



CITY OF WESTMINSTER

MINUTES

Licensing Sub-Committee (1)

MINUTES OF PROCEEDINGS

Minutes of a meeting of the **Licensing Sub-Committee (1)** held on **Monday 12th August, 2024**, Rooms 18.01 - 18.03 - 18th Floor, 64 Victoria Street, London, SW1E 6QP.

Members Present: Councillors Aziz Toki (Chair), Maggie Carman and Karen Scarborough

1. MEMBERSHIP

1.1 There were no changes to the membership.

2. DECLARATIONS OF INTEREST

2.1 There were no declarations of interest.

1. CONCEPT CLUB, 37 DUKE STREET, W1U 1LN

WESTMINSTER CITY COUNCIL LICENSING SUB-COMMITTEE NO. (1)

FULL REVIEW DECISION

Monday 12 August 2024

Membership: Councillor Aziz Toki (Chair), Councillor Maggie Carman and Councillor Karen Scarborough

Expedited Review of a Premises Licence in respect of Concept Club, 37 Duke Street, London W1U 1LN ("The Premises")- 24/04405/LIREVX

Case Summary

The Metropolitan Police Service ("Police") submitted an application for a Summary Review of the above Premises pursuant to Section 53A of the Licensing Act 2003 ("the Act") on 16 July 2024 as the Police considered the Premises were associated with serious crime. The Premises Licence Holder ("PLH") for the Licence is Electshow Ltd.

A Licensing Sub-Committee was convened on 18 July 2024 to consider whether it was necessary to take interim steps pending the determination of the Review applied for by the Police. At this hearing the Sub-Committee concluded that it was necessary and appropriate to suspend the licence with immediate effect. A copy of the Interim Steps Decision can be found at **Appendix 4** of the Agenda report.

The application received representations in support of the review from the Environmental Health Service (**Appendix 5**), Licensing Authority (**Appendix 6**) and 18 Interested Parties, including 31-37 Dukeson Properties Ltd who are the freehold owner and landlord of the Premises (**Appendix 7**).

Persons attending the hearing

For the Police:

Mr Armin Solimani (Counsel)
PC Steve Muldoon
PC Dan Evans

For the Premises Licence Holder

Ms Sarah Clover (Counsel)
Mr Julian Skeens and Mr Luke Elford (Solicitors)
Mr John Common (Operations Consultant)
Mr Andrew Bamber (Independent Expert)

For the Licensing Authority

Mr James Hayes

For the Environmental Health Service

Mr Anil Drayan

For 31-37 Dukeson Properties Ltd

Mr James Rankin (Counsel)
Mr Alun Thomas (Solicitor)

Officers present:

Presenting Officer – Sandra Robbie
Legal Adviser – Michael Feeney
Committee Officer – Katherine Stagg

Activities and Hours

The Premises Licence permits the following licensable activities:

Performance of Dance

Monday to Saturday: 09:00 to 06:00

Sunday: 09:00 to 03:00

Performance of Live Music

Monday to Saturday: 09:00 to 06:00

Sunday: 09:00 to 03:00

Playing of Recorded Music

Unrestricted

Anything of a similar description to Live Music, Recorded Music or Performance of Dance

Monday to Saturday: 09:00 to 06:00

Sunday: 09:00 to 03:00

Late Night Refreshment

Monday to Saturday: 23:00 to 05:00

Sunday: 23:00 to 03:00

Private Entertainment consisting of dancing, music or other entertainment of a like kind for consideration and with a view to profit

Unrestricted

Sale by Retail of Alcohol

Monday to Saturday: 10:00 to 06:00

Sunday: 12:00 to 00:30

Policy Considerations

- Appendix 4 of the City Council's Statement of Licensing Policy ("SLP")

Revised Home Office Guidance

- Chapter 12 on Summary Reviews

Background

On Monday 15 July, at approximately 02:20, a fight happened involving approximately 15 people at the Premises. The event was advertised as a Wireless After Party and hosted by NAITRAM LIVE. This was a private event in which only individuals on a guest list were able to attend. Approximately 190 people were registered in attendance.

The DPS called the Police and Ambulance services to attend the incident where three individuals, with varying degrees of injuries, were taken to hospital. One person was found with a stab wound to the abdomen, another person was found unconscious with a head injury and a third person, a security guard, was found with laceration injuries to the face after he was hit over the head with a bottle whilst trying to break up the fight.

Police licensing officers attended a meeting at the Premises on 16 July 2024 where they met with the PDS, the Premises' consultant and a legal representative. Officers

were given a copy of the post incident report form along with the venue's incident log. Further documents were requested by officers, but the Premises were unable to provide them.

Due to the seriousness of the offence, the multiple breaches of the licence conditions and a clear lack of control of the Premises the police believe that the Premises have failed to uphold the prevention of crime and disorder licensing objective. As such, the Police have grave concerns as to the operation of the Premises and requested that the Licensing Sub-Committee consider the imposition of suspension of the premises licence until the full hearing. At the interim steps hearing on 18 July the PLH did not oppose suspension of the premises licence, and the suspension of the licence was deemed both necessary and proportionate to promote the licensing objectives pending the full hearing.

The Sub-Committee is now required to:-

- (1) Review the Interim Steps taken on 18 July 2024 and consider whether it is appropriate for the promotion of the licensing objectives for the steps to remain in place, or whether they should be modified or withdrawn; and
- (2) To determine the full review of the premises licence pursuant to Section 53C of the Act.

Preliminary Matters:

1. Ms Sandra Robbie outlined the application to the Sub-Committee. The Chair introduced the Members of the Sub-Committee and outlined the procedure to the Parties in attendance. Cllr Toki and Cllr Carman confirmed that they had no declarations of interest to make. Cllr Scarborough stated that she had objected to a previous variation application in connection with the Premises Licence because at the time the Premises had been in her Ward. The Premises was no longer in her Ward, and Cllr Scarborough advised that she had no pre-determined views, she had not discussed the Application with any parties and she could consider the Application with an open mind.
2. The parties were invited to make submissions as to whether Cllr Scarborough should continue to sit on the Sub-Committee and no party made any submissions.

Submissions

3. Mr Armin Solimani, Counsel for the Metropolitan Police Service (MPS), outlined the Applicant's case to the Committee. He advised that the MPS were seeking a revocation of the Licence and maintenance of the interim step of suspension for three reasons. First, the trigger incident was very serious and was the result of wilful breaches of the licence conditions. Second, the operator's business model was incompatible with their licence. Third, the operator had failed to properly engage with the MPS, reinforcing their concerns that they would not stay within the bounds of their licence.

4. Mr Solimani advised of the trigger incident on 15 July 2024, where the Premises had hosted an after party for a music festival which led to a mass brawl between 15 patrons at 02:20, which had resulted in 3 people sustaining serious injuries. This was an example of serious crime, and he advised that it was lucky that the incident did not end in a fatality or life-changing injuries. He advised that this disorder was a direct response to the operator breaching conditions, including a condition that it be a Private Members Club. He advised that the perpetrators were not Members of the Club or known to the operators prior to the evening, as they operated as a public night club. Mr Solimani submitted that the purpose of running the Premises as a private members' club is to attract people who are known and people who are safe. The fact that anyone was let in because the Premises was operating as a nightclub meant that disorder resulted.
5. At a meeting following the incident the DPS did not understand why a members' list was needed, having thought an ID scanner would be sufficient. Mr Solimani submitted that it was not acceptable to say that each person became a member when they scanned their ID; this was against the spirit of the condition. The festival afterparty was not consistent with the licence conditions, including requiring alcohol to only be served to members by waiter/waitress service and becoming a restaurant at 03:00. The Premises held two similar events previously which were held in breach of their licence, and the clean up after the brawl was also a breach of condition 36.
6. Mr Solimani advised that this was not the first incident the Premises had attracted, with previous incidents including the beating of a male patron on 8 December 2023, an alleged sexual assault on 23 February 2024 and a fight between two members of staff on 2 March 2024. These were all a result of wilful breaches by the operator.
7. With regards to the second reason, Mr Solimani advised that the licence required the Premises to be a private members club, highlighting conditions 14, 42, 43, 44. These conditions included food being always available, an emphasis on private membership, a restaurant condition after 03:00 and waiter/waitress service of drinks. Condition 14 meant that food had to be a substantial part of the offering at all times. He submitted that the reality was that the Premises had been operating as a nightclub in breach of the conditions and not in line with the character the licence envisioned. The MPS at a meeting with the operator saw clearly on CCTV that the Premises regularly breached condition 43 after 03:00, and the operator had accepted this breach and said it would not happen again. He advised that the licence was incompatible with running a nightclub.
8. With regards to the third reason, Mr Solimani advised the Committee on the failure of engagement with the MPS from the operator. The operator had obstructed the investigation, withheld evidence, failed to engage in the original meeting and were dishonest about the nature of the event they had held at the Premises. He advised that the DPS had been let go following this incident, but the MPS questioned the judgement of this operator by having that person as a DPS in the first place.

9. Mr Solimani advised that the Premises had not provided evidence required by the conditions of the licence, including a guest list, risk assessment of the event and details of additional parties held at the Premises. He advised that at their original meeting the legal representative refused for the MPS to discuss the breaches to condition 43 and when asked to view CCTV of other dates after 03:00 the legal representative stopped them from seeing anything further due to GDPR. The Premises also refused to supply till receipts, showing how the operator had been obstructive and evasive in the polices' investigation.
10. Mr Solimani stated that when the operator provided the MPS with CCTV on a hard drive they provided it in an unviewable format with over 1500 files varying in length. He highlighted the failure of management to engage with the process, with the only time the MPS met with management was in the first meeting with the DPS who had since been let go.
11. Mr Solimani submitted with respect to GDPR and the CCTV condition that the question when deciding whether the police should have access is whether it is proportionate in the course of investigation. It would be impossible for the police to find out if Premises were complying with their licence if the police were not able to view CCTV, particularly when it is a condition that CCTV should be provided. The CCTV condition was lawful, and it should be given effect. The police had a legitimate interest in the data, as it was the only way to determine if there had been any breaches of the licence, such as whether the Premises was run as a restaurant after 03:00. The police's request was for a legitimate, specified purpose, and the refusal to provide CCTV on the grounds of GDPR did not stand up to legal scrutiny.
12. In response to questions, PC Dan Evans confirmed that the MPS had still not received all CCTV footage requested from the Premises apart from the trigger incident and the operator had issues with downloading the files. He also confirmed that they had not completed or provided a risk assessment for the event. Mr Solimani and PC Steve Muldoon advised that the main conditions the Premises had breached were conditions 14, 42, 43 and 44, with the Premises shutting down the requests to investigate condition 43. The DPS at the meeting had confirmed in response to a question from PC Muldoon that customers were able to get a drink at the bar.
13. PC Dan Evans advised that there were 25 crime events taking place in the vicinity of the Premises. 9 offences were classified as sexual or violent offences of which 6 occurred within the Concept Club. PC Dan Evans advised that they had not been able to see the CCTV for the last 31 days except for the trigger incident. PC Dan Evans advised that tables and chairs were permanently laid out but was unsure of the numbers. PC Evans also stated that with regards to condition 58 it could not be seen from the CCTV whether SIA were wearing BWV as required. The BWV had not been activated.
14. Mr James Hayes, representing the Licensing Authority advised the Committee that the Licensing Authority supported the MPS in their request for the licence to be revoked due to clear discrepancies between the licence and how the Premises operated. He advised on specific conditions including 16, that 90 is a significant number of table and chairs, and he questioned how this could be

permanent in a nightclub. He also noted that the operator did not comply with conditions 42 and 43 and noted nightclubs are associated with disproportionately more crime and noise nuisance than private member clubs. He advised that the Licensing Authority had serious concerns about the non-compliance with condition 21 as it limits the responsible authorities' ability to investigate premises and to ensure they comply with their licence. Mr Hayes stated that the police's request had been reasonable and targeted- it had not been a 'fishing expedition'.

15. With regards to the history of the Premises, Mr Hayes stated that the lowering of requirements in relation to membership had been granted because of the type of operation. It had been presented to previous Sub-Committees as a lower risk clientele/operation.
16. In response to questions, Mr Hayes advised that the Licensing Authority communicated with licence holders if they wished to amend their licence. He advised that the licence holder company had remained the same since 2005 but all the previous changes to the licence were made by operators different to those running the Premises currently. He advised that there were 150 residents living nearby but there was not a big catalogue of complaints.
17. Mr Anil Drayan, representing the Environmental Health Service (EHS), advised the Committee that the EHS supported the MPS in their application to revoke the licence and he attended the previous hearing to vary the licence in 2017 when the hours were extended to 06:00 from 03:00. He advised that the extension of hours was only allowed due to the restaurant condition past 03:00 and that it would only be open only to members and their guests as a private members club. He advised that they had received two complaints this year regarding the Premises with one complaint referring to London Opera Club. Mr Drayan stated that more detail from the PLH on the ownership and transfer of the licence was needed. The PLH had consistently been Electshow Ltd, but the Premises had traded under a number of different names over the years. He advised that the Sub-Committee could tighten up the conditions on the membership scheme if they wished.
18. In response to questions, Mr Drayan stated that he had never visited the Premises, although he had seen the area in which it is located. He advised that there was a block of flats nearby and from a public nuisance point of view the Premises could operate in a way that can minimise nuisance. Mr Drayan stated he would need to look at the Premises' queuing and dispersal policy if the committee were minded not to revoke. He advised that both complaints had been received in February this year.
19. Mr James Rankin, representing 31-37 Dukeson Properties Limited, advised the Sub-Committee that the PLH purchased shares of the licence holder's company and therefore the licence did not have to be transferred to them. He advised that his client was concerned that their tenants were not running the Premises correctly, highlighting the serious incident in July 2024. He disputed the PLH's refusal to provide CCTV to the MPS on GDPR grounds and stated that the condition was lawful and the PLH should have complied with it. Weeks after the initial request the police still did not have CCTV.

20. Mr Rankin advised that the PLH had been obstructive in the police investigation and that the landlord did not agree with the PLH's view that the conditions were difficult to navigate or unclear. He stated that scanning ID did not constitute becoming a member of the club, and the Premises had also been unable to provide a membership list. Ten membership forms had been provided but they were undated and referred to terms and conditions which there was no evidence of.
21. He also advised that the PLH had admitted breaching condition 43, regarding food being served after 03:00, and that the DPS had admitted that patrons could have bought drinks at the bar. The condition requiring alcohol by waiter/waitress service only applied throughout and not only after 03:00. He advised that there had been a wholesale breach of conditions, and the PLH's business model did not fit within the conditions on the licence. The conditions had been imposed in the first place when the Premises was presented as a restaurant focusing on Lebanese mezze with a clientele consisting of Middle Eastern gay men. However, the Premises was being run as a full-on nightclub.
22. The PLH had not shown how they would operate in the future within the licence and cutting back the hours would make no difference because the incident took place at 02:20. The Landlord therefore agreed with the MPS that the licence should be revoked.
23. In response to questions Mr Rankin advised that his client's main concern was wanting a tenant in their property who would run the Premises properly. He also advised that Premises tend to get one DPS per year, but the Premises had had 4 in the last 8 months since opening.
24. Ms Sarah Clover, Counsel for the PLH, outlined the PLH's case to the Committee. She advised that there had been many inaccuracies in the statements and representations regarding the incident on 15 July. Contrary to the MPS evidence, this had been a Naitram event and Naitram did exist. She advised that some of the contentious conditions on the licence including those of a Private Members Club and restaurant after 03:00 were added late in the day; the Premises had always been a nightclub with previous conditions having membership tied to ID scanning.
25. Ms Clover noted the distinction between a breach of the licensing objectives and a breach of the licence conditions. She stated that it was not for the Sub-Committee to punish the PLH for breaches of conditions by revoking the licence. Breaches of licence conditions were a separate matter punishable ultimately by the Courts. She advised the Committee that the breaches of conditions were not associated with the serious crime of 15 July and the PLH were within their rights not to show CCTV due to GDPR when the MPS asked for it regarding breaches of conditions, as this was separate to the incident that had occurred on 15 July.
26. Ms Clover advised that the incident of 15 July was an isolated incident and the Premises had been run as a nightclub for a long time and there had been consistent breaches of the licence before the current operators took over. She

advised that the Premises operated on a membership basis and had provided a guest list to the MPS for the night in question. She disputed the MPS's statement that the incident took place because of the style of operation, and highlighted to the Sub-Committee that the incident took place before 03:00 when the Premises was allowed to operate as a nightclub. The incident on 15 July was isolated and had not arisen because of the way in which the Premises has been run.

27. Ms Clover highlighted the 2017 variation minutes where the Premises was referred to as a nightclub, the applicant offered the restaurant condition and the MPS had no objection to the application. She advised that the promoter had had two previous events at the Premises and there was no indication of excessive intoxication in the crime report. She noted that a piece of glass was the weapon in the fight not a knife and while the crime scene was swept it was not sanitised. She advised that the Premises called the police and ambulance straight away and co-operated with the MPS by providing the paperwork needed, including a list of witnesses, statements and CCTV files. Ms Clover stated that it was important to differentiate between the two CCTV conditions on the licence- one requires immediacy and the other requires delivery of downloading.
28. Ms Clover highlighted the difference in the assistance the PLH had given the MPS in relation to the incident and the legal advice they had been given regarding the CCTV and GDPR protection in relation to potential breaches of licence conditions.
29. Ms Clover advised that the licence was not fit for purpose with duplications and ambiguity. She advised with regards to condition 44 that the Premises had waiters who served drinks and with regards to condition 43 they distributed pizzas after 03:00 but the Premises did accept a breach had taken place previously on this condition. She stated that the tables and chairs condition was being complied with. She advised with regards to condition 26 that WCC does not offer crime scene management training and the member of staff who swept up the crime scene had a certificate on crime scene management. They had had their employment terminated following the incident, and Mr Common's statement showed that a new DPS and management team had been picked.
30. Ms Clover stated that with regards to the DPS the PLH was between a rock and a hard place. If the DPS had not been dispensed with then the PLH would have been criticised. She disputed the MPS's representation that 6 incidents happened within the Premises, as two of the incidents had nothing to do with the Premises.
31. Ms Clover highlighted that Mr Michael Watson had visited the Premises regularly as an independent consultant and he had highlighted the body worn video previously and confirmed it was fully complied with the night before the incident. She advised that the MPS statements were emotive and not measured, and her clients had tried to have meetings with them to identify their concerns on what would give rise to future incidents. She also noted that in 2017 when the hours were extended, EHS and the Licensing Authority had not objected and had not proposed any conditions to add to the licence. She

advised that the residents and the landlord had not complained to the responsible authorities and the residents used the same language in their representations, following a letter received from WCC Licensing Team.

32. Ms Clover submitted that the issue was whether the incident was isolated, whether it was necessary to uphold the interim step of suspension and whether it was necessary to revoke the licence. The Premises were seeking a quality DPS who had to be approved by the MPS. Ms Clover offered the curtailment of hours to 03:00 if the Sub-Committee wished and noted that the Sub-Committee may wish to amend conditions, but revocation would be excessive.
33. In response to questions, Ms Clover advised that the Premises was a nightclub which was also a private members club. She noted that the PLH had breached condition 43 and probably condition 14 as well. She stated that there had been no breach of condition 21 because viewings of recordings had been made available immediately. She highlighted the issues of the licence including condition 37.
34. Mr Common, the Operations Consultant for Concept, advised the committee that some drinks were being served from the bar, contrary to condition 44, as the licence could be difficult to read and confusing, but the majority of drinks were being served by waiter/waitress service. Mr Common stated that the management had decided they were going to serve drinks from the bar even though he had advised them differently. Mr Common stated that there had been some discussions around applying to vary the licence to make it clearer and fit for purpose.
35. Ms Clover advised the Sub-Committee that none of the conditions being breached would impact on crime and disorder and that it would be wrong to revoke the licence not for serious crime and disorder but for breaches of conditions. Ms Clover highlighted the minutes of the 2017 hearing in which Mr Drayan advised there were already membership conditions on the licence. Ms Clover submitted that there was no causal connection between the breaches of conditions and the incident that had occurred. Mr Solimani was incorrect to say that had it not been for the breaches of conditions the trigger incident would not have occurred.
36. Ms Clover in response to questions advised that the GDPR disputes with the MPS are not in the papers as it was an ongoing issue with the MPS, and the issue was not before the Sub-Committee.
37. Prior to summing-up, Ms Clover informed the Sub-Committee that she had instructions to ask for the hearing to go into closed session so that an explanation as to why the Premises' management was not in attendance could be provided because this has been commented on. Ms Clover asked for any closed session to not include any of the other parties, apart from legal representatives. Mr Solimani and Mr Rankin objected to this request to exclude the other parties apart from legal representatives. The Legal Adviser had previously stated that the decision on the Application would not be based on the non-attendance of Premises' management but on the information and evidence presented before the Sub-Committee. The Sub-Committee adjourned

to consider the request to go into closed session and announced the following decision on its return:

'The Sub-Committee has considered whether to go into private session and if so on what basis. The Sub-Committee has decided not to go into private session. The Sub-Committee does not consider that it is necessary to go into private session in order to determine the application fairly. The Sub-Committee confirms that it will base its decision on the basis of the all the information and evidence before it, both in the papers and provided in oral submissions today.'

38. In summing up, Mr Solimani advised that multiple conditions on the licence had been breached and the MPS believed a revocation of the licence was needed. He advised that operators who operate within their licence increased trustworthiness and the breaches of conditions meant that the MPS did not trust the PLH. Even if the conditions on the licence were not 'good conditions' the operators still had to comply with them or request a variation. He advised that allowing the licence to continue after the serious incident would put the public at risk. He advised that in 2017 the licence already had membership conditions on it and the Premises in 2017 had been presented as a lower risk operation, different than what was currently being operated. Finally, Mr Solimani submitted that the breaches of conditions were related to the serious violence. He advised that the food service condition after 03:00 was important as it reduced the risk associated with selling alcohol after that time. The membership condition, which the operator disregarded, was also crucial to prevent the crime associated with a public nightclub.
39. In summing up, Mr Hayes advised that the Licensing Authority supported the Police's application and advised that the non-compliance of conditions had led to the problems, with all conditions needing to be adhered to. Mr Hayes advised that it was standard practice for the licensing team for letters to be sent to local residents in all major applications and many residents were due to be represented by Mr Richard Brown at the hearing but Mr Brown had been unable to attend at the last minute.
40. In summing-up, Mr Anil Drayan advised that the EHS continued to support the MPS in their application to revoke the licence. He advised that the operator in their submissions blamed the messy and ambiguous conditions for the problems, but they could have remedied this via variation applications. He advised that what had occurred was a serious incident and the Premises appears to have been operated contrary to what had been granted in 2017.
41. In summing-up, Mr Rankin stated that Ms Clover's clients had not been granted a licence; they had bought shares of Electshow Ltd and obtained the lease of the Premises and the licence. Mr Rankin added that the Landlord had objected previously to an application to turn the Premises into a lap-dancing club. Mr Rankin submitted that the trigger for the Application was the incident of serious crime, which starts the whole procedure. At the hearing now the Sub-Committee had to take all relevant matters into account, including breaches of conditions. Mr Rankin adopted Mr Solimani's submissions on membership, namely that in 2017 the Sub-Committee did not seek to remove the pre-existing membership condition. The PLH had not been able to provide any membership

terms and conditions, there was no ambiguity between conditions 14 and 43 as condition 14 applied at all times and the presence of waiters/waitresses did not mean that condition 44 was complied with because condition 44 required alcohol service to be by waiter/waitress service only. Finally, Mr Rankin noted that the compliance visits carried out by Mr Watson had all been before 03:00.

42. Prior to summing-up, Ms Clover requested that Mr Andrew Bamber, an Independent Expert, be allowed to speak, and the Sub-Committee granted this request. Mr Bamber stated that the crime reports in the papers showed commitments to the licensing objectives from the PLH, as the PLH had shown care for victims, worked with the MPS to ensure the arrest of offenders, refused entry to the club when appropriate and ensured prompt reporting to the police of incidents. The investigating and reporting officers in the crime reports do not make adverse comments about the management.
43. In summing up, Ms Clover advised that the breaches to the licence did not mean the operator could not be trusted, and they had worked with the MPS on the incident. She advised that they do not accept that the incidents are connected and there are clear demonstrations of the staff protecting the public by calling the police and distributing first aid, which showed no correlation to an inability to run the premise. She advised that the PLH did not accept the categorisation that they operated as a public nightclub and that the business model does not fit within the licence. It was wrong to suggest that if the Premises had been operating as it should have been then the incident would not have occurred. She also did not agree that a night club is the highest risk venue. She asked the Committee to look carefully at Condition 42 and to note that the ID scanner is linked to membership. Ms Clover concluded by noting that there has been no problem with the PLH before this incident.

Conclusions and reasons of the Sub-Committee

44. The Licensing Authority received a valid application for an expedited review under Section 53A of the Licensing Act 2003, submitted by the Police on 16 July 2024. The Sub-Committee noted the submissions from all the parties, adjourned the hearing to make its determination and resumed the hearing to announce its Decision. The full reasons for the Decision are set out below.
45. The Sub-Committee recognised that the proceedings set out in the Act for reviewing premises licences represent a key protection for the community when problems associated with crime and disorder, public safety, public nuisance or the protection of children from harm are occurring. The Act provides the Licensing Authority with a range of powers on determining a review that it may exercise where it considers them appropriate and proportionate for the promotion of the licensing objectives. In deciding which of these powers to invoke, the Licensing Authority should so far as possible seek to establish the cause or causes of the concerns which the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

46. With regards to the full review, the Sub-Committee decided to revoke the licence for the reasons given by the MPS, the Responsible Authorities and the Landlord. The incident which had triggered the application was extremely serious, as three people had suffered significant injuries. There was no dispute about this, as the PLH had accepted at the interim steps hearing that the interim step of suspension should be imposed.
47. The MPS had provided compelling evidence that the PLH had been operating in breach of numerous conditions on the licence. In particular the Sub-Committee concluded that there had been breaches of the following conditions:
- i) Condition 14: The requirement was to have substantial food available during the whole of permitted hours. The PLH had previously indicated that pizzas were distributed after 03:00 but there was no evidence that substantial food was available at all hours whilst the Premises was open, and the PLH during the hearing had accepted that it was probable that the condition had not been complied with.
 - ii) Condition 42: The Sub-Committee did not consider that the spirit of the condition was being followed if any member of the public was allowed to become a member simply by scanning their ID. The PLH had not been able to provide any evidence of membership lists or membership terms or conditions. It was also impossible to tell who would be a 'bona fide' guest of each member if everyone automatically became a member upon scanning their ID. The Sub-Committee accepted the submissions of the MPS that the membership condition was not in substance being complied with.
 - iii) Condition 43: The PLH accepted that it had been operating in breach of this condition. The Sub-Committee noted that this condition only applied from 03:00-06:00, whereas the trigger incident had occurred at approximately 02:20.
 - iv) Condition 44: The previous DPS had admitted to PC Muldoon that it was possible to buy drinks from the bar, in breach of this condition. The fact that the Premises employed waiters and waitresses did not mean that this condition had been complied with, as the requirement was to serve alcohol by waiter and waitress service only.
 - v) Condition 58: The BWV worn by security was not switched on after the incident occurred.
48. The Sub-Committee therefore considered overall that the Premises had not been operating in a way that was consistent with its licence. The conditions on the licence, particularly the conditions requiring that substantial food be available at all times, that alcohol be provided by waiter/waitress service only and that alcohol be sold for consumption only to members and their bona fide guests, were inconsistent with a nightclub operation, which was how the PLH had sought to run the Premises.
49. The PLH submitted that the conditions on the licence were confusing and ambiguous. The Sub-Committee did not agree that the conditions identified above were either confusing or ambiguous, but in any event if the PLH considered that the conditions were confusing or ambiguous then the correct course of action would have been to apply to vary the conditions. Mr Common

stated that there had been discussions around this possibility, but no variation application was ever made.

50. The PLH also submitted that the breaches of conditions were separate from the trigger incident, which was an isolated incident, and that it would be wrong and disproportionate for the Sub-Committee to revoke the licence on the basis of breaches of conditions that were unrelated to the incident of serious violence. The Sub-Committee agreed that its role was not to 'punish' the PLH for breaching the conditions on its licence. The Sub-Committee's role was to consider what was appropriate and proportionate for the licensing objectives. In considering what was appropriate and proportionate for the promotion of the licensing objectives, the Sub-Committee agreed with the submissions made by the other parties that the breaches of conditions were highly relevant when considering this issue.
51. First, the Sub-Committee accepted the submissions made by the MPS that the way in which the Premises had been run as a nightclub in breach of its conditions had contributed to the trigger incident. The Sub-Committee placed great weight on the submissions made by the MPS and the Licensing Authority that nightclubs were a higher risk premises than other types of premises such as private members' clubs. An incident of serious violence was more likely to occur at a nightclub where the Premises had less control over who was entering than at a members' club. This was supported by the fact that on 15 July the DPS had originally had a 'bad feeling' about the event and the atmosphere at approximately 01:00. It would have been less likely for the clientele to be difficult to manage and for there to have been a 'bad atmosphere' if the patrons had been members of the club who were known to the Premises rather than any member of the public.
52. Second, the conditions on the licence had been imposed in order to promote the licensing objectives. The conditions were designed to ensure that the Premises operated in a way that was less likely to adversely affect the licensing objectives by encouraging the consumption of food, reducing vertical drinking and ensuring a curated membership. The variation application in 2017 had been granted on the basis that this would be a low risk, low impact Premises, and that was inconsistent with the way in which the Premises was now being run. Breaching the conditions on the licence had therefore undermined the licensing objectives.
53. Third, the repeated and consistent breaches of the conditions on the licence raised serious concerns as to the ability of the PLH to operate the Premises in a way that would promote the licensing objectives. The evidence presented (which was not disputed by the PLH) was that the current operators had only been in place for approximately eight months. In that time there had been four DPS's, there had already been one extremely serious incident and there had been other more minor incidents highlighted by the police. In light of this and the consistent breaches of the licence conditions, the Sub-Committee did not have confidence that the PLH would be able to operate in a way that would promote the licensing objectives.

54. The Sub-Committee's conclusions as to the ability of the PLH to promote the licensing objectives were supported by the reaction of the PLH to the Application itself. The PLH had not cooperated fully with the Police but had instead refused to allow the Police to view CCTV from the Premises from before the trigger incident itself. At the meeting on 16 July the police had requested to view CCTV footage from within the past 31 days (namely 6 July), and after playing some footage which revealed breaches of conditions the PLH did not allow the Police to view any more footage on the grounds of GDPR. The Sub-Committee agreed with the submissions made by the Police, the Licensing Authority and the Landlord that the PLH had acted in breach of condition 21 by not allowing police officers to view CCTV immediately within the past 31 days upon request. The condition was lawful and must be complied with unless and until set aside.
55. The Sub-Committee considered that the request made by the police at the Premises was reasonable and targeted. It was not a 'fishing expedition', and the request was made for a legitimate reason, namely to ascertain whether the PLH was operating in accordance with its premises licence. For the reasons given above, the question of whether the PLH was operating in accordance with its licence was relevant to Police's investigations, and the Police had a legitimate interest in the data requested. It would be impossible for the Police or the Licensing Authority to find out if licence holders were complying with the conditions on their licence if licence holders were able to refuse reasonable and targeted requests on the grounds of GDPR. Finally, the Sub-Committee noted that the PLH had also so far failed to provide viewable downloads of the CCTV requested, as required by condition 22.
56. Overall, the Sub-Committee therefore considered that it was appropriate and proportionate for the promotion of the licensing objectives to revoke the licence. The evidence presented demonstrated that the PLH had operated the Premises in a way that was inconsistent with the licence, and the Sub-Committee for the reasons above did not accept that these breaches were separate from or irrelevant to the trigger incident. The Sub-Committee did not consider that reducing the hours to 03:00 as suggested would address the causes of concern, as the trigger incident had occurred at 02:20. Given the history of repeated non-compliance, the Sub-Committee also did not consider that imposing further conditions or amending any conditions on the licence would promote the licensing objectives, as the Sub-Committee lacked faith that the PLH would operate in accordance with any new conditions imposed.
57. The Sub-Committee also considered it appropriate and proportionate for the promotion of the licensing objectives for the interim step of suspension to be maintained for all the reasons given above. The Sub-Committee considered that if the Premises were allowed to reopen then this would undermine the licensing objectives, and no reduction in hours or change to conditions would be sufficient to address the Sub-Committee's fundamental concerns.
58. Being mindful of the Secretary of State's Guidance and having carefully considered the review application and the representations made by all the Parties, both orally and in writing, the Sub-Committee therefore decided that it was, necessary, appropriate and proportionate in order to promote the licensing

objectives, in particular the prevention of crime and disorder objective, to take the following steps:

- i) To revoke the licence.
- ii) To maintain the interim step of suspension.

The Applicant for the Review, the Premises Licence Holder and any Party who has made a relevant representation to the review application may appeal against the final decision within 21 days of receiving this Decision. The Applicant for the Review and the Premises Licence Holder may appeal against the interim step of suspension within 21 days of receiving this Decision. Any appeal against the interim steps decision must be heard by the magistrates' court within the period of 28 days beginning with the day on which the appellant commenced the appeal.

The Licensing Sub-Committee
12 August 2024

The Meeting ended at 2.02 pm