

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee A
Report of:	Interim Assistant Director of Regulation and Enforcement
Date of Meeting:	Friday 23rd October 2020
Subject:	Licensing Act 2003 Premises Licence – Summary Review
Premises:	Nakira, Queensgate, 121 Suffolk Street Queensway, Birmingham, B1 1LX
Ward affected:	Ladywood
Contact Officer:	Bhapinder Nandhra, Senior Licensing Officer, licensing@birmingham.gov.uk

1. Purpose of report:

A review of the premises licence is required following an application for an expedited review under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006).

2. Recommendation:

To consider the review and to determine this matter.

3. Brief Summary of Report:

An application under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) was received on 29th September 2020 in respect of Nakira, Queensgate, 121 Suffolk Street Queensway, Birmingham, B1 1LX.

Representations have been received from, West Midlands Police, Environmental Health, Birmingham City Council Licensing Enforcement and Public Health, as responsible authorities.

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

The report complies with the City Council's Statement of Licensing Policy and the Council's Corporate Plan to improve the standard of all licensed persons, premises and vehicles in the City.

5. Relevant background/chronology of key events:

On 29th September 2020, Superintendent Morris, on behalf of West Midlands Police, applied for a review, under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), of the Premises Licence granted to RP Restaurant Ltd in respect of Nakira, Queensgate, 121 Suffolk Street Queensway, Birmingham, B1 1LX.

The application was accompanied by the required certificate, see Appendix 1.

Within 48 hours of receipt of an application made under Section 53A, the Licensing Authority is required to consider whether it is appropriate to take interim steps pending determination of the review of the Premises Licence, such a review to be held within 28 days after the day of its receipt, review that Licence and reach a determination on that review.

Licensing Sub-Committee A met on 1st October 2020 to consider whether to take any interim steps and resolved that the Designated Premises Supervisor be removed and that the Premises Licence be suspended pending a review of the Licence. A copy of the decision is attached at Appendix 2.

The Premises Licence Holder was notified of the interim steps taken by the Licensing Authority and subsequently made a representation at 23:28hours on 14th October 2020. See Appendix 3.

As a result of this representation the Licensing Sub-Committee met on the 16th October 2020 and again having heard from representatives of the licence holder and West Midlands Police, resolved that the suspension of the premises licence and removal of the Designated Premises Supervisor (DPS) imposed on the 1st October 2020 be maintained. A copy of the decision is attached at Appendix 4.

The review application was advertised, by the Licensing Authority in accordance with the regulations; the closing date for responsible authorities and other persons ended on the 14th October 2020.

An additional representation has been received from West Midlands Police, which is attached at Appendix 5.

A representation has been received from Public Health, as a responsible authority. See Appendix 6

A representation has been received from Environmental Health, as a responsible authority. See Appendix 7.

A representation has been received from Birmingham City Council Licensing Enforcement, as a responsible authority. See Appendix 8.

A copy of the current Premises Licence is attached at Appendix 9.

Site location plans at Appendix 10.

When carrying out its licensing functions, a licensing authority must have regard to Birmingham City Council's Statement of Licensing Policy and the Guidance issued by the Secretary of State under s182 of the Licensing Act 2003. The Licensing Authority's functions under the Licensing Act 2003 are to promote the licensing objectives: -

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

6. List of background documents:

Review Application and Certificate from West Midlands Police, Appendix 1
Sub-Committee Interim Steps Meeting decision of 1st October 2020, Appendix 2
Representations back against Interim Steps decision of 1st October 2020, Appendix 3
Sub-Committee Interim Steps Meeting decision of 16th October 2020, Appendix 4
Additional representation received from West Midlands Police, Appendix 5
Copy of representation from Public Health, Appendix 6
Copy of representation from Environmental Health, Appendix 7
Copy of representation from Birmingham City Council Licensing Enforcement, Appendix 8
Current Premises Licence, Appendix 9
Site location plans, Appendix 10

7. Options available:

Modify the conditions of Licence
Exclude a Licensable activity from the scope of the Licence
Remove the Designated Premises Supervisor
Suspend the Licence for a period not exceeding 3 months
Revoke the Licence
Take no action

In addition the Sub Committee will need to decide what action, if any, should be taken regarding the interim steps initially imposed on the 1st October 2020 and subsequently maintained on the 16th October 2020.



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

I - Superintendent 7005 Morris

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

1. Premises details: Nakira

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

**Queensgate,
121 Suffolk Street Queensway**

Post Town: **Birmingham**

Post Code (if known): **B1 1LX**

2. Premises Licence details:

Name of premise licence holder (if known):

RP Restaurant Ltd

Number of premise licence (if known):

3919

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

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

(Please tick the box to confirm)



4. Details of association of the above premises with serious crime, serious disorder or both:
(Please read guidance note 2)

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

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

Although the consequences for the country and the economy were considerable and far reaching this is what the UK Government had to do.

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

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

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

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

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

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

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

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

This has been widely publicised; to the point in recent weeks where there hasn't been a day without something in the news about it.

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

These premises came to the attention of the Police on the 22nd August 2020. Officers noted at 5am a large number of cars on the car park which is immediately adjacent to the premises, and a large gathering of people, both in the car park and by the emergency exit.

Officers tried to find out what was going on but people were being illusive and not assisting. The emergency exit door was briefly opened and then closed very quickly. Officers stated they were banging on the door to be let in but no one answered.

Eventually the door was opened and officers made their way inside. What they saw inside they described as a party going on, loud music, no social distancing, with about 50 people in a small room, and another 20 outside.

Officers have noted that they struggled to find anyone who would identify as being in control of the premises, a person did come forward inside the premises who said he was the cleaner but also the key holder.

When officers went back outside they identified a male who claimed to be the licence holder/manager. This man is not on the premise licence as either the DPS or PLH but indicated to officer he was the "boss". This male denied doing anything wrong, whilst indicating that they had no Covid risk assessment.

This person who claimed to be "the boss" then stated to officers that the premises was a restaurant, something that the officers saw no evidence of and even questioned as the cleaner had indicated that the food had been ordered in.

Officers from the Birmingham Central Police licensing team emailed the premise licence holder and a meeting was held at the premises on the 28th August 2020. The male that claimed to be "the boss" was also at the meeting with the Premise licence holder.

It was claimed that the people in the premises on the 22nd August were staff doing some maintenance. This was not believed by the officers, as there was too many people there, the way they were dressed and no maintenance being carried out.

An email was sent on the 28th August 2020 to the premise licence holder from the Police licensing officer. In this email advice was given, the website showing the guidance was included and to assist key points from that to be considered.

The CCTV was requested but no response has come back from the PLH.

On the 26th September 2020 at around 00.40 hours (the premises should have been shut and closed at 22.00 hours), officers noted that again there were a number of cars parked on the car park adjacent to the premises.

It was noted by officers that the side emergency exit door was ajar. Officers investigated in case it hadn't been locked properly or the premises broken into. As officers investigated they came across two males in the main public area of the club, sat on a sofa.

Officers describe them as showing signs of intoxication, they could smell cannabis in the air, and noted there were drinks on the table and silver nitrous oxide canisters strewn all over the place.

Other officers then describe finding another upstairs room, the lights being put on and a number of people in this room. Evidence was seen of alcoholic drinks on the tables, no social distancing by the groups. Again officers noted that there were the silver nitrous oxide canisters on the floor.

Officers have noted that they were approached by a female who indicated it was her birthday party and that is why they were celebrating. From this it is clear that an event was taking place in the premises, and that there is potential financial gain by the premises.

This party contravenes Covid restrictions, and the rule of six, and also the fact that people were still in the premises at 00.40hours.

It was noted by officers that as people left they automatically went towards the rear fire exit to leave the premises, almost as if it was known that was how you left the premises.

Officers have noted with concern and disgust about how this premise has been found operating, in what they say are clear breaches of the Covid regulations.

There has been little to no engagement from the PLH, even after engagement from the Police licensing team. When officers have found the premise open with people inside there is no control, they have struggled to identify anyone in control of the premise. This is very concerning considering the way the country is struggling to deal with this pandemic.

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

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

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

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

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

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

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

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

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

Signature of applicant:

Date: 29/9/20

Rank/Capacity: Superintendent 2005 Mums

Contact details for matters concerning this application: BW Licensing

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

[REDACTED]

[REDACTED]

Notes for guidance:

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

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

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

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

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

West Midlands Police

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

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

Premises: Nakira

Premise Licence Number: 3919

Premise Licence Holder: RP Restaurant Ltd

Designated Premise Supervisor: Mr Anton Gasparov

I am a Superintendent in West Midlands Police.

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

The actions of the premise took in deciding to be open have placed an unnecessary risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. This is causing a public nuisance.

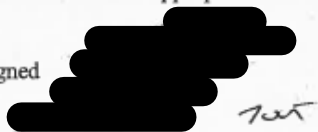
Public nuisance is a serious crime and combined with the national threat the Covid 19 possesses, it warrants the use of this power.

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

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

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

Signed





BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE - A

THURSDAY 1 OCTOBER 2020

**NAKIRA, QUEENSGATE, 121 SUFFOLK STREET QUEENSWAY,
BIRMINGHAM, B1 1LX**

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by RP Restaurant Limited in respect of Nakira, Queensgate, 121 Suffolk Street Queensway, Birmingham B1 1LX, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application

and

- that Anton Gasparov be removed as the Designated Premises Supervisor

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

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

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

The pandemic had continued to be the top story in the national news across the Spring, Summer and now into the Autumn of 2020; the Birmingham lockdown, and also the new national measures announced on 22nd September, had been very widely publicised and discussed both in news reports and on social media. 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.

Members heard the submissions of West Midlands Police, namely that in August 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, the Police had observed a general failure by the Nakira premises to follow the Government Guidance. Upon visiting the premises at around 05.00 hours on 22nd August 2020, Police found that loud music was playing at a volume which made conversation difficult, and also observed that there was no social distancing or limitation of numbers of patrons to allow for safe operation as per the Covid-19 requirements. 50 to 60 people were estimated to have been inside, with a further 15 to 20 outside. The Police ascribed these failures to unsatisfactory management by the premises licence holder and the designated premises supervisor.

The explanation given by the premises was that the people in the premises on 22nd August had in fact been "staff", who had been "carrying out maintenance work". This explanation was not accepted by the Police Officers who attended at 05.00 hours and witnessed that the large numbers of people at the premises were dressed for a night out, and loud music was playing.

It was also observed by Police that the premises licence holder was even in breach of an existing condition on the licence, namely that any operating beyond 04.00 hours must be notified to Police in advance. The Police were therefore concerned that the premises licence holder was being reckless in its style of operating, and was endangering public health by risking the spread of Covid-19.

A further visit on 26th September at 00.40 hours found the premises to be trading, in direct defiance of the order from HM Government that all premises serving food and drink must close by 22.00 hours. Around 20 to 30 people were found inside the premises, and social distancing was not being observed.

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

Attempts by the Police to advise those at the premises had not been accepted. Police had requested that the premises supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; this had not been forthcoming. The recommendation of the Police was therefore that the Sub-Committee should suspend the licence pending the review hearing.

A recently-appointed Director of the company which holds the premises licence then addressed the Sub-Committee. Having heard his submissions, the Sub-Committee agreed with the Police that the causes of the serious crime appeared to

originate from unsatisfactory internal management procedures at the premises. The Sub-Committee was not impressed with the Director's representations, or his answers to questions. He stated that he was new to the industry and "still learning". Whilst he stated that he did not deny responsibility or make excuses, he asked that the Sub-Committee take into account what he called the "mitigating circumstances".

However the "mitigating circumstances" centred around the suggestion that staff inside the premises on the night of the 22nd August, who had been cleaning, had been taken by surprise by large numbers of people (dressed for a night out) who had invaded the premises late at night; the Director stated that although the correct course would have been for those staff to call the Police, the staff had been reluctant to do so. The Director ascribed the reluctance to involve the Police to the Afro-Caribbean background of the staff and customers. The Sub-Committee found this to be a highly unusual approach for any premises licence holder to take, and not something that inspired confidence in the management arrangements at the premises. All in all, the Sub-Committee considered the licence holder to have failed to take its responsibilities seriously.

The Sub-Committee therefore determined that it was both necessary and reasonable to impose the interim step of suspension to address the immediate problems with the premises, namely the likelihood of further serious crime.

The Sub-Committee considered whether it could impose other interim steps, including modification of licence conditions, but considered that this would offer little to address the real issues, which were the unsatisfactory practices and the irresponsible attitude shown by the licence holder, both of which were a significant risk to public health in Birmingham.

However, the Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the Government Guidance in order to trade as usual. Therefore the risks could only be properly addressed first by the suspension of the Licence, and secondly by the removal of the DPS, pending the full Review hearing.

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

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

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

From: Carl Moore
Sent: 14 October 2020 23:28
To: David Kennedy; Licensing; Bhapinder Nandhra
Cc: Jake Brooke
Subject: Appeal Notice for Interim Steps for NAKIRA BAR & RESTAURANT, Queensgate, 121 Suffolk Street Queensway, Birmingham B1 1LX,

Dear David,

Re: Appeal against Interim Steps against NAKIRA Bar & Restaurant, Queensgate, 121 Suffolk Street Queensway, Birmingham B1 1LX

I now act on behalf of **RP Restaurant Limited** the Premises License Holder for the above premises.

My client has also instructed as Legal Representative Sarah Clover, from Kings Chambers.

Please take note that the premises license holder for Nakira Bar & Restaurant hereby makes representations against the interim steps imposed upon the license by the Licensing Authority on Thursday 1st October 2020 in accordance with 53B(6) of the Licensing Act 2003 on the grounds that the Decision of the Licensing Authority was unreasonable, against the weight of the evidence, contrary to law and in all the circumstances, was wrong. Specifically, the Licensing Authority should not have entertained a Summary Review based upon the public nuisance as a common law offence.

Please, could you arrange a hearing to consider those representations within forty-eight hours accordingly.

Many thanks

Carl
Carl Moore

C.N.A. Risk Management Ltd



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE C

FRIDAY 16 OCTOBER 2020

**NAKIRA, QUEENSGATE, 121 SUFFOLK STREET QUEENSWAY,
BIRMINGHAM, B1 1LX**

That having considered an application made on behalf of the licence holder under Section 53B(6) of the Licensing Act 2003 to make representations against the interim steps imposed by the Licensing Sub-Committee on 1st October 2020 following an expedited summary review 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 it will not lift the interim step of suspension imposed on 1st October 2020 and in consequence the licence remains suspended pending the full review hearing on 23rd October 2020.

and

- that the interim step of the removal of Anton Gasparov as the Designated Premises Supervisor will also remain in place.

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

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

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

measures were an attempt by HM Government to control the sharp rise in Covid-19 cases nationally.

The pandemic had continued to be the top story in the national news across the Spring, Summer and now into the Autumn of 2020; the Birmingham lockdown, and also the new national measures announced on 22nd September, had been very widely publicised and discussed both in news reports and on social media. 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 1st October 2020 further HM Government Guidance and regulations had been introduced on 14th 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 deliberations. For the purpose of this hearing the Sub-Committee only took into account regulations and guidance that were in force on 1st October 2020.

Sarah Clover of counsel appeared for the applicant. Also in attendance was Carl Moore; Dexter Laswell and Antonio Mankulu.

Gary Grant of counsel represented West Midlands Police. Also in attendance was PC Abdool Rohomon; PC Ben Reader and Jennie Downing.

An initial ruling was required on the admissibility under Regulation 18 of The Hearings Regulations of an email from PC Rohomon which had been served on the council on 14th October 2020, but which was not included in the agenda papers and had not been served on Ms Clover until yesterday evening. The Sub-Committee determined not to allow it.

Ms Clover then indicated that she would not be challenging any of the evidence and sought instead to make legal submissions. She challenged the legality of the issuing of the Certificate under s.53A of The Licensing Act 2003 and signed by The Chief Superintendent.

In essence, she made three main submissions about the legality of the certificate:

- i) In respect of the definition of 'serious crime' under s.81 of The Regulation of Investigatory Powers Act 2000 she maintained that no person if prosecuted for public nuisance (which carries a maximum sentence of life imprisonment) would reasonably expect to receive a sentence of 3 years' imprisonment in view of the fact that Parliament had built financial penalties only into the Covid-19 Regulations.
- ii) Ms Clover maintained further that the WMP could not show that the activities had in fact had the effect of endangering lives, and that consequently the certificate had been issued unlawfully.
- iii) The review should have been a standard review and not an expedited review.

Whilst these submissions were of academic interest, the Sub-Committee took the view that they had no bearing on its task today. The Sub-Committee was of the view that 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 its duty under s. 53B (8) and (9):

(8)At the hearing, the relevant licensing authority must—

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

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

(9)In considering those matters the relevant licensing authority must have regard to—

(a)the certificate that accompanied the application;

(b)any representations made by the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated); and

(c)any representations made by the holder of the premises licence.

Ms Clover made a further submission under the Public Sector Equality Duty created by the Equality Act 2010 and maintained that WMP had targeted three premises for enforcement which were owned or operated by members of the black community. Carl Moore who drafted the application on behalf of the operator gave no notice this point would be taken. WMP and the LSC were taken by surprise. Statute compels the LA to hold a hearing within 48 hours to determine whether interim steps should continue pending review. Today was the last day on which a hearing could take place. In response, PC Rohomon explained that there had been a lot of engagement with these and the other two premises identified (including the case of Petite Afrique which the Sub-Committee was due to hear next). He said that they had tried to engage with them and that race was not in their consideration. They were looking only at public safety. It just happened that these premises were Afro Caribbean operated.

It was the view of the Sub-Committee that its duty under the Public Sector Equality Duty created by the Equality Act 2010 had been discharged, given the time available. The Sub-Committee had regard to the protected categories under The Equality Act 2010; the Sub-Committee was informed of 'The Brown Principles' and accepted the assurances of the officer. It may be that when this matter comes

before the LSC for the full review hearing on 23rd October 2020, PC Rohomon will have more information available in respect of other premises that he has visited and their cultural background.

Other than to make her submissions on the legality of the certificate, Ms Clover made no submissions in respect of the lifting of the interim steps.

Members heard the submissions of West Midlands Police, namely that in August 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, the Police had observed a general failure by the Nakira premises to follow the Government Guidance. Upon visiting the premises at around 05.00 hours on 22nd August 2020, Police found that loud music was playing at a volume which made conversation difficult, and also observed that there was no social distancing or limitation of numbers of patrons to allow for safe operation as per the Covid-19 requirements. 50 to 60 people were estimated to have been inside, with a further 15 to 20 outside. The Police ascribed these failures to unsatisfactory management by the premises licence holder and the designated premises supervisor.

The explanation given by the premises was that the people in the premises on 22nd August had in fact been "staff", who had been "carrying out maintenance work". This explanation was not accepted by the Police Officers who attended at 05.00 hours and witnessed that the large numbers of people at the premises were dressed for a night out, and loud music was playing.

It was also observed by Police that the premises licence holder was even in breach of an existing condition on the licence, namely that any operating beyond 04.00 hours must be notified to Police in advance. The Police were therefore concerned that the premises licence holder was being reckless in its style of operating, and was endangering public health by risking the spread of Covid-19.

A further visit on 26th September at 00.40 hours found the premises to be trading, in direct defiance of the order from HM Government that all premises serving food and drink must close by 22.00 hours. Around 20 to 30 people were found inside the premises, and social distancing was not being observed.

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

Attempts by the Police to advise those at the premises had not been successful. Police had requested that the premises supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; this had not been forthcoming. The recommendation of the Police was therefore that the Sub-Committee should suspend the licence pending the review hearing.

All in all, the Sub-Committee considered the licence holder to have failed to take its responsibilities seriously.

The Sub-Committee therefore determined that it was appropriate, given this unchallenged evidence, that the interim step of suspension should remain in place in order to address the immediate problems with the premises, namely the likelihood of further serious crime. It also determined that the interim step of removing the DPS should remain. It was the view of the Sub-Committee that he was unable to run these premises according to law.

The Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the Government Guidance in order to trade as usual. Therefore the risks could only be properly addressed first by the suspension of the Licence, and secondly by the removal of the DPS, pending the full Review hearing.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office in relation to expedited and summary licence reviews, the Public Sector Equality Duty created by the Equality Act 2010 and the submissions made by the Police and by those representing the premises licence holder at the hearing.

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

From: Abdool Rohomon
Sent: 13 October 2020 09:33
To: Licensing
Subject: Nakira

Dear Licensing Authority

West Midlands Police have submitted an expedited review application for the above premise and wish to submit the following additional representation

Between the hours of 0300-0400 on the 24th September an alleged assault took place at the premise, as a result of which the victim has had his thumb severed off. The victim has indicated to investigating officers that he was told not to call the Police or an Ambulance and was taken out of the fire exit by friends and conveyed to hospital in a car.

The victim has provided investigating officers a name of an individual involved – who is claimed to be a door supervisor. These details match the details of a male that officers engaged with on the 22nd August, and at that time that person claimed to be a cleaner not a door supervisor

Requests for this CCTV have been made to the premises

Officers have also been supplied with additional CCTV from the premise, in that CCTV it appears to show that the premise is engaged in the smoking of Shisha inside the main area, which would not be compliant with the Health Act 2006.

It also shows none compliance with covid measures as people are freely moving around, people not wearing masks.

The covid risk assessment dated the 29th September has been supplied which raises concerns as to when it was done and the content it shows being enforced.

CCTV from the 25th/26th September has also been viewed and documented, it shows what is believed to be staff allowing people in through a fire exit, it does not show staff leaving in fear. This was the reason given by officers during a meeting after the incident.

It shows people freely moving around the premises, person using a balloon (which is widely used for the consumption of nitrous oxide), someone bringing out with them what looks like a birthday cake box (which an officer also comments on in the body cam footage), people going to the bar downstairs.

Extra footage has been requested as there are gaps in the original footage and for other areas.

Supporting documentation will be provided prior to the hearing

Regards

Abs Rohomon. BEM

PC 4075 Rohomon. BEM
BW Licensing
Police headquarters
Lloyd House
Colmore Circus
Birmingham
B4 6NQ



Birmingham Public Health

Nakira B1 1LX

Expedited Review Response

On Behalf of:
Dr Justin Varney
Director, Birmingham Public Health

14 October 2020



Making a positive difference everyday to people's lives.



The information contained in this document is provided for the purpose of review by Licensing Committee and may be circulated to all parties of the Review by Licensing Committee as appropriate. This document is not to be circulated to other parties outside of this Review without prior consent from the Author or used for purposes other than for the Review referred to in this report.

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Nakira, 121 Suffolk Street, Queensway, B1 1LX

Public Health's Response to Expedited Review

This is a response document from Birmingham Public Health in its capacity as a Responsible Authority (Police Reform and Social Responsibility Act 2011). This document supports the application for a review of a premises licence or club premises certificate under the Licensing Act 2003.

Wherever possible, supporting information contained within this document will be evidence-based and demonstrably refer to one or more of the licensing, those objectives being:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

To promote good practice and a collaborative, multi-agency approach, we will also share this document with the other Responsible Authorities for licensing in Birmingham.

This report is provided on behalf of the Director of Public Health.

Any queries relating to this report should be addressed to:

Kyle Stott
Licensing Lead
Birmingham Public Health
PO Box 16732
Birmingham
B2 2GF

publichealth@birmingham.gov.uk

1 Premises or club details

<i>Name of premises</i>	Nakira
<i>Postal address of premises</i>	121 Suffolk Street, Queensway, B1 1LX
<i>Premises licence holder</i>	RP Restaurant Ltd
<i>Premises licence number</i>	3919
<i>Designated Premises Supervisor</i>	Anton Gasparov

2 Overview of the Grounds for Review

These premises came to the attention of the Police on the 22nd August 2020. Officers noted (at 05:00am) a large number of cars on the car park which is immediately adjacent to the premises, and a large gathering of people, both in the car park and by the emergency exit.

Officers tried to find out what was going on but people were being illusive and not assisting. The emergency exit door was briefly opened and then closed very quickly. Officers stated they were banging on the door to be let in but no one answered. Eventually the door was opened and officers made their way inside. What they saw inside they described as a party going on, loud music, no social distancing, with about 50 people in a small room, and another 20 outside.

Officers have noted that they struggled to find anyone who would identify as being in control of the premises, a person did come forward inside the premises who said he was the cleaner but also the key holder.

When officers went back outside they identified a male who claimed to be the licence holder/manager. This man is not on the premise licence as either the DPS or PLH but indicated to officer he was the "boss". This male denied doing anything wrong, whilst indicating that they had no Covid risk assessment. This person who claimed to be "the boss" then stated to officers that the premises was a restaurant, something that the officers saw no evidence of and even questioned as the cleaner had indicated that the food had been ordered in.

Officers from the Birmingham Central Police licensing team emailed the premise licence holder and a meeting was held at the premises on the 28th August 2020. The male that claimed to be "the boss" was also at the meeting with the Premise licence holder.

It was claimed that the people in the premises on the 22nd August were staff doing some maintenance. This was not believed by the officers, as there was too many people there, the way they were dressed and no maintenance being carried out. An email was sent on the 28th August 2020 to the premise licence holder from the Police licensing officer. In this email advice was given, the website showing the guidance was included and to assist key points from that to be considered.

The CCTV was requested but no response has come back from the PLH.

On the 26th September 2020 at around 00.40 hours (the premises should have been shut and closed at 22.00 hours), officers noted that again there were a number of cars parked on the car park adjacent to the premises.

It was noted by officers that the side emergency exit door was ajar. Officers investigated in case it hadn't been locked properly or the premises broken into. As officers investigated they came across two males in the main public area of the club, sat on a sofa. Officers describe them as showing signs of intoxication, they could smell cannabis in the air, and noted there were drinks on the table and silver nitrous oxide canisters strewn all over the place. Other officers then describe finding another upstairs room, the lights being put on and a number of people in this room. Evidence was seen of alcoholic drinks on the tables, no social distancing by the groups. Again, officers noted that there were the silver nitrous oxide canisters on the floor.

Officers have noted that they were approached by a female who indicated it was her birthday party and that is why they were celebrating. From this it is clear that an event was taking place in the premises, and that there is potential financial gain by the premises.

This party contravenes Covid restrictions, and the rule of six, and also the fact that people were still in the premises at 00.40 hours. It was noted by officers that as people left, they automatically went towards the rear fire exit to leave the premises, almost as if it was known that was how you left the premises. Officers have noted with concern and disgust about how this premise has been found operating, in what they say are clear breaches of the Covid regulations.

Government guidance¹ states that:

All venues should ensure that steps are taken to mitigate the increased risk of virus transmission associated with aerosol production from raised voices, such as when speaking loudly or singing loudly, particularly in confined and poorly ventilated spaces. This includes broadcasts that may encourage shouting, particularly if played at a volume that makes normal conversation difficult.

¹To address increasing virus transmission rates, from 24 September, additional legal restrictions will apply:

- Businesses selling food or drink (including cafés, bars, pubs, restaurants and takeaways) must be closed between 10pm and 5am. Delivery services (including drive-through service) are exempt and can continue after 10pm provided they are not allowing customers on the premises. Bars and cafés within open premises, such as hotels or theatres, must also close at 10pm.
- In venues which sell alcohol, food and drink must be ordered by, and served to, customers who are seated. This means that a business that sells alcohol must introduce systems to take orders from seated customers, instead of at a bar or counter. This has been introduced to prevent crowding and social contact in licensed premises.
- All businesses selling food or drink must ensure that customers only consume food or drink while seated. This means that in unlicensed premises, food and drink can be purchased at a counter, but customers must sit down to consume it, even in outdoor settings.

3 Public Health response

Licensing Objective	Response
<i>The prevention of crime and disorder</i>	
<i>Public safety</i>	
<i>The prevention of public nuisance</i>	<p>The risk of spreading infections is deemed a "public nuisance". In the case of <i>R v Rimmington & Goldstein</i> (2005) UKHL 63, it quoted the leading modern authority on public nuisance as <i>Attorney general v PYA Quarries Ltd</i> (1957) 2 QB 169. The case quotes "a person is guilty of a public nuisance (also known as a common nuisance) who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property, morals or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects" (<i>Rimmington</i> at [3]).</p> <p>The statement submitted by West Midlands Police to the Licensing Committee to call for an expedited review suggests that there are numerous failures of the licence holder to promote the licensing objectives, and to adhere to, and implement the guidance from HM Government 'Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services (6 October 2020)'.</p> <p>It is reported that the non-compliance and non-implementation include:</p> <ul style="list-style-type: none"> • The operation of the venue outside of Government specified guidelines (after 10.00pm), including the hosting of a Birthday party, in defiance of the guidance¹. • Another gathering, described as a party, with loud music, no evidence of social distancing and possible overcrowding • The lack of implementation of social distancing measures • The playing of loud music

Summary

There appears to be clear evidence from West Midlands Police (WMP) that the premises is not operating to the guidance previously referred to¹. The guidance has been available to all premises since 11th May 2020 in preparation for reopening on 4th July, it is now October and WMP do state that they have had to attend and intervene at the premises on numerous occasions due to concerns with reference to COVID-19 breaches.

If the evidence presented is correct, then it is fair to assume that the licence holder has flagrant disregard for the guidance that is necessary to keep workers and customers safe during COVID-19, and this presents a clear and present risk to the population of the city during the pandemic.

It is deeply concerning and troubling that WMP state the following in their application for an expedited review "Officers have noted with concern and disgust about how this premise has been found operating, in what they say are clear breaches of the Covid regulations".

Birmingham is now designated as in tier two; this means that we are on high alert, more restrictions have been introduced, and this includes the hospitality sector and licensed premises.

We ask the licensing committee to consider all options at their disposal, including revocation of the licence should the full evidence conclude that there is flagrant disregard for following COVID-19 guidance designed to keep workers and customers, and the population of this city safe at this time.

4 Supporting Evidence and Information

4.1 Ambulance Activity

The West Midlands Ambulance Service data shows 6 incidents over a 12 month period but these took place in a 5 month period (September 2019 to January 2020). Also, although the data is for a 12 month period, it should be borne in mind that because of Covid-19 that the premises was closed for just over three months of 2020.

One of the six incidents at the premises was a stabbing.

See Appendix 1.

5 References

¹ HM Government - Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services (6 October 2020)

Appendix 1. Ambulance Activity Data for premises

Data for all call outs made directly to the premises, provided by West Midlands Ambulance Services for September 2109 to September 2020.

Incidents						
Chief Complaint/ Hour of Day	1	2	3	4	6	Total
Alcohol Related	1	1	0	0	1	3
Arrest Peri Arrest	1	0	0	0	0	1
Bleeding	0	0	0	1	0	1
Stabbing	0	0	1	0	0	1
Total	2	1	1	1	1	6

Incidents by Age & Gender				
Age Band	Female	Male	Unknown	Total
No Value	0	1	1	2
10-19	3	0	0	3
20-29	0	1	0	1
Total	3	2	1	6

Incidents and Transports to Hospital			
Month	Incidents	Transports	% Transported
September 2019	1	1	100.0 %
November 2019	1	1	100.0 %
December 2019	2	0	0.0 %
January 2020	2	1	50.0 %
Total	6	3	50.0 %

Incidents						
Day of Week / Hour of Day	1	2	3	4	6	Total
Wednesday	0	0	0	0	1	1
Saturday	0	0	1	0	0	1
Sunday	2	1	0	1	0	4
Total	2	1	1	1	1	6



Public Health

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Making a positive difference everyday to people's lives



From: Martin Key **On Behalf Of** Pollution Team

Sent: 12 October 2020 16:29

To: Licensing

Cc:

Subject: RE: Licensing Act 2003 - Section 53A Expedited Review Application - Nakira, Queensgate, 121 Suffolk Street Queensway, Birmingham B1 1LX

Importance: High

Hi

I am responding on behalf of the Environmental Health team as a responsible authority. I am aware that on 29 September 2020 West Midlands Police lodged an application for the expedited review of the premises licence granted to RP Restaurant Ltd in respect of Nakira, Queensgate, 121 Suffolk Street, Queensway, Birmingham, B1 1LX under Section 53A of the Licensing Act 2003. The application alleges that the licensed premises have been associated with serious crime and disorder.

West Midlands Police have submitted evidence that in August 2020, when the new arrangements for reopening following the lockdown due to COVID-19 was being eased for licensed premises, they had observed a general failure by the Nakira premises to follow the Government Guidance. Upon visiting the premises at around 05.00 hours on 22nd August 2020, Police found that loud music was playing at a volume which made conversation difficult, and also observed that there was no social distancing or limitation of numbers of patrons to allow for safe operation as per the COVID-19 requirements. 50 to 60 people were estimated to have been inside, with a further 15 to 20 outside. This was also in breach of an existing condition on the licence, namely that any operating beyond 04.00 hours must be notified to Police in advance.

A further visit on 26th September at 00.40 hours found the premises to be trading, in direct defiance of the order from HM Government that all premises serving food and drink must close by 22.00 hours. Around 20 to 30 people were found inside the premises, and social distancing was not being observed. Furthermore attempts by the Police to advise those at the premises had not been accepted and having requested that the premises supply the COVID-19 risk assessment (which is a mandatory requirement) this had not been forthcoming.

There has been unprecedented public coverage of the COVID-19 pandemic and the response of the government which includes the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020, Guidance entitled 'Closing Certain Businesses and Venues in England' Guidance entitled 'Keeping Workers and Customers Safe in Restaurants, Pubs, Bars and Takeaway Services'. In addition there were special local lockdown measures (specifically for Birmingham) and further national measures to address rising cases of coronavirus in England as a whole, which were announced by HM Government on 22nd September 2020. These national measures require that all businesses selling food or drink (including cafes, bars, pubs and restaurants) must be closed between 22.00 hours and 05.00 hours. There were other measures introduced including requirements for seated table service, wearing of masks, and participation in the NHS Test and Trace programme.

The premises are subject to Premises Licence reference 3919/3 most recently issued on 13 August 2018 due to a change in the premises licence holder but originally issued in 2013. This licence included a requirement that a Noise Limiting Device (NLD) of a type approved by the Environmental Protection Unit of Birmingham City Council shall be fitted to the amplification system and set at a pre-set volume level agreed with the Environmental Protection Section. This has not been carried out. Furthermore the Council began receiving noise complaints from nearby residents in late 2019 and a visit has been made to the premises. However due to the recent lockdown and restricted hours of operation further complaints have not been received and further investigation has not been undertaken.

The evidence suggests that the issues highlighted by West Midlands Police originate from unsatisfactory internal management procedures at the premises.

The Environmental Health team has a strong working relationship with the police over licensing matters as many of the issues raised by the night-time economy run across the key licensing objectives of crime prevention of crime and disorder, public nuisance and public safety. Since the beginning of the COVID-19 pandemic the Environmental Health team has considered COVID-19 secure practices in licensed premises through visits, TENs and applications. As in this case, the usual approach we adopt is education of the premises management and in most cases this results in COVID-secure operations. In this case the evidence suggests that the premises licence holder has failed to heed the advice and this has resulted in operations which I would submit do not provide sufficient controls to prevent COVID-19 transmission.

The Environmental Health team therefore submit this representation in support of the West Midlands Police application for the expedited review of the premises licence granted to RP Restaurant Ltd in respect of Nakira, Queensgate, 121 Suffolk Street, Queensway, Birmingham, B1 1LX under Section 53A of the Licensing Act 2003.

Best Regards

Martin Key
Environmental Protection Officer

Environmental Health | Regulation & Enforcement Division

: www.birmingham.gov.uk/eh | Facebook: [ehbham](https://www.facebook.com/ehbham) | Twitter: [@ehbham](https://twitter.com/ehbham)

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From: Gary Callaghan
Sent: 12 October 2020 09:43
To: Licensing
Cc:
Subject: Nakira Expedited Review

RE: NAKIRA
Queensgate
121 Suffolk Street Queensway
Birmingham
B1 1LX

Premises Licence number 3919

I hereby wish to make a representation in support of the West Midlands Police expedited review of the above premises. The visits by the Police on 22nd August and 26th September 2020 and findings, show that the premises have put the general public at risk during a Covid-19 pandemic . The premises were trading well after 22:00 hours , loud music was being played and no social distancing was being observed by the Police during the visits these are clear breaches of the Covid -19 regulations that are in place at the current time to stop the coronavirus spreading, they have blatantly put profit before the health and wellbeing of the citizens of Birmingham, It is well documented on TV and in the press that the coronavirus disease can endanger life and result in death. The premises have a duty and responsibility to promote the Licensing Act 2003 objectives. They have failed to promote the prevention of public nuisance . As a result I have serious concerns regarding the “ Premises licence holder “ RP Restaurant Ltd and Designated premises supervisor Anton Gasparov’s suitability and therefore fully support the Police in the expedited review.

Regards
Gary Callaghan

Gary Callaghan
Licensing Enforcement Officer
Birmingham City Council Licensing Enforcement

Website: www.birmingham.gov.uk/licensing Twitter: @BCCLicensing

For information on Birmingham Licensed premises including licensed hours, activities and conditions go to <http://publicregister.birmingham.gov.uk>

"Locally accountable and responsive fair regulation for all - achieving a safe, healthy, clean, green and fair trading city for residents, business and visitors"

LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

3919 / 3

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description	
Nakira Queensgate 121 Suffolk Street Queensway	
Post town:	Post Code:
Birmingham	B1 1LX
Telephone Number:	

Where the licence is time limited the dates
N/A

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

The times the licence authorises the carrying out of licensable activities			
Monday - Sunday	08:00	-	07:59 A ,B ,C ,E ,F ,G ,H ,M3
	23:00	-	05:00 L

The opening hours of the premises	
Monday - Sunday	08:00 - 07:59
The premises to have a standard operating hours of 10:00am till 04:00am. If the premises wish to go past 04:00am then the Premises Licence holder must give 28 days notice to West Midlands Police (Licensing Department Birmingham West and Central Police Station).	

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

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence RP Restaurant Ltd 181 -183 Summer Road Erdington	
Post town: Birmingham	Post Code: B23 6DX
Telephone Number: Not Specified	
Email N/A	

Registered number of holder for example company number or charity number (where applicable) 11173263
--

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Anton Gasparov	
Post town:	Post Code:
Telephone Number: N/A	

Personal licence number and issuing authority of personal licence held by designated premises supervisor where the premises licence authorises for the supply of alcohol	
Licence Number 8312	Issuing Authority BIRMINGHAM CITY COUNCIL

Dated 13/08/2018

SHAID YASSER
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

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

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

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

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

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

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

(1) A relevant person shall ensure that no alcohol is sold or supplied for consumption on or off the premises for a price which is less than the permitted price. (2) In this condition:— (a) “permitted price” is the price found by applying the formula $P = D + (D \times V)$, where— (i) P is the permitted price, (ii) D is the amount of duty chargeable in relation to the alcohol as if the duty were charged on the date of the sale or supply of the alcohol, and (iii) V is the rate of value added tax chargeable in relation to the alcohol as if the value added tax were charged on the date of the sale or supply of the alcohol; (b) “duty” is to be construed in accordance with the Alcoholic Liquor Duties Act 1979; (c) “relevant person” means, in relation to premises in respect of which there is in force a premises licence— (i) the holder of the premises licence, (ii) the designated premises supervisor (if any) in respect of such a licence, or (iii) the personal licence holder who makes or authorises a supply of alcohol under such a licence; (d) “relevant person” means, in relation to premises in respect of which there is in force a club premises certificate, any member or officer of the club present on the premises in a capacity which enables the member or officer to prevent the supply in question; and (e) “value added tax” means value added tax charged in accordance with the Value Added Tax Act 1994. (3) Where the permitted price would not be a whole number of pennies, the permitted price shall be taken to be the price rounded up to the nearest penny. (4) Where the permitted price on a day (“the first day”) would be different from the permitted price on the next day (“the second day”) as a result of a change to the rate of duty or value added tax, the permitted price which would apply on the first day applies to sales or supplies of alcohol which take place before the expiry of the period of 14 days beginning on the second day.

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

The admission of children under the age of 18 to film exhibitions permitted under the terms of this licence shall be restricted in accordance with any recommendation made:

- (a) By the British Board of Film Classification (BBFC), where the film has been classified by that Board, or
- (b) By the Licensing Authority where no classification certificate has been granted by the BBFC, or, where the licensing authority has notified the licence holder that section 20(3)(b) (s74(3)(b) for clubs) of the Licensing Act 2003 applies to the film.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

The Licence Holder shall ensure that all staff are regularly trained in their responsibilities under the Licensing Act 2003. In particular, the Licensing Objectives, no underage drinking, no drunkenness on the premises or outside of the premises, no use of drugs, violent or anti-social behaviour, a need to protect children from harm, and on compliance with the conditions attached to the premises licence The Premises Licence Holder shall ensure that records are kept of such training and that the records are available for inspection by any of the Responsible Authorities upon reasonable request.

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

Promoters:

- a) If the premises has any external promoter the premises must give 28 days notice of any such event to West Midlands Police (Licensing Department Birmingham West and Central Police Station). Notice must include full risk and security assessment. If additional control measures are needed they will become conditions for the duration of that event and any other events of the same name. Any additional measures to be communicated to the premises by West Midlands Police and retained on the premises and be produced when requested by any responsible authorities. For the sake of clarity of the promoter changes the event for any reason (name, music type, etc) then the above condition applies in terms of notification and risk assessments.
- b) If the premises has internal promoted events, then for the 1st event the premise must give 28 days notice of any such event to West Midlands Police (Licensing Department Birmingham West and Central Police Station). Notice must include full risk and security assessment. If additional control measures are need they will become conditions for the duration of that event and any other events of the same name. Any additional measures to be communicated to the premise by West Midlands Police and retained on the premises and be produced when requested by any responsible authorities.
- c) The Premise Licence holder to provide to West Midlands Police (Licensing Department Birmingham West and Central Police Station) by the last day of the month, a full list of events (times, names of event) for the following month.
- d) The Premises to have a documented dispersal policy.
- e) Search policy to be determined per event and through the risk assessment.
- f) Premises to have a documented lost and found policy
- g) Premises to have a documented drugs retention and disposal policy in agreement with West Midlands Police (Licensing Department Birmingham West and Central Police Station).

Hours - the premises to have a standard operating hours of 10:00am till 04:00am. If the premises wish to go past 04:00am then the Premises Licence holder must give 28 days notice to West Midlands Police (Licensing Department Birmingham West and Central Police Station).

Notification to include completed risk assessment and security assessment, any additional measures identified through the risk assessment will become conditions for the premises whilst they are operating the extended hours. West Midlands Police (Licensing Department Birmingham West and Central Police Station) retain the power to veto any such extension of the license if any of the licensing objectives have been or about to be breached. Any additional measures to be communicated to the premise by West Midlands Police and retained on the premises and be produced when requested by any responsible authorities.

The Premises Licence holder will ensure that when the premises use Door Supervisors that the numbers required will be determined by a risk assessment. Risk assessment to be disclosed to West Midlands Police (Birmingham Central Licensing Department).

The Premises Licence holder will ensure that Door Supervisors when deployed to be in High Visibility coats/jackets when outside and tabards inside. Door Supervisors are to sign on and off duty every night, the signing in sheet to include their full name and SIA badge number. Door Supervisors profiles to be retained

on the premises for every Door Supervisor that is working at the premises or has done in the last 6 months. Profiles to be proof of identity (copy SIA badge, passport or photo driving licence) and proof of address dated in the last 6 months (utility bill, bank statement or other government letter). Profiles to be made available immediately on request to any Responsible Authority.

The Premises Licence holder must operate an incident register and must ensure that any incident in the premise or relating from the premise, irrelevant if any emergency service is called is to be recorded in the premise incident register and signed off nightly by the DPS/Manager.

The Premises Licence holder will ensure that CCTV is fitted at the premises to the specifications and recommendations of West Midlands Police (Birmingham Central Licensing Department.) CCTV to be recording at all times the premises is open for licensable activity. CCTV images to be held for a minimum of 28 days and to be made available immediately downloadable on request by any Responsible Authority.

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

No enforceable conditions identified from operating schedule.

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

A Noise Limiting Device (NLD) of a type approved by the Environmental Protection Unit of Birmingham City Council shall be fitted to the amplification system and set at a pre-set volume level agreed with the Environmental Protection Section, to ensure the volume of music is pre-set so as not to cause a noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall be notified to the Environmental Protection Unit and shall fulfil the following criteria:

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

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

The Premises Licence holder will adopt the 'challenge 25' or similar policy as proof of age scheme to be in operation during licensed hours.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

N/A

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

N/A

3c) Committee conditions to promote public safety

N/A

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

N/A

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

N/A

Annex 4 – Plans

The plan of the premises with reference number **107358-3919/3** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection by appointment only. Please call the Licensing Section on 0121 303 9896 to book an appointment.

