

# Merton Council

## Licensing Sub-Committee

### Membership

#### Councillors:

Caroline Charles

Jil Hall

Michael Paterson

A meeting of the Licensing Sub-Committee will be held on:

**Date: 20 December 2022**

**Time: 11.30 am**

**Venue: These are virtual meetings and therefore not held in a physical location**

#### Agenda for this meeting

- 1 Appointment of Chair
- 2 Apologies for Absence
- 3 Declarations of Pecuniary Interest
- 4 Exclusion of the Public

To RESOLVE that the public are excluded from the meeting during consideration of the following item on the grounds that it is exempt from disclosure for the reasons stated in the report.

- 5 CMYK, 105-109 The Broadway, SW19 1QG 1 - 68

#### Note on declarations of interest

Members are advised to declare any Disclosable Pecuniary Interest in any matter to be considered at the meeting. If a pecuniary interest is declared they should withdraw from the meeting room during the whole of the consideration of that matter and must not participate in any vote on that matter. For further advice please speak with the Managing Director, South London Legal Partnership.

This is a public meeting and attendance by the public is encouraged and welcomed. For more information about the agenda and the licensing decision making process contact [democratic.services@merton.gov.uk](mailto:democratic.services@merton.gov.uk) or telephone 020 8545 3357.

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## **Procedure to be followed at Licensing Hearing**

1. The Chair will welcome all parties and all present will be introduced/introduce themselves
2. The Chair will confirm the sub-committee hearing procedures, a copy of which was included in the notice and agenda packs sent to all parties.
3. The Chair will ask the Legal Adviser to inform those present that the sub-committee had a briefing prior to the hearing to confirm the procedure and for clarification on any aspect of the application.
4. The Chair will ask Legal Adviser to confirm the process for questioning and whether there had been any requests for adjournments.
5. The Chair will ask the Licensing Officer if there are any technical issues they feel should be brought to their attention i.e. withdrawal of objector/agreed conditions (Note: If all objections are withdrawn then the Sub-Committee may go straight to point 14.  
If all conditions are agreed by all parties then the Sub-Committee may go straight to point 14)
6. The Applicant will present their case. Questions can then be asked of the Applicant by the Licensee, the interested parties and members of the Sub-Committee.
7. Presentation by any interested party. Questions can then be asked of the interested party by the Applicant, the Licensee and members of the Sub-Committee.
8. Presentation and response by the Licensee. Questions can then be asked of the Licensee by the Applicant, the interested parties, and members of the Sub-Committee.
9. The Chair will ask the Licensing Officer for any comments/ clarifications
10. The Chair will ask the Legal Adviser for any comments/clarifications
11. The Chair will invite closing statements by the interested parties
12. The Chair will invite closing statements by the Licensee
13. The Chair will invite closing statements by the Applicant
14. The Chair will announce that the Sub-Committee are retiring for private session. The Chair will inform those present that all parties should receive a written copy of the decision notice within 5 working days. The Legal Officer and Clerk will be invited to also retire.

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## Licensing Sub-Committee Report

Subject of hearing: **CMYK, 105-109 The Broadway, Wimbledon, SW19 1QG – Review Hearing following imposition of Interim Steps**

Date: **20 December 2022**

Time: **11.30am**

Venue: **Zoom**

- 1. Special Policy Area (premises licences and club certificates)**
  - 1.1 The premises are not in the special policy area.
- 2. Type of hearing and powers of the sub-committee**
  - 2.1 The sub-committee is required to:
    - a) Under Section 53C, determine the application by taking such of the steps set out below as it considers appropriate for the promotion of the licensing objectives.
    - b) Under Section 53D, consider any interim steps that have been taken, consider any relevant representations and whether the interim steps are appropriate for the promotion of the licensing objectives, and determine whether to withdraw or modify the interim steps
  - 2.2 In making their determination the sub-committee must have regard to the Licensing Act 2003, the licensing objectives, guidance issued by the Secretary of State and Merton's Licensing Policy.
  - 2.3 Review of premises licence: s53C
    - (i) To modify the conditions of the licence
    - (ii) To exclude a licensable activity from the scope of the licence
    - (iii) To remove the designated premises supervisor
    - (iv) To suspend the licence for a period not exceeding three months
    - (v) To revoke the licence.
  - 2.4 Interim Steps: s53D
    - (i) To modify the conditions of the licence
    - (ii) To exclude the sale of alcohol by retail from the scope of the licence
    - (iii) To remove the designated premises supervisor
    - (iv) To suspend the licence

### **3. Hearing papers**

- 3.1 The applications, notices and representations for determination by the sub-committee are contained in the hearing bundle (attached) together with any relevant existing licence. This includes any documents which must be sent to any of the parties to the hearing under Regulation 7(2) and Schedule 3 of The Licensing Act 2003 (Hearings) Regulations 2005. This bundle has been issued to all parties to the hearing and forms part of this report.

### **4. Legal advice to the sub-committee**

- 4.1 A legal officer appointed by the South London Legal Partnership will attend the hearing to advise the sub-committee on statutory provision and legal matters.

### **5. Licensing Officer comments**

- 5.1 This matter arises from a Summary Review application made by the police on the grounds of serious crime or serious disorder, and received by the Licensing Authority on the 25th November 2022.
- 5.2 On the 29th November the Licensing Sub-Committee considered interim steps as required under Section 53B, and suspended the Premises Licence with immediate effect. In addition, the Sub-Committee removed the DPS and removed the sale of alcohol from the licence.
- 5.3 The application was consulted on as required under the Act, and the consultation period ended on 9th December 2022.
- 5.4 During the consultation period no relevant representations were received by the Licensing Authority.
- 5.5 At the time of this report, the Licensing Authority has not received any submission from the Licensing Holder regarding the Review Application or the Interim Steps.
- 5.6 The current Premises Licence showing the permitted licensable activities is attached with the papers before the Sub-Committee
- 5.7 The Premises Licence has been in force since November 2005, and was transferred to the current Licence Holder (Webbs Leisure Ltd) in May 2022. The Designated Premises Supervisor was varied at the same time.
- 5.8 Following receipt of the Summary Review Application, the Licensing Authority received notification of an intention to surrender the Premises Licence on 28th November 2022. The sole director of the Licence Holder, Mr Lawrence Webb, was initially unaware that someone had attempted to surrender the Premises Licence, and therefore it was not accepted as notice of surrender being given by the Licence Holder. The Licence Holder has since indicated that he does wish to surrender the licence, and has been asked to surrender the licence directly or give written confirmation of who is authorised to do this on behalf of the company, but neither has been received.
- 5.9 Licensing Officers concerns on this point are:

- a) if a licence is not surrendered by the Licence Holder in accordance with the Act, (or can later be shown to be the case), then the licence has not lapsed and it remains valid.
  - b) a surrendered licence may be reinstated by a transfer application at any time within 28 days of surrender, and consent of the previous Licence Holder would not required in these circumstances
  - c) the potential last date for reinstatement of the licence would fall after the last date when the Summary Review must be determined by
- 5.10 Licensing Officers therefore exercised caution with ensuring that the Licence was properly surrendered, and with consideration to a transfer application having been received during the last Review application as explained below.
- 5.11 In April 2022, the Licensing Authority received a Review Application from the Police, and this was determined by the Licensing Sub-Committee in June 2022. At the hearing, the Sub-Committee heard that after the Review application was submitted, there was now a new Licence Holder (Webbs Leisure Ltd) and a new management team in place as a result of the May 2022 Transfer. The Sub-Committee was also informed that the new (current) Licence Holder has no connection to the previous owners.
- 5.12 At that hearing in June 2022, the Sub-Committee modified the hours on the licence to reduce hours to Midnight at weekends, and attached additional conditions of:
- a) All agency staff to be vetted before attending the venue for work.
  - b) Polycarbonates to be introduced throughout the venue for all drinks.
  - c) Increase the security at the rear entrance by 1 SIA door supervisor.
- 5.13 The June 2022 decision was initially appealed to the Magistrates Court, and later withdrawn before it was heard by the Court.
- 5.14 Prior to this year, the main history of the Premises Licence is summarised as follows:
- a) 2005 - Licence granted with times of 2am Sunday to Thursday, and 3am Friday & Saturday
  - b) 2011 - Summary Review determined - DPS removed, hours reduced to 2am all days, and conditions added
  - c) 2012 - Variation to increase hours to 3am - refused by Sub-Committee
  - d) 2018 - Variation to increase hours to 3am - granted by Sub-Committee. This application was at the time of the re-branding of the premises to CMYK
  - e) There has been a total of 5 Transfers and 6 DPS variations since 2005
- 5.15 Any determination the Sub-Committee makes under Section 53C of the Act will not have effect until after the end of the appeal period, or if an appeal is made, until that appeal is disposed of.

- 5.16 Under Section 53D of the Act, the Sub-Committee is required to consider the interim steps previously taken. If the Sub-Committee determine that Interim Steps should continue to apply, those interim steps shall have effect until the decision made under Section 53C comes into force.

**For enquiries about this hearing please contact**

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## Parties to the hearing

This document forms part of the notice of hearing.

The following are parties to the hearing having submitted relevant applications, notices or representations under the statutory provisions indicated:

<b>Review Applicant</b>
Metropolitan Police
<b>Licence Holder</b>
Lawrence Webb, Webbs Leisure Ltd
<b>Statutory Authorities</b>
None
<b>Interested Parties</b>
None



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of the Local Government Act 1972.

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of the Local Government Act 1972.

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## Licensing Act 2003 Notice of Interim Steps following a Summary Review

**Date of issue of this notice:** 29 November 2022

**Subject:** CMYK, 105-109 The Broadway, London, SW19 1QG

Having considered relevant applications and representations together with any other relevant information submitted on this matter the Licensing Authority has made the determination set out in Annex A. Reasons for the determination are also set out in Annex A.

The Premises Licence Holder has a right to submit representations against interim steps if imposed which would in turn trigger a further meeting of the Licensing Sub-Committee to consider such representations. These rights are set out in Schedule 53A of the Licensing Act 2003

**For enquiries about this matter please contact**

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**Useful documents:**

**Licensing Act 2003**

<http://www.hmso.gov.uk/acts/acts2003/20030017.htm>

**Guidance issued by the Home Secretary**

<http://www.homeoffice.gov.uk/>

**Regulations issued by the Secretary of State for Culture, Media and Sport**

[http://www.culture.gov.uk/alcohol\\_and\\_entertainment/lic\\_act\\_reg.htm](http://www.culture.gov.uk/alcohol_and_entertainment/lic_act_reg.htm)

**Merton's Statement of Licensing policy**

<http://www.merton.gov.uk/licensing/>

# Annex A

## Determination

The Licensing Sub-Committee met on 29 November 2022 following receipt of a valid application made by the Police Superintendent of the Metropolitan Police for a Summary Review of the Premises Licence for the premises "CMYK" at 105-109 The Broadway, London, SW19 1QG held by Webbs Leisure Limited, whose Designated Premises Supervisor is Panos Sotiriou. This application was received from the Metropolitan Police on the afternoon of Friday 25 November 2022.

A Summary Review submitted by the Metropolitan Police requires the Licensing Sub-Committee within the Review of the Premises Licence, to consider, where such premises are associated with serious crime or serious disorder (or both), within 48 hours of receipt of a Summary Review Application and consider under section 53B of the Licensing Act 2003 whether it is necessary to take Interim Steps pending the determination of the Review of the Premises Licence that will be considered in 28 days.

The Interim Steps that the Licensing Authority can consider taking are, whether to:

- modify the current conditions of the Premise Licence;
- exclude the sale of alcohol from the current permissions of the Premise Licence;
- remove the Designated Premises Supervisor (DPS) from the Premises Licence; or
- suspend the Premises Licence.

The Metropolitan Police and the Premises Licence Holder are not required to be invited to attend the meeting and therefore neither were present.

The Metropolitan Police applied for a Summary Review pursuant to section 53A of the Licensing Act 2003 following an incident at the premises on Tuesday 22 November 2022 at 01.55am during which a "large bar fight" had occurred and had resulted in a number of injuries being sustained by several individuals, including one person being knocked unconscious, one receiving a cut to the hand and one individual "covered in blood" and informing officers he had been "hit over the head with a bottle". The Police statement advises that no members of staff called the Police or an ambulance nor was any first aid offered to those with injuries". The Police statement is included below:

*"On Tuesday 22/11/2022 at 01:55 hours police were called by a member of the public to a large fight at Bar CMYK on Wimbledon Broadway, a large disturbance could be heard in the background. When police arrived on scene there was clear signs that violence had taken place, blood on the pavement, on the door and windows. A group of intoxicated males had stated that another group had started a fight, their friend had been injured and they didn't know where he was, they also mentioned that a male in the other group had a knife. Officers entered the venue to view CCTV with the designated premises supervisor (DPS), the footage showed a group of males involved in an extremely violent fight, using bottles purchased from the venue as weapons, several of the males involved had been hit with bottles, which resulted in one of the group being knocked unconscious. This male can be seen laying on the stairs out cold for over a minute while the fight carried on and him being kicked again. There is one member of security on duty, he alone is seen to try separate some of the group, no members of staff are seen to tend/offer any assistance to the unconscious male on the stairs, despite the DPS seen standing by looking on. Members of the group can be seen to push and kick each other down the stairs to the basement. The group then move from the*



*main bar area to the front, some are forced out and can be seen to try get back in, but are prevented as the door is being held shut. Whilst officers were viewing the footage, a disturbance could be heard coming from the bar area, when they went to investigate they were met by a male who's face and head was covered in blood, he informed officers that he had been hit over the head with a bottle, officers called for an ambulance and attempted to administer first aid, but the male refused any help and would not cooperate, he was highly intoxicated. His friends were heard to ask who done it and that he was going to 'Carve him up'. Other officers who attended the call had stopped two males who were involved in the incident not far from the scene, one of which had a cut to his hand which was bleeding heavily. No members of staff called police or an ambulance, nor did they offer any first aid to people with serious injuries. Bar CMYK had their licence reviewed by The Metropolitan police South West licensing team in June 2022, this was due to a high volume of crime, this resulted in extra conditions being imposed, one of which was for polycarbonates to be used for all drinks in the venue, this condition has been breached (along with others) as glass bottles have been used to cause serious injuries. It appears that the premises licence holder and DPS have total disregard for the extra conditions imposed by the licensing sub-committee after the recent licence review hearing. The Metropolitan Police South West licensing team believe that this venue is involved with serious crime and disorder, there is no confidence that it will be run in a manner that upholds the licensing objectives and therefore this licence should be suspended pending a fast track review".*

Following an application for a Review of the Licence at CMYK by the Metropolitan Police, a Licensing Sub-Committee reviewed the Premises Licence in June 2022 which resulting in a number of additional conditions being imposed, one of which included ceasing the use of glass bottles and glasses on the premises, as potential weapons and as a risk its customers. The Metropolitan Police noted that the incident on 22 November 2022 included the use of glass bottles purchased from the venue as weapons and therefore this condition was not being complied with.

The Metropolitan Police considered that the standard Review process would not be suitable following the seriousness of the incident and that they did not have confidence the premises would be run in a manner which upheld the Licensing objectives and requested immediate suspension of the premises licence. The Police submitted photographic evidence obtained from body worn cameras taken just after the incident.

### **Decision**

In discharging its functions in respect of this Summary Review, the Licensing Sub-Committee had to consider whether it is necessary to take Interim Steps pending the determination of the Review pursuant to section 53B of the Licensing Act 2003. The Licensing Sub-Committee had regard to the Licensing Act 2003 (and especially the promotion of the licensing objectives), its Regulations, the Home Office Guidance and the Section 53B Guidance, the Council's Statement of Licensing Policy, and parameters provided by relevant case law (especially the case of Daniel Thwaites Plc v Wirral Borough Magistrates' Court 2008). The Licensing Sub-Committee felt that there was sufficient proper evidence presented by the Metropolitan Police.

The Licensing Sub-Committee accepted that the premises had recently been associated with serious crime and disorder. The Licensing Sub-Committee were concerned that there was potential for further incidents and serious injuries to the public attending this premises. The Licensing Sub-Committee noted that the premises had not complied with the conditions previously imposed by the Licensing Sub-Committee and that it had been demonstrated that the premises was associated with persistent crime and disorder. The management of the premises, its DPS and the Premises

Licence holder did not have in place sufficient SIA Door Safety personnel to properly manage the premises.

The Licensing Sub-Committee decided to impose Interim Steps as follows:

- Suspension of the Premises Licence until the Review determination which must take place by 23 December 2022;
- Removal of the Designated Premises Supervisor from the Premises Licence;
- Removal of the Licensable activity of "Sale of Alcohol (on and off the premises) from the Premises Licence.

All of the above Interim Steps are to take place with immediate effect.

The Metropolitan Police and the Premises Licence Holder have been informed verbally and via email respectively of the decision on 29 November 2022.

## Reasons

The Licensing Sub-Committee decided to impose the Interim Steps suspending the Premises Licence and removal of the DPS and the sale of alcohol from the Premises Licence for the following reasons:

- a) The Licensing Sub-Committee had considered the detailed evidence provided by the Metropolitan Police which evidenced that serious crime and disorder had occurred at the premises;
- b) There was clear evidence that the Premises had breached the conditions imposed on their Premises Licence and despite reduced hours and additional conditions, serious crime and disorder had continued to occur at the premises and there remained a risk of potential further crime and disorder occurring;
- c) Any SIA door supervisors on the premises had not been able to prevent crime and disorder occurring at the premises both in terms of within the premises or at the entrance to the premises;
- d) The Licensing Sub-Committee believed that if no action were taken, there would be a serious risk to the public and also to the wider LGBTQ+ community attending the premises;
- e) The Licensing Sub-Committee were disappointed that they were required to take this decision particularly in having to recommend the suspension of the Premises Licence for the only LGBTQ+ venue in Wimbledon, which they would have liked to have supported. However in order to protect both the LGBTQ+ community and the wider community the Licensing Sub-Committee felt there was no alternative option.

The Licensing Sub-Committee therefore decided that these Interim Steps were the only appropriate and proportionate step to take to prevent further crime and disorder occurring at this premises, with the risk to customers and staff of serious injury applying the Licensing Objective of Public Safety.

### **Representations of Premises Licence holder**

If the holder of the premises licence makes, and does not withdraw, representations against any interim steps taken by the Licensing Sub-Committee, the Licensing Authority must, within 48 hours of receipt of the representations, hold a hearing to consider those representations, with notice to be provided to the Police, so they can also attend before the Licensing Sub-Committee to make representations. Such a hearing must consider whether the interim steps are appropriate and proportionate

for the promotion of the Licensing Objectives and determine whether to withdraw or modify the Interim Steps taken.

**Appeals**

There is no provision in section 181 or 8A of Schedule 5 of the Licensing Act 2003 for the Interim Steps decision to be appealed to the Magistrates or for any other remedy. This means that the only other option would be by Judicial Review.

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