

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE C 11 NOVEMBER 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE C HELD ON WEDNESDAY 11 NOVEMBER 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Mike Leddy in the Chair;

Councillors Mary Locke and Mike Sharpe

ALSO PRESENT

David Kennedy – Licensing Section
Mr James Rankin - FTB Chambers
Joanne Swampillai – Legal Services
Mandeep Marwaha – Committee Services

(Other officers were also present for web streaming purposes but were not actively participating in the meeting)

The Chair reminded Members there will be a 2 minutes National Silence at 1100 hours. Councillor Sharpe would read out the Kohima Epitaph and all proceedings will be stopped before 11am.

1/111120

NOTICE OF RECORDING/WEBCAST

The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

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DECLARATION OF INTERESTS

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

There were no interests declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/111120 Apologies were submitted from Cllr Straker-Welds with Cllr Mary Locke as nominee Member. Also, apologies submitted from Cllr Eustace with Cllr Mike Sharpe as nominee Member.

4/111120 **MINUTES**

The minutes of the meeting held on 26 August 2020 and 09 September 2020 were agreed.

LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW DAHLAK LOUNGE, HAMPTON STREET, BIRMINGHAM, B19 3LS

Report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

On Behalf of the Applicant

PC Abdool Rohomon – West Midlands Police (WMP)
Mr Chris Jones – Licensing Officer - West Midlands Police (WMP)

Those Making Representations

Mr Paul Samms – Environmental Health (attending on behalf of Martin Key)
Mr Duncan Craig – Citadel Chambers representing Mr Biniam Yemane Mebrahtu – Premises Licence Holder (PLH) & Designated Premises Supervisor (DPS).
Mr Joseph was in attendance.

* * *

The Chair introduced the Members and officers present and explained the hearing procedure.

The Chair asked if there were any representations to be withdrawn at this stage. It was noted there were no representations withdrawn at this stage of the hearing.

At 1012 the meeting was adjourned due to technical difficulties.

At 1014 the meeting was reconvened.

The Chair asked if there were any preliminary points for the Sub-Committee to consider.

PC Rohomon made three primarily points:

- the CCTV footage be viewed in private session (including bodycam footage)
- that if any issue was raised in relation to the Public Sector Equality Duty under the Equality Act 2010, then he was able to address it
- that if any issue arose in relation to the legality of the Superintendent's Certificate, then he was similarly in a position to address it

Mr Craig confirmed he had no objection for the CCTV footage to be viewed in a private session. Mr Craig also confirmed the last two preliminary points raised by PC Rohomon would not be raised by him.

The Chair then explained the hearing procedure prior to inviting the Licensing Officer, David Kennedy, to outline the report.

Before David Kennedy gave an outline to the report, he referred to PC Rohomon's preliminary point on the CCTV private session. He asked if WMP were content with all parties being involved in the screening of the CCTV in the private session. This was confirmed by PC Rohomon.

David Kennedy continued and made introductory comments to the documentation and gave a brief overview to the case.

The Sub-Committee were advised of the options available for a decision. In addition, they would need to decide what action, if any, should be taken regarding the interim steps imposed on the 15th October 2020. All parties would be invited to confirm their view of the interim steps as part of their summing up.

The Chair invited the applicant to make their submissions.

Mr Jones made the following points on behalf of the applicant (WMP):-

- a) He raised the premises could not be trusted to trade safely in line with the licensing conditions and the reasons would be shared with the Sub-Committee. Upon receiving the breach, it noted the premises were not working in a safe manner which was evident in the CCTV footage.
- b) The CCTV footage displayed prior to the arrival of the Police, there was no social distancing in place and there was a complete 'free for all' setting. It was clear there was a lack of regard to the guidance around Covid-19 and once the Police arrived outside, there was a complete change of style inside the premises i.e. where people were seated at tables.

Upon viewing the CCTV, it was clear the premises knew what they should be doing and were aware of how to operate in a covid safe manner however, this was ignored.

- c) He made the Sub-Committee aware there was a gap in the CCTV footage, therefore, the Police were unable to see how the premises went from a 'free for all' setting to people being seated. It was assumed the change happened whilst the Police were outside of the premises.
- d) WMP did not have any trust in the management of the premises as they could not operate in a safe manner therefore sought revocation of the licence.
- e) He explained the premises was situated in a large ex-industrial unit which was set back approximately 50 metres away from the road. There was a large car park with metal gates leading off the road. When he had visited the premises, the metal gates were wide open to allow access. This was also visible in the CCTV police officer's bodycam footage.
- f) He gave an outline to the layout of the building. There was a UPVC door which led to offices which he believed was not used by customers. However, a door had been added to the front right-hand side of the building which the premises stated this was a fire exit.

Furthermore, he highlighted the plan of the premises was incorrect and he explained the differences. The new fire exit to the right-hand side of the building was not shown on the plan. The only fire exit shown on the plan was to the rear of the building by the toilets.

- g) He referred to the premises Fire Risk Assessment dated 1st July 2020 which detailed the exit from ground floor toilets was 'not useable.' This was the only fire exit which had been indicated on the plan was clearly 'not usable'.

The bodycam footage exhibited the shutters of the premises were down offering no means of escape to patrons in the building.

- h) On the 16th August 2020, whilst dealing with an incident nearby, West Midlands Police found loud music emanating from Dahlak Lounge. As officers entered the premises, they stated the music was very loud, people were standing and a complete lack of social distancing. The premises was very packed and appeared overfull.

He read an extract from PC Reader's statement in which he highlighted there was loud music, queue outside the venue and approximately 100 -120 people on the ground floor. There was raised DJ area which was not indicated on the plan of the premises.

- i) He referred to people standing as well as sitting in booths of more than 6. The PLH did not have a Covid Risk Assessment in place. The Police offered advice to the PLH in order to assist and identify what was required to trade in a Covid-safe manner.

Officers referred to the 'Keeping workers and Customers Safe during Covid in Restaurants, Pubs and Takeaway Services which guided premises to reopen safely after the 4th July National Lockdown.

- j) On the 26th August, a meeting was arranged with the PLH. He noted there were several representatives from the premises including the PLH, PC Reader and himself. The Police spent some time explaining the social distancing requirements which was required at that time.
- k) The day before the meeting PC Reader had sent a detailed email explaining how the premises should be operated under the Covid-19 Regulations and Government Guidance. He additionally supplied links to the legislation and Guidance in the body of the email. (The email was referenced on pages 124 -126 of the pack).
- l) At the 26th August meeting, he asked for the Fire Risk Assessment which clearly stated the ground floor capacity was 60 people and first floor capacity was 60 people.
- m) On the 16th August, when the premises was visited by officers, there was over 100 people on the ground which was more than stated in the Fire Risk Assessment. The PLH was not aware that his premises had any capacity limit for numbers of people.

The Police requested for PLH to supply the Covid-19 risk assessment which was a mandatory requirement under the Government Guidance.

The PLH stated both Covid-19 and Fire Risk assessments had been done which was supplied to the Police on 3rd September 2020 and that they were compliant. (referred to on page 127 of the pack).

- n) On the 10th October, the Police received a complaint from a member of the public that loud music was emanating from the Dahlak Lounge and there were numerous cars in the car park. The Police attended at around 21.10 hours and found that very loud music was coming from Dahlak Lounge.

The bodycam footage shows the shutters to the premises pulled down and the premises appeared to be closed. Officers noted there were a number of cars in the carpark and patrons standing in the car park. Whilst officers were waiting outside, patrons in the carpark informed the officers they were waiting to get into the premises as it was a ticketed event. As a result, officers concluded there were several patrons inside the premises albeit from the outside the premises looked locked and closed.

Officers tried to gain entry to the premises however, the shutters were down. As officers waited outside the premises, they noted an individual inside the premises was looking out of an upstairs window. Soon after, the volume of the music reduced significantly which was apparent in the premise's CCTV footage.

A person thought to perhaps be a security guard and eventually unlocked the door from the inside. Officers noted they could hear keys unlocking the door.

- o) He further drew the Sub-Committee's attention to the plan of the premises where the rear fire exit indicated was 'unusable' according to the premises fire risk assessment. The main exit shutters were placed down and the door to the right-

hand side of the building was locked. This clearly indicated there was no means of escape for patrons if there was a fire.

- p) Upon entering, the Police found around 150 people on the ground floor with no social distancing and no mitigation in place. Officers noted many patrons were standing or walking about with no face coverings. There was a DJ set up and the three men standing behind this had no face coverings either. Several patrons were seated together, either on long benches or in booths, but nobody was keeping a Covid-safe distance from others. The music being played had already been turned down, but the Police found that they still could not hear anything above it. Masks were not being worn by customers and even some of the staff, except for the security guards.
- q) The Police Officers noted patrons smoking shisha in the premises and could see the glow of the coals. He emphasised the smoking of shisha increased the risk of fire. He referred to the Fire Risk Assessment dated 1st July 2020 where there was no reference to shisha being smoked in the premises.

On page 65 of the pack, the Fire Risk Assessment states;

*'Owners responsibilities - Most significantly reducing the risk from fire, keeping heat/ignition sources to a minimum and keeping combustible materials away from all heat sources, **no smoking** within the building and **not to impede escape routes.***

The Sub-Committee were reminded the doors were locked and the rear fire exit 'not useable', the main shutters down, the fire escape routes were impeded and not accessible.

- r) The Police Officers observed staff pulling patrons out of their seats, exhorting them to "move, move, you've got to move", and ordering those seated in booths to "get out", on the basis that the premises had exceeded its capacity limit.

The premises state to the Officers that they had around 150 patrons in the building.

- s) He highlighted smoking of Shisha increased the nature of fire and this venue had no escape routes for patrons. There was no ventilation in the building as the doors were locked and windows were closed.

He referred to witness statements from PC Wheeler, PC Twomey and PC Reader.

- t) A further meeting was arranged for 13th October. Mr Jones attended the premises and there were several representatives including the PLH. At this time, the premises were not trading, and the layout had not changed since the 10th October visit.
- u) The premises stated the CCTV footage could not be downloaded onto a memory stick or DVD as there was no facility on the hard drive.

- v) Mr Jones went back to his office and discussed his concerns with colleagues. He later returned with PC Rohomon and they noticed the seating was not 2 metres apart. The widest gap was only 1.17 metres and majority of the seating was back to back with no mitigation.

The Police Officers observed there was also a rear fire exit, but this was found to lead only to the outdoor smoking area – an entirely enclosed area, with no means of escape beyond that.

There were concerns the new fire exit (right hand side) of the building was also unsatisfactory to Police, given the small size of the door to it, and the presence of a trip hazard created by the flooring. The route to the fire exit was blocked by furniture.

- y) The Police Officers asked to view both the Fire Risk and Covid Risk Assessments. The capacity on the Fire Risk Assessment had increased to 160 patrons which had increased from the capacity of 60 patrons on 26th August visit.

The premises stated the capacity had increased due to the extra fire door they had placed to the right-hand side of the building. This was the fire door which was smaller in size than a normal size door and had a trip hazard leading to it. It was the same door which was locked and opened with keys on the 10th October visit.

The Risk Assessment was still dated 1st July and had not been signed. Mr Jones was concerned about the premises and therefore emailed West Midlands Fire Safety.

The Police Officers viewed the Covid Risk Assessment dated 9th October (referred to on pages 59 & 60 of the pack).

In the opinion of WMP, this was not a risk assessment but more like a tick box exercise.

At 1057 hours, the Chair asked Councillor Sharpe to read the Kohima Epitaph and followed by a 2-minute silence. The Sub-Committee would reconvene at 1103 hours.

At 1104 hours, the Sub-Committee reconvened.

Mr Jones referred to his last point on the Covid Risk Assessment dated 9th October which was one day before the officers had visited. He reiterated this was not a risk assessment with no control, accountability, plan or capacity details.

He mentioned to page 59 of the pack which referred to control measures;

‘Controls to manager queues are in place both internally and externally in order to maintain social distance’.

This was ticked as being in place however, it was clear from officers’ statements and bodycam, CCTV footage there was no control both inside and outside.

He highlighted further areas which were ticked as being in place on the Covid Risk Assessment however, the CCTV footage shows that these were not in place.

At this juncture, Mr Jones stated the 'body cam' footage would be shared in a private session, followed by the premises CCTV footage therefore the session should be conducted in private.

At 1108 hours, the Sub-Committee moved to a private session.

EXCLUSION OF THE PUBLIC

5/111120 **RESOLVED:-**

That in accordance with Regulation 14 of the Licensing Act 2003 (Hearing) Regulations 2005, the public be excluded from the hearing due to the sensitive nature of the evidence to be presented.

DAHLAK LOUNGE, HAMPTON STREET, BIRMINGHAM, B19 3LS

At 1136 hours, having heard the submissions in private the public were readmitted to the meeting and PC Rohomon continued to address the Sub-Committee.

Following the submissions made by WMP, the following questions and responses was noted;

- 1) The Chair queried when did Birmingham enter the tier two restrictions. In response PC Rohomon notified the Sub-Committee, Birmingham entered the Covid-19 tier two restrictions on the 14th October 2020 in line with the "The Health Protection (Coronavirus, Local Covid-19 Alert Level) (High) (England) Regulations 2020".

There were no further questions raised by the Sub-Committee, Mr Rankin and Mr Craig.

The Chair invited Mr Samms to make his representations.

Mr Samms made the following points on behalf of Environmental Health:-

- a) He highlighted the PLH had contravened the Covid-19 regulations even after WMP officers took time to explain these.
- b) He pointed the contraventions observed following the second visit from the police was worse than the first visit. There was no sign of improvement.
- c) He agreed with the submissions made by WMP.
- d) He highlighted there were concerns with the management as they did not provide sufficient controls to prevent COVID-19 transmission.

- e) He added the way the premises were conducted themselves would increase the chances of a lockdown. This would cause further problems with the economy and the NHS would face further challenges of dealing with the virus.
- f) He mentioned upon viewing the CCTV footage, it was clear the breaches were both with Covid-19 and Fire regulations as shisha was smoked in the premises.
- g) He agreed with WMP in having the licence revoked and the PLH/ DPS removed.
- h) He added the management were fully aware of what they had to adhere to however, as soon as the enforcement agencies were away from the premises, the premises contravene the regulations.

At this juncture, there were no questions raised by the Sub-Committee and Mr Rankin.

The Chair invited Mr Craig to make his representations.

Mr Craig made the following points on behalf of Premises Licence Holder (PLH): -

- a) He referred to the plan of the premises (page 44) in conjunction with the Fire Risk Assessment (page 61 onwards). It was correct that the fire escape to the rear of the premises going to the toilets was not accessible in terms of people exiting the building.
- b) He agreed the attached submitted plan does not accord with the position in the premises at present.
The three areas were; i) Fire escape was not correct ii) bar set up was slightly different configuration iii) layout of the furniture.

In respect of the furniture, there was a requirement under the licensing regulations that any fixed structure should be provided within any submitted plan. This included fixed furnishing, stages, large columns etc. However, the regulations were vague in respect of loose furniture.

- c) He maintained that the new plan would be submitted that accurately reflected the layout of the premises.
- d) He added there were four areas of escape from the building whereas WMP had indicated there were no means of escape from the building. Photographs had been provided and shared the exit points;
 - i) First Floor - There was a fire escape with a stairwell to the exterior of the building. This was not ideal for patrons to move from the ground floor to the first floor, however it was an exit.
 - ii) Ground Floor - Front of the premises – Three means of escape but not the two exits that had been indicated on the plans. He maintained that the shuttered front door was a useable exit.
 - Exit 1 - The entrance towards the right of the building (push bar) – he was unsure if this was compliant i.e. too narrow. Unfortunately, West Midlands Fire Service were unable to attend to give their view.
 - Exit 2 - Through the kitchen and then left via the office.

- Exit 3 - New fire exit
- e) The Fire Risk Assessment was amended by 4 Point Fire Solutions in September 2020. 4 Point Fire Solutions amended the capacity based on revisions that had been undertaken by the premises however, they never revisited the date on the front of the Fire Risk Assessment which should have happened to avoid any confusion.
- f) He was surprised there was a noise complaint as the premises was set back from the main road. The premises was set away in a remote area.
- g) He referred to the shutters being down, and this was an effort by the PLH to prevent and discourage patrons from entering the premises as the premises was full.
- h) He referred to the body cam footage at 5 minutes 23 secs. There was a patron in the carpark indicating they did not want anyone else in the premises and referred to PC Twomey statement (page 122) stating this was a ticketed event and the shutters were down.
- i) Capacity – The premises had their door security provider to undertake the Covid Risk Assessment. The Covid Risk Assessment was undertaken the day before the Police visited the premises. His understanding was the risk assessment was undertaken in conjunction with the visit to ensure it was Covid safe. He highlighted a ‘risk’ was when someone had identified risk contained within a business and had taken steps to address that.
- j) He agreed that some of the risks had not been complied with (the doors being pinned back for example) but maintained that many others had. He “held his hands up” to there not being total compliance.
- k) He did not agree with what WMP analysis on the Covid Risk Assessment document.
- l) He referred to the Covid Risk Assessment and an example was given of a statement in the risk assessment that the premises would only operate at 30% of the fire risk capacity.
- m) 4 Point Fire Solutions evaluated the fire safety figure was 220. Unfortunately, this had been misunderstood by the premises. This figure had been explained to them and going forward would be considered.
- n) He added the PLH had undertaken all the measures advised which was evidence in the photographs provided in the pack i.e. hand sanitisers, posters and the reconfiguration of the furniture etc.
- o) He highlighted the licence was not granted until March 2020 and they had not operated prior to the lockdown. It was noted some premises would adapt to Covid-19 related changes better than others.

- p) He agreed in the CCTV footage it was clear there were social distancing issues, however this was not a premises who had not considered the rules as they had instructed an external body to undertake the appropriate risk assessments. They had taken positive and purposeful steps to try to address the concerns raised.
- q) He disagreed with WMP into characterising the premises as having total disregard and maintained that it was not a tick-box exercise and that his client had paid money to have it produced.
- r) The premises had employed door staff and masks were readily available to all customers as they entered the premises. However, it was difficult to get younger people to comply with certain aspects of the Covid-19 rules.

At 1155, the meeting was adjourned due as the Chair having technical difficulties.

At 1157 the meeting was reconvened.

Mr Craig queried with the Chair how much content he had missed from the discussion. The Chair summarised the last points he could recall from the discussion prior to experiencing technical difficulties.

Mr Craig and Mr Rankin both confirmed the Chair had not missed any content and that he had captured all the points made so far.

Mr Craig continued with his submissions;

- s) He agreed the risk assessment referred to smoking. However, the PLH understanding was that this referred to smoking cigarettes as the PLH believed the business/ building was compliant. The PLH conceded patrons were smoking shisha pipes inside the premises and the premises were compliant.
- t) He outlined the PLH position; The premises opened in August, the police were involved, and the external agency undertook the risk assessments which was submitted to the Police. As there were no feedback from the Police on the risk assessment, the PLH thought this was satisfactory.
- u) He referred to the lacuna in the CCTV footage which the PLH had no explanation for. The PLH had been in touch with the CCTV engineer (Mohammed) and had requested to retrieve the footage. Unfortunately, he was unable to do so.
- v) He agreed there was a difference between the two sets of CCTV footage and explained how the premises were trying to get patrons to comply to Covid-19 guidance i.e. sitting down which eventually came into control. The PLH had cooperated with WMP in terms of their investigation.
- w) He added there were issues retrieving the CCTV footage from the hard drive via USB. It was noted the premises found it challenging to forward the footage therefore the PLH whatsapped this to Mr Craig. Unfortunately, Mr Craig was unable to forward as he too had difficulties however, following a slight delay this was submitted to WMP Officers.

He summarised by highlighting the two responsible authorities are proposing to revoke the licence and he did not see this appropriate as this was challenging times for all businesses. Several businesses were struggling to adapt to the changes and this premises had considered steps and measures.

He invited the Sub-Committee to consider a suspension of the licence for a period of 3 months in order to allow the premises to undertake a comprehensive risk assessment and re-evaluate its position in readiness for when premises can open after the lockdown. He proposed the removal of the DPS (which was also the PLH). The PLH recognised that there was a need to have a full time DPS to undertake the day to day running of the premises.

He referred to proposed conditions that should be added to the licence. These were submitted at page 47 of the pack around Challenge 25, Public Nuisance, Public Safety and the Protection of Children from Harm.

A revised plan of the premises would be submitted in accordance to the current layout of the premises.

Following the representations made by PLH, the following questions and responses were noted;

- 1) The Chair referred to Covid-19 Risk Assessment (pages 59 & 60), there were two signatures and queried whose were these.

In response, Mr Craig confirmed the top signature was the PLH & DPS (Mr Biniam Yemane Mebrahtu) and the second signature was of Mr Andrews who was a bar staff. The document was produced by external company and it was signed once received.

- 2) The Chair added the PLH signed the document therefore agreed the Covid-19 restrictions would be adhered to. However, the Sub-Committee had clearly seen the restrictions were not complied to. He questioned why this happened. The tables should have been spaced out and clearly this was not adhered too though on the Covid-19 Risk Assessment this was ticked as being done. Patrons were socialising between tables, the rule of 6 was not in place which raised several areas of concern.

In response, Mr Craig stated the PLH had adhered to a number of the restrictions and gave examples. However, he generally felt that a wide number of late-night venues that were not food led and where provisions had been made, maintaining patrons to stay in bubbles of 6 was extremely challenging. The door staff tried to maintain adherence to the restrictions however, once staff move to other areas of the premise's patrons move around and start talking to each other. He added patrons discipline changes especially under the influence of alcohol. However, there was a clear effort by this premises to apply the rule of 6.

- 3) Councillor Sharpe referred to page 66 of the pack – 'the recommended evacuation time was 2 minutes' and had this ever been tested.

In response, Mr Craig notified the Sub-Committee the PLH had not undertaken a fire drill. He added this evaluation had been undertaken by the company (4 Point Fire Solutions) who would have based this on the number of exits from the premises.

- 4) Mr Rankin raised several queries in relation the Covid Risk Assessment. These were around; Compliance to the risk assessment; capacity figures; staff advising patrons to sit down; socially distance by moving to groups of 6; the risk assessment was provided by a professional provider; tables were spaced out to facilitate in social distancing; doors being pinned open and new fire exit being locked; shisha being smoked in the premises

In response, Mr Craig confirmed there was sustainable compliance to the Risk Assessment. The capacity figure was a genuine error made by the PLH and the premises were at 70% capacity. He agreed based on a misapprehension, the premises were substantially over capacity which was not deliberate and no had no intent from a Covid-19 point of view.

He confirmed the 'Track & Trace' was in place at the entrance of the premises.

He confirmed the staff had been given instructions on social distancing and taken through the risk assessments. However, staff were having difficulty getting patrons to sit down and which did eventually settle down.

He added in the first CCTV footage, door staff were walking and advising patrons however, they were not moving to groups of 6.

He referred to the point made by Mr Rankin on the Risk Assessment - 'customers are encouraged to use the order a' and explained the risk assessment was provided by an external provider who operated in this field. They were the door security for the premises and Risk Assessments would be provided for a number of premises. From the PLH view, the Risk Assessment was produced by a 'professional provider' and the PLH paid £350 for the Risk Assessment.

At this juncture, Mr Craig checked with the PLH what the 'customers are encouraged to use the order a' meant as this was raised by Mr Rankin. The PLH understanding was that customer were not encouraged to order at the bar and to order from someone on the floor. Mr Craig agreed this was poorly worded but the PLH was in accordance of the guidance at the time.

In relation to the query on the tables being spaced out to facilitate in social distancing, Mr Craig informed the Members the measures the premises undertook manifested a significant improvement to the measures the premises prevailed prior to the furniture being moved round. To a certain extent this did aid social distancing and the measure had been followed.

He added, the front door was pinned open periodically as there were concerns on capacity and to ensure patrons waited outside the premises.

The PLH informed Mr Craig, the new fire exit was also opened periodically and was not locked at the time the Police visited the premises as it was a push bar and can not be opened from the outside.

Mr Rankin reminded the Sub-Committee; the Police could hear the noise of keys which could be as a result of a chain and padlock on the fire door to prevent it from being opened.

The PLH confirmed there was no lock on the door and only the main door shutter was down. The exit through kitchen was not covered by a shutter.

Mr Craig conceded there was shisha being smoked in the premises and that the PLH understanding was that he was compliant with the legalisation.

Mr Rankin anticipated Mr Craig had advised the PLH that shisha was not allowed to be smoked in an enclosed area and that he was not complaint with the legislation. Mr Craig advised he was not in a position disclose advice given to his client.

Following further queries from Mr Rankin on the smoking of shisha, Mr Craig stated the PLH position was that the shisha smoking was entirely lawful however, he could not advise his client on this as he was not sure if the building was compliant or not.

- 5) The Chair referred page 41 of the pack and the comments made by Mr Craig in relation to the access to the CCTV footage.

“CCTV will be recording at all times the premises are open for any licensable activities and images will be held for a minimum of 28 days and made available immediately on request by any of the Responsible Authorities.

The Premises Licence holder shall ensure that a trained member of staff will be on duty and be available to download the CCTV to any of the Responsible Authorities”.

The Chair added there was a clear breakdown in communications as WMP did not receive the CCTV footage when requested. The premises had a duty to make the footage available when requested immediately.

Mr Craig explained the footage was available anytime for WMP for inspection at the premises. The premises did try to send the footage to WMP however, there was a delay due to the issues around the size and format.

Mr Craig sought further clarification from the PLH in relation to uploading the footage on the USB. He then informed the Sub-Committee the PLH was having operational difficulties uploading to a USB. The Sub-Committee were made aware the CCTV footage was available upon request however not as fast as WMP would have liked.

In summing up Mr Samms made the following points: -

- He recognised the Management were trying to comply to the restrictions. There were many businesses across the City struggling to adhere to current guidelines however, based on the evidence presented, he supported the WMP position to revoke the licence and remove the DPS.

In summing up PC Rohomon made the following points: -

- He referred Mr Craig's comment about being surprised around the noise complaints considering the location of the premises however, Officers could hear the noise from another premises whilst dealing with an incident nearby. In addition, during October, a Member of public had complained about the noise.
- Capacity issue – At 19.00pm, the capacity would have been less than 30% and it was clear from the CCTV footage there was no control inside the premises therefore, WMP had no confidence of control later in the evening at 20.46pm. This was visible in the footage when the venue was much fuller, and it was evident there was no control.
- There were members of staff distributing the coals for the shisha than maintaining the order of the premises.
- The venue only maintained some order only when the Police arrived at the premises as someone looked through the top window.
- The shutters were shut to keep patrons out and stop them from entering the premises, however WMP did not agree with this and it was to make the premises look like it was closed.
- The number of door staff at the premises had not been carried out correctly had in line with the condition on door staff i.e. the number of exits and how to maintain control on this.
- The Risk Assessments had not been carried out correctly as there was no appropriate detail contained within it i.e. what was social distancing measures, policy was.
- Interim steps, WMP had no confidence with this premises going forward as there was no compliance to the risk assessments (Fire & Covid).
- He closed his submissions by inviting the Sub-Committee to revoke the licence and WMP would advocate the interim steps suspension and the removal of the DPS remain in place.

In summing up Mr Craig made the following points: -

- In terms of shisha, he did not want the Sub-Committee to speculate if the building was complaint as there was no evidence to form a view on this.
- West Midlands Fire Service had been unable to attend therefore there was no evidence the fire exits were compliant. However, the rationale behind this had been provided by the PLH.
- There was a failure by the premises to fully comply with the Risk Assessment provided however, the premises had engaged and taken steps to improve.
- He closed his submissions by inviting the Sub-Committee to remove the DPS; suspend the licence for three months and impose suggested conditions.

Mr Rankin checked with Mr Craig if he had any response to WMP submissions to if the licence was revoked as Mr Craig wanted the interim steps to remain in place. Mr Craig indicated he had no submissions to make on that point.

The Chair thanked all parties for their attendance.

At this stage the meeting was adjourned in order for the Sub-Committee to make a decision and all parties left the meeting.

The Members, Committee Lawyer and Committee Manager conducted the deliberations in private and the decision of the Sub-Committee was sent out to all parties as follows;

6/111120 **RESOLVED:-**

That having considered a full review of the premises licence under s.53C of the Licensing Act 2003 following an expedited summary review under s.53A of the Act brought by West Midlands Police in respect of the premises licence held by Mr Biniam Yemane Mebrahtu in respect of Dahlak Lounge, Hampton Street, Birmingham B19 3LS, this Sub-Committee determines:

- that the premises licence shall be revoked
- that Biniam Yemane Mebrahtu be removed as the Designated Premises Supervisor
- that having reviewed the interim steps imposed on 15th October 2020 that it will not withdraw or modify the interim steps of suspension of the licence and the removal of the designated premises supervisor Biniam Yemane Mebrahtu under s.53D of the Act. Those steps remain in place pending any appeal

West Midlands Police [WMP] were represented by Chris Jones and PC Abdool Rohomon.

The premises licence holder and DPS Biniam Mebrahtu attended, together with his business partner Mr Victor Joseph. The Sub-Committee noted that the premises licence was held by Mr Mebrahtu alone, and not as a partnership. They were represented by Duncan Craig of counsel.

Environmental Health was represented by Paul Samms, who appeared on behalf of Martin Key who had made a representation.

Three preliminary issues were raised by PC Rohomon:

- That the CCTV footage be viewed in private session
- That if any issue was raised in relation to the Public Sector Equality Duty under the Equality Act 2010, then he was able to address it
- That if any issue arose in relation to the legality of the Superintendent's Certificate, then he was similarly in a position to address it

Mr Craig indicated that he was content that the CCTV be viewed in private, and that he raised no issues in relation to the PSED or the legality of the certificate.

Before the meeting began the Sub-Committee was aware of the amended *Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020*, the updated version of the Guidance entitled '*Closing Certain Businesses and Venues in England*' originally issued by HM Government on 3rd July 2020, and the Guidance entitled '*Keeping Workers and Customers Safe in Covid-19 in Restaurants, Pubs, Bars and Takeaway Services*' issued originally by HM Government on 12th May 2020 and updated regularly thereafter.

The Sub-Committee was also aware of the special local lockdown measures (specifically for Birmingham) which had been announced by HM Government on Friday 11th September 2020, then introduced on Tuesday 15th September 2020. These measures had been an attempt to control the sharp rise in Covid-19 cases in the city.

Furthermore, the Sub-Committee was aware of the further national measures to address rising cases of coronavirus in England as a whole, which had been announced by HM Government on 22nd September 2020. These national measures had been published on the "gov.uk" website on that date and detailed the new requirements for all businesses selling food or drink (including cafes, bars, pubs and restaurants), ordering that all such premises must be closed between 22.00 hours and 05.00 hours. Other requirements for such premises included seated table service, wearing of masks, and participation in the NHS Test and Trace programme. These measures were an attempt by HM Government to control the sharp rise in Covid-19 cases nationally.

The pandemic had continued to be the top story in the national news across the Spring, Summer and now into the Autumn of 2020; the Birmingham lockdown, and also the new national measures announced on 22nd September, had been very widely publicised and discussed both in news reports and on social media. The Prime Minister, together with HM Government's Chief Medical Officer and Chief Scientific Officer, had resumed the televised 'Coronavirus Briefing' broadcasts which had been a feature of the first few months of the pandemic. In recent days HM Government had also designated a pyramid-style 'Three Tier' system for the nation, to indicate the level of risk for each area. Birmingham had been designated as 'Tier 2', meaning a 'high' level of risk.

The Dahlak Lounge premises had been granted the premises licence on 12th March 2020, less than two weeks before the national lockdown was imposed.

Mr Biniam Yemane Mebrahtu attended the meeting, as the premises licence holder and also as the designated premises supervisor.

Members heard the submissions of West Midlands Police, namely that the background to the certificate issued by the Chief Superintendent under s53A(1)(b) of the Act was that, in Birmingham, it had been observed that the death rate, the rate of infection, and the rate of hospital admissions were all steadily increasing;

there were more Covid patients in Birmingham hospitals currently than there had been at the start of the March 2020 lockdown.

From the 4th July 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, information on how to trade was readily available to such premises - via the "gov.uk" website, and also the very many news reports, both on television and on general social media. The requirements included no loud music, no dancing, queue management, and 2m social distancing (or 1m with mitigation measures).

On the 16th August 2020, West Midlands Police observed a general failure by the Dahlak Lounge premises to follow the Government Guidance. Whilst dealing with an incident nearby in the early hours of the morning, Police found that loud music was emanating from Dahlak Lounge at a volume which could be heard in the street.

Upon entering, Police observed that there was no social distancing or limitation of numbers of patrons as per the Covid-19 requirements, to allow for safe operation. Police described the premises as "packed" with patrons. Under the fire risk assessment, the capacity limit was 120 patrons - 60 on the ground floor and 60 on the first floor. Far more than these numbers were estimated by Police to have been inside. Loud music was playing, making normal conversation impossible, and therefore requiring raised voices – a known risk for Covid transmission. The Police ascribed these failures to unsatisfactory management by the premises licence holder Mr Mebrahtu, who was also the designated premises supervisor.

Police offered advice and help to the licence holder via email, to assist him in understanding what was required to trade in a Covid-safe manner. Police also held a meeting with him on 26th August and spent some time explaining the social distancing requirements. The day before the meeting PC Reader had sent a detailed email explaining how the premises should be operated under the Covid-19 Regulations and Government Guidance. He additionally supplied links to the legislation and Guidance in the body of the email. Surprisingly, Mr Mebrahtu was not aware that his premises had any capacity limit for numbers of patrons. Police requested that he supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; Mr Mebrahtu stated that the risk assessments had been done for both Covid risk and fire risk. He supplied these on 3rd September 2020.

Then from September 2020, the measures imposed by HM Government became stricter – closure at 22.00 hours, music to be limited to 85 decibels, no standing (table service only), wearing of masks, and participation in the NHS Test and Trace programme. This information was readily available to licensed premises via the "gov.uk" website, television and on social media.

On 10th October 2020 Police received a complaint from a member of the public that loud music was emanating from the Dahlak Lounge and that there were numerous cars in the car park. Police attended at around 21.10 hours, which was within the permitted opening hours (closure required at 22.00). Police found that very loud music was indeed emanating from Dahlak Lounge, at a volume which could be heard in the street – despite the shutters to the premises being pulled

down and locked, and the premises appearing to all intents and purposes to be 'closed'. Around twenty people were in the car park. One individual inside the premises was seen to look out of an upstairs window; moments later, the volume of the music reduced significantly. A person, thought to perhaps be a security guard, then unlocked the door from the inside.

Upon entering, Police were astonished to find the situation inside to be even worse than that which had been observed on the 16th August. Around 150 people were found on the ground floor; no social distancing whatsoever was being observed and many patrons were standing or walking about. Others were seated together, either on long benches or in booths, but nobody was keeping a Covid-safe distance from others. The music being played had already been turned down, but the Police found that they still could not hear anything above it. Masks were not being worn by many customers, and even some of the staff, except for the security guards; smoking of shisha by patrons was going on.

Staff hurriedly began pulling patrons out of their seats, exhorting them to "move, move, you've got to move", and ordering those seated in booths to "get out", on the basis that the premises had exceeded its capacity limit.

Police observed that the door through which they had entered, which had been unlocked for them by somebody inside, was in fact a front fire escape. There was also a rear fire exit, but this was found to lead only to the outdoor smoking area – an entirely enclosed area, with no means of escape beyond that. A second front fire exit was also unsatisfactory to Police, given the small size of the door to it, and the presence of a trip hazard created by the flooring and the irregular-sized door. Emergency lighting and signage was not in place at the front fire exit; indeed, sofas and benches had been placed in the path of the main escape route. The shutters had also been pulled down and locked. The premises' view was that this was to stop people from getting in.

This was all completely unacceptable in terms of fire safety but was made infinitely more serious by the fact that many patrons inside were smoking shisha, which by its nature increases the risk of fire. The view that PC Rohomon took was that the premises were enclosed for the purposes of The Health Act 2006 and that, in consequence, the smoking of shisha was unlawful. Moreover, as the Police explained, ventilation arrangements are key to compliance with the Health Act 2006 when smoking shisha, yet the Dahlak Lounge had the main shutters pulled down and locked. Any outbreak of fire would have had disastrous consequences, even if proper social distancing and a proper limit of numbers had been in place (which they were not) – and yet Police had observed around 150 people on the ground floor, which had a capacity limit of 60 persons.

The licence holder claimed to Police that the fire assessment had confirmed that he could have 220 persons on the premises (160 on the ground floor and 60 on the first floor); upon examining the fire risk assessment document, Police observed that the capacity had changed to "220" in total for both floors (not 120 in total as shown in the old fire risk assessment-60 on the ground floor and 60 on the first floor), yet the document was still dated 1st July 2020. Also unsatisfactory was the reliance on what was called the "extra fire exit" to justify the increase in the

capacity limit; this turned out to be the irregular sized door with the trip hazard. It was also apparent that the layout of the premises had altered considerably from the deposited plan; there was now a stage in place; there was the installation of the “extra fire exit door”; and the bar counter had been extended. The layout of the furniture had changed. Mr Craig submitted that seating which was not fixed was not covered by the regulations. Irrespective of this, the Licensing Sub-Committee was concerned that the seating (whether fixed or unfixed) did not accord with the deposited plan was positioned in a manner which did not comply with Covid19 Guidance to maintain social distancing between tables and had been positioned so as to block a fire exit. PC Rohomon submitted that there were no useable means of escape in the event of fire. One exit led to the smoking area which was not a means of escape; the “extra fire exit” was locked; and the shutters were down.

The Covid risk assessment produced by the licence holder was also found to be wholly unsatisfactory. It was regarded by Police as having been approached by the licence holder as a mere tick-box exercise, rather than a proper consideration of what was required to trade safely during the pandemic. Police had requested CCTV from the premises, but this had not been forthcoming. Mr Craig was later to accept responsibility for not forwarding CCTV footage timeously. He maintained that he had forwarded the files, but that the emails had bounced back.

The CCTV footage had been viewed by the Sub-Committee in advance of the hearing, and extracts were shown in private session.

- Footage was shown on body worn camera of the police approach to the shuttered outside of the premises
- Footage was then shown from camera 1 and was timed at 20.32 on 10th October 2020. PC Rohomon said that it was a scene of “carnage” and that there was so much wrong with the footage. It was a free for all; there was no social distancing; people were standing up throughout the premises; people were dancing; the rule of six was not being observed; no one was wearing masks; upwards of 20 shisha pipes were being smoked; the seating blocked the fire exit (which was locked in any event); the tables and benches were closer than 2m and there were no mitigation measures in place to allow for 1m distancing. It was, he said, “a total mess and there was no control”. The Sub-Committee agreed with this finding.
- Footage was then shown of the premises at 21.16 after the police had arrived. There was a gap in the footage between the first clip and this clip. The police were not given any footage showing what had happened after the operators of the premises became aware of the police presence outside. This clip showed a very different picture. People were now mostly seated, although it was clear that the tables and benches were close together- in some instances, as close as 20cms. The Sub-Committee saw a table of 8 being reduced in number as the previous occupants were ushered towards the staircase leading to the first floor. Even still, a man who had been in this party then gets up and embraces someone from the next-door table which is clearly closer than 2m. Shisha pipes were still clearly evident.

The Police said that it was this footage which had convinced them to apply for a summary review and to seek revocation. The scene 40 minutes before had been “carnage”, and the following scene demonstrated that the operators clearly knew what they **should** have been doing because they had taken some steps to comply with the regulations as shown in the second clip. WMP were therefore concerned that the premises licence holder was being reckless in his style of operating and was endangering public health by risking the spread of Covid-19. All in all, the scene discovered on the 10th October was in stark contrast to the licensee’s declaration in September that the premises was both fully Covid-compliant and fully fire risk compliant.

The Police explained that the premises’ decision to trade in this unsafe manner, which was not compliant with the Government Guidance, was an overt risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. The Covid-19 virus is a pandemic which has required all licensed premises to act responsibly and in accordance with the Government Guidance when trading, in order to save lives. It was therefore a flagrant risk to public health for any licensed premises to breach the Government Guidance by trading in an unsafe manner.

Paul Samms made representations on behalf of Environmental Health and supported the case for revocation.

Duncan Craig made submissions on behalf of the licensee. He agreed that the plan was defective, and agreed that the plan differed in several respects to the original plan. He maintained that the plan could be cured by depositing a fresh plan showing the alterations. The Sub-Committee felt that this missed the point. The public had been put at risk as a direct consequence of these alterations, the impeding of the (locked) fire escape being just one example of this.

Mr Craig maintained that there were in fact four useable fire exits. He pointed to one which would have required patrons to climb stairs to make use of the first-floor exit. He pointed to another which would have required customers to go through the kitchen and then the office in order to make use of it. He maintained that the shuttered front door was a useable exit. He said that the shutters were there to discourage people from entering, and not as the police had claimed to give the appearance that the premises were closed.

In respect of the Covid Risk Assessment he maintained that it was not a tick-box exercise and that his client had paid money to have it produced. He was taken to one example of what appeared to be a “ticking of the box” by his client which contained an incomplete assessment of a risk to which his client had entered “yes” in the box. He agreed that some of the risks had not been complied with (the doors being pinned back for example) but maintained that many others had. He “held his hands up” to there not being total compliance. An example was given of a statement in the risk assessment that the premises would only operate at 30% of the fire risk capacity. This would have been 66 people if the “amended” and unsigned fire risk assessment was to be accepted, and not the 152 people who were on the premises. He maintained that his client, “acting in good faith”, had read that to mean that the capacity would be reduced by a third.

It was, he said, a matter of opinion whether the Covid Risk Assessment was, in this case, a tick-box exercise. In Mr Craig's professional opinion it was not. The Sub-Committee disagreed. Mr Craig did not seek to blame WMP for not providing feedback on the Covid Risk Assessment when it was sent to the police.

In respect of the smoking of shisha, he maintained that his client "understands that he is compliant". The Sub-Committee disagreed and preferred the submissions of PC Rohomon that the premises were enclosed.

As to the gap in the CCTV footage, Mr Craig could offer no explanation other than that an engineer had been contacted with a view to retrieving the footage.

He invited the Sub-Committee not to speculate about the evidence.

He closed his submissions by inviting the Sub-Committee to remove the DPS; suspend the licence for three months and impose suggested conditions.

The Sub-Committee applied its mind to the task in hand which was to take such steps as were appropriate and proportionate under s.53C in order to promote the licensing objectives. It also bore in mind paragraphs **11.1** and **11.26** of the Guidance issued under s182.

The Sub-Committee was mindful that the promotion of the licensing objectives is ultimately a forward-looking exercise. Deterrence is also a proper consideration. In ***East Lindsey District Council v Abu Hanif [2008] EWHC 3300 (Admin)***, a licensing case involving the employment of illegal workers, the High Court (Jay J) made important observations of more general application to licence review decisions:

"The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence."

Similarly, in ***R (Bassetlaw District Council) v Worksop Magistrates' Court [2008] EWHC 3530 (Admin)***, the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J (at §32), referred to deterrence as a proper consideration in the context of licence reviews.

The Sub-Committee found that the licensing objective of the prevention of crime and disorder is engaged. A breach of the Regulations is a criminal offence and so engages the prevention of crime and disorder licensing objective. The Sub-Committee's attention was drawn to the case of ***R (Blackpool Council) v Howitt [2008] EWHC 3300 (Admin)*** where breaches of the newly imposed smoking ban

were a criminal offence. There does not have to be a criminal prosecution or conviction for this objective to be engaged.

All in all, the Sub-Committee considered the licence holder to have failed to take his responsibilities seriously. It found that the activities identified above amounted to a flagrant disregard for the licensing objectives generally, including those of public safety and public nuisance.

The Sub-Committee agreed with the Police that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises. The Sub-Committee found the Police observations relating to Covid, fire risk and shisha to be alarming, and not something that inspired the slightest confidence in the management arrangements at the premises. All in all, the Sub-Committee considered the licence holder to have failed to take his responsibilities seriously.

The Sub-Committee considered whether it could impose other steps short of revocation, including modification of licence conditions and suspension of the licence for three months (as urged by Mr Craig), but considered that this would offer little to address the real issues, which were the unsatisfactory practices and the irresponsible attitude shown by the licence holder, both of which were a significant risk to public health in Birmingham.

The Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the Government Guidance in order to trade as usual. Mr Craig invited the committee to remove the DPS, but offered the Sub-Committee no replacement DPS for the Sub-Committee's consideration. The Sub-Committee considered that, in the circumstance, the revocation of the licence and the removal of the DPS was the appropriate and proportional course to take.

The Sub-Committee is required under s.53D of the Act to review the Interim Steps that have been taken by the Licensing Sub-Committee under s.53B. In conducting a review of the Interim Steps, s.53D(2) sets out how it should approach such a review:

*In conducting the review under this section, the relevant licensing authority **must—***

(a) consider whether the interim steps are appropriate for the promotion of the licensing objectives;

(b) consider any relevant representations; and

(c) determine whether to withdraw or modify the interim steps taken.

The Sub-Committee took the view that, given the conduct of the operator of these premises, that it is appropriate and proportionate that these steps remain in place.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the s.182. Guidance and the Guidance issued by the Home Office in relation to expedited and summary licence

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reviews, as well as the submissions made by the Police, the Environmental Health Officer and Mr Craig at the hearing.

All parties are advised that there is a right of appeal to the Magistrates' Court against the Licensing Authority's decision within 21 days of being notified of these reasons.

Please note, the meeting ended at 1306.