

BIRMINGHAM CITY COUNCIL
LICENSING SUB-COMMITTEE A

Thursday 1 October 2020 at 1100
hours in On-Line Meeting,
Microsoft Teams

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

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

2 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant 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.

3 APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

Attached

4 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

N.B. Application scheduled to be heard at 1100 hours.

Documents submitted.

- A. Certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003
- B. Application for Review of Licence
- C. Copy of Premises Licence
- D. Location maps

West Midlands Police have applied for an expedited review of the premises licence in respect of LA Reference, 160 Hockley Hill, Birmingham, B19 1DG.

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

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

This hearing has been arranged in order to consider whether it is necessary to take any interim steps in respect of the licence pending the determination of the review. The Premises Licence is included at item C.

The interim steps that must be considered at the hearing are:

- Modification of the conditions of the premises licence;
- Exclusion of the sale of alcohol by retail from the scope of the licence;
- Removal of the designated premises supervisor from the licence;
- Suspension of the licence

5 OTHER URGENT BUSINESS

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chairman are matters of urgency.

West Midlands Police

CERTIFICATE UNDER SECTION 53A (1)(B) OF THE LICENSING ACT 2003

I hereby certify that in my opinion the premises described below are associated with serious crime and disorder

Premises: Petite Afrique (La Reference)

Premise Licence Number: 4155

Premise Licence Holder: Mr Rodrigue Tankeu

Designated Premise Supervisor: Mr Rodrigue Tankeu

I am a Chief Superintendent in West Midlands Police.

I am giving this certificate because I am in the opinion that the procedures under the Licensing Act are inappropriate in this case because the standard review procedures are thought to be inappropriate due to the seriousness of the crime, and the serious management failings of the premises concerned.

This venue has been visited on a number of occasions when officers have attempted to engage and explain the updated guidance. Officers have not been confident that measures are being followed or that licensing conditions are being complied with.

On Saturday 26th September this premises operated without properly implementing social distancing guidance. The venue still had numerous customers present at 22:25 hours when the well-publicised time for licensed premises to close is 22:00. This has caused unnecessary risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. This is causing a public nuisance.


Public nuisance is a serious crime and combined with the national threat the Covid 19 possesses, it warrants the use of this power.

I have considered the use of the normal review procedure but I do not feel this would be appropriate in these circumstances due to the above reasons, and the fact that to maintain the licensing objective of preventing crime and disorder the normal review procedure would not be sufficient.

The severity of the incident is a matter that needs to be brought to the attention of the Licensing Committee immediately.

I am conscious of the guidance on the use of "Expedited Reviews" and given the emphasis that is given to use of this power to tackle serious crime and disorder, my feelings that this process is deemed appropriate are further enforced.

Signed

 C/Supt 1218 GLEW



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

Before completing this form please read the guidance notes at the end of the form. If you are completing the form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary

I - Chief Superintendent 1218 Green

(on behalf of) the chief officer of Police for the West Midlands Police area apply for the review of a premises licence under section 53A of the Licensing Act 2003

1. Premises details: Petite Afrique (La Reference)

Postal address of premises, (or if none or not known, ordnance survey map reference or description):

**160 Hockley Hill
Birmingham
B19 1DG**

2. Premises Licence details:

Name of premise licence holder (if known):

Mr Rodrigue Tankeu

Number of premise licence (if known):

4155

3. Certificate under section 53A (1)(B) of the Licensing Act 2003 (Please read guidance note 1)

I confirm that this is a certificate has been given by a senior member of the police force for the police area above that in his/her opinion the above premises are associated with serious crime or serious disorder or both, and the certificate accompanies this application.

(Please tick the box to confirm)



4. Details of association of the above premises with serious crime, serious disorder or both:

(Please read guidance note 2)

The year 2020 has seen a Pandemic disease, referred to as Covid 19 infect vast swathes of the World, with the UK not being immune to its effects.

In March the UK Government had to take the extra ordinary step of closing down numerous operating premises, close schools, encourage people to work from home, all with the aim of stopping the spread of the virus, reduce the number of deaths and stop the infection rates.

On the 4th July 2020, the UK government were able to start relaxing the lock down measures. This was not a return to normality but a start to allow businesses to reopen, and get the country operating again. The re-opening was assisted with guidance issued to the sectors that were being allowed to re-open.

For licensed premises, the guidelines were found in a document called "Keeping workers and customers safe during Covid 19, in restaurants, pubs, bars and takeaway services"

<https://assets.publishing.service.gov.uk/media/5eb96e8e86650c278b077616/working-safely-during-covid-19-restaurants-pubs-takeaways-240920.pdf>

This document has been revised, on the 14th June, 24th June, 3rd July, 9th July, 23rd July, 31st July, 12th August, 10th September, 11th September, 18th September and 24th September.

This guidance was designed to do one thing, to show how premises could open and what they would need to do, to do so safely and minimise any potential spread of the disease.

This document provided guidance in matters such as, risk assessments, queue control, social distancing, noise control, no dancing, no shouting and enhanced cleaning.

Cases and infection rates of Covid 19 began to rise again in various parts of the UK through September, resulting in areas having to issue local lock down rules. Birmingham was not immune to the increased numbers of Covid 19, and had to impose local lock down rules on the 15th September 2020.

On top of this the UK Government then imposed nationwide (England only) measures forcing all hospitality venues to close at 10pm and for everyone to be out of the building by 10pm. This was on top of any local lock down rules.

This has been widely publicised.

The UK Prime Minister – Boris Johnson addressed the UK through a TV broadcast, in which he emphasised the dangers of the disease coming back and that we had to stick to the rules to curb the growth in infections.

The police approach has been around the 4 E's principle, Engage, Explain, Encourage, Enforce.

Officers have visited Petite Afrique numerous times since the 4th July when venues reopened. The visits have been to engage with the venue and explain the restrictions and guidance in place.

Sgt Nick Giess, the licensing Sgt attended the venue and spoke with the licence holder (Rodrigue Tankeu) at the end of August. Following this visit, the licence holder sent a very generic risk assessment to Sgt Giess. The licence holder stated that he planned to 'review and update it weekly'.

On the 4th September at approximately 22:55 hours, PC 2413 Reader attended the venue and spoke with Rodrigue Tankeu again. PC Reader noted that the music was very loud whilst customers were sat inside the premises. Rodrigue Tankeu told the officers that the music was just being tested and wasn't normally that loud. He was unable to state to the officer if he had a noise limiter in place, as per his licence conditions.

On the 26th September, PC 2413 Reader and PC 2853 Jevons were deployed on Op Reliant, a force wide operation to respond to suspected Covid guidance breaches. The officers drove past the location at around 22:20 and noticed a large number of vehicles outside. Officers noticed that the metal shutters were half way down covering the main doors.

Officers entered the premises at 22:25 and found approximately 40 people, including staff, inside the venue. Social distancing measures were not in place and the premises had failed to close at 22:00 as per the government measures. Customers were drinking at tables. Upon police attendance, customers quickly began to leave. These customers who left were not wearing facemasks as per guidelines.

Rodrigue Tankeu told officers he had been trying to get people to leave since 21:45, he stated they would not listen to him and didn't want to go. He also confirmed that his security staff had left at 22:00. If this was true, then he had no control of the venue.

Licensing officers have viewed the CCTV for the venue and have seen people at the bar being served just prior to 22:00. Rodrigue Tankeu is working behind the bar taking payments from people. This appears to contradict his account to officers that he had been trying to get people to leave. There appears to be no table service in operation and staff behind the bar are not all wearing face masks. Customers are sat at the bar drinking.

This venue is ignoring the guidance and hosting customers inside the premises post 22:00 with shutters half down.

The infection rate in Birmingham continues to rise, as of the 29/9/20 it has risen to 145.1 per 100,000, compared to last weeks figure of 96.2.

It is imperative that hospitality trade comply with the rules set down, to curb the growth of the disease.

Covid 19 is a worldwide virus that has seen many people die, articles in the press have shown that deaths unfortunately have surpassed 1 million people.

It is an infectious disease which is spread as a result of activities carried out by people. This explains the reason for measures such as social distancing.

The risk of spreading infections is deemed a "public nuisance". In the case of R v Rimmington and Goldstein (2005) UKHL.63, it quoted the leading modern authority on public nuisance as Attorney general v PYA Quarries Ltd (1957) 2 QB 169.

The case quotes "a person is guilty of a public nuisance (also known as a common nuisance) who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or emission is to **endanger the life, health**, property, morals or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects" (Rimmington at [3]).

Public nuisance is a common law offence which carries an offence of life imprisonment. It is WMP's stance that a serious crime under the definition in RIPA has been fulfilled on the above facts.

"Serious crime" is defined by reference to S.81 of RIPA Act 2000. An offence for which an adult could reasonably be expected to be sentenced to imprisonment for a period of 3 years or more.

West Midlands Police are concerned that the actions of this premise are contributing to the spread of the virus, they are ignoring the rules set to help reduce the threat of this virus, which places both its customers, staff in danger and threatens their safety, which then widens to the safety of their families and the communities they live in.

Signature of applicant:



Date: 30-9-2020

Rank/Capacity: C/84PT (218 GREEN), SW COMMANDER.

Contact details for matters concerning this application: BW Licensing

Address: Licensing Dept c/o Birmingham West and Central Police Station, Birmingham

Telephone Number(s): 0121 626 6099

E-mail - bw_licensing@west-midlands.police.uk

Notes for guidance:

1. A certificate of the kind mentioned in the form must accompany the application in order for it to be valid under the terms of the Licensing Act 2003. The certificate must explicitly state the senior officer's opinion that the premises in question are associated with serious crime, serious disorder or both.

Serious crime is defined by reference to section 81 of the Regulation of Investigatory Powers Act 2000. In summary, it means:

- conduct that amounts to one or more criminal offences for which a person who has attained the age of eighteen and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more; or
- conduct that amounts to one or more criminal offences and involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose.

Serious Disorder is not defined in legislation, and so bears its ordinary English meaning.

2. Briefly describe the circumstances giving rise to the opinion that the above premises are associated with serious crime, serious disorder or both.

LICENSING ACT 2003PREMISES LICENCE

Premises Licence Number:

4155 / 3

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
La Reference 160 Hockley Hill	
Post town:	Post Code:
Birmingham	B19 1DG
Telephone Number:	
Not Specified	

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

A	Plays
B	Films
C	Indoor sporting events
E	Live music
F	Recorded music
G	Performances of dance
H	Anything of similar description to that falling within (live music), (recorded music) or (performances of dance)
L	Late night refreshment
M3	Sale of alcohol by retail (both on & off the premises)

The times the licence authorises the carrying out of licensable activities

Sunday - Wednesday	10:00	-	03:00	A ,B ,C ,E ,F ,G ,H ,M3
	23:00	-	03:00	L
Thursday - Saturday	10:00	-	05:00	A ,B ,C ,E ,F ,G ,H ,M3
	23:00	-	05:00	L

The opening hours of the premises

Sunday- Wednesday	10:00	-	03:30
Thursday - Saturday	10:00	-	05:30

Where the licence authorises supplies of alcohol whether these are on and/or off supplies

On and Off Supplies

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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Mr Rodrique Kouamo Tankeu	
Post town:	Post Code:
Telephone Number: Not Specified	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) N/A

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Rodrique Kouamo Tankeu	
Post town:	Post Code:
Telephone Number: Not Specified	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number CV220000303	Issuing Authority COVENTRY CITY COUNCIL

Dated 05/06/2020

SHAID YASSER
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

No supply of alcohol may be made under the premises licence (a) at a time when there is no designated premises supervisor in respect of the premises licence, or (b) at a time when the designated premises supervisor does not hold a personal licence or his personal licence is suspended.

Every retail sale or supply of alcohol made under this licence must be made or authorised by a person who holds a personal licence.

The responsible person must ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. In this paragraph, an irresponsible promotion means any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises— (a) games or other activities which require or encourage, or are designed to require or encourage, individuals to— (i) drink a quantity of alcohol within a time limit (other than to drink alcohol sold or supplied on the premises before the cessation of the period in which the responsible person is authorised to sell or supply alcohol), or (ii) drink as much alcohol as possible (whether within a time limit or otherwise); (b) provision of unlimited or unspecified quantities of alcohol free or for a fixed or discounted fee to the public or to a group defined by a particular characteristic in a manner which carries a significant risk of undermining a licensing objective; (c) provision of free or discounted alcohol or any other thing as a prize to encourage or reward the purchase and consumption of alcohol over a period of 24 hours or less in a manner which carries a significant risk of undermining a licensing objective; (d) selling or supplying alcohol in association with promotional posters or flyers on, or in the vicinity of, the premises which can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness in any favourable manner; (e) dispensing alcohol directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of disability).

The responsible person must ensure that free potable water is provided on request to customers where it is reasonably available.

The premises licence holder or club premises certificate holder must ensure that an age verification policy is adopted in respect of the premises in relation to the sale or supply of alcohol. The designated premises supervisor in relation to the premises licence must ensure that the supply of alcohol at the premises is carried on in accordance with the age verification policy. The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and either— (a) a holographic mark, or (b) an ultraviolet feature.

The responsible person must ensure that— (a) where any of the following alcoholic drinks is sold or supplied for consumption on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) it is available to customers in the following measures— (i) beer or cider: ½ pint; (ii) gin, rum, vodka or whisky: 25 ml or 35 ml; and (iii) still wine in a glass: 125 ml; (b) these measures are displayed in a menu, price list or other printed material which is available to customers on the premises; and (c) where a customer does not in relation to a sale of alcohol specify the quantity of alcohol to be sold, the customer is made aware that these measures are available.”

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. (2) In this condition:— (a) “permitted price” is the price found by applying the formula $P = D + (D \times V)$, where— (i) P is the permitted price, (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol; (b) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence— (i) the holder of the premises licence, (ii) the designated premises supervisor (if any) in respect of such a licence, or (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence; (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994. (3) Where

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the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny. (4) Where the permitted price on a day ("the first day") would be different from the permitted price on the next day ("the second day") as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

The admission of children under the age of 18 to film exhibitions permitted under the terms of this licence shall be restricted in accordance with any recommendation made: (a) By the British Board of Film Classification (BBFC), where the film has been classified by that Board, or (b) By the Licensing Authority where no classification certificate has been granted by the BBFC, or, where the licensing authority has notified the licence holder that section 20(3)(b) (s74(3)(b) for clubs) of the Licensing Act 2003 applies to the film.

Each individual assigned to carrying out a security activity must be licensed by the Security Industry Agency.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

Regulated entertainment and Late night refreshment shall take place indoors only.

No adult entertainment, services or activities permitted on the premises at any time.

All staff to be trained on their responsibilities under the Licensing Act 2003, a record to be maintained and produced to responsible authorities upon request.

2b) Conditions consistent with, and to promote the prevention of crime and disorder

The premises licence holder will provide West Midlands Police (Birmingham Central Police Station) 28 days notice, if they propose to show any sporting event with international/national/local significance.

A refusal log to be maintained at the premises which will be available for inspection by any of the responsible authorities. Staff to record all refusals of sale of alcohol.

The premises licence holder/DPS will supply a monthly risk assessment for standard operation of the premises to the West Midlands Police Licensing Department at Steelhouse Lane Police Station, or such other officer or Police Station as shall have been notified to the Designated Premises Supervisor in writing. For any non-standard event after midnight the DPS will provide a risk assessment of the night/event to West Midlands Police (as above) at least 28 days before the event.

External Promoted Events: If the premises has any late night external promoter event which is not part of the standard operating procedure, then a separate risk assessment will be completed and forwarded to the Licensing Department at Steelhouse Lane Police Station at least 28 days, or such other time as agreed with West Midlands Police Licensing Department, before the event. Any additional conditions (in writing) required by West Midlands Police will become a condition of the premises licence for the purposes of that event.

The premises will implement and put in practice a drugs policy.

An incident log book will be kept and maintained on the premises, and will be made available for inspection by West Midlands Police and responsible authorities.

Members of staff will receive regular training in their responsibilities under the Licensing Act 2003, to include use of the proof of age scheme adopted by the premises. Such training to be documented and records shall be retained at the premises and produced to responsible authorities upon reasonable request.

The premises licence holder will ensure that the Designated Premises Supervisor, or such other member of staff as may be nominated by him/her, attends local Pubwatch (or such other similar scheme).

CCTV to be installed and maintained to the satisfaction of West Midlands Police. The CCTV system to be in full working order at all times when the premises are open for licensable activities.

The CCTV system shall record and store images for a minimum of 28 days. Images to be made available to West Midlands Police and Local Authority officers upon request.

The premises will risk assess its standard operating procedures covering seven days a week, included in this risk assessment will be any security provisions. A copy of risk assessments to be made available to West Midlands Police Licensing Department (Steelhouse Lane).

2c) Conditions consistent with, and to promote, public safety

SIA registered door supervisors will be engaged at the premises in accordance with the standard operating procedures risk assessment. Door staff profiles will be retained for all staff that are working in the premises or have been working at the premises in the last 3 months. Profiles are to be proof of identity (photocopy of driving licence or passport) and proof of address (utility bill or bank statement). Proof of address is not required when proof of identity is a new photo driving licence. Profiles are to be available for inspection on request by a responsible authority.

When door supervisors are engaged at the premises they shall wear Hi-Vis armbands at all times.

2d) Conditions consistent with, and to promote the prevention of public nuisance

A Noise Limiting Device (NLD) shall be fitted to the amplification system and set at a pre-set volume level, ensuring the volume of music is pre-set so as not to cause a noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall fulfil the following criteria:

- a. The device shall be fitted by a competent person and once fitted shall not be moved unless prior approval is given.
- b. The device shall be capable of cutting off the mains power to the amplification system if the volume exceeds the pre-set level or shall be capable of maintaining the volume of the music at the pre-set level and shall not restore power to the sound system until the NLD is reset by the licensee or their nominated person.
- c. The amplification system shall only be operated through the sockets/power points linked to and controlled by the NLD at all times.
- d. The NLD shall be maintained in full working order and at the pre-set volume during regulated entertainment.
- e. Any damage or malfunction to the NLD shall be reported to the Environmental Protection Unit as soon as possible and within 24 working hours of the damage occurring or malfunction being noted. The NLD shall not be used in this damaged or malfunctioning state.
- f. Any amplified regulated entertainment within the premises shall be controlled by the NLD.

There shall be adequate supervision of the external area, and security provision will be assessed within the standard operating procedure risk assessment (see above).

All windows are to be closed from 2300 hours.

The premises licence holder shall ensure that a written agreement is made with a reputable taxi company/ companies requiring that when taxis pick up and drop off customers from the licensed premises that noise from these vehicles does not cause a nuisance to local residents.

Customers who require a taxi from the site shall be advised by staff to use taxi companies specified by the licensee.

2e) Conditions consistent with, and to promote the protection of children from harm

No enforceable conditions identified from operating schedule.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

Qualified door supervisors shall be employed to control persons queuing to enter and exit the venue, from 11pm onwards. The number of qualified door supervisors to be employed shall be in accordance with that required by the risk assessment but shall not be less than two.

The premises shall adopt the Challenge 25 Scheme and appropriate signage will be placed at the entrance to the premises and adjacent to the bar servery.

3b) Committee conditions to promote the prevention of crime and disorder

N/A

3c) Committee conditions to promote public safety

N/A

3d) Committee conditions to promote the prevention of public nuisance

N/A

3e) Committee conditions to promote the protection of children from harm

N/A

Annex 4 – Plans

The plan of the premises with reference number **115412-4155/3** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection by appointment only. Please call the Licensing Section on 0121 303 9896 to book an appointment.

