

**Meeting of the Licensing Sub-Committee 4
Tuesday 20th July, 2021 at 10.00am**

In the Council Chamber at the Council House, Priory Road, Dudley

**Agenda - Public Session
(Meeting open to the public and press)**

1. Apologies for absence.
2. To report the appointment of any substitute Members for this meeting of the Sub-Committee.
3. To receive any declarations of interest under the Members' Code of Conduct.
4. To confirm and sign the minutes of the meeting held on 29th January, 2019, as a correct record.

The following application is to be considered under the provisions of the Gambling Act 2005:-

5. Application for a Licensed Premises Gaming Machine Permit – The Mayfair Club, Unit 4 Wedgbury Way, Brierley Hill (Pages 1 - 4)
6. To consider any questions from Members to the Chair where two clear days notice has been given to the Monitoring Officer (Council Procedure Rule 11.8).



Chief Executive

Dated: 12th July, 2021

Distribution:

Councillor J Clinton (Chair)
Councillors R Burston and J Cowell



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Submitting Apologies for Absence

- Elected Members can submit apologies by contacting Democratic Services (see our contact details below). Members wishing to appoint a substitute should notify Democratic Services as soon as possible in advance of the meeting. Any substitute Members must be eligible to serve on the meeting in question (for example, he/she must have received the training required by the Council).

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Licensing Sub-Committee Procedure

- Chair to welcome parties and introduce Members and Officers
- Establish who the parties are and any representatives
- Clarification of any points of fact and indicate what, if any, evidence may be submitted and read
- Presenting Officer of the Local Authority or Solicitor to present the report to the Sub-Committee
- Relevant Authority to present their evidence and the Chair will then ask the following if any have any questions for the Officer:-
 - Objectors/or their representative
 - Applicant or representative
 - Sub-Committee Members and Legal Advisor
- Objectors or their representative/nominated person to present his/her case (including Ward Members)
 - Any witnesses to be called
 - Each witness to be questioned through the Chair in the following order:-
 - Representative of objectors (if present), if no representative, the objectors
- The Chair will then ask the following if they have any questions for the representative or the objectors:-
 - Presenting Officer Local Authority (or Solicitor)
 - Applicant or Representative
 - Sub-Committee Members and Legal Advisor
- Applicant or representative to introduce his or her case
 - Any witnesses for the applicant to be called
 - Each witness to be questioned through the Chair in the following order:-
 - Representative of Applicant (if present)
 - Presenting Officer Local Authority/Solicitor
 - Relevant Authority
 - Objector or Representative
 - Sub-Committee Members and Legal Advisor
- Presenting Officer Local Authority/Solicitor to sum up.
- Objectors/Representative to sum up.



- Applicant or Representative to sum up (must make final comments)
- Legal Advisor indicates to parties details of legal advice to be given to Sub-Committee
- Parties asked if they have had a fair hearing
- All parties, together with any members of the public to withdraw
- Sub-Committee to make their decision
- All parties invited to return and the Chair reads out the decision and the reasons for the decision.



Minutes of the Licensing Sub-Committee 4

Tuesday 29th January, 2019 at 10.00 am
In the Council Chamber, The Council House, Dudley

Present:-

Councillor P Miller (Chair)
Councillors C Perks and S Waltho

Officers:-

B Hughes – Assistant Team Manager Waste and Fleet Care (Place Directorate);
R Clark – Solicitor and L Jury – Democratic Services Officer (Chief Executive's Directorate).

8 **Declarations of Interest**

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

9 **Minutes**

Resolved

That the minutes of the meeting of the Sub-Committee held on 28th August, 2018, be approved as a correct record and signed.

10 **Application for a Licensed Premises Gaming Machine Permit – The Gigmill, South Road, Stourbridge**

A report of the Strategic Director Place was submitted on an application for the grant of a Licensed Premises Gaming Machine Permit for two Category C machines and one Category D machine, in respect of the premises known as The Gigmill, South Road, Stourbridge, which was considered by the Sub-Committee under the Gambling Act 2005.

The following persons were in attendance at the meeting in respect of this application:-

Mr C Grunert – John Gaunt and Partners Licensing Solicitors on behalf of the premises licence holder – Marston's PLC.
Ms Wild - Designated Premises Supervisor

Following introductions, the Assistant Team Manager Waste and Fleet Care presented the report on behalf of the Council, and Mr Grunert responded to queries from Members. The positioning of the machines were clarified, confirming that the machines would be visible from the bar in order for the bar staff to be able to supervise the use of the machines. The type of Category D machine was clarified as a 'crane grab' machine, noting that the prizes consisted of a gift and were not cash prizes.

The parties 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 outlined the decision.

Resolved

That, following consideration of the information contained in the report submitted, a Licensed Premises Gaming Machine Permit for two Category C machines and one Category D machine, be granted, subject to the machines being positioned so they are visible from the bar to enable supervision and monitoring by staff.

11 **Application for Review of a Premises Licence – Londis, 202 High Street, Lye, Stourbridge**

A report of the Strategic Director Place was submitted on an application for the review of the premises licence in respect of Londis, 202 High Street, Lye, Stourbridge.

The following persons were in attendance at the meeting:

R Jones – Trading Standards
A Babbs – Licensing Enforcement Officer
W Hilary-Patten - Public Health
D Jenkins – West Midlands Police

Following introductions, the Assistant Manager Waste and Fleet Care presented the report on behalf of the Council.

As the applicant was not in attendance, the Sub-Committee were advised to hear representations from the officers at the meeting to establish the attempts that had been made to contact the applicant (Mr Rafi) to invite him to attend this Sub-Committee. The Sub-Committee agreed to hear the evidence to enable them to decide on whether to continue with the hearing in the absence of the applicant or to defer the hearing to a later date.

The Licensing Enforcement Officer confirmed to the Sub-Committee the numerous attempts that had been made to contact Mr Rafi including two emails that had been sent (dated 14th and 17th January 2019) that had not been replied to and a letter that had been sent to Mr Rafi's current address which had been returned and marked 'addressee gone away'. It was confirmed that notice had been served on Mr Rafi's current accountants who confirmed that they were also unable to contact him. It was noted that the premises known as Londis were no longer trading as the shutters to the premises were fully closed. Telephone calls had also been made and messages left but no return calls had been received.

The Trading Standards Officer confirmed that on 3rd January, 2019 he had spoken to a man on a mobile phone who had confirmed that he was Mr Rafi and had agreed to attend an interview under caution on 14th January, 2019. The Officer called Mr Rafi on the 13th January 2019 to confirm his attendance but Mr Rafi reported that he was unable to attend the meeting due to a family crisis so a further meeting was arranged for 22nd January, 2019. Mr Rafi was called on the morning of 22nd January and when Mr Rafi answered the call he stated that he was unable to hear the Officer and terminated the call. Mr Rafi was immediately called back on his mobile several times but it was not answered. It was noted that additional papers had been sent to Mr Rafi via recorded delivery to all three addresses that were registered to him. It was also confirmed that Mr Rafi was the Designated Premises Licence Holder (DPS) and a Director of KAS Convenience Stores Ltd, the Premises Licence Holder.

Ms D Jenkins, West Midlands Police, confirmed that they had also tried to contact Mr Rafi, in relation to the crime of illegally abstracting electricity, on the telephone number they held for Mr Rafi, but it was no longer connected and the case had now been submitted to the Crown Prosecution Service (CPS).

Arising from the information that had been presented, the Sub-Committee were satisfied that all reasonable efforts had been made to contact Mr Rafi to invite him to attend the meeting and agreed to proceed in his absence.

The Trading Standards Officer presented the facts of the case relating to the prevention of crime and disorder and the protection of children from harm under the Licensing Act 2003, and outlined the reasons that had resulted in the application being made for a review of the premises licence.

It was reported that on 25th October, 2018, during a series of underage 'test purchase' exercises that were being carried out across the Borough, a 16 year old test purchaser was sold alcohol, namely a 75cl bottle of Echo Falls California (Red Berries & Plum) Wine with an ABV of 12.5%, contrary to Section 146(1) of the Licensing Act 2003 and in direct contravention of the licensing objectives.

The Sub-Committee heard evidence relating to the selling of alcohol by an employee of the store to an under-aged person. The employee was subsequently issued with a fixed penalty notice.

On examination of the store by a Trading Standards Officer who had witnessed the sale of alcohol, it was confirmed that although 'Challenge 25' and 'Statutory Tobacco' notices were displayed at the store, the employee was unable to locate a current Refusals Register. A copy of the Premises Licence was also not on display.

In continuing, the Trading Standards Officer referred to the evidence in relation to the attempts made by them to contact Mr Rafi with a view to interviewing him under caution and his refusal to attend. Having regards to the evidence presented by colleagues and the history related to the premises, as set out in the report, Trading Standards recommended that the Sub-Committee consider revoking the licence or suspending the licence for 3 months with a view to securing an action plan, as set out in the additional documentation. The action plan related to the reinstallation of Closed Circuit Television (CCTV), the refusal register policy to be put in place and appropriate training to be provided to all staff in relation to the selling of alcohol. It was noted that these were existing conditions of the licence that were not being complied with.

The West Midlands Police representative then presented representations on behalf of the Police and in doing so confirmed that the sale of alcohol to a child was in direct contravention of the Licensing Objectives and the fact that the recent failed test purchase was to a 16 year old was of great concern. Furthermore, they were contacted by British Gas Revenue Protection Officers on 3rd December, 2018 who reported that an abstraction of electricity had taken place after the supply to the premises had been disconnected for non-payment of a bill in September 2018 amounting to £6995.87 together with an unpaid bill prior to the disconnection, totalling £93,944.80. This offence had been submitted to the Crown Prosecution Service for their decision. It was commented that should the Sub-Committee be minded not to suspend or revoke the premises licence, West Midlands Police fully supported the proposal from Trading Standards for additional robust conditions to be placed on the premises.

The representative for Public Health reported on the impacts of the health of adolescents as a consequence of alcohol consumption. It was noted that the sale of alcohol to a young person was very serious and Public Health supported the proposal to revoke, suspend or impose additional conditions on the licence on the grounds of protecting children from harm.

The Licensing Enforcement Officer then presented the representations on behalf of the Council, and in doing so, reported that an enquiry with Companies House had confirmed that Mr Rafi had been an active Director of KAS Convenience Stores since 22nd December, 2008.

On 29th November, 2013 Trading Standards conducted a test purchase at the premises known as Londis, High Street, Lye and during this exercise, a 15 year old male child purchased a bottle of cider where no age or identification was asked for by the seller to the child resulting in a sale being made. As a result of this, a review of the Premises Licence was conducted where it had been established that two of the licensing objectives were not being complied with.

On 6th December 2013, a variation of DPS was confirmed on the Premises Licence in the name of Mr Kasif Rafi, the present DPS, and the licence was issued by Wolverhampton City Council.

The subsequent Sub-Committee hearing/decision took place on 11th March, 2014 and nine separate licence conditions were imposed on the licence, a copy of which was attached to the report together with a copy of the minutes of the Sub-Committee.

On 28th November, 2018, the Licensing Department and Trading Standards conducted an un-announced compliance visit on the premises and during this visit, it was discovered that none of the nine licence conditions were being adhered to. The Store Manager, the sole member of staff on the premises at the time of the compliance visit, confirmed that the owner of the business was Mr Rafi who had owned it for the past five years. The Store Manager confirmed that she had not received any training concerning under age sales during this time. It was also reported that a make shift refusals register was produced and it was noted that the last entry had been September 2016.

On the 4th December, 2018, a letter was sent to Mr Rafi and all the Directors of KAS Convenience Stores at the address held by the authority, which outlined the compliance visit on 28th November, 2018 and the breach of all the licence conditions. Mr Rafi was invited to contact the Licensing Department but the letter was returned to sender marked 'Addressee gone away'. On 18th December, 2018 a further letter was sent to Mr Rafi, posted through the letter box at the Londis Store. To date, a reply had not been received.

As a result of both visits, the underage sale and non-compliance with the Licensing Conditions, a review of the licence was requested by Trading Standards. The Licensing Authority was also aware that there is an on-going criminal investigation being conducted as reported by the West Midlands Police representative.

In concluding, it was noted that the premises were no longer trading and it was requested that consideration be given to revoke the Premises Licence or suspend it for up to three months together with the removal of Mr Rafi as the DPS.

In addressing concerns raised by members with regards to CCTV coverage in the store, Trading Standards confirmed that CCTV should be installed, working and retained. However, during the visit on 25th October, 2018, when asked to see the CCTV footage, the employee took the officers to the back of the store where the CCTV was kept but the metal case that housed the hard-drive was empty with wires protruding where the hard-drive should be. The employee confirmed that Mr Rafi had taken the hard-drive away a few weeks previously. When Mr Rafi was contacted about the CCTV, he stated that the CCTV was working and he was unable to confirm that he was the DPS when questioned. There were still cameras in the store but no hard-drive which breaches the licencing conditions.

In responding to the question relating to the illegal extraction of electricity referred to in the report, the Police reported that British Gas had confirmed that they had disconnected the electricity supply in September 2018. Having been notified that the supply had been reconnected, they visited the premises in December 2018 and disconnected the supply again and noted that nearly £7000 electricity had been used in two months. Mr Rafi had stated that British Gas were not his suppliers but British Gas had confirmed that they were the only electricity supplier to the premises. British Gas had confirmed that there was some suggestion of fraud relating to the bill but no further information had been disclosed.

Referring to the test purchase exercise that had taken place on 25th October, 2018, the Principal Solicitor sought clarification on the procedure relating to test purchases given the purchaser had lied about his age when challenged by the employee. The Sub-Committee understood that young people when primed and trained to take part in the exercise were told to be truthful when challenged about their age. In responding, the Trading Standards Officer stated that it was accepted as practice around local authorities for the test purchaser to be untruthful about their age when questioned. The brief given to the volunteers was then explained in detail and it was pointed out when purchasers were challenged about their date of birth or asked for identification, they must give their real date of birth and not use false identification. The rationale behind this process was referred to in that the Attorney General stated that in reality anyone underage going into a licenced premises, would not give their real date of birth, therefore, the Attorney General's view was that it was acceptable that Trading Standards and volunteers follow suit.

The Principal Solicitor commented that if this was a change in policy, Sub-Committee Members should be informed and trained accordingly.

The parties 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 outlined the decision.

Resolved

That, the Premises Licence in respect of Londis, 202 High Street, Lye, Stourbridge, be revoked for the following reasons:

In the light of the recent test purchase exercise:

- Condition 3 regarding the maintenance and weekly review of the refusals register has been breached, as has condition 4 relating to CCTV.
- Condition 6 appears to have been breached in that the Store Manager has admitted that she had had no relevant training in the last five years, and therefore condition 7 has also been breached.
- It is of huge concern that Mr. Rafi was not able to confirm that he was the DPS for the premises and that he did not tell the truth to the Council Officer about the CCTV being in place as at 25th October 2018.
- The Sub-Committee finds that the safety of children has not been safeguarded by this underage sale, and that it is highly likely that electricity has been extracted unlawfully and therefore the licensing objectives have not been upheld.
- The Sub-Committee has considered imposing further conditions on the license and removing the DPS, but in the light of the significant breaches of the current conditions, and in the light of the actions of the DPS including his dishonesty, the Sub-Committee considers that these steps are insufficient to address the concerns. The premises licence holder has not attended or even communicated with the Sub-Committee or relevant agencies about the hearing today.

The Sub-Committee therefore revokes the premises license.

Mr Rafi will be informed of his right of appeal.

The meeting ended at 11.30 am.

CHAIR

Meeting of the Licensing Sub-Committee 4 – 20th July 2021

Report of the Acting Director of Public Realm

Application for a Licensed Premises Gaming Machine Permit

The Mayfair Club, Unit 4 Wedgbury Way, Brierley Hill. DY5 3JT

Purpose

1. To consider the application for the grant of a Licensed Premises Gaming Machine permit for 4 category C machines, in respect of the premises known as The Mayfair Club, Unit 4 Wedgbury Way, Brierley Hill, DY5 3JT.

Recommendation

2. That the Committee determine the application for the grant of a permit for 4 category C machines in respect of the premises known as The Mayfair Club.

Background

3. The Mayfair Club, holds a current premises licence for the following: -

E: Live Music	Monday - Sunday	09:00	02:00
F: Recorded Music	Monday - Sunday	09:00	02:00
I: Late Night Refreshment	Monday - Sunday	23:00	02:00
J: Supply of Alcohol	Monday - Sunday	10:00	02:00



4. The Local Authority licensing policy states as follows:-

- If authorisation is sought for more than two category C or D machines the applicant will be required to attend a hearing to support the application. All plans submitted with applications for premises licences must set out the siting of each category C or D machine.
- Parliament has placed no restrictions on the age at which category D machines may be played (other than those in amusements arcades). It is, therefore, a matter for the discretion of the premises licence holder and any adults accompanying the children concerned whether they are entitled to play such machines. In the case of premises used exclusively or primarily for the consumption of alcohol, all children under the age of 16 will only be permitted entry to the premises if accompanied by adults. All such machines must be sited in accordance with the Gaming Act.
- There is unlikely to be the need for a hearing where the application is for renewal of the existing permit for more than two machines or where the application is for the grant of a Licensed Premises Gaming Machine Permit at premises which already have an existing permit for more than two machines, and where that number is not increased.

5. On 28th June 2021 (date full application and fee received), Mr Dominic Rossookh made application on behalf of The Mayfair Club Limited for the grant of a licensed premises Gaming Machine Permit for 4 category C machines. The application together with the site plan identifying the position of all 4 machines has been forwarded to Committee Members and Interested Parties.

6. The current licence holder of the premises licence is The Mayfair Club Ltd, the premises currently hold no notifications or permits for category C or D machines.

Finance

7. There are no financial implications.

Law

8. Pursuant to part 12, section 283 of the Gambling Act 2005 the Council can grant a licensed premises gaming machine permits.

9. Pursuant to schedule 13 4(2) on considering an application for a permit the Licensing Authority shall:-

- (a) grant an application
- (b) refuse the application, or



- (c) grant it in respect of:-
 - (i) a smaller number of machines than that specified in the application
 - (ii) a different category of machines from that specified in the application, or
 - (iii) both

10. Pursuant to schedule 13, 5

- (1) A Licensing Authority may not attach conditions to a permit
- (2) As soon as is reasonably practicable after granting an application a Licensing Authority shall issue a permit to the applicant.

11. Pursuant to schedule 13, 5(3) as soon as it reasonably practicable after refusing an application a Licensing Authority shall notify the applicant of:-

- (a) the refusal, and
- (b) the reasons for it

12. In pursuance of schedule 13 6 (2) a Licensing Authority may not refuse an application, or grant an application in respect of a different category or smaller number of gaming than that specified in the application, unless they have

- (a) notified the applicant of their intention to refuse or grant the application in respect of
 - (i) a smaller number of machines than that specified in the application
 - (ii) a different category of machines than that specified in the application or
 - (iii) both, and
- (b) given the applicant an opportunity to make representations

13. In pursuance of schedule 13 6 (3) a Licensing Authority can satisfy the opportunity to make representations by giving the applicant an opportunity to make:-

- (a) oral representations
- (b) written representations, or



(c) both

14. In pursuance of schedule 13 21 (1) the applicant for a holder of a permit may appeal to the Magistrates Court if the Licensing Authority:-
- (a) reject an application for a permit
 - (b) grant an application for a permit in respect of a smaller number of machines than that specified in the application or a different category of machines from that specified in the application.

Risk Management

15. There are no risk management implications.

Equality Impact

16. This report takes into account the Council's policy on equal opportunities.
17. The licensing of premises and individuals will impact on children and young people through their attendance at licensed premises.
18. There has been no consultation or involvement of children and young people in developing these proposals.

Human Resources/Organisational Development

19. There are no organisational development/transformation implications.

Commercial/Procurement

20. There are no commercial/procurement implications.

Council Priorities

21. This application falls within the Council's responsibility for gambling which has a direct link to the Council's key corporate priority that safety matters.



Acting Director of Public Realm

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