

Agenda

Licensing Sub Committee 1

Friday, 8 April 2022 at 10.00 am
At Council Chamber - Sandwell Council House, Oldbury

This agenda gives notice of items to be considered in private as required by Regulations 5 (4) and (5) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1 Apologies for Absence

Members to declare any interests in matters to be discussed at the meeting.

2 Minutes

5 - 16

To confirm the minutes of the meeting held on 13th and 17th December 2021.

3 Declarations of Interest

Members to declare any interests in matters to be discussed at the meeting.

4 Application for the grant of a New Premises Licence at De La Vies, 2A Barnsley Road, Birmingham B17 8ED

17 - 116

Members to consider the new premises application of De La Vies, 2A Barnsley Road, Birmingham B17 8ED.



Kim Bromley-Derry CBE DL
Managing Director Commissioner
Sandwell Council House
Freeth Street
Oldbury
West Midlands

Distribution

Councillor Allen (Chair)
Councillors Fenton and R Jones

Contact: democratic_services@sandwell.gov.uk

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Minutes of Licensing Sub Committee 1

**Monday 13th December 2021 at 10.00am
in the Council Chamber at Sandwell Council House, Oldbury**

Present: Councillor Allen (Chair)
Councillors R Jones, Z Hussain and Mabena.

Also Present: Councillor Williams.

Officers: Usha Devi (Licensing Enforcement Officer);
Christian Attard (Licensing Enforcement Officer);
David Elliott (Solicitor);
Trisha Newton (Senior Democratic Services Officer);
Amundeeep Johal (Democratic Services Officer);
Gabrielle Evans (Democratic Services Officer).

53/21 Apologies for Absence

There were no apologies for absence.

54/21 Declarations of Interest

No interests were declared at the meeting.

55/21 **Minutes**

Resolved that the minutes of the meetings held on 24 August 2021, 27 August 2021, 8 September 2021, 20 September 2021, 23 September 2021 and 25 October 2021 were confirmed as a correct record.

56/21 **Exclusion of the Public**

Resolved that the public and press be excluded from the rest of the meeting to avoid the possible disclosure of exempt information under Schedule 12A to the Local Government Act 1972, as amended by the Local Government (Access to information) (Variation) Order, 2006, relating to any individual and information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Matter Delegated to the Sub Committee to consider Local Government (Miscellaneous Provisions) Act 1976 – Private Hire Driver’s/Vehicles/Operators Licensing related matters

57/21 **Review of a Dual Private Hire and Hackney Carriage Driver’s Licence in respect of Mr S H**

Members considered a review of the Private Hire and Hackney Carriage Drivers Licence in respect of Mr S H.

Mr S H was in attendance at the meeting, accompanied by his legal representative.

The Sub Committee was advised that Mr S H had been invited to attend the Committee meeting following a conviction for Driving without Due Care and Attention and failure to notify the Taxi Licensing Office that he had been summoned in respect of the driving offence within 7 days as required by the conditions of his licence.

The Committee heard that this conviction was as a result of a road traffic collision in Mr S H's Private Hire Vehicle on 11th March 2021. Whilst Mr S H advised that this accident was reported to the Taxi Licensing Office following the accident, there were no records of this and the office had only been informed on 2 September 2021.

Additionally, the Taxi Licensing Office received a report from Ola, following a complaint from a passenger. On 30th May 2021, a private hire booking was made on behalf of a female passenger who, after the journey took place, realised several belongings had been left in the vehicle. Ola were notified and connected the passenger to the driver who arranged to return the items after his current commitments. It was reported that Mr S H phoned the passenger demanding £25 for the cost of returning the property.

It was reported that the operator had reported the matter to West Midlands Police, however, the matter was not taken further by the Police.

Mr S H's legal representative advised that Mr S H had attempted to report the accident from his hospital bed but the ongoing pandemic prevented him from informing and receiving a response from officers. Officers stated that there was no evidence of this phone call being made. Furthermore, when the driver was interviewed by Licensing Enforcement, he was still unaware of the charge and had not received any paperwork relating to the charge for the client until the third week of August 2021. On the 3rd September, after appearing in Court, the conviction had been reported to the Taxi Licensing Team. In terms of reporting, drivers were required to submit written notification upon any arrests or investigations within 3 days and were obliged to notify within 7 days of any convictions.

The legal representative also highlighted that the driver had been licensed by Sandwell Council for 8 years and had no other previous incidents or complaints. Evidence in support of Mr S H's character was supplied to the Taxi Licensing Team.

It was highlighted that the operator upheld a zero-tolerance policy to charging customers for lost property retrieval. It was noted by the Committee that Mr S H no longer worked for the operator and his account had been suspended.

Whilst a medical examination was undertaken on 22nd June 2021, in line with license requirements, there was no record of Mr S H having an operation for the Taxi Licensing Team to make a decision on fitness to drive.

The Sub Committee took advice from its Legal Advisor before adjourning to make a decision on the application.

The Sub Committee had taken into consideration representations made by all parties.

Having considered all the information before them, the decision was made to revoke the licence due to the conviction of a major road traffic offence. The Sub Committee noted the serious nature of the road traffic offence and failure to provide written notification in accordance with requirements of the licensing conditions. Public safety was of paramount importance. With respect to the customer complaint, the Sub Committee noted with concern that the work arrangements with the operator had been terminated. The Sub Committee saw no reason to depart from guidance on this occasion.

Resolved that the Dual Private Hire and Hackney Carriage Driver's Licence in respect of Mr S H be revoked.

In making the decision the Committee had regard to the Local Government (Miscellaneous Provisions) Act 1976, Council Policy and Guidelines, relevant case law and the Human Rights Act 1998.

58/21

**Review of a Private Hire Driver's Licence in respect of Mr
T H**

Due to time restraints, the Sub Committee agreed to adjourn the meeting and reconvene on Monday 20th December 2021.

Meeting ended at 13:50pm

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Minutes of Licensing Sub Committee 1

**Friday 17 December 2021 at 10.00am
in the Council Chamber, Sandwell Council House, Oldbury**

Present: Councillor Allen (Chair)
Councillor Fenton and Webb

Officers: Kiran Dhesi (Licensing Officer)
Mr Radjou (applicant)
Duncan Craig (representing the applicant)
Nicola Stansbie (West Midlands Police)
David Elliott (Legal Advisor)
Trisha Newton (Senior Democratic Services Officer)
Gabrielle Evans (Democratic Services Officer)
Connor Robinson (Democratic Services Officer)

59/21 Apologies for Absence

Apologies for absence were received from Councillor Chidley.

60/21 Declarations of Interest

There were no declarations of interest

61/21 Additional Item of Business

There were no additional items of business to consider.



Application for a variation of a Premises Licence for Nowa Polka, 17 Waterloo Road, Smethwick

The Sub Committee considered the application for a variation of a Premises Licence for Nowa Polka, 17 Waterloo Road, Smethwick, following representations by West Midlands Police.

The premises operated as a convenience store with an off licence known as Nowa Polka, the application sought to increase the operating hours and sale of alcohol at the premises to 24 hours a day Monday-Sunday.

The West Midlands Police representative addressed the Sub Committee and set out the reasons for their representation:

- the Premises was situated in an Impact Area (a small geographical area comprising a few neighbourhoods where there was a disproportionate amount of crime, demand, deprivation and harm);
- the sale of alcohol 24 hours a day at this location was a serious concern and would undermine the prevention of the crime and disorder objective;
- the Premises was located near to supported accommodation for young, vulnerable adults many of whom have been subject to drug and alcohol issues and exploitation;
- a similar Premises opposite to Nowa Polka had at the same time also applied for a 24-hour licence, raising the possibility of a trend which was a concern for the Police (these Premises had subsequently withdrawn their application).

In response to the representations made, the applicant's legal representative addressed the Sub Committee, stating that the applicant was aware of the challenges in the area, that the convenience store was not selling solely alcohol, and the reasoning for the change was to meet a demand locally for a service the establishment provided.

The applicant's legal representative outlined a series of draft conditions for consideration by the Sub Committee as a means of addressing any concerns with a particular focus on:



- a minimum of one personal licence holder would be on the premises whenever licensable activities are being undertaken;
- the personal licence holder would ensure there was sufficient, competent staff on duty at the premises for the purpose of fulfilling the conditions of the licence and for preventing crime and disorder;
- CCTV would be installed and maintained in good working order and be correctly time and date stamped;
- an incident book would be kept at the Premises and maintained up to date at all times;
- every sale of alcohol for consumption off the premises would not be less than the minimum price calculated at 99 pence per cans or bottles of beer and cider;
- the minimum price applicable to the supply of alcohol not being a can or bottle of beer or cider would be the minimum price for the type of alcohol most similar to that supplied. The minimum price would be varied every two years following discussions with the Premises Licence Holder (unless the Licensing Authority considered it appropriate not to do so);
- the premises would not stock or sell beers or ciders with an ABV in excess of 6.5% with the exception of craft beers;
- the premises would have no more than 20% of its overall display area in the retail area dedicated to alcoholic products.

The applicant stressed his desire to operate his business within the proposed conditions and how he would ensure his business operated fully at all time within them all.

The Sub Committee questioned the effectiveness of minimum pricing on alcohol and stocking of products with an ABV with an excess of 6.5% on deterring any alcohol abuse.

West Midlands Police indicated that no compromise had been proposed by the applicant despite Police representation, with the applicant noting that the business model depended on the 24-hour opening.

The Sub Committee took advice from its Legal Advisor before adjourning to make a decision on the application.



The Sub Committee had taken into consideration representations made by all parties and was minded to refuse the application on the basis that:-

- members had first-hand knowledge of the area and understood the issues prevalent in the community and considered that the application would have a detrimental impact in that area;
- consideration had been given to the Police representation and considered that the extension of the operating hours would undermine the crime and disorder objectives;
- while the proposed conditions of the applicant had been considered, they did not in the opinion of the Sub Committee address the core issues and concerns raised by the Police and members.

Resolved that the application for a variation in relation to the Premises Licence for Nowa Polka, 17 Waterloo Road, Smethwick, B66 4JX be refused.

In making its decision the Sub Committee took into account the Licensing Act itself, the Section 182 Guidance and noted that it must carry out all its functions under the Act with a view to promoting the licensing objectives. It also took into account the Human Rights Act 1998.

The Premises Licence Holder would be advised of his right of appeal under section 53c of the Licensing Act 2003 to the Magistrates Court within 21 days of receipt of the decision letter.

63/21

Application for a variation of a Premises Licence for Tani Sklep, 6 – 8 Waterloo Road, Smethwick B66 4JW

The Sub Committee was advised that, following discussions with the responsible authorities prior to the meeting, the applicant had withdrawn the application for the Temporary Event Notice.



Consideration of this matter by the Sub Committee was therefore no longer required.

Meeting ended at 1.45pm

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Report to Licensing Sub Committee 1

08 April 2022

Subject:	Application for the grant of a New Premises Licence at 2A Barnsley Road, Birmingham B17 8ED
Director:	Director – Borough Economy – Alice Davey
Contact Officer:	Geeta Bangerh (Licensing Officer) licensing_team@sandwell.gov.uk

1. Recommendations

1. Consider the application for the grant of a new premises licence under section 17 of the Licensing Act 2003 in respect of De La Vies, 2A Barnsley Road, Birmingham B17 8ED.
2. Each application must be considered on its merits taking into account the evidence presented at the hearing, and the Guidance issued under Section 182 of the Licensing Act 2003 and the Council's Licensing Policy. The options that can be considered once evidence has been heard are detailed at section 5.


2. Reasons for Recommendations

- 2.1 The Licensing Sub Committee is asked to make a decision on the application based on any evidence presented at the hearing taking into account the Guidance issued under Section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy and to give reasons for their decision.
- 2.2 To consider an application for the grant of a new premises licence in respect of De La Vies, 2A Barnsley Road, Birmingham B17 8ED,



following representations received from the local residents and a local councillor, objecting to the grant of the application due to public safety and the prevention of crime and disorder issues.

3. How does this deliver objectives of the Corporate Plan?

	<p>A strong and inclusive economy Investing in people and jobs. Licensed premises provide employment in the Borough and help to support the Borough's economy.</p> <p>It is the Authority's aim to offer a wide choice of high quality and well managed entertainment and cultural venues within a safe, orderly and attractive environment; valued by those who live here, work here and come to visit. We want to ensure that businesses operate responsibly and safely so that our residents live in decent neighbourhoods and have a good quality of life.</p>
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4. Context and Key Issues

4.1 Under the Licensing Act 2003, a responsible authority or any other person may make representations in respect of the application which must be relevant to one or more of the four licensing objectives, namely:

- The Prevention of Crime and Disorder
- Public Safety
- The Prevention of Public Nuisance
- The Protection of Children from Harm

4.2 Representations have been received from local residents and a local Councillor. A copy of the representations is attached at Appendix 10.

CURRENT POSITION

4.3 An application has been made by De La Vies Dry Edge Steakhouse Limited for the grant of a new premises licence.

4.4 A copy of the full application pack is attached at Appendices 1 and 2.



- 4.5 The proposed Licensable activities for are Live music, Recorded music, Performances of dance, Anything of a Similar Description falling in these categories and Late Night Refreshment. The proposed hours are Sunday to Wednesday 23:00 to 00:00 (Midnight) and Thursday to Saturday 23:00 to 02:00.
- 4.6 The Supply of Alcohol (Both On/Off the Premises) Sunday - Wednesday 11.00 - 00.00 (Midnight) and Thursday – Saturday 11.00 - 02.00.
- 4.7 The proposed opening hours are Sunday - Wednesday 09.00 - 00.30 and Thursday – Saturday 09.00 - 02.30.
- 4.8 Non-Standard timings are an additional hour every Sunday and Monday of each Bank holiday weekend and Christmas Eve. And the end of permitted hours on New Year’s Eve to the start of permitted hours on New Year’s Day.
- 4.9 The application states, the restaurant consists of two floors, the first floor will be the restaurants main area where the menu will be delivered, and the second floor will be a lounge area for customer to relax and will be served pre/post dinner drinks with snacks.

The premises will be a high-class restaurant/bar, serving the local community. Policies and procedures will be in place for the safe and efficient running of the premises, including:

- Noise Management Plan
- Staff training and operations manual
- Refusals log
- Challenge 25
- Signage to show respect for our neighbours

4.10 Operating Schedule/Proposed Conditions

General

As the applicant, I will ensure that I fully uphold all of the four licensing objectives, at all times. I have taken into consideration (1) Statement of Licensing Policy (2) Section 182 Guidance.

I have therefore submitted a robust operating schedule, demonstrating a



commitment to due diligence at the premises.

The premises has car parking spaces for approx. 25 cars, for a 55 seater restaurant.

As the Premises Licence Holder, I will ensure that I fully uphold all of the licensing objectives, at all times.

Policies and procedures are being fully implemented for the safe and efficient running of events, including:

- Staff training and operations manual
- Refusals log
- Incident log and incident policy
- Challenge 25
- Noise Management Plan
- Signage – consideration to neighbours

The prevention of crime and disorder

CCTV has been installed, and will be operated, and fully maintained at all times the premises is open for licensable activities.

Images will be retained for at least 28 days and will be produced on request by any Responsible Authority.

Warning notices will be displayed in public areas of the premises advising that CCTV is in operation, in accordance with GDPR.

If the CCTV hard drive needs to be replaced then the old / previous will be kept on the premises for a minimum of 28 days and made immediately available to any of the responsible authorities on request.

The premises licence holder or their representative will check the CCTV daily, prior to carrying out licensable activity, to ensure it is working and recording. This check will be documented, signed, timed and dated. This documentation will be made immediately available to any of the responsible authorities on request.

There will be someone on site while the premises is carrying out licensable activity who is able to operate the CCTV on request of any of the responsible authorities.



A refusals log will be maintained at all times and will be checked and signed off by the DPS at monthly intervals. This will be made available for inspection by any Responsible Authority, upon reasonable request. The refusals book shall contain details of time and date, description of the attempting purchaser, description of the age restricted products they attempted to purchase, reason the sale was refused and the name/signature of the sales person refusing the sale.

All staff training in relation to the Licensing Act and challenge 25 policy will be signed by both the trainer and trainee. No staff to work 'front of house' without this documented training while the premises is carrying out licensable activity. These training records to be made immediately available to any of the responsible authorities on request. There shall be no supply of alcohol for consumption off the premises except in sealed containers.

Premises to be clear of customers no later than 1 hour after the termination time for the sale alcohol.

The lower ground floor to trade as a restaurant only and any alcohol sale to be ancillary to the purchase of a meal. There will be no vertical drinking on the lower ground and ground floors.

Public Safety

The premises licence holder or DPS will carry out pre-opening checks of the restaurant, to ensure that there are no risks to patrons and that all safety precautions are in place.

The licence holder will ensure that all staff receive appropriate staff training.

The licence holder would ensure that all staff are aware of their social and legal obligations and their responsibilities regarding the sale of alcohol.



All safety certificates and inspection reports will be kept on site and made available by officers of relevant statutory bodies. (Food hygiene etc)
The premises will comply with all food safety regulations. The staff involved in food preparation will be fully trained.
A Fire Risk Assessment will be in place and will be updated on a regular basis.

The prevention of public nuisance

As the Premises Licence Holder, I will ensure that the disturbance caused to the general public is kept to a minimum, and signage will be placed in prominent places asking customers to respect our neighbours.

All doors and windows will be kept closed when music is played, other than for access and egress. (Generally ambient background music).
The premises staff will ensure that the frontage and the front and rear car parks of the restaurant are checked regularly for litter and rubbish, clearing any debris away.

The licence holder shall enter into an agreement with a hackney carriage and/or private carriage firm to provide transport for customers, with contact numbers made readily available to customers, who will be encouraged to use such services.

No rubbish, including bottles, shall be moved, removed, or placed in outside areas between 2300hours and 0800hours.

The premises licence holder shall ensure that patrons using any outside areas (such as terraces and beer gardens) do so in a quiet and orderly fashion.

Recorded music will be played at a back-ground level where customers can hold a conversation in a normal speaking tone.



The Protection of children from harm

The Licensee shall adopt a "Challenge 25" policy, where all customers who appear to be under the age of 25 and attempt to purchase alcohol or other age-restricted products, shall be asked for proof of their age. The Licensee shall prominently display notices advising customers of the "Challenge 25" policy.

The following proofs of age are the only ones to be accepted:

- Proof of age cards bearing the "Pass" hologram symbol
- UK Photo Driving licence
- Passport

A refusals log shall be maintained at all times and will be checked and signed off by the DPS at regular intervals. These will be made available for inspection by any Responsible Authority, upon reasonable request. A till prompt system shall be installed to assist staff by reminding them to challenge for ID when a purchase is attempted.

No Children under the age of 18 allowed on the premises after 22.00 hrs unless accompanied by an appropriate adult.

4.11 Conditions agreed with the Police Licensing officer, 8 March 2022

- Premises to be clear of customers no later than 30 minutes after the termination time for the sale alcohol.
- The lower ground floor to trade as a restaurant only and any alcohol sale to be ancillary to the purchase of a meal.
- There will be no DJs allowed to perform throughout the premises.
- Recorded music will be played at a back ground level where customers can hold a conversation in a normal speaking tone.
- The management team will ensure that someone controls the entry of customers to the upstairs lounge, by way of a member of staff being present in the foyer.
- The management team will operate a 'dispersal plan' to ensure customers do not cause unnecessary nuisance to neighbouring residents.



4.12 A location map of the premises is attached at Appendix 11.

4.13 **Consultation (customers and other stakeholders)**

A notice has been published in a local paper and a public notice has been displayed at the premises outlining the application and inviting comments/representations to be sent to the Licensing Authority, detailing a closing date for these to be received. Details of the application were also published on the Council's website.

5. **Alternative Options**

5.1 The options available to the Licensing Sub-Committee having considered all the relevant information are as follows:

- to grant the licence subject to conditions consistent with the operating schedule accompanying the application, and any mandatory conditions which must be included in the licence
- to exclude from the scope of the licence any of the licensable activities to which the application relates;
- to refuse to specify a person in the licence as the premises supervisor;
- to reject the application

5.2 Conditions may be altered or omitted, or any new condition added.

5.3 Additional conditions or restrictions to licensable activities and/or times should only be imposed if considered appropriate for the promotion of the licensing objectives. If other law already places certain statutory responsibilities on a premise, it would not be appropriate to impose similar duties.

5.4 Members of the Sub Committee should be advised that the applicant, or any other person who made relevant representations in relation to the application, may appeal against the decision made to the Magistrates' Court within 21 days of the date on which they were notified.

6. **Implications**



<p>Resources:</p>	<p>There are no direct strategic resource implications associated with this application.</p> <p>In respect of premises licence applications, we do not foresee any issues in respect of sustainability of proposals.</p> <p>The application relates to a privately owned property.</p>
<p>Legal and Governance:</p>	<p>Members of the Licensing Sub Committee when making their decision on the application must take into account the four licensing objectives, the Guidance issued under Section 182 of the Licensing Act 2003 and the Council's own Statement of Licensing Policy. The applicant and those who have made relevant representations have the right to appeal the decision made by the Licensing Sub Committee to the Magistrates Court, so the Committee are asked to give reasons for their decision wherever possible.</p> <p>Members of the Sub-Committee should not allow themselves to predetermine the application or to be prejudiced in favour or opposed to the applicant and/or the licence holder and shall only determine the application having had an opportunity to consider all relevant facts.</p>
<p>Risk:</p>	<p>The Police are a statutory consultee for all Licensing Act 2003 applications. Prevention of Crime and Disorder is one of the four licensing objectives and applicants have to demonstrate how they will achieve this objective by volunteering measures in the operating schedule submitted with the Licence application.</p> <p>The Police have not made a representation to this application.</p> <p>Whilst full details of the application and any representations have been shared with the committee members, only information that is in the public domain has been made available for the reports that have been made public online, in line with data protection protocols.</p>



Equality:	The Equality Act 2010 legally protects people from discrimination in the workplace and in wider society. The operators of this premises are responsible for complying with all relevant legislation.
Health and Wellbeing:	This is not applicable to applications for premises licences submitted under the Licensing Act 2003.
Social Value	This is not applicable to applications for premises licences submitted under the Licensing Act 2003.

7. Appendices

- Appendix 1 – Licence Application
- Appendix 2 – Premises Floor Plan (March 2022)
- Appendix 3 – Incident Management Policy
- Appendix 4 – Incident Management Policy – Staff Training
- Appendix 5 – Incident Log Book
- Appendix 6 – Noise Management Plan
- Appendix 7 – Operations Manual – Staff Training
- Appendix 8 – DPS Authorisation sheet
- Appendix 9 – Refusal Log
- Appendix 10 – Representations
- Appendix 11 – Location Plan

8. Background Papers

- Sandwell Metropolitan Borough Council Licensing Policy
- Guidance issued under Section 182 of the Licensing Act 2003
- The Licensing Act 2003 (Hearings) Regulations 2005



By virtue of paragraph(s) 3 of Part 1 of Schedule 12A
of the Local Government Act 1972.

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