supervisor) to enable the Trade Licences to be transferred to the Landlord or its nominee (as the case may be) with immediate effect so far as it is possible in the manner prescribed by the Licensing Act; or
 - (ii) Whilst the Licensing Act 1964 remains in force to transfer the Trade Licences held by the Tenant to the Landlord or its nominee or nominees it being agreed that the Trade Licences if not so transferred shall be considered as lost or wilfully withheld by the holder so that the Licensing Justices may receive a copy of them under section 36 Licensing Act 1964) and to attend when required by the Landlord before the Licensing Justices and to sign all necessary notices and to do all other acts and things which may be required when this agreement ends to transfer the Trade Licences to the Landlord or its nominee or nominees which may be necessary to obtain for the succeeding tenant of the Property a protection order under sections 10 and 11 of the Licensing Act 1964 and subsequent full transfer of the Trade Licences.
- (q) In case the Tenant shall refuse or neglect to assign transfer or remove the Trade Licences as required it shall be lawful for the Landlord and the Landlord is hereby irrevocably empowered by the Tenant to do all things necessary to effect such renewal or transfer or removal to sign any notice of renewal or transfer or removal of any of the Trade Licences for and on behalf and in the name of the Tenant to appear before the Licensing Justices (if appropriate) either personally or by its solicitors or agents to apply for such renewal or removal and to consent as the agent of the Tenant to a transfer being made to a new tenant of the Property or to the Landlord's nominee.

5.3 Purchases

- (a) to observe and comply with the Tenant's purchasing obligations in the Schedule;
- (b) to pay the Landlord for all goods supplied to the Tenant (whether or not the supply is made pursuant to the terms of the Schedule) in accordance with the Landlord's terms for payment at the price specified in the Landlord's Current Price List it being agreed that in the event of goods being ordered directly from a Nominated Supplier payment shall be to the Landlord or the Nominated Supplier as the Landlord may direct and any payment made after the due date shall accrue interest it being agreed that all sums so due shall be recoverable as rent in arrears.

5.4 Liquidated Damages

Where the circumstances arise to pay to the Landlord Liquidated Damages which shall be recoverable as rent arrears.

5.5 Alterations

The Tenant shall not make any alterations or additions to the Property nor alter add to or change the height elevation or external architectural design or appearance of the Property or the existing signboard.

5.6 Nuisance etc

- (a) Not to do or permit at the Property anything which may be or become a riotous assembly a nuisance or annoyance or danger or in any other way offensive in the reasonable opinion of the Landlord;
- (b) Not to use the Property for any illegal or immoral purpose.

5.7 Easements and Encroachments

- (a) not to permit any trespass or any encroachment over any part of the Property nor permit any market or street trading or any stall or barrow caravan or mobile home to stand on the Property;
- (b) not to permit the acquisition of any new rights or easements over any part of the Property;
- (c) to do all things as may be reasonably required by the Landlord to prevent any of the matters referred to in this clause.

5.8 Planning Permission

Not to apply for any planning permission relating to the Property.

6 Tenant's Covenants (Repair etc)

The Tenant covenants with the Landlord:

6.1 Repair and Decoration

- (a) to keep and maintain the interior of the Property in a reasonable state of repair and in a good and tidy condition;
- (b) to keep the Property clean tidy and free of weeds and (subject to the requirement of any statute to the contrary) to trim all hedges trees and shrubs;
- (c) to keep all pipes running water gutters down pipes gullies and drains sanitary apparatus and all foul drains clear of obstruction and in good working order and where applicable to arrange for septic tank drainage to be emptied and ditches cleared as necessary;
- (d) to keep all equipment and in particular but without prejudice to the generality thereof all fire fighting warning and detection equipment emergency lighting equipment heating and cooling equipment cellar hoists and other cellar equipment extractor systems in proper repair and properly maintained and upon request to provide written proof of proper servicing inspection and certification of such equipment;
- (e) to renew all cracked or broken glass including plate glass;
- (f) in the event of the Property or any parts thereof being destroyed or damaged by any risk insured against by the Landlord and payment of any insurance monies being refused by virtue of any act omission or default of the Tenant then immediately to rebuild and re-instate at the Tenant's expense the Property or part of it so destroyed or damaged under the supervision of and to the reasonable satisfaction of the

Landlord the Tenant being allowed towards the expense of so doing the amount of insurance monies (if any) actually received by the Landlord (other than loss of rent).

6.2 Tenant's Inventory

- (a) The Tenant will at his own expense provide and keep such trade fixtures and fittings furniture and effects as are necessary or appropriate for operating the business of a public house on the Property and as are of a type quantity and design which are in accord with the Landlord's service and quality standards and sound and saleable stock (the "Tenant's Inventory") and will repair or replace damaged worn or obsolete items whenever reasonably required by the Landlord to do so and will not charge or dispose of any part or parts of the Tenant's inventory without the prior written consent of the Landlord;
- (b) If appropriate the Landlord shall require the Tenant on the Term Commencement Date to purchase the outgoing tenant's inventory at a price to be agreed between the parties or in default of agreement at a valuation to be made in the manner usual in the trade as between an incoming and outgoing tenant;
- (c) The Landlord shall be entitled at any time whether during or at the expiry or sooner determination of the Term to purchase such of the Tenant's inventory as the Landlord shall select and offset its value against any monies owing to the Landlord or to any other person or Landlord by the Tenant in either case at its value determined as in Clause 6.2(b) above the Tenant hereby agreeing to leave the Tenant's inventory upon the Property (unless or until required by the Landlord to remove the same);
- (d) At the expiration or prior determination of this Agreement the Tenant will sell the Tenant's inventory to the succeeding tenant at its said value except insofar as the Landlord shall have already elected to purchase the Tenant's inventory under Clause 6.2(c) above;
- (e) The property in the items of the Tenant's inventory selected by the Landlord shall pass to the Landlord immediately upon the Landlord giving notice to the Tenant of its intention to exercise its option contained in Clause 6.2(c) and they shall remain at the Tenant's risk until such time as the Tenant delivers the same into the possession of the Landlord upon quitting the Property.

6.3 Access for Third Parties

To allow anyone who reasonably needs access in order to inspect repair or clean neighbouring premises to enter the Property at any reasonable time provided that such person requiring access gives reasonable notice and causes minimal inconvenience and makes good any damage to the Property.

7 Tenant's Covenants (Insurance)

The Tenant covenants with the Landlord:

7.1 Not to vitiate insurance

Not to act in a way which will or may result in the insurance of the Property being void or voidable or in the premium for it being increased nor to allow anyone else to do so.

STATEMENT OF WITNESS

(Criminal Procedure Rules, r 27.2;
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)

Statement of [redacted]
(Full Name)

Age of witness Over 18
(If over 18 enter over 18)

Occupation of witness [redacted]

This statement, (consisting of 2 page(s) signed by me), is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the day of

.....
Signed

I have lived with my [redacted] near the Mississauga (formerly the Harp Inn) public house, Walsall Street, Wolverhampton for about twenty years. For about four years I have seen a rise in trouble and noise disturbance coming from there. Since the name changed to Missaussuga about two years ago the problems have got considerably worse. Every weekend (Friday and Saturday) I am having to put up with loud music coming from the pub. I can easily make out the words being sung. And when the DJ is speaking I can also hear him loud and clear. The pub doesn't start to get busy until 01:00 hours and continues to stay open until about 05:00 hours when customers start to leave. We then have to put up with cars being started and loud music being played from those vehicles. There are regular fights outside which end up with bottles being broken and scattered around the street. The windows have all been open during

.....
Signed

NOTE : If statements are typed double spacing should be used.
One side only of the paper should be used.

STATEMENT OF WITNESS

(Criminal Procedure Rules, r 27.2;
Criminal Justice Act 1967, s. 9, Magistrates' Courts Act 1980, s.5B)

Continuation Sheet No. 1

the last two months and so the music has become louder. The parking is a real issue as cars are dumped anywhere and everywhere and on one occasion at 04:30 hours, my [REDACTED] was returning from [REDACTED] shift and couldn't get [REDACTED] car through to our street as it was blocked with patrons vehicles. I have never seen any security staff working on the door. A lot of the residents that live around here are elderly and are afraid to make a complaint. They have asked me to make a complaint on their behalf which is why I recently raised it at my local PACT meeting. I would welcome something being done about this as we are not sleeping at the weekend and I have concerns with the type of people that the pub is attracting. I don't understand why this pub is allowed to stay open until 05:00 hours in the middle of a residential area.

.....
Signed

NOTE : If statements are typed double spacing should be used.
One side only of the paper should be used.

Minutes of the Licensing Sub-Committee 4

Tuesday 23rd February, 2016 at 10.00 am
in the Council Chamber, The Council House, Dudley

Present:-

Councillor D Russell (Chair)
Councillors P Miller and C Perks

Officers:-

R Clark – Principal Solicitor – Resources and Transformation Directorate , L Rouse – Licensing Clerk – Place Directorate and K Taylor, Democratic Services Officer – Resources and Transformation Directorate.

33 **Apology for Absence**

An apology for absence from the meeting was received on behalf of Councillor A Aston.

34 **Appointment of Substitute Member**

It was reported that Councillor C Perks had been appointed as Substitute Member for Councillor A Aston for this meeting of the Sub-Committee only.

35 **Declarations of Interest**

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

36 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 19th January, 2016, be approved as a correct record and signed.

Application for Review of Premises Licence – The Earl of Dudley Arms, Wellington Road, Dudley

A report of the Strategic Director Place was submitted on an application for the review of the premises licence in respect of The Earl of Dudley Arms, Wellington Road, Dudley, following the issue of a Closure Order by Wolverhampton Magistrates Court under Section 80 of the Anti-Social behaviour, Crime and Policing Act 2014, as a result of an application by the West Midlands Police.

Prior to the commencement of the hearing, the Sub-Committee together with Mr I Stebbings (Barrister for the Premises Licence Holder) and Mr C Streeten (Barrister for West Midlands Police) discussed a preliminary issue regarding the validity of the process of consideration of a review of the premises licence following a closure order.

It was reported that the Licensing Section had received the closure order by e-mail on 28th January, 2016 from West Midlands Police that prompted an advertising process for the automatic review of the premises license pursuant to Section 6, therefore the application must be determined within 28 days. It was further noted that Section 182 guidance indicated that the review must be heard within 10 days of receipt of the order however this did not appear to originate in the Licensing Act 2003 or the 2005 Premises License and Club Premises Licence Regulations 2005.

The parties then withdrew from the meeting to enable the Sub-Committee to determine whether the application could be determined.

The Sub-Committee having made their decision invited all parties to return and the Chair then outlined the decision.

Resolved

That the Sub-Committee concludes that the period of 10 days in which to convene a hearing is contained in the guidance, and is not a statutory provision, and does not make sense in line with the publicity provisions. It therefore concludes that the application has been listed correctly and in accordance with the Licensing Act and proceeds to hear and determine the review today.

The following persons attended the meeting in respect of this application:-

Mr I Stebbings – Barrister on behalf of Mr Hines (Earl of Dudley)
Mr O Hines – Premises Licence Holder (Earl of Dudley)
Mr G Thompson – Supporter
Mrs M Blake – Supporter
Mrs T Perkins – Supporter
Mr R Cole – Supporter
Mr W Jarrett – Supporter

Mr C Streeten – Barrister on behalf of West Midlands Police
DCI C Hanson – West Midlands Police
PS A Hands – West Midlands Police
PC J Preston – West Midlands Police
PC A Baldwin – West Midlands Police
Ms K Turley – West Midlands Police
Sergeant J Jones – West Midlands Police
Mr B Hughes, Licensing Enforcement Officer

Mrs S Young – Observer
Mr R Gutteridge – Express and Star

Following introductions, the Interim Licensing Manager presented the report on behalf of the Council.

Mr Streeten then presented his case on behalf of West Midlands Police, and in doing so stated that the only appropriate step was revocation of the premises licence on the grounds of the history of crime and violence at the premises, and the poor management of the premises in particular Mr Hines failure or delays during investigations regarding CCTV data and should the premises be re-opened following the closure order he anticipated that it would be a short-time before a serious crime occurred.

PS Hands referred to his witness statement, which had been circulated to all Members prior to the hearing, with particular reference to thirteen crime reports in respect of the premises between December, 2013 and December, 2015.

In responding to a question from Mr Streeten, PS Hands reported that the crime and violence incidents mainly involved people that had been customers at the premises, and that Mr Hines had been unwilling to provide statements and CCTV data and was not pro-active in protecting the welfare and safety of his customers.

In responding to a number of questions asked by Mr Stebbings, PS Hands confirmed that he had visited the premises once following the closure order and had collated the crime reports and incidents from police logs. He also stated that although Mr Hines had submitted CCTV data in regard of an incident in January, 2015, the CCTV footage was not in a viewable format and following investigations it was evident that the CCTV had not been recorded. PS Hands further stated that it would be reasonable for security to be present during the week depending on the number of customers.

Mr Stebbings reported that the majority of the incidents had occurred in the car park to the premises and that Mr Hines would be attending a court case in April, 2016 as a witness to give evidence.

At this juncture, particular reference was made to the incident in December, 2015 in that Mr Hines had provided the contact details of the victim to West Midlands Police, and that in view of the CCTV unit being seized by Police, the DY Licensing confirmed that no action would be taken and that Mr Hines had purchased a temporary unit in compliance with a condition of his premises licence.

PS Hands confirmed that he was not present at a Licensing Strategy meeting held in April, 2015.

Mr Streeten asked a number of questions to DCI Hanson, and in responding it was stated that this had been the first closure order that DCI Hanson had been involved with and that it was clear that there was a prolong history of violence associated to the premises. He also stated that there had been convincing intelligence that the premises had a stronghold gang influence, based on the convictions and arrests and links to Class A drugs and that members of the local gang were known to attend the premises.

DCI Hanson further stated that he believed Mr Hines to have a lack of control at the premises and was incapable of managing the premises robustly, and that throughout his 24 years of experience he could not recall another premises that posed a danger to the public, and raised concerns that a serious incident could occur should the premises remain open, and therefore requested that the premises licence be revoked.

In responding to questions asked by Mr Streeten, DCI Hanson stated that he did not believe that amendments to the premises licence such as decreasing the licensing hours and removing Mr Hines as Designated Premises Supervisor would mitigate the risk posed to the public.

In responding to a number of questions asked by Mr Stebbings, DCI Hanson confirmed that he was not present at a Licensing Strategy meeting in April, 2015, and that he had visited the premises once following the closure order.

Mr Stebbings referred to a 'dispatch system' placed on premises in order for Police Officers to attend a premise immediately if notified of a disturbance. DCI Hanson confirmed that it was unlikely for this to have been placed on public houses, as these usually related to dwellings.

At this juncture, Mr Streeten made an application in accordance with Regulation 14 of the Hearing Regulations, for the public and press to be excluded for the next part of the meeting. The application was granted by the Sub-Committee and supported by Mr Stebbings. All members of the public and press then withdrew from the meeting.

During the exclusion of the press and public, PC Baldwin, PC J Preston and Mr Stebbings on behalf of Mr Hines provided detailed accounts of the strategy meeting in April 2015 that had been arranged following a request by Mr Hines in order to discuss escalating incidents. It was noted that following the strategy meeting, PC Baldwin had undertaken two walkthroughs of the premises, and although more attention to the premises would have been preferred this was limited due to staffing shortages and reduction in resources.

Following further discussion and a brief adjournment all parties, including the press and public, returned to the meeting.

Mr Jarrett then outlined his support to Mr Hines in that he had visited the premises for fourteen years particularly on a Friday and Saturday to play dominoes and confirmed that he had not witnessed any incidents at the premises or had been aware of the gang reputation until following the closure order.

Mrs Blake in her support stated that she had visited the premises on a number of occasions and referred to the community events that had been arranged by Mr Hines and raised concerns that if the premises did not re-open then there would be no-where for the community to attend.

At this juncture, Mr Stebbings made an application in accordance with Regulation 14 of the Hearing Regulations, for the public and press to be excluded for the next part of the meeting. The application was granted by the Sub-Committee and supported by Mr Streeten. All members of the public and press then withdrew from the meeting.

During the exclusion of the press and public, Mr Stebbings referred to the witness statement of Mr Hines and asked a number of questions in respect of the incidents that had been summarised by PS Hands earlier in the meeting. It was noted that following the closure order, Mr Hines had completed phoenix training and a Security Industry Authority (SIA) approved up-skilling course, and agreed to provide the West Midlands Police with a dongle with downloaded CCTV on request and inform his employees of the pass-code to access the system. He also referred to his good working relationship with PC Baldwin. Mr Hines responded to a number of questions asked by Mr Streeten and Members of the Sub-Committee, following which he requested an opportunity to improve his business and referred to the options available to the Sub-Committee to review the premises licence in the future.

In summing up, Mr Streeten on behalf of West Midlands Police, stated that on the balance of probability the only steps to ensure the safety of the public and prevention of crime and disorder was for the premises licence to be revoked, which had been supported by those in attendance. He acknowledged that the premises provided a valuable community asset, however the potential risk to the safety of the customers were extremely serious.

In summing up, Mr Stebbings on behalf of Mr Hines, stated that there were a number of options that could be taken by the Sub-Committee and requested that the premises licence be suspended. He referred to the incidents summarised at the meeting, in particular that there was no evidence to support as the representatives of the Police in attendance today had not visited the premises prior to the closure order, and the accusations surrounding the acceptance of a local gang attending the premises was denied by Mr Hines. He also stated that Mr Hines was prepared to amend his conditions of licence and cooperate with authorities to allow him to maintain his business.

The parties then withdrew from the meeting to enable the Sub-Committee to determine the application.

The Sub-Committee having made their decision invited the parties to return and the Chair then outlined the decision.

Resolved

That, following careful consideration of the information contained in the report submitted, and as reported at the meeting, the premises licence in respect of The Earl of Dudley Arms, Wellington Road, Dudley, be revoked.

Reasons for Decision

This is a review of a premises license, following a closure order made initially in Wolverhampton Magistrates Court in December, 2015, and then upheld an appeal in Wolverhampton Crown Court on 8th January, 2016. Dudley MBC Licensing office states that it received the closure order by e-mail on 28th January, 2016 from West Midlands Police, which triggered an advertising process for the automatic review of the premises license pursuant to Section 67. The application must be determined within 28 days. The Section 182 guidance indicates that the review must be heard within 10 days of receipt of the order, but this period does not appear to originate in the licensing act or the 2005 Premises License and Club Premises Licence Regulations 2005. The Sub-Committee therefore considers the Section 182 guidance, but this 10 day period does not appear to allow the licensing authority an opportunity to conduct an advertisement process or allow for representations to be made. In the light of the publicity for the review, a number of local pub users had made representations supporting the license holder, and that have attended today. They broadly support the re-opening of the pub as a community resource for all ages.

The Sub-Committee accepts that the licensing authority did not receive the closure order until 28th January. This triggered the automatic review process. The review does have to be determined within 28 days, and today falls within 28 days from 28th January. The Sub-Committee concludes that the period of 10 days in which to convene a hearing is contained in the guidance, and is not a statutory provision, and does not make sense in line with the publicity provisions. It therefore concludes that the application has been listed correctly and in accordance with the Licensing Act and proceeds to hear and determine the review today.

The principal licensing objective in issue today is that of the prevention of crime and disorder. The police have presented a history of crime in the public house and significantly in the car park outside these premises, since at least 2013. The incidents have included stabbings to the body and face, some criminal damage, the taking of a motor bike from the car park which concluded with a threatening confrontation and some incidents of lesser violence.

The police evidence places a particular emphasis upon the poor management of the premises over time, delayed reporting to the police of significant incidents and significant delay in passing or allowing access to CCTV of specific incidents.

Mr Hines denies most of the delay in reporting incidents, places great emphasis on him calling a strategy meeting in April 2015 in order to discuss escalating incidents, and states that he will now provide the West Midlands Police with a dongle with downloaded CCTV on request. He therefore asks the Sub-Committee to take a less draconian step than revocation, which the West Midlands Police recommend. He submits that the Sub-Committee could suspend to allow Mr Hines time to put his CCTV compliance in order and demonstrate his cooperation with authorities. He asks for a last chance.

The Sub-Committee however, is not satisfied that Mr Hines has taken the criminal activity committed on his premises seriously and has not acted decisively and expeditiously to address it. In particular, it finds that since 2013, he has failed on most occasions to deliver to the police CCTV recordings of key events in a timely manner, and had not cooperated with the police requests, but made the process of reporting and investigation prolonged and difficult. It is also concerned that the level of crime is particularly serious, and that for there to be two knife incidents and other violent incidents around a single premises in such a short time, is extremely serious. These appear to be minimised by Mr Hines.

The Sub-Committee finds that the history and nature of the incidents, and the association with a local gang, has now given these premises a name and reputation, which has escalated beyond the ability of Mr Hines to manage and control. He asks for a last chance but the Sub-Committee concludes that he should have taken some decisive action well before April 2015, and that provision of CCTV on request would have made a real difference to the persons committing offences on the wider premises. The situation has now got out of his control to manage, and further conditions, or the removal of the Designated Premises Supervisor, are now insufficient to overcome this reputation. Suspension of the premises licence is also too little too late, and the Sub-Committee will not accept that the real risk of a death on these premises is a risk it can take. For these reasons the Sub-Committee takes the step of revoking the premises licence.

Any party has a period of 21 days in which to appeal this decision from the date of receipt.

