

BEFORE BIRMINGHAM CITY COUNCIL’S
LICENSING SUB-COMMITTEE

A Summary Premises Licence Review under S.53A-D of the Licensing Act 2003

THE CHIEF CONSTABLE OF WEST MIDLANDS POLICE
(“WMP”)

Applicant

- v -

RP RESTAURANTS LTD
(t/a “NAKIRA”
Queensgate, 121 Suffolk Street, Queensway,
Birmingham B1 1LX)

Premises Licence Holder

WMP WRITTEN SUBMISSIONS
ON FACTS & LAW
For Review Hearing on 23 October 2020

[Page references in square brackets are to the Agenda Papers]

INTRODUCTION

1. “Nakira” held itself out to be “*Birmingham’s Premium Clubbing Venue*”, a “*legendary lounge and nightclub*” and the “*ultimate hotspot with DJ booth*”.¹ It covers two floors with two bars downstairs, a further bar upstairs and two VIP rooms. It has a capacity of some 650 persons. Nakira has operated at this location since October 2018. Its website indicates “*we understand and appreciate the expectation of excellence*”.

¹ Website: <http://nakirabirmingham.co.uk/>

2. However, since the restrictions on hospitality venues imposed by the Government in response to the COVID-19 pandemic, the premises licence holder of Nakira, RP Restaurants Ltd, has persistently, deliberately and flagrantly operated in breach of regulations and guidance. These measures are intended to secure the health and safety of Nakira's staff, customers and the wider community by reducing the opportunities for a potentially fatal respiratory infection to spread during a national pandemic that has already resulted in over 43,000 deaths in the UK.
3. This is not a case involving a one-off inadvertent or unavoidable minor breach of technical requirements due to the COVID-19 pandemic. Nor is the behaviour exhibited the result of an innocent misunderstanding of complex legislation or changing rules by a well-meaning operator doing its best in difficult circumstances. Indeed, these breaches have occurred despite engagement, advice and warnings from the authorities.
4. Rather, the breaches here are the result of deliberate, reckless or, at the very least, grossly negligent actions by the operators of Nakira in order to further their commercial interests. They have operated without paying any serious regard to the wider consequences to the community of their actions during a national pandemic. Therefore, West Midlands Police ("WMP") consider this as a serious matter that undermines the licensing objectives.
5. There appears to be little effective managerial control over this premises.
6. In addition, there has been at least one serious violent incident at the venue in recent weeks. On 24 September 2020 a customer had the tip of his thumb severed off when a male who works at Nakira slammed the victim's finger in the main door. It is of deep concern, and reveals much about the approach of the management at Nakira, that they tried to cover-up this incident so the authorities would not find out.
7. This attitude accords with other attempts by the operators, their management and staff to mislead the authorities during the investigation into the facts behind this summary review application. The licence holder has also sought to mislead this sub-committee in an earlier interim steps held on 1 October 2020.
8. Given the facts set out in the Agenda Papers, WMP have no confidence that this licence holder has either the competence or willingness to promote the licensing objectives of, in particular, preventing crime and disorder, preventing public nuisance and public safety. Nor do WMP

have any confidence that the operator will abide by the new 3-Tier COVID-related regulations and provide a COVID-secure premises if they were permitted to open for licensable activities.

9. It is significant that WMP's application for review has received support from Birmingham's Licensing Enforcement, Director of Public Health, and Environmental Health teams acting as responsible authorities.
10. The sub-committee is entitled to take robust, appropriate and proportionate steps, warranted in the public interest, that achieve the twin aims of:
 - a. preventing this operator from further undermining the licensing objectives, and
 - b. deterring similar behaviour by this operator or others.²
11. As a consequence, WMP invite the sub-committee to revoke the premises licence³.
12. Should the sub-committee take that step, then WMP would ask that, additionally, the sub-committee suspends the premises licence as an interim step pending any appeal.⁴

FACTUAL TIMELINE & SUPPORTING WMP DOCUMENTS

22 August 2020

13. On 22 August, at around 05:00hrs, police officers saw a large gathering of 40-50 cars parked in the car park next to Nakira.
14. Nakira looked to be closed from the front. Police officers banged at the front door to be let in. The front door was locked and later found to be bolted from the inside. This is a feature of this case – the premises attempts to look closed from the front and, instead, permits customers to enter more covertly enter via a rear/side door.
15. Police saw a large gathering of people in the car park and about 15-20 people near the side exit. They appeared to be dressed as if for a night out. Police made enquiries of these people

² In relation to licence review decisions also serving the purposes of deterrence, see *East Lindsey District Council v Abu Hanif* [2016] EWHC 1265 (Admin) (per Jay J at §16 and 18) and *R (Bassetlaw District Council) v Worksop Magistrates' Court* [2008] EWHC 3530 (Admin) (per Slade J at §32)

³ Pursuant to s.53C(3)(e) of Licensing Act 2003 (LA2003)

⁴ S.53D(3)(d) LA2003

as to why they were present but they were uncooperative and elusive in response to police enquiries. A number of them appeared drunk.

16. The side door, was opened and then immediately shut. Officers banged on the door to be let in so they could investigate what was going on inside. Eventually, other customers left and police were able to enter through the now open side door.
17. Officers went to the upstairs room in the venue. There was party going on with loud music, a DJ and neon lights. There were about 50 people crammed into a relatively small room with a bar and drinking alcohol (bottles of Hennessy Cognac, Grey Goose and disposable cups were seen).
18. No efforts were being made by management to ensure some level, any level, of social distancing. The event was clearly not being operated in a COVID-secure manner. The officer on the ground described the situation as “*extremely disturbing*”.
19. 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 was involved in the incident on 24 September when he shut the door on a customer’s hand severing the top of his thumb). He 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 (or more likely had not) carried out.
20. One staff member told police the event was a birthday party, but no one appeared to know whose.
21. Eventually, a man identifying himself as the “Boss”, Mr Kieron Costello, appeared outside. He appeared to be drunk. He claimed to be the licence holder (though he is not). He admitted to police that the venue had no COVID-safe Risk Assessment.
22. Another male present claimed to be a lawyer and asserted the venue was operating as a “restaurant” (there was no evidence it was and no sign of food being prepared, served or any discarded food plates). In contrast, Mr Rasani told police on the night that the venue had food delivered in.
23. Although the premises holds a 24-hour licence, any events held past 04:00hrs requires 28-days advanced notice with a risk and security assessment to be provided to WMP (who have

a veto). No such notice was provided to police. The venue was operating at 05:00hrs in breach of the conditions of its premises licence [PL at p.33-42].

24. Police Statements relating to this incident are at [p.85-95].

25. Police Bodycam footage is also available and has been served on all parties should the sub-committee wish to view it.

26 August 2020

26. 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 has 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.

27. Mr Swallow's statement is at [p.113].

28. 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

29. On 28 August the police held a meeting at Nakira with the operators. PC Reader and a colleague met with Mr Dextor Laswell (a Director of the Premises Licence Holder⁵), Mr Kieron Costello ("the Boss") and other staff.

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

31. When asked about the event on 22 August, Mr Costello claimed the people inside were "*staff members carrying out maintenance*"⁶. The police did not believe him.

⁵ Companies House printout at [p.175-178]

⁶ See email at p.110.

32. WMP submit 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.
33. PC Reader subsequently saw the bodycam footage from the 22 August, which was at odds with the account 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 and is at [p.110-112]. 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 on the venue, and queue management.
34. Police statements relating to this meeting are at [p.108-112].

24 September 2020

35. The male victim is a regular attendee of Nakira. On 24 September between 03:00 – 04:00hrs he left the venue. 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. He has been left with permanent injuries and the incident is currently being investigated by police as grievous bodily harm.
36. The victim contacted the owner of the club who he knew, Mr Dextor Laswell. Mr Laswell has been ignoring his calls. The victim was later told the doorman involved in this incident was “Mr Rasni”. Despite the spelling ambiguity, this is believed to refer to the same male, Mr Rasani, who was present at the venue on 22 August describing himself to police as a “cleaner”. There is no record on the SIA database of Mr Rasani (or “Rasni”) being registered to act as a door supervisor or security guard.
37. The venue did not report this serious incident to the police or call an ambulance. Indeed they have sought to cover-up the incident. This is not the behaviour of a responsible licence holder who is capable of promoting the licensing objectives. The victim himself contacted the police to report the incident.

38. At the time of writing, the licence holder has still not supplied WMP with the CCTV covering this incident in response to requests.
39. (Note: the 10pm curfew did not come into force until 05:00hrs on 24 September and so this late opening was not a breach of the curfew provisions).
40. The police documents relating to this incident are at [p.139-146].

25 September 2020

41. A “whistle-blower” complaint was made to the local authority on 25 September and forwarded to WMP. The complainant indicated that he had been told by a friend or relative that Nakira would be open from 11pm for a “secret event” (despite the 10pm curfew that had come into force the day before on 24 September). The organisers would be letting people in at the [...] ⁷ entrance and upstairs via the fire entrance.
42. 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 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 10pm curfew.
43. The whistle-blower complaint is at [p.48].

26 September 2020

44. The 10pm curfew was by now in force.
45. At around 00:45hrs on 26 September WMP officers drove past Nakira and noticed a large amount 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).

⁷ The missing word has been cropped off the email.

In the main public area of the premises police saw two men sat 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.

46. Officers went upstairs to one of the rooms. The lights went on and a further 15-20 people were sat around sat 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*”⁸. Officers could smell cannabis and fresh half empty bottles of alcohol and half 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.
47. Officers estimated that about 25-30 persons were in the venue in total. There was no social-distancing and the Rule of 6 was not being complied with since groups of more than 6 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.
48. One female told police she was a dentist and this was her birthday celebration. Other guests appeared to confirm this was the reason they were in Nakira.
49. 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.
50. The main bar area was open with all the lights on and 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. (CCTV footage later showed shisha pipes being smoked, unlawfully, inside the venue earlier in the night).
51. Eventually, in response to police enquiries, a female from the security company that managed the building attended the premises to lock it up.
52. The police officer on the ground described the scene as leaving him feeling “*quite disgusted*”.

⁸ Pc Malborn, p. 101

53. Police statements relating to this incident are at [p.97-106].
54. Police Bodycam footage as well as CCTV from inside the venue is also available (and has been served on all parties) should the sub-committee wish to view it.

CCTV of 26 September 2020

55. The CCTV from the premises on 26 September, in so far as it has been supplied to WMP, has now been examined. The footage has been uploaded to a cloud-link which has been served on all the parties in this review hearing. (If the sub-committee wish to view any of it then it can, technical glitches permitting, be played via MS Teams).
56. The footage shows that despite some customers leaving and the front door being locked shortly after 10pm, 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 now claims (and supplies letters from staff in support). The footage also shows shisha pipes being smoked (unlawfully) inside the venue from 20:00hrs.
57. 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 the party-goers were discovered by police - has still not been disclosed by the licence holder despite police requests.
58. The police have produced a timeline at [p.147-164]. Of particular note are these observations:
- 20:00-20:30 – shisha pipes are being smoked inside the venue.
 - 22:06 – the front door of the premises is locked. Some customers leave.
 - 22:09 – some people remain in the venue and disco lights are on. A male is walking around with a drink in his hand.
 - 22:13 – people are still in the venue walking around, some with drinks, and others sitting in a booth.
 - 22:15 – two females in party attire are posing and taking photos of each other with mobile phones.
 - 22:15 – 22:20 – a male approaches the side fire exit door via a corridor in the staff area. The fire exit door is blocked. The male removes articles blocking the door. He

opens the door and lets in 3 other males who enter peacefully. (These males had previously been seen at the front door). Female staff members are walking in this corridor carrying trays with glasses. They do nothing to intervene.

22:21 – a female goes to a car park outside, returns to the venue door and drops what looks like a canister, picks it up and re-enters the premises before leaving at 22:23.

00:09 – customers walking around ground floor area. Male seen walking into lobby area with a balloon in his hand which he raises to his face (believed to be nitrous oxide inhalation). A male is seen behind the bar with a balloon in his hand also believed to be nitrous oxide.

00:28 – two females seen walking in corridor. One carrying a mobile phone and a bottle/glass.

00:34 – male walking around with bottle in his hand.

29 September 2020

59. On 29 September, WMP apply for a summary review of Nakira's premises licence. The certificate is signed by Superintendent Morris.

30 September 2020

60. PC Rohomon requested a meeting with Dextor 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 off Dextor Laswell earlier in the year. Mr Costello indicated he was the DPS.
61. Companies House records indicate that Mr Mankulu became a Director of RP Restaurants Ltd on the same day as this meeting, 30 September⁹. Mr Costello is not recorded to be the DPS on the Premises Licence. Both said they became aware of the police request for the meeting via Dextor Laswell.
62. 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

⁹ See p.177

since the staff had felt intimidated they left. (WMP assert that this account is contradicted by the CCTV footage from the night).

63. This meeting is evidenced in the statement of PC Rohomon at [p.116-118].

1 October 2020

64. The licensing sub-committee determined to suspend the premises licence as an interim step pending the full review hearing.

65. In the course of this hearing the licence holder claimed the issues arose out of “unsatisfactory *internal management procedures at the premises*”.

66. The Decision Notice is at [p.12-14].

12 October 2020

67. For the first time, the licence holder served a Risk Assessment on the police (dated 29 September 2020). The Risk Assessment is at p.179-188. The date of the document coincides with WMP’s application for a summary review. The licence holder has not suggested they had any Risk Assessment prior to that date which they ought to have done.

16 October 2020

68. The licensing sub-committee considered a challenge to the interim suspension by the premises licence holder and determined that the suspension of the premises licence should continue pending the full review hearing.

PREMISES LICENCE HOLDER’s EVIDENCE

69. The premises licence holder has served a number of witness statements/letters and a Risk Assessment. They are in the Agenda Papers at [p.76-82].

70. Mr Dexter Laswell indicates that he is a co-director of RP Restaurants Ltd together with Mr Mankulu. He claims that he gave strict instructions that Nakira should be completely shut down at 10pm.
71. Since that did not happen, either Mr Laswell is lying or else he has no effective control over his premises. Either way, it demonstrates the licence holder is unable to promote the licensing objectives in the future.
72. A number of letters have been submitted from staff at Nakira. They claim that on the night of 25/26 September some friends of a colleague remained in the venue as it was their “colleague’s” birthday. SIA door supervisors were released at 22:00hrs. However, the number of people entering Nakira increased and were aggressive. Despite staff asking them to leave they did not. The staff decided to leave at around midnight.
73. These assertions are undermined by:
- a. The CCTV evidence showing staff remaining in the premises during the lock-down party.
 - b. When police arrived the “birthday girl” claimed to be a dentist.
 - c. Her birthday guests were not aggressive when confronted by police.
 - d. There is no evidence that staff attempted to get the customers to leave after 10pm.
 - e. Party attendees were being recorded on CCTV being let in to the venue peacefully at 22:15 with staff in the vicinity making no attempt to prevent them entering.
 - f. There is no evidence of the attendees being “aggressive” towards staff on the disclosed CCTV footage.
 - g. Why would SIA staff be released when people were still on the premises after 22:00hrs? Any responsible operator would have directed the SIA staff to help remove the unwelcome guests.
 - h. The staff made no attempt to contact police to assist them with the remaining customers who, it is now claimed, refused to leave.

RELEVANT COVID-19 RESTRICTIONS & REQUIREMENTS

74. Since March 2020, Government restrictions on the hospitality trade, and suggested measures for licensed premises to take, have been altered on several occasions in response to the dynamic health challenges facing the UK during the COVID-19 pandemic.

75. A breach of the Regulations is a criminal offence and so engages the prevention of crime and disorder licensing objective.¹⁰
76. However, it should be borne in mind that, regardless of the specific terms of COVID-related regulations, all licensed operators are subject to a more general legal duty under the Health and Safety at Work Act 1974 to protect the health, safety and welfare of their employees and other people who might be affected by their business¹¹. This includes staff, customers and the wider community. Operators must do whatever is reasonably practicable to achieve this aim.
77. Operators can be expected to have regard to government issued guidance in ensuring that they provide a safe work environment. There is no legal duty on an operator to comply with every word of COVID-related guidance issued by the Government. Nevertheless, responsible operators should take such guidance into account when ensuring that their operation is run in a COVID-safe and secure manner. As part of this process operators are legally obliged to carry out a risk assessment.¹² Moreover, operators are expected to effectively *implement* the measures set out in their risk assessment.
78. The following timeline sets out, in summary form, the most relevant restrictions applicable to licensed premises introduced from March 2020 and introduced by way of Regulations:
- a. **21 March**¹³ – certain businesses including nightclubs, pubs, bars and restaurants were ordered by regulations to **close** (with some exceptions for takeaway/delivery of food and drink). (The **lockdown** relating to movement of persons began five days later on 26 March).
 - b. **4 July**¹⁴ – (“**Independence Day**”) save for nightclubs, discos, dance halls and similar venues (which open at night, have a dance floor or other space for dancing by members of the public and provide music for dancing), the hospitality industry was permitted to re-open. This included the re-opening of pubs, bars and restaurants.

¹⁰ See *R(Blackpool Council) v Howitt* [2008] EWHC 3300 (Admin) in relation breaches of regulatory provisions (the smoking ban in pubs) engaging the crime and disorder objective.

¹¹ See s.2-4 of the Health and Safety at Work Act 1974.

¹² See regs 3-5 of the Management of Health and Safety at Work Regulations 1999

¹³ The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020, replaced from 26.3.20 with The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 which also introduced the original “lockdown”.

¹⁴ By way of amendment to the No.2 Regs.

Extensive industry specific guidance was issued by the Government to assist licensed premises in drawing up their risk assessments. A number of measures were proposed to assist operators to provide a COVID-secure environment. These measures included social-distancing (2m or 1m with risk mitigation), reconfiguring seating and tables to maintain social distancing, reducing and managing queues, managing capacity levels in a venue to avoid over-crowding, hygiene and sanitation measures.

- c. **14 September**¹⁵ – the **Rule of 6** was introduced by regulations. Subject to a number of exceptions (including larger households), gatherings in pubs, bars and restaurants were limited to groups of 6 persons who could not mix with other groups.
- d. **15 September**¹⁶ – special regulations relating to **Birmingham** were introduced in response to an increasing COVID-19 infection rate. These regulations placed restrictions on households mixing in private dwellings.
- e. **18 September**¹⁷ – restaurants, pubs and bars were required to collect the contact details of their customers for **track and trace** purposes (with QR codes mandatory from 24 September). Further obligations¹⁸ were placed on hospitality operators requiring them to take reasonable measures to ensure (subject to certain exceptions) that: (a) table bookings for a group of more than 6 persons are not accepted; (b) groups of more than 6 are not admitted to the premises; (c) mingling between groups is avoided; and (d) an appropriate distance is maintained between tables (i.e. 2m or 1 m if barriers, back to back seating, or other mitigation measures).
- f. **24 September**¹⁹ – amended regulations placed further restrictions on restaurants, pubs and bars (among other venues) from 5am on 24 September. A **curfew** of 10pm-5am was introduced, during which hours businesses “*must not carry on*” that business or “*provide that service*”. (The curfew provisions are headed “*Restrictions on opening hours of businesses and services*”²⁰). After 10pm a premises could still provide a delivery/drive-thru service for food or drink in response to orders but not a take-away service. In addition, for restaurant, pubs and bars that serve alcohol for

¹⁵ The Health Protection (Coronavirus, Restrictions) (No.2)(England) Regulations 2020 (“the No.2 Regs”)

¹⁶ The Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) Regulations 2020

¹⁷ The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

¹⁸ The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020.

¹⁹ By way of amendment to the No.2 Regs.

²⁰ Reg.4A of No.2 Regs

consumption on the premises, they may only do so if the food or drink is ordered by, and served to, **seated customers** and the operator must take all reasonable steps to ensure the customers remain seated whilst consuming the food or drink²¹. From 24 September both customers and staff (likely to come into close contact with the public) in restaurants and bars were required to wear **face coverings** whilst indoors unless they had a “reasonable excuse”, e.g. to remove a mask where it is reasonably necessary to eat or drink. (Some persons are specifically exempted from the face-covering provisions including police officers, PCSO’s and local authority officers).²²

- g. **28 September**²³ – further obligations were imposed on operators to take all reasonable measures to prohibit customers **singing in groups** of more than 6, or **dancing** on the premises, or playing recorded music at **sound levels** above 85db(A) at source.²⁴ (These measures were later revoked on 14 October 2020). With effect from this day the requirement on hospitality undertakings to take all reasonable measures to ensure “mingling” between groups did not take place was replaced with a requirement to take such measures to ensure no person in one group “joined” another.
- h. **14 October** – the new 3-Tier Regulations (Medium, High and Very High Alert Levels) were introduced.

LEGAL FRAMEWORK

Full summary review hearing

79. This full summary review hearing is held under s.53C of the Licensing Act 2003 (LA2003).

80. The licensing authority must:²⁵

²¹ Reg.4B of No.2 Regs

²² The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place)(England) Regulations 2020 (as amended)

²³ The Health Protection (Coronavirus, Restrictions) Obligations

²⁴ The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations (as amended)

²⁵ S.53C(2)

- a. hold a hearing to consider the application for the review and any relevant representations; and
- b. take such steps as it considers appropriate for the promotion of the licensing objectives.

81. The steps available to the licensing authority are: ²⁶

- a. to modify the conditions of the licence (which includes changes to permitted hours);
- b. to exclude a licensable activity from the scope of the licence;
- c. to remove the designated premises supervisor;
- d. to suspend the licence for a period not exceeding three months;
- e. to revoke the licence;

82. Licensing authorities must carry out their functions under the Licensing Act 2003 with a view to the promotion of the licensing objectives.²⁷

83. The licensing objectives, all of which may be considered at this full summary review hearing, are:

- a. The prevention of crime and disorder
- b. The prevention of public nuisance
- c. Public safety
- d. The protection of children from harm.

84. Each is of equal importance and the promotion of the four objectives is a paramount consideration at all times.²⁸

85. In the case of Nakira, the police submit that all the objectives, whether directly or indirectly, are engaged.

²⁶ Section 53C(3)

²⁷ Section 4 LA03

²⁸ S.182 Guidance at paragraph 1.4

86. Steps taken to achieve the promotion of the licensing objectives should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.²⁹
87. In carrying out their licensing functions a licensing authority must have regard to the licensing authority's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003 ("s.182 Guidance")³⁰.
88. In relation to "Reviews", the s.182 Guidance recognises that:³¹

*11.1- The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent **a key protection for the community** where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.*

89. Similarly, the s.182 Guidance points out, in the context of reviews arising in connection with crime, that the duty of a licensing authority is to make decisions in the interests of the wider community and not simply those of the individual licence holder:

*11.26- Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises licence, for the promotion of the crime prevention objective. It is important to recognise that certain criminal activity or associated problems may be taking place or have taken place despite the best efforts of the licence holder and the staff working at the premises and despite full compliance with the conditions attached to the licence. In such circumstances, the licensing authority is still empowered to take any appropriate steps to remedy the problems. **The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.***

90. Hearsay evidence is admissible³² although the High Court has observed that:³³

²⁹ S.182 Guidance at 9.43

³⁰ Section 4, Licensing Act 2003

³¹ Chapter 11 "Reviews". Emphasis added.

³² *Westminster v. Zestfair*, [1989] 88 LGR 288

³³ *Leeds City Council v. Hussain* [2002] EWHC 1145 (Admin)

“Some evidence such as gossip, speculation and unsubstantiated innuendo would be rightly disregarded. Other evidence, even if hearsay, might by its source, nature and inherent probability carry a greater degree of credibility. All would depend on the particular facts and circumstances.”

91. Given these are administrative/civil proceedings, where a factual issue falls to be decided the standard of proof is the balance of probabilities.
92. The promotion of the licensing objectives is ultimately a forward looking exercise. Deterrence is also a proper consideration. In East Lindsey District Council v Abu Hanif (Admin), a licensing case involving the employment of illegal workers, the High Court (Jay J) made important observations of more general application to licence review decisions: ³⁴

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

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

The Superintendent’s Certificate

94. The Superintendent’s certificate that accompanied this application for summary review is at [p.11]. The application itself is at [p.6-10].

³⁴ [2016] EWHC 1265. See also R (Bassetlaw District Council) v Worksop Magistrates’ Court [2008] EWHC 3530 (Admin), when the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J stated at §32: “... Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.”

95. In *Lalli v Commissioner of Police for the Metropolis* [2015] EWHC 14, the High Court indicated that it is not for the licensing authority to go behind the Superintendent's Certificate stating that, in his opinion, the premises is associated with serious crime or serious disorder or both.
96. In the course of his judgment, Mr John Howell QC, sitting as a Deputy High Court Judge, stated [at §62]:

“In my judgment 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.”

And to similar effect [at §75]:

“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. The licensing authority is not obliged to consider whether or not it is liable to be quashed.”

97. 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 on what steps are appropriate to take in order to promote the licensing objectives as the summary 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.”

98. Finally, in the context of summary reviews, the Court in *Lalli* stated [at § 71]:

“The statutory provisions describing the substantive functions of the licensing authority on receipt of the application for a summary review are focused solely on what may be necessary or appropriate for the promotion of the licensing objectives.”

Public Sector Equality Duty

99. At the interim steps hearing on 16 October 2020, Counsel for the licence holder invited the sub-committee to consider their obligations under the Equality Act 2010 and, in particular, the Public Sector Equality Duty (“PSED”) as contained in s.149.

100. WMP agrees that the PSED *is* engaged in these proceedings, as it is with every licensing determination by a local authority. WMP positively invites the sub-committee to consider their PSED when reaching their determination.

101. The PSED requires a public authority (which includes this licensing sub-committee), in the exercise of its functions, to have **due regard** to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

102. The “protected characteristics” are: age, disability, gender reassignment, pregnancy and maternity, **race**, religion or belief, sex, sexual orientation.³⁵

³⁵ S.149(7) of the Equality Act 2010

103. As in the interim hearing on 16 October, the sub-committee will wish to have regard to the “Brown Principles”.³⁶ In summary this means:

- a. Decision-makers must be made aware of their duty to have 'due regard' and to the aims of the duty.
- b. Due regard is fulfilled before and at the time a particular policy that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken.
- c. Due regard involves a conscious approach and state of mind. A body subject to the duty cannot satisfy the duty by justifying a decision after it has been taken. Attempts to justify a decision as being consistent with the exercise of the duty, when it was not considered before the decision, are not enough to discharge the duty. General regard to the issue of equality is not enough to comply with the duty.
- d. The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- e. The duty has to be integrated within the discharge of the public functions of the body subject to the duty. It is not a question of 'ticking boxes'.
- f. The duty cannot be delegated and will always remain on the body subject to it.
- g. It is good practice for those exercising public functions to keep an accurate record showing that they had actually considered the general equality duty and pondered relevant questions. If records are not kept it may make it more difficult, evidentially, for a public authority to persuade a court that it has fulfilled the duty imposed by the equality duties.

104. In this case there is, at the time of writing, no evidence before the sub-committee suggesting that a decision to revoke the premises licence of Nakira would have an adverse impact on any group of people with protected characteristics (e.g. the BAME community).

³⁶ Set out in *R(Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158

105. But, even if such evidence were to be produced, WMP submits 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 who frequent Nakira itself).
106. At the interim steps hearing on 16 October, there appeared to be an insinuation from the licence holder that WMP were unfairly and unjustifiably focusing their enforcement action on venues popular with the BAME community in Birmingham. That is denied. The statement of PC Abdool Rohomon (dated 20.10.20) deals with this issue at Agenda Papers [p.46-47].

CONCLUSION

107. For these reasons WMP invite the sub-committee to revoke the premises licence of Nakira and impose an interim suspension pending any appeal.

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