

BIRMINGHAM CITY COUNCIL

LICENSING SUB- COMMITTEE A, 01 OCTOBER 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON THURSDAY, 01 OCTOBER AT 1100 HOURS, AS AN ON-LINE MEETING.

PRESENT: - Councillor Davis in the Chair;
Councillors Locke and Brennan.

ALSO PRESENT

Joanne Swampillai – Committee Lawyer
David Kennedy – Licensing Section
Mandeep Marwaha – Committee Manager

NOTICE OF RECORDING

1/011020 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

DECLARATIONS OF INTEREST

2/011020 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting.
No interests were declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/011020 No apologies had been submitted. It was noted that Councillor Brennan was in attendance and substituted for Councillor Beauchamp.

LA REFERENCE, 160 HOCKLEY HILL, BIRMINGHAM, B19 1DG - LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 - APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS

The following persons attended the meeting: -

Those making representations: On behalf of West Midlands Police

PC Ben Reader – West Midlands Police (WMP)

On behalf of the Premises Licence Holder

There was no attendance from the Premises License holder or representatives.

The Chairman welcomed all present and explained the hearing procedure to consider representations against the interim steps imposed at the expedited review in respect of the licence.

The Chairman asked if there were any representations to withdraw. West Midlands Polices had no representations to withdraw.

At this juncture, the Chairman queried if there were any preliminary points to be made. In response, PC Reader confirmed a private session was not required as there was no CCTV to share.

David Kennedy, Licensing Section, made introductory comments to the documentation and gave a brief overview to the case.

The expedited review was served on the licensing authority and the license holder. The license holder was notified by WMP via an email address that was recently being used.

The notification of this review was sent to the license holder via the same email address however, no response was received by the license holder to participate at this meeting.

Members were notified if the license holder was aggrieved with the decision made, he had the right to make representations back to the licensing authority. If this was received by the licensing authority, then the Licensing Sub-Committee would need to reconvene within 48 hours of receiving those representations (excluding non-working days).

West Midlands Police had applied for an expedited review of the premises licence in respect of LA Reference (trading as Petite Afrique), 160 Hockley Hill, Birmingham, B19 1DG.

The application had been made under Section 53A of the Licensing Act 2003 (as amended) and had been accompanied by a certificate signed by a senior member of the force, stating that in their opinion the licensed premises had been associated with serious crime and disorder.

(See document No. 1 & 2)

- 1) Certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003
- 2) the Application for Review of Licence

In accordance with the regulations, the licensing authority had given the premises licence holder and responsible authorities a copy of the application for review and a copy of the certificate.

The hearing had been arranged in order to consider whether it was necessary to take any interim steps in respect of the licence pending the determination of the review. A copy of the premises licence was attached. (See document No. 3).

PC Reader made the following points with regards to the representations and in response to questions from Members:-

1. An overview was given as to the reason for the Expedite Review. Members were reminded of the steps Government had set for all businesses, schools etc in accordance to Covid-19. On the 4th July, the Government were able to relax the lock down measures. One aspect was to allow certain businesses to reopen. Guidance for license premises was shared to show how businesses could operate safely and minimise the spread of Covid-19. Areas such as risk assessment, queue controls, social distancing, control of noise, restrict dancing etc were outlined.
2. As of 15th September, Birmingham had been in local lockdown. Nationally, the Government imposed a 10pm closure for license premises, hospitality venues etc.
3. The Police approach had been to use the Four E's (Engage, Explain, Encourage and Enforce). Several premises were undergoing the 'enforcement' stage as the other three stages had not been implemented successfully by businesses.
4. La Reference (Petite Afrique) was based in Hockley Hill by Constitution Hill in the City. It was noted this was an isolated area.

5. PC Reader had visited the premises several times. He noted generally there were a number of vehicles parked outside the premises.
6. Licensing Sergeant (Nick Giess) had visited the premises three times during August 2020 and spoke to the license holder (Rodrigue Tankeu). The Licensing Sergeant had raised issues with Rodrigue around the volume of music, people dancing and using the pool table within the venue.
7. Following the third visit (end August 2020), the licence holder submitted a generic risk assessment to Sergeant Giess. The risk assessment was not specific to the venue. It was very generic around measures that could be put in place to reduce transmission such as staff not wearing uniform whilst travelling to work etc. Further details of this would be provided for the full hearing.
8. The risk assessment was emailed to Sergeant Guise. In the email, Rodrigue indicated the document would be reviewed and updated on a weekly basis.
9. On 4th September, before 11pm, PC Reader was working on 'Operation Reliance' which was a force operation to tackle unlicensed music events and calls around breaches to Covid-19 Regulations.

Note: At this juncture, PC reader was disconnected from the MS Teams and the Committee paused until he reconnected as he was dialling in from a landline. The Committee and livestream paused until PC Reader reconnected.

10. PC Reader visited the venue and noted the music was very loud. There were customers in the premises and PC Reader asked Roderigue to come outside so that he could speak to him.
11. Roderigue stated the music was being tested and was not normally that loud. PC Reader found this improbable, as the advice on the sound level had been given before.
12. Roderigue could not give an answer on the noise limit – a condition that should have been in place.
13. PC Reader questioned the conditions on the license and Roderigue confirmed he had submitted a risk assessment to Sergeant Giess

14. PC Reader had no confidence that Roderigue was complying with his license or with the Covid-19 guidance.
15. On 26th September (Saturday evening), PC Reader was deployed onto Operation Reliance. He visited a number of premises. Whilst driving through the City Centre approximately 10.20pm, he noticed a number of vehicles still outside La Reference (Petite Afrique). This led PC Reader to think there still were people inside, although the shutters of the premises were halfway down with lights on.
16. PC Reader parked on the side street and went to the main doors. He entered the premises approximately 10.25pm and there were around 40 people inside including staff inside the venue.
17. This was 25 minutes after the premises should have closed.
18. Social distancing measures were not in place. Customers were talking loudly gathered in particular around two tables. There were drinks on the tables.
19. Someone shouted as PC Reader entered the premises. A customer then turned to see PC Reader and his colleague in the corner. At this stage, people quickly began to leave walking past them. PC Reader had not directed anyone to leave at that point.

Note: At this juncture, PC reader was disconnected from the MS Teams and the Committee paused until he reconnected as he was dialling in from a landline. The Committee and livestream paused until PC Reader reconnected.

20. PC Reader noted customers that were leaving were not wearing face masks, as per guidelines.
21. Roderigue was in the section that people had been in and was clearing the tables. After a couple of minutes when people left the premises, Roderigue came to PC Reader and his colleague to speak to them.
22. PC Reader was disappointed that Roderigue (as the DPS and license holder) had no form of face covering.
23. Roderigue stated he had been trying to get people to leave since 9.45pm. He stated they were not listening to him and did not want to go. PC Reader found this strange as he never had control of the venue.

24. PC Reader asked Roderigue if he had security staff. Roderigue stated he had security, but they left at 10pm. Again, PC Reader found this strange as Roderigue let security leave whilst there were customers still in the venue especially knowing the current guidance.
25. PC Reader confirmed to Members the following details:
 - 1st visit – 4th September
 - 2nd visit – 26th September – post change in covid-19 time.
26. PC Reader asked Roderigue to see the CCTV. Roderigue nor his staff who were on site, could work it the CCTV.
27. PC Reader wanted to review the CCTV to see prior to WMP officers arrival what had been happening in the venue. Also, to see if Roderigue's version of the events were as he had stated i.e. Roderigue stated he was trying to get people to leave.
28. There were four members of staff present in the venue, none of which were wearing any form of face coverings.
29. Since the 26th September, PC Reader had been to the venue to review the CCTV. He saw people being served at the bar just before 10pm. The technician was in a rush to leave for another job therefore, PC Reader requested for the footage to be produced.
30. Only a limited amount of the CCTV was viewed, however the parts viewed indicated Roderigue serving behind the bar with no mask on. He appeared to be taking card payments from people that were standing at the bar. There were customers sat at the bar, therefore it did not look like table service was in operation.
31. There were other staff behind the bar and PC Reader could only see one staff member wearing a face covering.
32. Social distancing measures were not taken seriously.
33. PC Reader checked a couple of the cameras from 9.45pm onwards and could not get an overview/full picture of the number of people who were in the venue. He could not tell if a number of people had left prior to 10pm or whether the people PC Reader had seen leaving had been at the venue for a while.
34. There were outstanding issues with the premises i.e. if the venue were noting track and trace details, if they were taking bookings and had the bookings been kept under 6 etc.

35. PC reader and his colleague saw a number of people gathered around a table, loudly talking, not wearing masks. Staff were not wearing masks.
36. This was taking place 25 minutes after the cut off time and wondered if the PC Reader and his colleague had not entered the venue if those people would have left. He questioned if this would have continued for a while.
37. People who left were taking drinks with them. The tables still had drinks on them when people had left. and PC Reader got the impression the people were not about to leave and would have stayed longer if Police officers had not entered the premises at that time.
38. PC Reader referred to the original submissions on behalf WMP and believed the 'Four E's approach' had not worked with this premises therefore WMP had to go to the enforcement stage.
39. Following numerous visits, there was no confidence the license holder who was also the DPS had control of this premises and was not operating it safely.
40. Members were informed the premises was not in a residential area and where the premises were situated was explained.
41. Members were made aware that WMP were not aware of any historical issues with the venue however, having conversation with Roderigue, he had only recently taken ownership of the premises as the license holder and DPS.
42. The venue was previously called La Reference and now called Petite Afrique.
43. On one occasion, Roderigue mentioned to PC Reader that the previous license holder had sadly passed away and he had now taken over the business and became the license holder and DPS.
44. Members were informed the transfer to Roderigue had taken place on the 18th May 2020. Following this, he nominated himself to become the DPS on 24th July 2020.

The Chairman informed the public that at this stage, normally the submissions from the DPS or Premises License Holder would take place. However, despite efforts to contact them they were not present at the Committee.

In summing up PC Reader made the following points: -

- WMP were working around the 'Four E's Approach' and were now at the enforcement stage. The visit three visits from Sergeant Giess and two visits from PC Reader therefore a total of five visits. On the fifth visit, WMP have found significant breaches and regulations were not adhered to. The premises had a number of customers post 10pm.
- Roderigue was the license holder and DPS. WMP had no confidence for Roderigue to be the DPS or license holder as Roderigue appeared to be unable or unwilling to comply with his license and regulations of national guidance. Roderigue was not able to safely operate the venue and to keep customers safe.
- WMP would be seeking suspension of the premises license so that an investigation could take place of what exactly what had happened and whether there were further breaches which could be brought to the full hearing in 28 day's time.

The Chair noted the position of the WMP was clear.

At 1223 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Managers withdraw from the meeting to make the decision and inform all parties via email within the relevant time period for the expedite review.

4/011020

RESOLVED:-

That, having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Mr Rodrigue Kouamo Tankeu in respect of La Reference (Petite Afrique), 160 Hockley Hill, Birmingham B19 1DG, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application and
- that Rodrigue Kouamo Tankeu be removed as the Designated Premises Supervisor.

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 were 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 were 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. In recent weeks 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.

Members heard the submissions of West Midlands Police, namely that from 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, the approach taken by West Midlands Police was to advise and offer guidance to licence holders and designated premises supervisors to assist them in following the new requirements.

However, this approach had not seemed to be working in terms of La Reference (Petite Afrique). Despite conducting numerous visits since the 4th July 2020, to explain the restrictions, Police had observed a general failure by the La Reference (Petite Afrique) premises to follow the Government Guidance. There were 5 visits in total from West Midlands Police - including three visits from the licensing Sergeant in August 2020.

Upon visiting the premises on the 4th September 2020, Police found that loud music was playing at a volume which made conversation difficult. The licence holder, who is also the designated premises supervisor, was unable to confirm whether a noise limiter (required as a condition of the licence) was in operation. He claimed that the music levels were simply “being tested” and would not usually be played at that volume.

On the 26th September the Police attended again, at 22.25 hours, only to discover that La Reference (Petite Afrique) was trading, in direct defiance of the order from HM Government that all premises serving food and drink must close by 22.00 hours. Around 40 people were found inside the premises, many of whom left hurriedly upon seeing Police arrive. Masks were not being worn by customers, and social distancing was not being observed.

The explanation given by the premises licence holder was that he had been trying to get customers to leave from 21.45 hours onwards, but the customers “would not listen to him, and did not want to go”. This explanation was not accepted by the Police Officers once they examined the CCTV footage, which showed Mr Tankeu serving behind the bar shortly before 22.00 hours, not trying to get customers to leave. CCTV also showed that there was no table service in operation and customers were sitting at the bar drinking. Social distancing rules were not being observed, and even some bar staff were not wearing masks.

The Police ascribed these failures to unsatisfactory management by the premises licence holder. The Police explained that the licence holder’s 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 Police 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.

The Covid-19 virus is a pandemic which has required all licensed premises to act responsibly and in accordance with both the law and 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.

Attempts by the Police to advise those at the premises had not succeeded. Police had requested that the premises supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; the document supplied had been generic and the licence holder had stated that the document would be reviewed and updated on a weekly basis. All in all the Police had concluded that the licence holder was either unable or unwilling to comply with the Government Guidance; accordingly they had no confidence in him to trade safely. The recommendation of the Police was therefore that the Sub-Committee should suspend the licence pending the review hearing.

The licence holder did not attend the meeting and did not send a representative. The Sub-Committee agreed with the Police that the licence holder had failed to take his responsibilities seriously. The Sub-Committee therefore determined that it was both necessary and reasonable to impose

the interim step of suspension to address the immediate problems with the premises, namely the likelihood of further serious crime.

The Sub-Committee considered whether it could impose other interim steps, including modification of licence conditions, 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.

However, 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. Therefore the risks could only be properly addressed first by the suspension of the Licence, and secondly by the removal of the DPS, pending the full Review hearing.

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

All parties are advised that the premises licence holder may make representations against the interim steps taken by the Licensing Authority. On receipt of such representations, the Licensing Authority must hold a hearing within 48 hours.

All parties are advised that there is no right of appeal to a Magistrates' Court against the Licensing Authority's decision at this stage.

OTHER URGENT BUSINESS

5/011020 There was no other urgent business.

The meeting ended at 1226 hours.

.....
CHAIRMAN