



Walsall Council

REPORT OF THE DIRECTOR OF PUBLIC HEALTH

LICENSING SUB - COMMITTEE

16 MARCH 2023

APPLICATION FOR A PREMISES LICENCE SUMMARY REVIEW – SECTION 53B OF THE LICENSING ACT 2003 - INTERIM STEPS PENDING REVIEW

**The Colliseum Nightclub
(aka Valesah's Night Club & Savannah's Gentlemen's Club)
Corner of 23 Bradford Street and 17 Newport Street
Walsall
WS1 1RZ**

1.0 Summary of Report

- 1.1 For members of the licensing sub committee to consider if interim steps are necessary pending a review hearing of the premises licence to be held in respect of The Colliseum Nightclub, Corner of 23 Bradford Street and 17 Newport Street, Walsall, WS1 1RZ.
- 1.2 The summary review application is made by the Chief Officer of West Midlands Police, a responsible authority under the terms of the Licensing Act 2003.
- 1.3 The decision to impose interim steps cannot be determined under officer delegated authority.

2.0 Recommendations

- 2.1 That the licensing sub committee having regard to the submitted summary review certificate, application and any representations, must determine what interim steps, if any, are considered necessary for the promotion of the licensing objectives pending the determination of the review.

The interim steps available to the sub-committee to impose are:

- The modification of the conditions of the premises licence;
- The exclusion of the sale of alcohol by retail from the scope of the licence;
- The removal of the designated premises supervisor from the licence;
- The suspension of the licence.

The sub-committee may determine to impose none, or one or more of the above steps.

3.0 Background information

- 3.1 The current premises licence which includes the operating schedule and premises plan is attached at **Appendix 1**. The premises licence holder is Capital Leisure.
- 3.2 A street map of the locality is given at **Appendix 2**.
- 3.3 The Chief Superintendent of West Midlands Police has requested a premises licence summary review, on the grounds that the premises is associated with both serious crime and serious disorder. He states that the normal procedure of calling a premises licence review would be insufficient in comparison with the severity of the crime and serious management failings at the premises concerned.
- 3.4 The summary review certificate, is formal certification which both identifies the premises and provides a statement from the Chief Superintendent outlining the reasons he believes the premises is associated with both serious crime and serious disorder, was received on 14 March 2023 and is given at **Appendix 3**.
- 3.5 The certificate was accompanied by an application for the summary review of the premises licence summary review application and is given at **Appendix 4**. This application details amongst other things:
- Assault and disorder reported to the Police shortly after 05:00hrs on Saturday 11.03.23.
 - Disorder taking place inside the premises where a male was stabbed with a bladed instrument, tragically, resulting in his death at the premises shortly thereafter.
 - An allegation of failure to comply with a condition of licence, namely that: "Routine searches will take place to ensure that no illegal substances or weapons are brought in to the club".
 - This venue has historic association with gang nominals (ie persons believed to be gang members) and that some gang

nominals were present at the premises on the night of the incident.

3.5 The application attaches a statement from PC Ben Reader (dated 14 March 2023) and subsequently a statement from Jennifer Mellor (dated 15 March 2023). The police have requested that these witness statements and further information is not disclosed to the public and that hearings are held in private session. The statements are attached at **Appendix 5. Exempt Information under Paragraph 7 of Part I of Schedule 12A of the Local Government Act 1972 (as amended)**.

3.6 The exclusion of the public is a matter for this licensing subcommittee and will be determined as a preliminary issue at the hearing in accordance with Regulation 14(2) of the Hearing Regulations 2005.

Regulation 14(2) The licensing authority may exclude the public from all or part of a hearing where it considers that the public interest in so doing outweighs the public interest in the hearing, of that part of the hearing, taking place in public.

3.7 The application along with the certificate and the two witness statements have been served on the premises licence holder.

3.8 The application makes a request for the immediate suspension of the premises licence as an interim step as the police are of the view that there are genuine concerns for public safety and the crime and disorder objective if this premises were to remain open.

3.9 In accordance with prescribed regulation, within 48 hours following the receipt of the summary review certificate and application the Licensing Authority must consider imposing interim steps on the premises licence.

4.0 Resource Considerations.

4.1 Financial:

If aggrieved by the decision at the final review hearing both the police and the premises licence holder may apply to the Magistrates' Court for an appeal hearing. The Licensing Authority would have to bear the costs of defending such an appeal.

4.2 Legal:

The Licensing Act 2003, under sections 53A – D, sets out the requirements of the summary review process.

A summary review application may be made by the Chief Officer of Police provided a senior member of the police force believes that the

licensed premises is associated with serious crime, or serious disorder, or both.

Guidance issued under section 182 of the Licensing Act 2003 provides:

The tests to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:

- (a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or
- (b) Involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Following receipt of the summary review certificate & application the Licensing Authority must determine, with 48 hours, whether interim steps are necessary to promote the prevention of serious crime, serious disorder, or both.

The interim steps which may be imposed by the Licensing Authority are

- The modification of the conditions of the premises licence;
- The exclusion of the sale of alcohol by retail from the scope of the licence;
- The removal of the designated premises supervisor from the licence; and
- The suspension of the licence

In reaching its decision the Licensing Authority must have due regard to the Licensing Act 2003, statutory guidance issued under s182 of the Act and the Licensing Authority's own statement of licensing policy.

The decision taken by the Licensing Authority will have immediate effect or as soon after it as the Licensing Authority directs.

Once a decision has been reached the Licensing Authority must give immediate notice to both the premises licence holder and the chief officer of police of the decision and the reasons for it.

The premises licence holder may make representations against any interim steps imposed on the licence. On receipt of such representations the Licensing Authority must, within 48 hours, hold a hearing to consider those representations.

The Licensing Authority must, within 28 days of receipt of the premises licence summary review certificate and application hold a review hearing where any interim steps will be reviewed.

4.3 **Section 182 Guidance**

12.2 - The powers apply only where a premises licence authorises the sale of alcohol. They do not apply in respect of other premises licences, or to premises operating under a club premises certificate. The powers are aimed at tackling serious crime and serious disorder, in particular (but not exclusively) the use of guns and knives. The powers complement the general procedures in the 2003 Act for tackling crime and disorder associated with licensed premises and should be reserved for the most serious matters which cannot be adequately or otherwise redressed unless urgent action is taken. Separate powers in the Anti-social Behaviour, Crime and Policing Act 2014 provide for the instant closure of premises by the police in some circumstances (in essence, disorder or nuisance). The consequent review of premises licences by the licensing authority is provided for by section 167 of the Licensing Act 2003.

12.5 - The tests to determine the kinds of conduct that amount to serious crime are set out in section 81(2) and (3) of the Regulation of Investigatory Powers Act 2000. Those tests are that the conduct:

- (a) constitutes an offence for which a person who is 21 years of age or over with no previous convictions could reasonably be expected to be sentenced to imprisonment for 3 years or more; or
- (b) Involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose.

12.6 - There is no definitive list of behaviours that constitute serious disorder, and the matter is one for judgment by the local police. The phrase should be given its plain, ordinary meaning, as is the case under section 12 of the Public Order Act 1986 in which it is also used.

12.7 - In deciding whether to sign a certificate, the senior officer should consider the following (as applicable):

- The track record of the licensed premises concerned and whether the police have previously had cause to give advice about serious criminal or disorderly conduct (or the likelihood of such conduct) attributable to activities taking place on the premises. It is not expected that this power will be used as a first response to a problem and summary reviews triggered by a single incident are likely to be the exception.
- The nature of the likely crime and/or disorder – is the potential incident sufficiently serious to warrant using this power?
- Should an alternative power be deployed? Is the incident sufficiently serious to warrant use of the powers in Part 4, Chapter 3 of the Anti-social Behaviour, Crime and Policing Act 2014, or section 38 of and Schedule 6 to the Immigration Act 2016, to close the premises? Or could the police trigger a standard licence review to address the problem? Alternatively, could expedited reviews be used in conjunction with other powers (for example, modifying licence conditions following the use of a closure power)?
- What added value will use of the expedited process bring? How would any interim steps that the licensing authority might take effectively address the problem?

12.8 - It is recommended that these points are addressed in the chief officer's application to the licensing authority. In particular, it is important to explain why other powers or actions are not considered to be appropriate. It is up to the police to decide whether to include this information in the certificate or in section 4 of the application for summary review. The police will also have an opportunity later to make representations in relation to the full review. In appropriate circumstances the police might want to make representations to the licensing authority suggesting that they modify the conditions of the premises licence to require searches of customers for offensive weapons upon entry. Under the powers in sections 53A to 53D, this could be done on an interim basis pending a full hearing of the issues within the prescribed 28-day timeframe or for an appropriate period determined by the licensing authority.

12.12 - The determination of interim steps is not a matter that may be delegated to an officer of the licensing authority. The relevant decisions are likely to be taken by a licensing sub-committee rather than the full committee. It should also be noted that there is no requirement for a formal hearing in order to take interim steps. This means that the relevant sub committee members can communicate by telephone or other remote means in order to reach a decision. A written record should always be produced as soon as possible after a decision is reached.

12.13 - The interim steps that the licensing authority must consider taking are:

- the modification of the conditions of the premises licence;
- the exclusion of the sale of alcohol by retail from the scope of the licence;
- the removal of the designated premises supervisor from the licence; and
- the suspension of the licence.

Modification of the conditions of the premises licence can include the alteration or modification of existing conditions or addition of any new conditions, including those that restrict the times at which licensable activities authorised by the licence can take place.

12.16 - In addition, very careful consideration needs to be given to interim steps which would require significant cost or permanent or semi-permanent adjustments to premises which would be difficult to remove if the outcome of the subsequent full review was to withdraw or modify those steps. For example, making structural changes, installing additional CCTV or replacing all glassware with safer alternatives may be valid steps, but might be disproportionate if they are not likely to be deemed necessary following the full review (or any subsequent appeal). The focus for interim steps should be on the immediate measures that are necessary to prevent serious crime or serious disorder occurring.

4.4 **Staffing:** Nothing arising from this report.

5.0 **Citizen impact**

5.1 None arising from this report.

6.0 Community Safety.

6.1 Is addressed through the review hearing process which is designed to promote the prevention of serious crime, serious disorder, or both and safeguard the communities of Walsall.

7.0 Environmental impact

7.1 None arising from this report.

8.0 Performance and risk management issues

8.1 None arising from this report.

9.0 Equality implications

9.1 None arising from this report.

10.0 Consultation

10.1 Carried out in accordance with prescribed regulation.

11.0 Contact Officer

11.1 Muhammed Sayful Alom – Sayful.alom@walsall.gov.uk

12.0 Appendices

12.1 Appendix 1 – Current premises licence.
Appendix 2 – Street map of the locality.
Appendix 3 – Summary review certificate
Appendix 4 – Summary review application.
Appendix 5 – Police Statement - **Exempt Information under Paragraph 7 of Part I of Schedule 12A of the Local Government Act 1972) (as amended).**