

## LICENSING & PUBLIC SPACE PROTECTION ORDER (PSPO) SUB COMMITTEE

THURSDAY, 21 JULY 2022

PRESENT: Councillors Mandy Brar, Gurpreet Bhangra and David Cannon

Also in attendance: Councillor Gurch Singh

Officers: Oran Norris-Browne, Greg Nelson, Craig Hawkings, Anthony Lenaghan and Alex Lisowski

### APPOINTMENT OF CHAIRMAN

Councillor Bhangra nominated Councillor Cannon to be Chairman of the Sub-Committee. This was seconded by Councillor Brar.

**AGREED: That Councillor Cannon be Chairman for the duration of the meeting.**

### APOLOGIES FOR ABSENCE

No apologies for absence were received.

### DECLARATIONS OF INTEREST

Councillor Brar declared that she was a licensee.

### PROCEDURES FOR SUB COMMITTEE

The Sub-Committee noted the procedures.

### CONSIDERATION OF AN APPLICATION TO VARY A PREMISES LICENCE S34 OF THE LICENSING ACT 2003

Greg Nelson, Reporting Officer outlined the report to the Sub-Committee. The application was for a variation to a premises licence under s34 of the Licensing Act 2003. The premises in question was Labyrinth, Unit 15A Windsor Royal Station, Windsor SL4 1PJ.

The proposed variation that was being applied for was to remove the 9<sup>th</sup> and 10<sup>th</sup> conditions of Annex 3 of the current premises licence which read:

“An ID scanning system will be employed at the premises and will be utilised for all customers. This will be in operation during licensable activities and shall be a condition of entry”, and

“The scanning of all ID’s, with no discretion allowed”.

This variation being applied for was for this to be replaced by the following:

“An ID system will be employed at the premises and in operation during licensable activities. The ID system will be utilised for all customers and a condition of entry EXCEPT that a customer may be admitted to the premises without ID in the following circumstances:

1. The customer without ID must be accompanied by a customer with ID whose details would of course be recorded.
2. A clear head and shoulders CCTV picture is taken of the customer without ID and retained.
3. The customer without ID must provide a bank card or other document which confirms their name so that the name is retained and a copy of the document.
4. The date and time of entry, customers name and documentation, head and shoulders picture and ID of their companion would be retained, and the entry signed off by a senior manager.”

Greg Nelson then provided some background information on the premises and its licence history. A minor variation to the licence was submitted on 16 May 2022 and was subsequently refused by RBWM Licensing. The applicant, Epic Bars and Clubs Berkshire Limited, therefore decided to apply for a full variation, which was the subject of the hearing.

Greg Nelson said that 2 representations had been received from responsible authorities. These were from RBWM Licensing and RBWM Trading Standards. Greg Nelson did point out that the applicant had responded to RBWM trading Standards to their satisfaction, and therefore the Trading Standards representation was not a matter for the Sub-Committee to consider. No representations were received from other persons, therefore RBWM Licensing’s representation, was the only one for the Sub-Committee to consider.

Greg Nelson reminded the Sub-Committee of the 4 licensing objectives, which were as follows:

- Prevention of crime and disorder
- Public safety
- Prevention of public nuisance
- Protection of children from harm

The Chairman asked if the licence that had been granted was a new licence. Greg Nelson confirmed that the license was granted in August 2021 and that the premises opened in April 2022.

Andrew Woods, the applicant’s representative, began his submission by stating that in no way was the variation to the licence in any way dismissive of the licensing objectives, and instead it sought to help promote them. He outlined to the Sub-Committee a brief history of the licence and the premises. He said that the applicants were very experienced in the night time economy business. He stated that a neighbouring premises named ATIK had a rough capacity of 1,000 people, with a slightly younger clientele. This compared to the applicant’s premises, which had a rough capacity of 400 people. He said that no neighbouring premises other than ATIK had a condition on their premises licence where an ID scanner was required. Labyrinth did have this condition and scanned 100% of IDs.

Andrew Woods wanted to place on record that himself and the applicants had a very good working relationship with the Licensing Authority and Craig Hawkings, Licensing Team Leader, and that this would continue regardless of the Sub-Committee’s decision. He admitted that the ID scanner was quite useful at times, for example it had been able to inform them that the average age of their customers was 27 years old.

Andrew Woods said that the applicant was highly skilled within the late-night entertainment business and that the 100% scanning of ID’s did currently aid them in identifying their market and audience. He admitted that this was of course not the reason for 100% ID scanning being used, but that the applicant was a huge fan and supporter of it. He then offered some clarity on what the applicant was applying for specifically and how the discretion would be applied. He added that the Challenge 25 policy would be used, and if the customer looked under 25, then this discretion would not be allowed to be used.

Andrew Woods said that he had provided the Sub-Committee with the operating times of neighbouring premises and pointed out that they had no conditions for an ID scanner, other than ATIK. RBWM policy did not mention the need for a premises to even need an ID scanner.

Andrew Woods said that originally Thames Valley Police had no objections or concerns regarding this application, however he did note that the position had changed a few days prior to the hearing due to an alleged incident that had occurred in Windsor. He then outlined the timeline of events to the Sub-Committee to give them some context to the situation. He stressed that the incident had not occurred on the premises and that the premises was aiding the police in their investigations.

Anthony Lenaghan, Legal Officer, reminded all to use the word 'alleged' as this was an ongoing investigation.

Andrew Woods said that if the variation to the licence was granted then they would expect roughly 10-12 persons per night being allowed in through use of the discretion that had been outlined. He added that the incidents that had occurred on the premises since it had opened had all been dealt with correctly and did not break any of the licensing objectives. The police had been complimentary about how the premises had dealt with these.

Nigel Blair, Applicant, then provided a brief history on the premises' operation within the borough. He said that in all of his other venues outside of the borough, the variation that was being applied for, was used. He stressed that large groups attended the premises and if one of them did not have their ID, then the group would move onto a neighbouring premises, which cost the premises business.

Councillor Bhangra asked for some clarity on the Challenge 25 policy and whether or not a simple bank card would be a suitable item of ID.

Andrew Woods said that the door staff were trained and that they would have to make an assessment as to whether that person looked over 25 or not.

Councillor Brar said that the ID scanner appeared to be working well and asked why they wished to change this.

Andrew Woods said that large groups of people were having to be turned away from the premises if one person had forgotten ID. As neighbouring premises did not have ID scanners, these groups would instead go there. This was not good financially for the premises.

Councillor Brar expressed some concern over identifying whether or not people were over 25 or not. Andrew Woods said that the Challenge 25 policy would be applied at all times, including with the use of the discretion.

Councillor Bhangra said that the ID scanner's data was kept for 31 days currently and asked if they would keep it longer. Andrew Woods said that, if necessary, they would keep the information for 12 months.

The Chairman said that the Challenge 25 policy as part of the discretion was not present currently within their submissions. Andrew Woods admitted that it was not specifically put as part of the discretion, but this could be added.

The Chairman said that the premises had later operating hours than all other

premises nearby and that the variation being applied for, was merely for commercial reasons. Andrew Woods agreed but said that the variation would not challenge or break the licensing objectives.

The Chairman expressed concern at the proposed variation and stated that so far, he could see no reason other than commercially, to grant the variation. He added that there were currently no guarantees that people attending the premises would even know each other, hence giving the discretion policy a potentially challenging outcome. He also added concern of

the wording of the discretion being applied by a senior manager. Better wording was suggested as being applied by the senior manager on duty at that time.

Andrew Woods said that the variation was not originally planned when applying for the licence. The variation would successfully adhere to all four of the licensing objectives. Nigel Blair added that many customers now pre-booked their tickets and through this, they were constantly reminded that they must bring ID to be allowed entry. He added that some people did still forget their ID's, however the premises did try their hardest to inform as best they could.

Charles Kelly, Applicant, added that he had numerous conversations every night where 46-year-olds who did not carry ID, were not allowed entry to the club due to the 100% ID scanning condition. He added that this was an issue, and the variation being applied for would address this successfully and in accordance with the licensing objectives.

Councillor Bhangra asked what would happen if the ID scanner became faulty.

Charles Kelly stated that no internet connection was required and that they also had 2 scanners, which reduced the likelihood that the premises would be left with no ID scanner. It was agreed that this would be a very rare occasion.

Craig Hawkings, who had made representations about the application on behalf of RBWM Licensing, as a responsible authority, began by echoing Andrew Woods' comments about their good relationship, and that it would continue after the decision of the hearing was made.

Craig Hawkings briefly outlined some of the points that he had made within his representations, including the crime statistics and the fact that the use of a bank card as a form of ID was not satisfactory in identifying a person. He noted that the main competitor of the premises within Windsor was ATIK, and that they too had a condition in their license where they must complete 100% of ID scanning.

Craig Hawkings questioned how the information of persons would be stored such as the name from the bank card or the details of the accompanying person. He also added his concern over how a photo would be taken of a person and said that a 'clear' photo was too brief.

Craig Hawkings said after further investigations by Thames Valley Police, that he would withdraw his remarks about the incidents on 10 April and 16 June 2022. However, three other incidents had still occurred. This included the most recent alleged sexual assault that had occurred in Windsor, with the alleged suspect being tracked back to the premises. Due to the condition of carrying out 100% of ID scanning, the alleged suspect was easily and quickly identified. This showed the value of scanning 100% of all ID's.

Craig Hawkings said that a bank card did not have a photo of the person, therefore this could be a different person's bank card and false names could be provided. This would hinder police investigations. A disagreement had occurred between the RBWM Licensing team and Thames Valley Police about their non-objecting to the application.

Alex Lisowski, on behalf of RBWM Licensing, as a responsible authority, wished to point out that Andrew Woods had stated that the proposed variation had been discussed with the police, however it had not been discussed with the RBWM Licensing team until the application was received. He also added that Andrew Woods had said that if the variation was refused then all other premises should be given added conditions to do with the scanning of ID's. As per the licensing objectives, any conditions should be used as a deterrent to not stop people from committing crimes, but it should include measures to detain people in the event that crime was committed.

The Chairman asked Craig Hawkings about Andrew Woods' references to the licensing objectives. Alex Lisowski said that he believed that he had covered this with his point on the deterrent. The Chairman agreed.

Andrew Woods said that Craig Hawkings had stated that the premises was associated with violence and that this was based on four incidents. Two of these incidents saw people refused entry, one incident saw a person ejected from the premises, and one was an alleged incident that occurred away from the premises. He asked Craig Hawkings if he was basing his statement off of those sole incidents and said that this was completely wrong.

Craig Hawkings replied by stating that he was just using the crime statistics that had been provided by Thames Valley Police. Alex Lisowski listed the incidents and stated that violence may not have occurred, but aggression was present in all incidents and that this was certainly a form of violence.

Andrew Woods said in relation to other premises not having a condition on their license stating that they require 100% ID scanning, that it was his understanding that this would only be imposed if there was evidence available that suggested the premises required it. Craig Hawkings confirmed this. Andrew Woods then asked why this condition was therefore implemented when the premises first opened, as there was no existing evidence available.

Craig Hawkings confirmed that it was Thames Valley Police who had asked for the condition to be added to the premises license when it was first granted, however he could not dispute the fact there had been no incidents.

*(The Chairman adjourned the meeting at 1:10pm)*

*(The meeting resumed at 1:20pm)*

The Chairman welcomed everybody back and asked the clerk to confirm the procedures.

The clerk confirmed that Andrew Woods would provide his summary first, followed by Greg Nelson.

Andrew Woods referred to a High Court case which suggested that no speculation could be made on cases and that there had to be hard evidence when it came to the Sub-Committee making their decision.

Andrew Woods said that it was grossly unfair to connect the premises to violence. He said that the incidents that had been discussed, showed that measures were in place at the premises to limit violence. He said that the basis of the application was to allow people who were over 25 access to the premises in certain circumstances where they had forgotten their ID. He said that the licensing objectives were not affected at all.

Andrew Woods said that they would be happy to change one of the conditions being applied for from requiring one person to have ID per person without, to requiring two persons with ID per person without ID.

Andrew Woods said that the deterrent would still remain if the variation was granted, which was in line with the licensing objectives. He said that the 100% of ID scanning was very stringent and that no other premises had this as a condition other than ATIK, which was deemed slightly unfair. He noted that RBWM licensing policy did not dictate that the 100% scanning of ID's was required.

Greg Nelson summarised the licensing authority's case and outlined some of the changes in wording that had been discussed during the course of the Sub-Committee. He looked to Andrew Woods for confirmation on these, in which he confirmed the following:

- Incorporating the Challenge 25 policy into the wording of the variation.

- A change in wording to who had authority to use the discretion. It would read as the manager on duty at that time.
- A change to the number of persons with ID per person without ID from one to two.
- Clarity would be needed on the quality of the photograph of the person without ID.
- Data would be stored for 12 months in accordance with GDPR and Data Protection.

Greg Nelson asked the Sub-Committee to bear this in mind when making their decision. He reminded the Sub-Committee of the four licensing objectives and reminded them to ensure that they took all written and oral representations into account. He then gave the Sub-Committee the options that they had.

The Chairman asked all parties if they had anything else to say, which they did not. They were then asked if they were happy that they had been given every opportunity to say everything that they wished too. All parties confirmed this.

The Chairman thanked all parties for their attendance and reminded everyone that the decision of the Sub-Committee would be provided within five working days of the hearing.

During their deliberations, the Sub-Committee considered all of the written and oral submissions that were provided by the Applicant, Officers of the Council, and Objectors.

After having heard all of the evidence that had been presented to them, the Sub-Committee agreed to grant the variation subject to some conditions and changes to current wording, which were as follows.

1. The date and time of entry, customers name and documentation, head and shoulders picture and ID of their companion would be retained, and the entry signed off by the senior manager on duty **at that time**.
2. The 'Challenge 25' policy must be robustly applied at all times, including when admitting any and all customers to the premises.
3. The customer without ID must be accompanied by **2 customers with ID** whose details would be recorded as per the existing practice.
4. A clear head and shoulders CCTV picture is taken of the customer without ID and retained **for 12 months to comply with GDPR and the Data Protection Act. The picture should be of a sufficient quality, as defined by the Police, to enable physical identification of a person.**

The meeting, which began at 11.10 am, finished at 2.15 pm

CHAIRMAN.....

DATE.....