

# BIRMINGHAM CITY COUNCIL

<b>LICENSING SUB-COMMITTEE A 23 OCTOBER 2020</b>
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## **MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON FRIDAY 23 OCTOBER 2020 AT 1000 HOURS AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Phil Davis in the Chair;

Councillors Bob Beauchamp and Majid Mahmood.

### **ALSO PRESENT**

Bhapinder Nandhra – Licensing Section  
James Rankin – Barrister instructed by Legal Services  
Joanne Swampillai – Legal Services  
Phil Wright – Committee Services

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

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### **NOTICE OF RECORDING/WEBCAST**

- 1/231020 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](http://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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2/231020 **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.

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### **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

- 3/231020 Apologies were submitted on behalf of Councillor Mary Locke and Councillor Majid Mahmood was the nominee Member.
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**LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW NAKIRA,  
QUEENSGATE, 121 SUFFOLK STREET QUEENSWAY, BIRMINGHAM, B1 1LX**

The following report of the Interim Assistant Director of Regulation and Enforcement was submitted:-

(See document No. 1)

The following persons attended the meeting.

**On Behalf of West Midlands Police (WMP)**

Gary Grant – Barrister, FTB Chambers, instructed by WMP  
Tim Woodward – Solicitor WMP  
Jennifer Downing – Solicitor WMP  
PC A Rohomon – WMP  
PC B Reader – WMP

**Those Making Representations**

Kyle Stott – Public Health,  
Martin Key – Environmental Health  
Gary Callaghan – BCC Enforcement

**On behalf of the Premises Licence Holder**

Leo Charalambides – Barrister, Kings Chambers) representing the Premises  
Licence Holders  
Dexter Laswell – Co Licence Holder  
Antonio Mankulu – Co Licence Holder  
Carl Moore – (Licensing Consultant)

The Chairman introduced the Members and officers present and asked if there were any preliminary points for the Sub-Committee to consider.

Mr Grant indicated that he would wish to show a few clips of CCTV footage and requested that these be shown in private as the clips showed a number of guests and customers and there had not been time to blur the faces of those people.

Mr Charalambides was content to move into the private session to view the CCTV footage.

The Chair confirmed that at the appropriate time the meeting would go in to private to view the CCTV footage.

The Chairman then explained the hearing procedure prior to inviting the Licensing Officer, Bhupinder Nandhra to outline the report.

Mr Charalambides sought, and the Chair allowed, to ask the officer a question and make a general point. He noted that in the officer's presentation the decision

was going to be notified by the 27 October 2020. He noted that the regulation 26 indicated that the decision had to be notified at the conclusion of the hearing and he sought clarification, during the meeting, if that would be the case.

Mr Charalambides noted that the section 182 guidance at paragraph 14.67 indicated that the authority's Statement of Licensing Policy should have due regard to the Equality Act 2010 and explain how the Public Sector Equality Duty had been complied with. He asked the Licensing Officer if the current edition of Birmingham City Council's Statement of Licensing Policy referred to the Equality Act 2010 and the Public Sector Equality Duty and how the Equality Duty had been complied with.

The Chair indicated that he understood that if there was an issue of non-compliance the legal challenge would not be in this meeting but elsewhere. He advised that he would adjourn the meeting so that he could seek legal advice.

At 1030 the meeting was adjourned.

At 1040 the meeting was reconvened.

The Chair advised that the Sub-Committee in reaching its decision would have due regard to the Equalities Act 2010 and he would not allow any further questioning of the Licensing Officer. He continued that regarding the decision in line with the Sub-Committee's normal practise it would deliberate immediately after the meeting and not to verbally confirm the decision then but issue the full written decision by the 27 October.

Mr Charalambides reiterated his previous comments relating to when the decision should be notified. He added that the question relating to the Equalities act 2010 was an easy one to respond to. He emphasised that the Council's Statement of Licensing Policy did not make reference to the Equality Act 2010 or the Public Sector Equality Duty and how it was complied with. He would have asked a supplementary question if the Authority undertook an annual review of the compliance with the Public Sector Equality Duty and he was going to assume it did not.

Mr Rankin proposed that the decision and notification of it be given today but the full decision with the reasons being sent out in writing on the 27 October. Both parties confirmed that they were happy with that proposal.

Mr Grant drew the Sub-Committee's attention to page 210 of 212 of the documentation paragraph 99 onwards which set out his view on the Public Sector Equality Duty in relation to the matter before the Sub-Committee.

Mr Grant made the following points on behalf of WMP:-

- a) The operator of Nakira had shown a persistent, deliberate and flagrant approach to the Covid 19 regulations and measures designed to protect staff and customers of Nakira and by extension the wider community.

**Licensing Sub-Committee A – 23 October 2020.**

- b) As everyone in the meeting knew the country was in the middle of a pandemic which had already killed over 43,000 people in the country and was spread by close contact between people in situations without proper measures been taken to prevent the spread.
- c) Hospitality venues which are designed to bring people together have such measures in place. Such venues were original closed during the lockdown and then allowed to reopen on 4 July 2020 with strict new measures in place. Without such measures there would be a danger to customers and the wider community.
- d) There were two sets of measures which operators should have regard to. First the is the law which were the regulations which were modified on a regular basis in light of experience and knowledge of the virus. These were summarised at paragraphs 74 to 78 on pages 202 of 212 to 205 of 212 in the agenda pack. Secondly supporting the regulations was guidance issued by the Government on 3 July 2020 to be considered by operators of hospitality venues.
- e) It was not a legal requirement for the operator of Nikira to abide by every detail of the guidance if it was not appropriate to their own setting. The guidance was a set of ideas from the Government that operators must have regard to when running a Covid secure venue.
- f) When looking at the case it is not an operator that is well intentioned in trying to comply with changing regulations but has made innocent mistakes. This was an operator taking deliberate, reckless and negligent actions to further their commercial interest. There was little or no managerial control of the premises. The operator was unwilling or unable to operate the venue in the correct manner so could not be trusted to operate in the newly introduced 3 tier regulations if allowed to reopen.
- g) The operator of Nikira had misled the police and the Sub-Committee at an earlier interim steps hearing. In addition, there was an incident on 24 September 2020 where a customer of the premises had the top of his thumb severed off when it was shut in a door by someone claiming to be a doorman. Management of the premises sought to cover the incident up by telling the victim not to call the police or an ambulance.
- h) Considering the evidence to be presented, the Sub-Committee is entitled to take robust, appropriate and proportional steps with the to support the licensing objectives. The aim of this was to prevent the operator of Nikira from undermining the licensing objectives in the future and to act as a deterrent to other operators.
- i) WMP were seeking the revocation of the licence and suspend the licence as interim steps pending any appeal.
- j) The factual timeline and supporting WMP documents were set out in paragraphs 13 to 68 on pages 193 of 212 to 201 of 212 which Mr Grant verbally summarised.

**Licensing Sub-Committee A – 23 October 2020.**

- k) It was noted on the 22 August 2020 the premises were operating beyond 0400 hours and had not provided a risk assessment to the police as required under the licence conditions.
- l) On the 22 August 2020 the police found the front door shut and locked with customers being let in through the back door (sometimes referred to as the side door) and that was a feature of the case.
- m) On the 22 August 2020 police officers advised the both a Mr Rasani and Mr Costello on Covid matters and WMP at this stage did not invoke a summary review.
- n) On the 26 August 2020 attempts were made to contact the club owners by email.
- o) On the 28 August 2020 police officers met, at the premises, Mr Dextor Laswell (a Director of the Premises Licence Holder) and Mr Kieron Costello and other staff. At this meeting it was indicated that on the 22 August 2020 staff had been undertaking maintenance which clearly was untrue. At the meeting advice was again given.
- p) On the 24 September 2020 the incident took place involving the doorman severing a customer's thumb which the premises tried to cover up. It had come to light that morning that the victim did not wish to pursue the matter.
- q) On the 25 September 2020 a whistle-blower complaint was made to the City Council and passed on to the WMP (page 188 of 212 of the agenda pack). It indicated that the premises were to have a secret event starting at 2300 hours with people let in through the '--- door'. Although missing from the council email it can be assumed that the word rear or side is missing. The events indicated by the whistle blower happened on the following night.
- r) The event on the 26 September 2020 was a pre-planned birthday party and not caused by unruly customers refusing to leave as claimed by the premises. As CCTV shows people being let in. It happened when various Covid restrictions were in place including 10pm curfew, social distancing with the rule of 6, Track and Trace and food and drink to be served whilst people were seated. None of these measures were in place. In addition, there was evidence of cannabis smoking, use of 'laughing gas' and the use of shisha pipes indoors which did not suggest good management.
- s) WMP were still waiting for CCTV from the 26 September 2020 for the period 2230 to 2330 hours and any CCTV footage from the upstairs room. Footage was also awaited from the 24 September 2020 door incident. Emails requesting footage can be found at pages 119 to 129 of 212.
- t) WMP had set out a detailed timeline of the CCTV footage at pages 46 of 212 to 61 of 212 in the agenda pack and the main footage is cross referenced in Mr grant's written submissions at paragraph 58 on page 199 of 212.

- u) On the 30 September a meeting was arranged between WMP and Dextor Laswell but an Antonio Mankulu and Kieron Costello attended (Page 200 of 212 in the agenda pack). This clearly shows the difficulty in understanding who is in control of the premises and who holds the Designated Premises Supervisor (DPS) position. Mr Mankulu at the meeting gave detail of the events of the 26 September 2020 which were contradicted by the CCTV footage.
- v) A risk assessment dated 29 September 2020 was provided on 12 October 2020 to WMP so the premises had been operating without a risk assessment prior to that contrary to the law.
- w) Staff statements in the agenda pack were of a similar nature and they suggested that the event on the 26 September was for a staff member's birthday but police attending on the night were told it was a dentist's party. They also state that SIA registered door staff left at 2200 hours which was strange when people were still in the premises who staff alleged were being aggressive. Staff also claim people did not leave when asked so they did at midnight. They did not request assistance from the police or City Council.

Mr Grant noted that he had spoken for 30 minutes and suggested that the CCTV footage be viewed in private. Mr Charalambides sort clarification if he would be allowed to speak for more than the 30 minutes in view of the fact that the time taken to view the CCTV footage should be considered.

The Chair indicated his intention to see how long the CCTV footage would take to view and add an appropriate amount of time to the length of time Mr Charalambides.

The Chair indicated that he was going to adjourn the meeting for 10 minutes and reconvene in the private session of the meeting to allow the viewing of CCTV footage.

### **EXCLUSION OF THE PUBLIC**

4/231020

#### **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.

The meeting was adjourned at 1121 hours.

At 1224 hours the meeting resumed in the public session with the people previously in attendance present.

In answer to Members questions PC A Rohomon and Mr Grant made the following points: -

**Licensing Sub-Committee A – 23 October 2020.**

- a) The CCTV footage showed that on the first visit to the premises on the 22 August 2020 police officers gave advice to staff including Mr Costello. This was the first-time police were aware that the premises were opening.
- b) WMP were proactive in sending out emails to the licenced, the various Business Improvement Districts (BIDs) and others to advise around risk assessments and to confirmation when premises would be open. Many premises engaged with WMP on receipt of the email.
- c) The matter came through to the WMP Licensing Team who contacted Nikira via a third person as Mr Dexter was not on the system as being connected to the premises. A meeting was then held where further advice was given which was confirmed in an email which included cut and pasted advice from the Government's guidance. The emails were at pages 106 to 107 of 212 and 111 of 212 in the agenda pack.
- d) In terms of 'engage' and 'educate' the police had done all they could. The police could not have written the risk assessment for the premise but would have been able to give advice had they seen it.
- e) The premises were found to be open again on 25 September 2020 when there was effectively a lock in. There was no contact with the premises since the meeting in August.
- f) In relation to the alleged assault the Sub-Committee has heard that the victim had that morning advised that they did not wish to pursue the matter although follow up checks were still required to establish if that was the case. It was highlighted that further action could still be taken due to the involvement of a Security Industry Authority (SIA) badged person. The licensing Team at WMP were first alerted to the assault on 5 October via an email (page 118 of 212 in the agenda pack). The victim had indicated the delay in reporting the incident to the police was due to him trying to contact Mr Dexter who he knew. The crime log began on page 137 of 212 in the agenda pack.
- g) No details of people inside the premises for the alleged dentist's birthday party were taken but further action against individuals may be taken through the premises in due course.
- h) Once it was known that premises would be reopening on the 4 July 2020 WMP were proactive in contacting as many people as possible in the hospitality sector indicating premise could seek advice and share risk assessments with WMP. On the first weekend officers were out and about visiting premises. Information was fed into the WMP licensing Team who then contacted premises as appropriate.
- i) The work at identified premises with poor risk assessments in place and following advice from the police had improved them.
- j) The police continued to be in dialogue with various premises on Broad Street, City Centre and Southside hearing their concerns.

- k) PC Rohomon in his professional opinion did not think the premises were taking the situation seriously enough. Officers only became aware the premises were open when they saw a number of vehicles on the carpark which they thought strange as Nikira operated as a nightclub and they did not think it would be open. Officers then saw people congregating at the rear door, but the front door was padlocked shut and with the blacked-out windows the premises appear shut. On engaging with the people officers were met with silence. Officers noted that people were dress as if going to a party. Officers at first had difficulty gaining access to the premises. When they did, they found a party which did not meet Covid guidelines.
- l) Having been advised by the police on that first occasion, if the premises were taking the situation seriously then a risk assessment and CCTV footage of the evening would have been sent to the police when they asked. Action would have been taken by the owners after they had been advised at a meeting shortly afterwards, but this did not happen.
- m) There was no enforcement activity against the premises after the first instance and they were educated on the Covid guidance and requests for a risk assessment and the CCTV footage were met with silence which did not inspire confidence that the premises were taking the situation seriously.

At this point Mr Grant with the Chair's permission commented that at the interim steps meeting there had been a suggestion that WMP were targeting premises frequented by the black community and the issue of the Public Sector Equality Duty had already been raised at the meeting. He noted that PC Rohomon had made a statement relating to this, but he asked him if the premises were unique in catering for the black community. PC Rohomon indicated that the premises were not unique in this respect and there were many other premise catering for the black community in the City centre and across the wider Birmingham conurbation.

Kyle Stott, Public Health, presented his representations and made the following points: -

- a) Public Health had submitted a short representation when first notified as the department like to listen to proceedings to obtain a full picture of the situation.
- b) What had been seen and heard in the meeting was very compelling for the wrong reasons.
- c) Public Health representation was around the prevention of public nuisance in terms of spreading the virus. The expedited review of WMP clearly shows a non-compliance by the premises of the Covid regulations and guidance in that a party was held after 2200 hours with loud music and no social distancing.
- d) It was clear that the premises were not operating in accordance with the Covid guidance which had been available since 11 May 2020. The guidance was designed to allow premises to reopen safely on 4 July 2020 and had been updated 21 times.



- e) It was very concerning that there was no evidence of a covid related risk assessment and if there was one it is suggested that it is not been followed.
- f) Th CCTV footage clearly shows the breaches of Covid guidance/regulations in that there was no social distancing, people standing up without wearing a face mask, people should be seated and no ventilation. This was not in the spirit of licensing objectives or the Covid guidance which was designed to keep staff and members of public safe.
- g) Given the Covid statistics for the number of Covid cases, related deaths and related hospital admissions premises cannot operate in the way Nikira has and goes against everything that is being undertaken to combat Covid.
- h) He was also concerned that the CCTV footage show evidence of shisha pipe smoking and sought confirmation that communal pipes were in use. The issues around communicable disease from that was terrifying particularly as there was evidence linking communal shisha pipes and the transmission of disease. Covid was transmissible via water droplets and being inside and less than two metres apart increased the risk. Smoking shisha inside was banned.
- i) The CCTV footage also showed the use of nitrous oxide cannisters and it was illegal to supply these for recreational use. There was no safe limit for their use and hard to gauge dosage on the street which made them very dangerous to use recreationally with death being a consequence of their use.

Martin Key, Environmental Health, presented his representations and made the following points: -

- a) By way of background he explained that he worked in the section of Environmental Health that dealt with industrial premises and licensing matters. Whilst there was a section within the department which specialised in dealing with Covid, officers in other sections had due regard to Covid issues in their day to day work whilst undertaking visits.
- b) The department had published guidance on the 2 July 2020 which was regularly updated and was on the Council's website.
- c) It was clear from scientific evidence that Covid thrived on social contact and Covid secure operations would minimise such contact to prevent the spread. Evidence suggested that young people passed it on to the older generation who were more at risk.
- d) All the teams were therefore trying to protect the public and at the same time allow businesses in the hospitality sector to operate safely whilst minimising the risk.
- e) The evidence presented by West Midlands Police showed that the premises had shown a disregard to social distancing, the curfew, wearing of masks and having a one-way system in place. Other issues related to the use of shisha

indoors and a locked fire door. Additionally, customers were using the staff area putting the staff at risk.

- f) There was no management intervention which demonstrated a lack of management control and no evidence that that would change going forward. The police review and request for revocation was supported.

Gary Callaghan – BCC Enforcement, presented his representations and made the following points: -

- a) The Sub-Committee had heard that there had been several breaches of the licensing conditions including not providing CCTV footage and not informing WMP that they would be opening after 0400 hours. The police had also struggled to establish who was managing the premises. Shisha had been smoked in the premises. Nitrous oxide cannisters had also been used.
- b) Antonio Gasparov was the Designated Licence Holder (DPS) but he had not engaged with the police. Staff in the documentation had suggested that Kieren Costello was the DPS. There had been no application with licensing to make this change.

In answer to Members questions those making representations made the following points: -

- a) In the Licence conditions it indicated that CCTV footage must be kept for 28 day and made available to responsible authorities on request. Because there was missing footage it maybe that the premises had something to hide.
- b) The national Guidance 'Working Safely during the Coronavirus' had been published on 11 May 2020 by the Government and updated on a regular basis. There are links available on many outlets so that any premises could refer to it.
- c) There was no specific guidance targeting different section of the population.
- d) There was also Council guidance which was widely available.
- e) Despite lobbying of Central Government there were no regulations regarding shisha lounges apart from the 2006 health Act relating to smoking. Shisha was not a licensable activity. Whilst covered by the 2006 Act the situation is further complicated because act specified certain restricted smoking materials such as tobacco, but other substances were smoked in shisha pipes.

At the invitation of the Chair, Mr Grant indicated that Councillor Mahmood's question relating to if there was a disproportionate impact of Covid on Birmingham's Afro Caribbean community was an important one but was not answered by those making representations. Mr Stott explained that there had been a disproportionate impact on the Afro Caribbean community in Birmingham which had been the subject of a West Midlands inquiry. The findings had been fed into the national inquiry. Evidence suggested that Covid was impacting on the Black, Asian, and Minority Ethnic (BAME) community. The health protection

section of Environmental Health was providing support and information around the issue. No specific guidance was given to Licence Holders relating to the BAME Community as they would be expected to undertake a Covid risk assessment and guidance is available to ensure that a robust risk assessment can be produced.

Mr Charalambides confirmed he had no questions for the Responsible Authorities.

At 1310 hours the meeting was adjourned.

At 1341 hours the meeting was reconvened.

Mr Charalambides on behalf of the Premises Licence Holders presented their case and made the following points:-

- a) He accepted that the case raised a number of concerns, namely the licensing Act 2003 and what is proper and relevant under it, the proper and appropriate response to the Covid 19 pandemic and how a Licensing Sub-committee discharges its duty under the Public Sector Equality Duty.
- b) In any review of a licence paragraph 11.20 of the Section 182 guidance indicates that as far as possible the Sub-committee should identify the cause (s) of the events to identify what remedial action needs to be taken. The it must be decided what is appropriate and proportionate in the circumstances. In looking at the issues the Sub-committee needs to see what is relevant to the Licensing Act and not what is topical in the news.
- c) On page 32 of 212 in the agenda pack the Environmental Health Officer sums up what is required when he makes reference to unsatisfactory internal management procedures and that is not disputed. From the evidence and investigation by the premises licence holder it was clear that trusted staff Members and colleagues engaged in their own private enterprise on two occasions. What did not come out from the submissions made by the police was that in August the premises were closed for maintenance and the staff abused the trust of management by having a private gathering. In September the doors and the premises were closed at 2200 hours but there was a private gathering. There were no till receipts or cash taken after that time. This is significant as the Sub-committee was not being asked to review licensable activities.
- d) Given that it was accepted that management's trust had been abused and that that was poor internal management of the premises the Sub-Committee was invited to first impose no interim steps and secondly suspend the premises licence for a period of two months to allow an internal review of the company structure, officers, including removing the DPS, and Covid operating practices.
- e) The Premises Licence Holders wished to make an unusual but important request. This was for the Sub-Committee to undertake to ensure that the Licensing Authority had a Public Sector Equality Duty review of the Statement

of Licensing Policy. In addition, a Public Sector Equality Duty risk assessment review should be undertaken of all 2003 Act reviews and summary reviews brought by the police and the Licensing Authority in the last three years particularly since the 23 March 2020.

- f) From the documentation submitted it was clear that the Premises Licence Holders agreed with Environmental Health that internal management procedures were lacking and it was requested that the premises be treated like other premises had been in similar circumstances and be given time to rectify the situation.
- g) The issue was whether the case was a Licensing Act 2003 one or Covid 19 enforcement case. The Crown Prosecution Service had given guidance to the enforcement of regulatory breaches under Covid 19 regime which indicate a light touch approach. The service says that they expect enforcement of the Covid Regulations would be through the issue of a prohibition notice for businesses or by a direction in respect of gatherings and Mr Charalambides made detail reference to the guidance. He highlighted in relation to the Section 53A certificate that the offences mentioned were summary only and therefore in line with the guidance just referred to could be charged by the police.
- h) Reference to summary offences was important as in the case of R v Rimmington and Goldstein, which WMP rely on in their case, Lord Bingham indicates where there is a statutory offence it is that offence which should be proceeded with. Therefore, in the case before the Sub-committee there is a clear statutory regime for responding to Covid 19 and the police have repeatedly indicated that it is a Covid 19 case. Mr Charalambides suggested that the police were abusing the Licensing Act 2003 for a purpose it was not designed for and nor was anyone in the meeting in a position to discuss proficiently. On page 186 of 212 of the documentation in PC Rohomon's statement he says 'this was because the operator was unwilling or unable to comply with the Covid 19 regulations and guidance so immediate steps needed to be taken to prevent further breaches'. Mr Charalambides indicated that the way to deal with such breaches was by way of prohibition notices and directions under the Covid Regulations not the Licensing Act 2003.
- i) The Public Health 1984 Act was used to prevent the spread of disease and Public Health led on this and the Sub-committee had the input as necessary from various Responsible Authorities of which Public Health was one. They were the experts in that not the police who had expertise in crime and disorder. The power of the Local Authority in these matters lay in the directions, prohibition notices and the Public Health Act advised by Public Health Officers and not the Licensing Act 2003.
- j) The Section 53a Certificate relied on outdated legislation from 1815 rather than more modern regulations and was based on the Rimmington case which had not been read in full. In addition, the Sub-Committee understood that they did not involve themselves in issues where other legislation was available eg Fire Safety Regulations. The Section 182 guidance refers to sticking to one's expertise.

- k) There had been discussions about whether the Sub-Committee could go behind the Section 53a certificate of the Chief Superintendent. The Sub-committee could not go behind it, but they did not have to agree with the Chief Superintendent's views on whether there had been serious crime and disorder. If the Sub-Committee agreed with the Crown Prosecution Service that Covid breaches are dealt with via the regulations which are summary only offences, then the Certificate was not something to bear in mind. The Sub-committee had to make up its own mind as to what was serious crime and disorder.
- l) The promotion of the Licensing objectives related to the immediacy of the premises and is referred to in paragraph 2.21 which Mr Charalambides made detailed reference to. It was not about Health and Wellbeing as if it was then things such as liver damage and sexually transmitted diseases would be of concern, but they are not when considering licenses as the consequences beyond the immediate premises were not an issue. The immediacy issue was also addressed in the Hope and Glory Case which the Sub-Committee was familiar with.
- m) The Sub-Committee should make no interim decision and lift that to avoid the need to have such a discussion in the Magistrates Court and elsewhere.
- n) The Sub-Committee should positively engage with the Public Sector Equality Duty. The Section 182 Guidance at paragraph 14.67 indicated that Licensing Authorities Statement of Licensing Policy should recognise the Equality Act 2010 and the legal obligation to have due regard to elimination of unlawful discrimination, harassment and victimisation, to the advancement of opportunity and to foster good relations between persons with different characteristics. The policy should refer to the legislation and explain how the equality duty has been complied with. Birmingham's policy does not do either. That omission had been raised before publicly with senior licensing members. The Section 182 Guidance goes on to say that Licensing Authorities should publish information at least annually to show how the Authority has demonstrated the Public Sector Equality Duty. Birmingham City Council had not done this. The three Members of the Sub-Committee in the decision making today must approach the Public Sector Equality Duty. If the information was not available, then the Sub-Committee had a duty to go and obtain it.
- o) On behalf of the Premises Licence Holders checks had been undertaken relating to WMP issuing several reviews or summary reviews. Two of these were against public houses namely the Greyhound and the Bricklayers Arms both of which were represented by large pub companies and had a prominently white customer base. In each case the Designated Premises Supervisor had been 'fiddled around with' and a warning given. Both premises were able to continue trading. When it came to black and ethnic minority orientated premises such as PBs, Petite Afrique, Nakira and Dahlak Lounge the outcome has been suspension at interim steps followed by revocation of the licence. There was therefore a harsher response to premises operated by people from black and ethnic minority community than

those operated by others. That then presented the need to ask questions under the Public Sector Equality Duty why such venues were being treated differently to others. Are the police targeting such premises?

- p) The premise was offering to stay shut whilst it got its house in order.
- q) Reference was made to the different cultures and their idea of what a nightclub was and what they were used for. The Licencing Authority needed to understand that in its policy and how it influenced promote those premises meeting the requirements of people with different characteristics.
- r) The review process was being used to discriminate against premises operated by and for the black and ethnic minority community because such venues were not wanted. The Sub-committee should make a commitment to establish if that was the case.
- s) As the Sub-committee appeared not to have sufficient information to establish that then it should agree a two month suspension of the licence to deal with the licensing issues, remove the DPS and not impose any interim steps as requested by the premises in the submissions made.
- t) The Sub-Committee should also ask why in the current Covid situation why many suspensions and revocations are there so being asked for against premises operated by and for the black and ethnic minority community. The information to answer that should be sought by the Sub-Committee.

The Chair noted that the Sub-committee would have due regard to the Public Sector Equality Duty in reaching it's decision.

In response to questions from Members of the Sub-Committee Mr Charalambides made the following points:-

- a) The premises licence was at page 33 of 212 in the agenda pack and authorises the widest range licensable activities including late night refreshment. The premises had operated in different formats. The two-month period of closure would allow the management to consider which way the premises should operate going forward and to have a clear plan of how it would operate. Prior to Covid it had operated as a late-night bar and a restaurant bar as and when needed. After lockdown the premises reopened on 5 September and operated as bar typically. Therefore, the premises did not participate in the eat out to help out scheme.
- b) In respect of there being enough time for the premises to get their house in order, the background was that Government advice and the Covid regulations were constantly changing so premises were having to readapt.
- c) It would not be easy to move from a late-night bar scenario to a restaurant. The premises thought that when they reopened in September it would be as a late-night bar but the 2200 hour curfew was introduced resulting in a need to change direction.

- d) The premises employed 12 Members of staff of which 3 were cleaners.
- e) Private birthday parties were not authorised, and staff should not be locking the door at anytime to have a private party. The two-month closure would allow staffing to be looked at and trust rebuild between staff and management.
- f) The community all knew each other, and this had led to difficulties such as staff being asked to open back doors and customers entering behind the scenes rooms such as the kitchen and staff room. The two directors were taking responsibility for the actions of the staff.
- g) A report could be provided during the closure setting out who the DPS was, how the premises intended to operate in future both during Covid restrictions and in normal circumstances. Details of staff and management would be included. Advertising methods would be included. Currently word of mouth is the prevailing way people are aware of the premises although social media was in operation.
- h) During both incidents the police encountered a confusing picture of who was in charge with many saying they were. There were now two directors.
- i) In relation to the DPS removed at the first hearing who had been inactive with the premises this was because he lived in Bournemouth and covid had resulted in him going and remaining there. While the premises were under refurbishment other people such as the cleaners and Kieron Costello assumed managerial responsibility under the direction of the DPS. This was why Keiron presented himself as the DPS and the situation was wholly unsatisfactory. Keiron held a personal licence which was beneficial in the situation that he found himself in.

In response to a comment from Mr Charalambides, the Chair indicated that the Sub-committee would consider everything that had been said in their deliberations. With regard to the Statement of Licensing Policy he had initiated a review with a draft paper coming before Committee in November. The Sub-Committee would be taking a decision on the breach of the licencing matters and take legal advice as appropriate. He emphasised that the Sub-Committee would be using all the information before them to reach a decision.

Councillor Majid Mahmood suggested that it might be appropriate to adjourn the meeting in order for information to be obtained from officers about the Public Sector Equality Duty and on the number and type of cases since 23 March 2021 so that the Sub-committee could have information on whether a consistent approach was being undertaken between the different types of premises and ownership.

Mr Rankin, Committee Lawyer, reminded the Sub-committee on the time constraints in which the decision had to be given to all parties and did not feel that all the information that Mr Charalambides felt the Sub-committee should have could be obtained in that time.

The Chair indicated his intention to adjourn the meeting.

The meeting was adjourned at 1443 hours.

The meeting was reconvened at 1500 hours.

The Chair began explaining how he wished to proceed, and it was realised that PC Rohomon was having technical difficulties.

PC Rohomon overcame his difficulties

Councillor Majid Mahmood then had technical difficulties and the meeting was adjourned briefly.

The Meeting reconvened and the Chair invited Councillor Majid Mahmood to ask questions of PC Rohomon around the action taken by WMP regarding other premises.

PC Rohomon responded as follows:-

- a) The Sub-committee had heard about the 4 Es which WMP were working to throughout the pandemic. None of the cases brought before the Licensing Sub-committee had been on a one-off basis since the ending of lockdown.
- b) The Bricklayers Arms was dealt with during lockdown so no premises should have been open. It happened sometime into the lockdown so the Licensee should have been aware the premises should be closed. This was a first-time offence and was brought to the Sub-Committee because of the lockdown following complaints by members of the public.

At this point in the meeting Councillor Majid Mahmood had technical difficulties and the meeting was briefly adjourned whilst he reconnected with the meeting.

The meeting was reconvened, and PC Rohomon continued.

- c) The Greyhound had been in breach just once and officers attended when a wedding was taking place which resulted in the occupant receiving a fine. Management of the premises were met and brought in their risk assessment which was found wanting. A remedy was quickly produced and WMP had not found the premise to be in breach of Covid regulations since.
- d) All the premises brought before Sub-committees since the 4 July had been through the 4 Es but there had been no communication or advice had not been which had led to further breaches.
- e) Premises needed to engage with the police and take heed of advice. If that did not work then the police would use the enforcement part of their strategy.
- f) WMP was not racist and were dealing with premises on their individual merits and if there are continued breached by premises wherever they are in Birmingham the are brought before a Sub-committee. There were a vast



majority of premises across Birmingham who were conforming to the Covid regulations.

In summing up, Kyle Stott, Public Health, indicated that, from what he had heard in the meeting, he was of the opinion that the Premises Licence Holders could not deny that they were in control of the premises and were able to promote the Licensing Objectives during the events seen on CCTV and referred to in writing. They had a disregard to the Covid regulations and various breaches were seen. The virus did not discriminate, and everyone had to adhere to guidance and regulations. Covid was making people in Birmingham seriously ill and people were dying. The authority could not ignore any breaches in any premises. That said the value of the night-time economy to the City in terms of job creation investment etc was recognised. Mr Stott suggested that, whilst the guidance had changed on several occasions which could be seen as unhelpful, it had in fact been available since the 11 May 2020 for premises to access. Therefore, a majority of the venues across the city had followed it to protect the public and staff.

Mr Stott indicated that it was for the Sub-Committee to decide if the Premises Licence Holders could uphold the guidance to protect the public and staff and at a minimum the premises should be closed for two months and the DPS removed in order for the premises to have time to get their 'house in order'. However, he felt that that was too little too late given the number of issues that had been observed over such a short time. Should the Premises Licence Holders keep their licence than Public Health would work with them produce a robust risk assessment which should have already been in place and disappointedly was not.

In summing up, Martin Key, Environmental Health, indicated that he had been doing Environmental Health work several years and like PC Rohomon it did frustrate him that people were saying that he was not acting on an equal basis. Most of the Environmental Health work arose from complaints which are dealt in the same way regardless of who the complainant or person the subject of the complaint was. He noted that in this case the police had spoken to the Premises Licence Holders, advised and undertaken some gentle enforcement. If that failed, then the only recourse was to use all the powers they had available to them. It had been accepted by the Premises Licence Holders that there was inadequate control over the premises and there was confusion as to who was in charge. The Premises Licence Holders had offered a two month closure which would conclude just before the Christmas break which would create a host of difficulties around social distancing and the evidence presented showed a lack of social distancing and compliance with other Covid measures by customers and staff in the premises already happening. There had been plenty of time for management to understand all the guidance put out regarding Covid in particular the need for social distancing. The two-month closure was welcomed, and he would work with the premises. However, it was for the Sub-committee to decide if that was appropriate and whether the Premises Licence Holders could get their 'house in order'. Mr Key concluded by supporting the police in bringing the expedited review.

In summing up, Gary Callaghan, BCC Enforcement, indicate the evidence submitted and the CCTV footage showed a catalogue of mismanagement at the premises. A number of issues had been raised including breaches of the conditions of the licence. Evidence had been submitted that management and staff had 'hoodwinked' the police and told lies to them. The Sub-committee would have to decide whether the events were, as described by the premises or not. Either way people were being let into the premises via the back door and after 2200 hours in what was a prearranged way, as correctly suggested by the whistle-blower, for an event. The police had tried to engage with the premises management, but they had not being forthcoming. He did not think a two-month closure would be enough to deal with the management issues at the premises.

In summing up Mr Grant on behalf of WMP made the following points:-

- a) The Premises Licence Holders' case was that the those in charge oversaw failures which led to the summary review were the ones to put it right. WMP did not agree with that assertion.
- b) The question Sub-committee should ask is, bearing in mind the evidence seen, heard and read, whether they had confidence in the license holder promoting the licensing objectives and providing a Covid secure premises if they were permitted to open again following a two month suspension. WMP had no confidence that it would happen.
- c) It was still unclear as to who was running the premises. Mr Dexter Laswell was a Director of the company who was emailed on 22 August 2020 to meet with the police officers. He provide a witness statement for the licence holder. But at the meeting on 28 August 2020 he turned up with Keiron Costello who had explained on the 22 August that he was the 'boss'.
- d) Mr Laswell at the meeting on 28 August promised that he would get things right before the premises re-opened. This was before the events on the 5/6 and 24 September 2020. On the latter date a customer had had their thumb severed and the premises chose to say to the victim not to contact the authorities. These were the people who were asking the Sub-committee to trust them. To get it right if they reopened.
- e) The events of 25/26 September were pre-ordained and the CCTV footage did not show an intruders being aggressive towards staff after 2200 hours. That is what Mr Laswell and various staff members had said in evidence. This was a lie and an attempt to mislead the Sub-committee.
- f) It was not the role of the Sub-committee or those making representations or advising the Sub-Committee to impose their opinions in place of those on the certificate.
- g) The issues were not simply Covid related but also related to the licensing objectives. The Sub-Committee only had to take such steps that are appropriate to promote the licensing objectives. (Paragraph 80 page 205 of 212 in the agenda pack)

- h) With regard with the crime and disorder objective every breach of the Covid regulations was an offence. There had been several breaches not least the ignoring of the 2200 hours curfew. This did not have to be serious crime and disorder. Whether the Crown Prosecution Service would prosecute this matter was not the test of serious crime for the certificate which was the opinion of the Superintendent.
- i) With regard with the public nuisance objective the Sub-committee need only refer to the relevant paragraph of Rimmington on page 9 of 212 of the documentation. The public nuisance objective was engaged as the premises was operating in an unsecure and dangerous way in respect of Covid.
- j) With regard with the public safety objective the Sub-Committee should refer to paragraph 2.7 of the Section 182 guidance which deals with public safety. That means the safety of people using relevant premises rather than public health which was addressed in other legislation. The issue before the Sub-Committee was the real risk of contracting, on the premises itself a potentially fatal respiratory infection which WMP argue engages public safety.
- k) With regard with the protection of children from harm objective everyone in the premises not socially distancing goes home with an increased risk of infection, to homes with children.
- l) All of the licensing objectives were engaged.
- m) The Public Sector Equality Duty was also engaged in the case. Any omission in the Authority's Statement of Licensing relating to the Public Sector Equality Duty can be dealt with by the Sub-committee. WMP was asking the Sub-committee to look at the impact of its decision on all communities but in particular the Afro-Caribbean community. With this regard the statement of PC Rohomom that the issue was not focussed on the premises because it catered for the Afro-Caribbean community but because of its actions and failing to respond to previous warnings. In addition, the premises were not unique in providing for the Afro-Caribbean community as there were many such premises in Birmingham. So should the Sub-committee's decision be to revoke the licence there would not be a disproportionate impact. Further the impacts of Covid on the BAME community had been raised in submissions so taking the Public Sector Equality Duty requirements to its logical conclusion the revocation of the licence would help protect that vulnerable community.
- n) The case was that WMP engaged and advised but management chose either to deliberately flout the regulations or had no ability to control their premise. For either reason WMP were seeking the revocation of the licence because they can not be trusted to promote the licensing objectives.

In summing up Mr Charalambides on behalf of Premises Licence Holder made the following points:-

- a) The application was mixed, confused and unfocussed because it seeking to address Licensing Act 2003 issues, Covid 19 issues and now the Sub-

## **Licensing Sub-Committee A – 23 October 2020.**

Committee had been advised that it would enhance the Public Sector Equality Duty by closing or restricting another club at the request of the police.

- b) He had asked the Sub-committee to consider the relevance which was that those in control of the licence had admitted to the issues which in a Court of Law would reduce the sentence. So should the Sub-committee be thinking of revocation then they should go a step lower. Admission was important because the Licensing Act was about identifying the issues and the remedial action.
- c) The management of the Premises were not incompetent as during questioning WMP indicated that they had approached the case by communication and engagement and the premises had provided CCTV footage, sent emails to the police, had meetings with officers and sent the risk assessment. All CCTV watched at the hearing had been provided by the premises, so they had co-operated.
- d) The two occasions that are relevant to the proceedings had been private events outside the control of management and there was no indication on how the premises operated during its normal perimeters. It was not fair to say that advice had been ignored or the risk assessment which had been provided was so poor. The risk assessment had been produced at a time when such documents were required so its submission is not late.
- e) The premises had engaged Carl Moore a well-known Licensing Consultant who has worked with the Local Authority. The premises were serious in engaging professionals to assist them.
- f) The premises were asking that the Sub-committee to impose a 2 month suspension to allow the premises to undertake a full review and produce an operation manual to include detail of Covid operations. The DPS would also be removed to allow both the Police and the Sub-committee to object to any replacement.
- g) The Sub-Committee should note that Covid had its own regulations which can be used by the police but not Licensing. The Sub-committee should disregard the issues that were summary ones. Licensing could not cure all ills as Licensing was about dealing what happened on the premises not the wider community. If other regimes existed to deal with an issue such as being drunk, then they were not a matter for the Sub-committee.
- h) It had been highlighted that premises that served Afro-Caribbean community were being treated differently in Birmingham. Without identifying anyone Mr Charalambides indicated that he was aware that premises were being told to amend their cultural offer so that they could be granted a licence. This was against the Public Sector Equality Duty. In order to consider the Duty the Sub-committee needed to have the right information to consider the issue today and it was noted that the Chair had indicated that a paper would be forthcoming in November that would address the longstanding failure of the Statement of Licensing Policy not to include the Public Sector Equality Duty. Councillor Mahmood's questions/comments on this issue were welcomed.

## Licensing Sub-Committee A – 23 October 2020.

Reference was made to how premises run for and by the BAME community in Birmingham were treated differently to those premises run by other communities in that they received draconian measures as apposed to a fine.

- i) As the Sub-committee appeared not to have the necessary information to consider the Public Sector Equality Duty the Premises Licence Holders' suggestion of a two month suspension of the licence to deal with the licensing issues, remove the DPS and not impose any interim steps was the least erroneous sanction.
- j) The Premises Licence Holders wished to continue a dialogue with everyone at the meeting. Reference was made to the case of Chief Constable of Nottinghamshire Police v Nottingham Magistrates' Court and the Sub-committee needed to encourage partnerships rather than follow one party or the other.

In response to a comment from Mr Rankin, Mr Charalambides indicated that he was relying on paragraph 30 in the Rimmington case.

At 1603 hours the meeting was adjourned in order for the Sub Committee to make a decision and the Members, Committee Lawyer and Committee Manager left the meeting

At 1640 hours the Members, Committee Lawyer and Committee Manager returned to the meeting and a short decision was announced and that the full decision of the Sub-Committee as set out below would be sent out to all parties by 27 October 2021.

The Chair asked if anyone had any further points to make and Mr Grant requested that the Sub Committee review the interim steps and impose an interim suspension pending any appeal. Mr Charalambides reminded the Sub-committee that he had asked that within the decision the reasoning around the certificate and Public Sector Equality Duty should be referenced.

At 1643 hours the meeting was adjourned in order for the Sub Committee to make a decision and the Members, Committee Lawyer and Committee Manager left the meeting

At 1651 hours the Members, Committee Lawyer and Committee Manager returned to the meeting and the Chair confirmed that the interim steps would continue.

4/260820

### **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 RP Restaurant Limited in respect of Nakira, Queensgate, 121 Suffolk Street Queensway, Birmingham B1 1LX, this Sub-Committee determines:

- That the premises licence shall be revoked

- That the designated premises supervisor Anton Gasparov shall be removed
- Having reviewed the interim steps imposed on 1<sup>st</sup> October 2020 (and not lifted on 16<sup>th</sup> 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 Anton Gasparov under s.53D of The Act. Those steps remain in place pending any appeal.

The Sub-Committee's reasons are as follows:

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 22<sup>nd</sup> 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 22<sup>nd</sup> 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 recently resumed the televised 'Coronavirus Briefing' broadcasts which had been a feature of the first few months of the pandemic.

The Sub-Committee was also aware that since 1<sup>st</sup> October 2020 further HM Government Guidance and regulations were introduced on 14<sup>th</sup> October 2020, namely: The Health Protection (Local Covid-19 Alert Level) (High)(England) Regulations 2020 No. 1104. Birmingham is now ranked as Tier 2 High. These further measures formed no part of the Sub-Committee's deliberations. For the purpose of this hearing it only took into account regulations and guidance that were in force on 1<sup>st</sup> October 2020.

Mr Leo Charalambides of counsel appeared for the licence holder. Also in attendance were Carl Moore, Dexter Laswell and Antonio Mankulu.

Mr Gary Grant of counsel represented West Midlands Police. Also in attendance were PC Abdool Rohomon and Jennie Downing.

The Sub-Committee read all of the evidence contained in the agenda papers, as well as Mr Grant's written submissions which helpfully set out the relevant Covid-19 restrictions and requirements. They shall not be rehearsed in these reasons.

The written submissions also set out the factual background to this review which comes to the Sub-Committee following an expedited review hearing on 1st October 2020, at which the licence was suspended and the DPS (Anton Gasparov) removed pending a full review of the premises licence. Unsuccessful representations were made against those steps on 16<sup>th</sup> October 2020.

In summary, the factual background is this:

### **22 August 2020**

West Midlands Police relied on evidence where they were told that a party was taking place at 05.00 hours, with 50 or so people crammed into a small upstairs room. Guests were accessing the premises from a side/rear door. The front door was locked. There was no social distancing, and the premises was not Covid-secure. There was a DJ, loud music, and neon lights. The premises was not in breach of the 22.00 hour curfew because this was not yet in place. There was, however, a breach of the condition on the licence which required notification to the Police - 28 days' notice in advance if the premises were to operate beyond 04.00. There was little or no managerial control. A Mr Rasani identified himself as a cleaner. Police later believed that this man was involved in an incident on 24<sup>th</sup> September 2020 when a guest had his thumb severed. Kieron Costello described himself as "the boss". He appeared to be drunk. He claimed to be the licence holder (although he is not). He admitted to police that the venue had no COVID-safe Risk Assessment. The police found the incident "extremely disturbing", and so did the Sub-Committee.

No-one appeared to be in control of the venue. Mr Hasing Rasani identified himself to police as a "cleaner". (This is believed to be the same man who was later described as a "doorman", and who was involved in the incident on 24 September when a customer's hand was shut in a door, thereby severing the top of his thumb). Mr Rasani indicated that he had opened the venue as key-holder and would close it. Police attempted to educate him about the COVID-risks. He was unaware of any risk assessment the venue had carried out.

### **26 August 2020**

On 26 August a police licensing officer, Mr Mark Swallow, contacted by email an individual on police records believed to be associated with the venue: Mr Catalin Anghei. Mr Anghei responded by stating he had had nothing to do with the club

for a long time. He did not know the identity of the DPS but identified the owner as Dexter Laswell and provided his contact details.

The DPS on the Premises Licence is Mr Anton Gasparov. The police have not encountered him in their recent investigations. (He was removed as DPS at the interim steps hearing on 1 October 2020).

### **28 August 2020**

On 28 August the police held a meeting at Nakira with the operators. PC Reader and a colleague met with Mr Dexter Laswell (a Director of the Premises Licence Holder), Mr Kieron Costello (“the Boss”) and other staff.

Mr Laswell indicated to police that the venue would not reopen again as a refurbishment was planned. He pledged to “*get it right before it was open*”. He complained about other venues holding events.

When asked about the event on 22 August, Mr Costello claimed the people inside were “*staff members carrying out maintenance*”. The police did not believe him. The Sub-Committee did not accept this explanation either.

WMP submitted that either the management deliberately lied to police, or else they were wholly ignorant as to what was going on in their venue, and so have no effective control over it. The Sub-Committee accepted this submission.

PC Reader subsequently saw the bodycam footage from the 22 August, which was at odds with the account that he had just been given by Mr Costello. He sent an email to Mr Laswell later on 28 August expressing his “shock” at the version of events presented to him earlier that day in their meeting. The email set out in detail the current Government Guidance on restaurants and bars. The “*steps that would usually be needed*”, as set out in the Guidance, were helpfully pasted onto the police email, and included measures to secure social distancing, management of the number of customers in the venue, and queue management. The Sub-Committee viewed this as a “warning shot” over the bows to the operators of the premises.

### **24 September 2020**

The male victim was a regular attendee of Nakira. On 24 September between 03:00 – 04:00hrs he left the venue. This was not a breach of the 22.00 curfew which came into force at 05.00 that day. When he returned, he went through the main door to reception and attempted to enter via the “small door” to the venue. He was refused entry by the door supervisor. The victim grabbed hold of the door and the doorman forcibly closed the door on his hand. This incident severed the top of the male’s thumb. He was given first aid in the venue’s office and told not to call the police or an ambulance. He was taken out of the venue by a friend via the rear of the premises and taken to hospital. We were told that he has been left with permanent injuries, but that he did not wish to pursue the matter further.

The venue did not report this serious incident to the police or call an ambulance. Rather, they have sought to cover up the incident. The Sub-Committee did not



believe that this was the behaviour of a responsible licence holder who was capable of promoting the licensing objectives. The victim himself contacted the Police to report the incident.

The licence holder has still not supplied the Police with the CCTV covering this incident, despite requests.

### **25 September 2020**

A “whistle-blower” complaint was made to the local authority on 25 September and forwarded to the Police. The complainant indicated that he had been told by a friend or relative that Nakira would be open from 23.00 for a “secret event” (despite the 22.00 curfew that had come into force the day before, on 24 September).

The importance of this complaint is that the predicted infringement of the curfew was precisely what occurred on the evening of 25 September and into early hours of 26 September. Contrary to the licence holder’s initial assertions that the events witnessed by Police were due to an unexpected infiltration by aggressive customers, it appears that the event was a pre-planned and deliberate breach of the 22.00 curfew.

### **26 September 2020**

The 22.00 curfew was by now in force.

At around 00:45hrs on 26 September, Police Officers drove past Nakira and noticed a large number of vehicles in the car park. The rear fire exit was ajar. Officers entered the venue. Only low-level lighting was on inside the venue (as would be encountered in a night-club setting). In the main public area of the premises police saw two men sitting on a sofa who appeared to be drunk. There were drinks on the table and silver nitrous oxide canisters strewn all over the place (nitrous oxide, or laughing gas, is a legally prohibited drug for recreational purposes). The smell of cannabis was in the air.

Officers went upstairs to one of the rooms. The lights went on and a further 15-20 people were sitting around close together drinking and chatting. An officer described the room as being “*full of people who were drinking and in close proximity to each other*”. Officers could smell cannabis and saw fresh half-empty bottles of alcohol and half-empty glasses of alcohol on all the tables. Nitrous oxide canisters were all over the tables as well. The people in this room seemed to be nervous about the Police’s arrival.

Officers estimated that about 25-30 persons were in the venue in total. There was no social distancing and the ‘Rule of Six’ was not being complied with since groups of more than six were sitting together. The officers on the ground stated that the event was “*clearly in breach of COVID-19 regulations*”. All attendees were dressed in “*party attire*”. No one admitted to being a staff member or management. One individual claimed to be a cleaner.

## **Licensing Sub-Committee A – 23 October 2020.**

One female told police she was a dentist, and that this was her birthday celebration. Other guests appeared to confirm this was the reason they were in Nakira.

Officers told the attendees they were breaching COVID guidelines and the guests were asked to leave. The upstairs room cleared in response to the police presence. The people automatically exited through rear corridors and the fire exit as opposed to the main front door to the premises. This suggested to the officer that the – more covert - side exit was the expected means of entry and exit to the premises.

The main bar area was open with all the lights on and was in an untidy state. Additionally, within the kitchen area, there was warm shisha paraphernalia, which indicated to police that someone had been in the kitchen when police arrived but left when they saw them. The Sub-Committee was shown CCTV footage showing shisha pipes being smoked, unlawfully, inside the venue earlier in the night.

### **CCTV of 26 September 2020**

The footage shows that despite some customers leaving and the front door being locked shortly after 22.00, there is effectively a “lock-in” party continuing in Nakira until police arrive at around 00:40hrs. Staff remained at the premises. Some people are deliberately let in (peacefully) at the side door at 22:15hrs. There is no “invasion” of unwelcome aggressive guests, as the licence holder initially claimed - indeed he supplied letters from staff in support of this assertion. It was now said by Mr Charalambides that this infiltration was not the correct explanation for the events, but that trusted staff members and colleagues had held their own private event.

On several of the cameras there is an unexplained gap in the footage supplied between 22:30-23:30. The footage from the upstairs room from 22:00hrs - where most of the party-goers were discovered by police - has still not been disclosed by the licence holder, despite police requests.

The CCTV also showed customers holding balloons which are used to inhale nitrous oxide, as well as customers being let in through the fire door after 22.00 with no staff intervention.

### **29 September 2020**

On 29 September, the Police applied for an expedited review of Nakira’s premises licence. The certificate was signed by Superintendent Morris.

### **30 September 2020**

PC Rohomon requested a meeting with Dexter Laswell on 30 September. On that day, at the time indicated, Antonio Mankulu and Kieron Costello turned up at the police station. Mr Mankulu indicated that he was the director of the company that held the premises licence and had bought company from Dexter Laswell earlier in the year. Mr Costello indicated he was the DPS.

Companies House records indicate that Mr Mankulu became a Director of RP Restaurants Ltd on the same day as this meeting, 30 September. Mr Costello was not recorded to be the DPS on the Premises Licence. Both said they became aware of the police request for the meeting via Dexter Laswell.

Mr Mankulu claimed that Mr Costello had been at the premises on the night of 26 September but had left at around 22:00hrs. He had left as security were still there and staff were clearing up. Staff later indicated to Mr Mankulu that people had walked through the back door and since the staff had felt intimidated, they left at midnight. The Sub-Committee saw no evidence of intimidation and questioned why, in those circumstances, the staff left.

The Sub-Committee found it hard to understand who is, in fact, in charge of these premises. Nor did the Sub-Committee understand why Mr Costello left the premises at 22.00 when things were clearly still in full flow.

The Sub-Committee also heard from Martin Key of the Environmental Health Department, Kyle Scott from Public health and Gary Callaghan from Licensing Enforcement. All supported the Police submission that the licence should be revoked.

On behalf of the licence holder, Mr Charalambides stressed that these were “private” events. The Sub-Committee did not see how that could excuse the very real failings of management exhibited on these occasions. He accepted, however, that the measures put in place were “unsatisfactory”. He urged upon the Sub-Committee that the remedy for all of the above was to suspend the licence for two months.

### **The legality of the certificate**

Mr Charalambides made a number of submissions as to the legality of the certificate issued by the Superintendent. In essence it was said that the Superintendent had relied upon the common law penalty for public nuisance (life imprisonment) without applying his mind to the Crown Prosecution Service Guidance for prosecuting breaches of the Covid Regulations which, he pointed out, stated that these were summary only offences and punishable with a fine, and which urges a ‘light touch’ approach. He pointed out the other remedies available, prohibition notices or directions in respect of gatherings. He categorised the route selected by the Superintendent as “The Victorian Road”. He drew the attention of the Sub-Committee to the Guidance issued by the Home Office under s.182 of the Act, to which the Sub-Committee of course had regard. The Sub-Committee found these arguments academic because it was bound by the High Court decision in **Lalli v Metropolitan Police Commissioner [2015] EWHC 14 (Admin)** in which Deputy High Court Judge John Howell ruled on three occasions in his judgment (paragraphs 62, 70 and 75) that:

*“the licensing authority is obliged to conduct the summary review even if it considers that the information available to the officer when he gave the certificate did not establish that the premises were associated with serious crime or serious disorder”. (62)*

*“In my judgment Parliament intended that the licensing authority should be entitled to treat an application for a summary review made by the chief officer of police as valid if it is accompanied by a certificate that apparently meets the requirements of section 53A(1) and has not been quashed. It is not obliged to consider whether or not it is liable to be quashed.”(70)*

*“In my judgment, therefore, the licensing authority was not obliged to consider whether or not Superintendent Nash was entitled to give the certificate that he did on the basis of the information then available to him”. (72).*

The Sub-Committee therefore had to accept the certificate on its face and apply its mind to the duty under s. 53C of the Act:

(2)The relevant licensing authority must—

(b)take such steps mentioned in subsection (3) (if any) as it considers appropriate for the promotion of the licensing objectives;

(3)Those steps are—

- (a)the modification of the conditions of the premises licence,
- (b)the exclusion of a licensable activity from the scope of the licence,
- (c)the removal of the designated premises supervisor from the licence,
- (d)the suspension of the licence for a period not exceeding three months, or
- (e)the revocation of the licence.

The legality or otherwise of the certificate had no bearing on that. Mr Charalambides then submitted that the Sub-Committee was under a duty to scrutinise the certificate. He said that Members did not have to follow down the path of the Certificate, and that whether they agreed with the Certificate or not was reflected in the steps they should take.

The Sub-Committee disagreed. This is not what The High Court in **Lalli** ruled. The Court pointed out that the licensing authority’s own view as to whether the premises was “associated with serious crime or serious disorder” (even if different to the opinion of the senior police officer who signed the certificate) is not decisive as to what steps are appropriate to take in order to promote the licensing objectives at the summary review hearing (and by analogy the full review hearing). The Deputy High Court Judge stated [at § 63]:

*“The fact (if it be the case) that the licensing authority does not itself consider that any reasons provided for giving the certificate establish that there is an association between the licensed premises and serious crime or serious disorder is not of itself necessarily decisive for any decision about interim steps or for the determination of the summary review itself. The licensing authority may consider interim steps are necessary or appropriate for the prevention of crime and disorder (which is one of the licensing objectives) given further information provided, or representations made, by the chief officer of police or, when determining the summary review, by others... When doing so, as explained above, the authority may consider representations that do not relate to the crime prevention objective (as well, of course as those which do) and, as section 53C(2)(b) of the*

*2003 Act states, the authority must then take any steps as it considers appropriate for the promotion of the licensing objectives, not merely the crime prevention objective.”*

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

### **Public Sector Equality Duty**

Mr Charalambides drew the attention of the Sub-Committee to the provisions of **The Equality Act 2010** which is engaged in a case such as this. He correctly pointed out that the City Council’s current Statement of Licensing Policy (“SoLP”), which it is required to publish every 5 years, makes no mention of the Equality Act as is required by paragraphs 14.66 and 14.67 of the Guidance.

Two points arise. First, the current Statement of Licensing Policy is out for consultation and that omission will be rectified. Secondly, the absence of any reference to the Equality Act in the SoLP does not prevent the Sub-Committee from applying its mind to the provisions.

In broad terms, Mr Charalambides identified two premises which he said had a white clientele, but which had been treated differently from his clients, who operate a premises for the Afro-Caribbean community. These other premises were The Bricklayers Arms and The Greyhound. He maintained that Black Asian and Minority Ethnic (“BAME”) venues were treated more harshly. He made assertions about other unidentified cases that he had been involved with in Birmingham where it had been suggested “off the record”, by unidentified police officers, that the operator agree to a condition that no urban or bhangra-style music be played. He drew an analogy with the “stop and search” powers, which he said were exercised more usually against members of the BAME community. He said that it seemed to be the case that if premises in Birmingham were operated by black or Asian operators, then they would be dealt with more harshly. In closing he said that he was **not** accusing WMP of being racist, but that he was just making it clear that he has been pulled aside on numerous occasions on the issue of the style of music being played in venues.

PC Rohomon gave the Sub-Committee some important further information. He explained that the four “Es” (engage; explain; encourage and enforce) were the key principles as to how the Police had been working with premises during Covid. None of the cases where enforcement had taken place (save for The Bricklayers Arms) had been on an “ad hoc” basis.

The Bricklayers Arms was an expedited review which took place before 4<sup>th</sup> July (“Independence Day”) and the introduction of regulations and guidance. That premises should not have been open during national lockdown. They were. The licence was suspended for 3 months.

In respect of The Greyhound, the premises were found to be in breach on one instance, and a fine of £1,000 was levied. A meeting took place with the operators where they were asked for a risk assessment; they replied very quickly and have not been in breach since. PC Rohomon said that it was a “two-way street”. The Police give advice and when the premises do not respond to the advice, that is when they use enforcement powers. He said that, unfortunately, some premises are not responsive, although the vast majority do engage once they have been found to be in breach. He said that he got annoyed when the police are accused of being racist. He has been a police officer for 19 years. He said that they are not racist in any shape or form, and that they are simply responding to public concern. He said that you can only go so far, and that if someone does not respond or listen, then that is when enforcement powers were used.

The Sub-Committee also had regard to PC Rohomon’s statement submitted with the evidence, together with the evidence he gave earlier in the hearing that these premises were not unique, and that there were other premises in the city centre and the wider community which members of the black community visit. Consequently, there would be no adverse impact on any protected category in the event of the revocation of the licence for Nakira.

The Sub-Committee was also aware that the Act and the hearings regulations required these proceedings to be completed within a certain timescale.

The Sub-Committee was advised of the relevant statutory provisions under **s.149 of the Equality Act 2010**. It had regard to the protected categories under the Act; it was informed of ‘**The Brown Principles**’ and accepted the assurances of the officer. It was aware, also, that the PSED is not a duty to achieve results. Rather it is a duty to have regard to the need to achieve the goals identified in paras (a) to (c) of s.149(1)- ***Hotak v Southwark London Borough Council [2015] 2 WLR 1342 at para 73.***

With these matters in mind, the Sub-Committee gave the appropriate weight to the evidence of the Police, and the submissions of Mr Charalambides. It was the view of the Sub-Committee that its duty under ***the Equality Act 2010*** had been discharged.

The Sub-Committee found that the actions of the Police were focused on these premises not through improper motive or because they served the Afro-Caribbean community, but because the operators failed to heed warnings and advice given to them.

The Sub-Committee’s view was that there is an overriding duty to promote the licensing objectives in an appropriate and proportionate manner in this case, having had due regard to the PSED., not least because the increased risks of COVID-19 infection as a result of acts and omissions by Nakira’s operators impacts on all communities, including the BAME community itself who frequents Nakira.

All in all, the Sub-Committee considered the licence holder to have failed to take its responsibilities seriously. It found that the activities identified above amounted to a flagrant disregard for the licensing objectives.

It also had in mind the case of ***R (Bassetlaw District Council) v Worksop Magistrates' Court [2008] EWHC 3530 (Admin)***, and the fact that deterrence is a proper consideration in the context of licence reviews.

It looked at the question of imposing a lesser step than revocation. Mr Charalambides urged the Sub-Committee to suspend the licence for 2 months. A suspension of up to 3 months was available. Nevertheless, the Sub-Committee viewed the activities of the premises licence holder as so serious, that the only appropriate and proportionate course for it to take was to revoke the licence. The Sub-Committee had no confidence or trust in the management of the premises. The revocation of the licence and the removal of the DPS removed the threat to the licensing objectives of crime and disorder, public nuisance and public safety which would otherwise prevail if these premises were allowed to continue operating under the current management.

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, ***the Public Sector Equality Duty created by the Equality Act 2010*** and the submissions made by the Police, Environmental Health, Licensing Enforcement and Public Health. The Sub-Committee listened carefully to the submissions of the representative of the premises licence holder.

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 operators of these premises, that it is appropriate and proportionate that these steps remain in place.

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.

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