

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A

MONDAY, 11 JANUARY 2021 AT 10:00 HOURS
IN ON-LINE MEETING, MICROSOFT TEAMS

Please note a short break will be taken approximately 90 minutes from the start of the meeting and a 30 minute break will be taken at 1300 hours.

A G E N D A

1 NOTICE OF RECORDING/WEBCAST

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

2 DECLARATIONS OF INTERESTS

Members are reminded that they must declare all relevant pecuniary and non pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

3 APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3 - 80

4 MINUTES

To confirm and sign the Minutes of the meeting held on 1 October 2020.

To confirm and sign the Minutes of the meeting held on 15 October 2020.

To confirm and sign the Minutes of the meeting held on 19 October 2020.

To confirm and sign the Minutes of the meeting held on 26 October 2020.

81 - 100

5 LICENSING ACT 2003 PREMISES LICENCE –
TRANSFERCOSTCUTTER, 442 – 444 BIRCHFIELD ROAD, PERRY
BARR, BIRMINGHAM, B20 3JG

6 **OTHER URGENT BUSINESS**

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

BIRMINGHAM CITY COUNCIL

LICENSING SUB- COMMITTEE A, 01 OCTOBER 2020

MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON THURSDAY, 01 OCTOBER AT 09 00 HOURS, AS AN ON-LINE MEETING.

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

ALSO PRESENT

Joanne Swampillai – Committee Lawyer
David Kennedy – Licensing Section
Louisa Nisbett – Committee Manager

NOTICE OF RECORDING

1/011020 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items

DECLARATIONS OF INTEREST

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

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/011020 No apologies had been submitted. It was noted that Councillor Brennan was nominee Member for Councillor Beauchamp.

NAKIRA, QUEENSGATE, 121 SUFFOLK STREET, QUEENSWAY, BIRMINGHAM, B1 1LX - LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 - APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS

The following persons attended the meeting: -

Those making representations: On behalf of West Midlands Police

PC Abdool Rohomon – West Midlands Police (WMP)

On behalf of the Premises Licence Holder

Dexter Laswell – Director of the Company
Antonio Mankulu – Director of the Company
Kieran Castello – attending with the Directors of the Company

The Chairman welcomed all present and sought clarification regarding those in attendance. Following introductions by the Chairman, the Chairman enquired if there were any preliminary points for the Sub-Committee to consider.

During a discussion clarification was sought as to who was responsible for operating the business. Antonio Mankulu informed that the transfer of the business had not yet been completed. PC Abdool Rohomon said that Companies House records showed Dexter Laswell to be a Director, and the DPS to be Anton Gasparov and not Kieran Castello. Kieran Castello said that he had applied to be DPS in June however there was no record of this. David Kennedy added that Companies House records showed that Antonio Mankulu had been appointed Director on 3 September, 2020.

The meeting was adjourned at 0930 hours in order for the Sub-Committee to seek legal advice and resumed at 0938 hours.

The Chairman noted the information regarding the recent transfer of the business to Dexter Laswell and Antonio Mankulu as Directors and that Anton Gasparov was recorded as DPS and not Kieran Castello. Also noting that the Directors did not have time to seek legal representation but would do so in future. The Sub-Committee was happy to give all three people in attendance the opportunity to speak if they so wished.

The Chairman then explained the hearing procedure following which the main points of the report were outlined by David Kennedy, Licensing Officer.

Abdool Rohomon, WMP, made the following points in response to questions from Members with regards to the certificate issues by WMP under Section 53A of the Licensing Act 2003 for a Review of the Licence held by Nakira:-

1. The premises had committed a serious offence during the Covid 19 Pandemic amounting to a public nuisance which endangered life and health and was therefore a common law offence for which an adult could be sentenced for more than 3 years.
2. Abdool Rohomon reminded everyone of the Covid 19 pandemic and events in the UK and rest of the world. The UK had the 5th largest death rate in the world for Covid 19.
3. The UK government in March took the biggest peace time decision to lock down the whole country in order to stop the spread of the disease This had led to hardship for a lot of people
4. As the infection rates dropped the Government in July decided to gradually open up the economy under strict guidelines. The guidance to keep people safe from Covid 19 had been updated 11 times.
5. New guidance had been issued for licensed premises to enable them to operate safely and minimise the spread of Covid 19. Advice had been given on risk assessments, noise control, queues etc. so that they could return to some normality.
6. On 15th September, Birmingham had been in local lockdown. Nationally, the Government imposed a 10pm closure for licensed premises, hospitality venues etc. who were able to provide table service only. alongside other measures such as social distancing and the rule of 6.
7. The stance from WMP in general was to engage with premises but use enforcement action if necessary. He had no confidence in the Manager of this premises.
8. On 22 September, 2020 when track and trace was in place, officers from the team drove past Nakira which is outside of the night time economy area and just outside the Mailbox. There was a large number of people on the open air car park next to the exit door which officers found to be locked. Officers noted that the people were dressed up for a night out and noted that the fire door briefly opened.

9. The exit door was eventually opened and officers found 50 to 60 people in the premises. There was no social distancing, loud music was playing and it was just like a normal night club which was not allowed at present.
10. The officers cleared the premises and tried to find the person in charge. A male said that he was the keyholder and that he was the boss. He denied doing anything wrong and that it was a restaurant.
11. Officers were concerned at the number of people in the premises. A meeting was held with Dexter Laswell the sole Director and Kieran Castello. The excuse given for people being in the premises was that staff were undertaking maintenance work. This was not believed to be true there as was no maintenance being carried out and the people were drinking.
12. CCTV footage from the premises had been requested from the premises but had not been received.
13. On 26 September, 2020 at 00.40 hours officers noted cars in the car park. The exit door was ajar and they investigated to find people inside upstairs sitting together with the lights off.
14. There was alcohol on the tables which should not be available after 2200 hours and nitrous oxide canisters on the floor.
15. A female approached officers and said she was a dentist and that they were celebrating her birthday and this was her birthday party.
16. A meeting was arranged between WMP. The Premises Licence holder Antonio Mankulu and Kieran Castello attended. He was not aware of Kieran Castello being the DPS. Kieran Castello said that the premises closed at 2200 hours. He had left staff to close up when he left the premises at 2200 hours. The staff had informed him that while they were clearing up a number of people walked into the premises. The Staff fearing for their safety left the premises.
17. CCTV footage was provided to WMP however there were some missing bits. On the CCTV it can be seen –
 - A female taking nitrous oxide canisters into the building
 - A member of staff opening the exit door and letting 4-5 people in and them walking through the staff corridor.
 - A male inhaling from a balloon.
 - People walking around after 2200 hours.
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18. WMP had tried to engage with the premises but did not have a response from them.
19. WMP had requested that the premises supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance but this had not been forthcoming.
20. The more these types of actions occurred, the longer the pandemic would be. This affected everyone and delayed the reopening of the economy.
21. No risk assessment had yet been received from the premises.
22. Nitrous oxide was a legal high.
23. The numbers of people on the premises was 15 to 20 outside and 50 to 60 inside on 22 August and on 25 September there was 20 to 30 people inside.
24. 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 WMP in advance.

Dexter Laswell and Antonio Mankulu – Directors of the Company made the following points in support of the premises and in response to questions from Members:-

1. Dexter Laswell appreciated the hard work of the police and especially Abdool Rohomon. The premises had recently been sold to Antonio Mankulu.
2. On 22 August, 2020 the premises was closed. When the officers arrived there were some Romanians on the premises carrying out maintenance work.
3. He agreed that the premises needed to engage with the police.
4. Antonio Mankulu apologised for everyone being here today. He was not trying to deny responsibility for the premises but asking the Sub-Committee to consider the mitigating circumstances and make a fair decision.
5. The decision would affect himself and 18 staff members who relied on the jobs to look after their families.

6. With regard to the August incident he had been informed that there were 15 to 20 people inside and 50 to 60 people outside. People were trying to get into the building as the club was popular.
7. The reason no action had taken was because they did not breach Covid 19 regulations on that day. There was no alcohol being served. A sound test and lighting tests were being done. WMP had mixed up the numbers of people.
8. With regard to engagement, he was surprised that WMP had not contacted him directly. He wanted to engage with WMP and build the business to the required standards. He was new to the industry and had a lot to learn. He hoped to have a chance to prove that he had learned.
9. He had only limited time to investigate the incidents. Statements from staff and the DPS married up. The DPS had left Staff to clear the premises on the 22nd August and a large numbers of people had invaded the premises late at night entering by the back door. Staff feared for their safety and left. Staff had been unable to reach himself and the DPS by telephone.
10. 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.
11. He believed the staff based on his investigations and he had checked neighbouring cameras. He believed that some people had come there to cause trouble.
12. He was new to the industry and still learning. He wanted to build a relationship with WMP. He understood it was a breach of security and was carrying out further investigations. He hoped to get a chance to put things straight. He requested that the mitigating circumstances be considered.
13. A risk assessment had been done. They were trying their best to improve.
14. Antonio Mankulu was new to the industry in March. He was from a Technical background. He had owned a company and been involved in the community in Birmingham running a young entrepreneur network engaging with young people.

15. The application for a change of DPS had been sent in June and would be followed up.

In summing up PC Abdool Rohomon made the following points:-

- An email was sent to the premises on Thursday and Dexter Laswell attended a meeting with WMP together with Kieran Castello.
- WMP have engaged with the premises as much as they could. The premises had not engaged well with WMP.
- The reasons given for staff not calling the police when people tried to get into the premises was disrespectful.
- The excuses given by the premises was dubious. They said Romanians were in the building carrying out tests. Why were they doing that at 0500 hours, also people leaving the premises were intoxicated.
- Staff were still there at 1020 hours and were not closing up.
- Some of the CCTV footage submitted was missing.
- Premises were struggling and the actions by Nakira put others in jeopardy.
- The sub-Committee is requested to suspend the licence.

In summing up Dexter Laswell made the following points: -

- Officers need to work without prejudice.
- The application for a change of DPS was still being waited for.
- He felt that Abdool Rohomon did not want to engage with him.
- Antonio Mankulu referred to the comment from Abdool Rohomon that it was disrespectful for him to say that the Afro-Caribbean community did not engage with the police and spoke of recent events in the news involving the police.
- If their licence was lost this would lead to a loss of jobs.
- Had the information been correct regarding the number of people on the premises they would have received a statement from WMP..

- He understood that the breach of security was his responsibility and down to his inexperience. He should have handled the business better however there were mitigating circumstances.
- He hoped the Sub-Committee would keep in mind the economic impact on the 18 staff employed at the premises.
- The Sub-Committee was asked to make a fair decision taking into account the mitigating circumstances. He also hoped that WMP would treat them fairly.

At 1102 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Managers withdraw from the meeting to make the decision and inform all parties via email within the relevant time period for the expedited review.

4/011020

RESOLVED:-

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by 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.

OTHER URGENT BUSINESS

5/011020 There was no other urgent business.

The meeting ended at 1115 hours.

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CHAIRMAN

BIRMINGHAM CITY COUNCIL

LICENSING SUB- COMMITTEE A, 15 OCTOBER 2020

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE A HELD ON
THURSDAY, 15 OCTOBER AT 1000 HOURS,
AS AN ON-LINE MEETING.**

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

ALSO PRESENT

Joanne Swampillai – Committee Lawyer
David Kennedy – Licensing Section
Louisa Nisbett – Committee Manager

NOTICE OF RECORDING

1/151020 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items

DECLARATIONS OF INTEREST

2/151020 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting. No interests were declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/151020 No apologies were submitted.

DAHLAK LOUNGE, HAMPTON STREET, BIRMINGHAM, B19 3LS - LICENSING ACT 2003 AS AMENDED BY THE VIOLENT CRIME REDUCTION ACT 2006 - APPLICATION FOR EXPEDITED REVIEW OF PREMISES LICENCE: CONSIDERATION OF INTERIM STEPS

The following persons attended the meeting: -

Those making representations: On behalf of West Midlands Police

Christopher Jones – West Midlands Police (WMP)
P C Reader - WMP

On behalf of the Premises Licence Holder

Mr Biniam Yemane Mebrahtu – Premises Licence Holder and DPS
Olayinka Soremi – Business Partner
Victor Joseph – Business Partner

The Chairman welcomed all present and sought clarification regarding those present. Following introductions by the Chairman, the Chairman enquired if there were any preliminary points for the Sub-Committee to consider. Victor Joseph indicated that he would be speaking on behalf of the premises licence holder.

The Chairman then explained the hearing procedure following which the main points of the report were outlined by David Kennedy, Licensing Officer.

Christopher Jones, WMP, made the following points with regards to the certificate issued by WMP under Section 53A of the Licensing Act 2003 for a Review of the Licence held by Dahlak Lounge and in response to questions from Members:-

1. The Sub-Committee was reminded of the seriousness of the Covid 19 pandemic and events in the UK and rest of the world adding that there were more people in hospital than in March 2020.
2. As the infection rates dropped the Government on 4 July, 2020 decided to gradually open up the economy under strict guidelines. New guidance had been issued for licensed premises to enable them to operate safely and minimise the spread of Covid 19. Advice had been given on risk assessments, noise control, queues, no standing or dancing within premises and table services only. Other measures

included the rule of 6, social bubbles, 2 metre distancing, track and trace and background music only.

3. On the 16th August 2020, West Midlands Police (including PC Reader) were in the vicinity dealing with an incident nearby in the early hours of the morning, Police found that loud music was emanating from Dahlak Lounge at a volume which could be heard in the street.
4. Upon entering the premises Police observed that there was no social distancing, the music was loud and people were standing. The premises appeared to be “packed” with patrons. The capacity limit was 120 patrons however far more than these numbers were estimated by Police to have been inside.
5. The premises licence holder was emailed by PC Reader making him aware of his responsibilities and detailed information given on how to make the premises covid safe.
6. A meeting was held with WMP and the premises licence holder together with other representatives on 26 August, 2020. A copy of the risk assessment clearly stated that 120 patrons was allowed on the premises - 60 on the ground floor and 60 on the first floor. There had been a lot more on the premises than legally allowed. The premises licence holder was unaware of this capacity.
7. A copy of the risk assessment was sent to WMP by the premises licence holder on 3 September stating that the venue is complying with all fire and risk regulations.
8. On Saturday 10 October a member of the public contacted WMP concerned about the loud music and vehicles parked at the premises. When officers attended the building appeared closed as the shutter was down but loud music could be heard from in the building. Someone looked out from an upstairs window and the music was turned down.
9. When the door was eventually opened from the inside approximately 150 people could be seen downstairs. Seating was bench style or sofa type and there was no social distancing. There was also a DJ booth with 3 men. Officers noted that people were smoking shisha pipes. Voices were heard telling people to move and a person who officers believed to be a member of staff telling the men in the booth area to get out as there were too many.
10. A statement was read out from PC Wheeler who had been on the scene. He noted that loud deafening music could be heard. Every door had been locked. If there had been an emergency this endangered the life of people in the premises.

11. He had spoken to an unknown male at the door, marked as a fire exit who said he was getting the key. He was informed by the male that it was a Shisha Lounge.
12. There were 3 people behind the DJ booth. He observed the 2 people being pulled out of the booth. People were walking around with no face coverings. There were groups of more than 6 people.
13. In his opinion there were approximately 150 people present. PC Wheeler did not walk further into the premises as he viewed it to be unsafe during the pandemic. The premises were not covid secure, there was no social distancing.
14. The door was locked. There was in excess of 6 people in booths.
15. When asked for a copy of the Covid risk assessment the premises licence holder appeared with a few pieces of paper and said that the risk assessment said that up to 200 people were allowed inside.
16. Officers asked for the CCTV footage when they visited the premises but were told there was a problem with the hard drive and they could not download it. The premises had been saving the footage on a mobile phone. The premises undertook to email the footage to WMP however no emails had been received. The CCTV had not been seen to date however there was bodycam footage.
17. It was noted by officers at the meeting that the seating was 1.7 metre apart some with no gaps. The fire exit was blocked. The exit door led into an enclosed smoking area. The front shutter was down and the door was locked. The premises said they had locked the door to stop people getting in. The front fire exit door was also smaller than the standard size and was a fire hazard.
18. The risk assessment had now changed capacity to 160. The premises said this was due to the installation of a new fire exit door at the front of the building. This was still dated July 2020. Officers raised their concerns with West Midlands Fire Service. The risk assessment was not fit for purpose and the premises showed a lack of understanding how to operate safely. The risk assessment sent by them on 3 September, 2020 stated they were trading within the guidelines.
19. Officers have engaged with the premises since the first visit in August and encouraged them to ask questions if they did not understand anything.

20. The premises were not Shisha compliant, all the doors were locked, shutters were down, there was no ventilation. Officers were concerned that the premises were not trading safely even given the amount of engagement by WMP. WMP were not satisfied that the premises could trade Covid safe or meet the regulations.
21. As far as he was aware there was no licence to sell Shisha although it was covered under smoking.
22. None or very few regulations had been followed. There was no social distancing, people were standing and there was loud music.
23. Officers counted the number of people present. The risk assessment had been sent to WMP saying that the premises licence holder complied with all the regulations. WMP had offered advice to the premises.
24. The premises said it was not their fault that the CCTV could not be downloaded.
25. Reference was made to the plan of the premises. David Kennedy confirmed that the plan formed part of the Licence. If changes were made premises were legally obliged to vary the licence. The plan in the documents was the original plan.

Victor Joseph, Business Partner made the following points in support of the premises and in response to questions from Members:-

1. They had listened to WMP and noted the comments. They were in the process of seeking legal advice for someone to represent the premises.
2. In response to the Chair's statement that the Interim steps being taken would allow BCC to take action against the premises if necessary, Victor Joseph replied that at the moment the information heard was only from WMP. They were seeking legal advice.
3. He was speaking on behalf of the premises licence holder and they did not want to make any comments today. Victor Joseph confirmed again that they had decided not to comment at this time.
4. David Kennedy, Licensing confirmed that the premises licence holder was not legally required to participate in this meeting. They are notified

of the decision from the hearing by Licensing. If they are aggrieved they can make representations back to Licensing.

In summing up PC Abdool Rohomon made the following points:-

- West Midlands Police had engaged with the premises face to face however they had still not traded safely and had put the public at risk.
- There were a lot of fire and safety issues at the premises such as the closed shutters and doors, lack of regard to customer health and safety and shisha was being sold.
- WMP had tried to educate the premises and sent emails, however here was still a lack of Covid safe trading.
- There was no confidence that the premises could trade in a safe manner. The Sub-Committee was urged to suspend the licence held by the premises.
- Victor Joseph said that he understood what was being said and did not wish to comment until they had taken legal advice. He was assured by the Chair that this would not affect the decision made by the Sub-Committee.

At 1111 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager withdraw from the meeting to make the decision and inform all parties via email within the relevant time period for the expedited review.

4/011020 **RESOLVED:-**

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by Mr Biniam Yemane Mebrahtu in respect of Dahlak Lounge, Hampton Street, Birmingham B19 3LS, 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 Biniam Yemane Mebrahtu 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 had been 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 had been 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 resumed the televised 'Coronavirus Briefing' broadcasts which had been a feature of the first few months of the pandemic. In recent days HM Government had also designated a pyramid-style 'Three Tier' system for the nation, to indicate the level of risk for each area. Birmingham had been designated as 'Tier 2', meaning a 'high' level of risk.

The Dahlak Lounge premises had been granted the premises licence on 12th March 2020, less than two weeks before the national lockdown was imposed.

Mr Biniam Yemane Mebrahtu attended the meeting, as the premises licence holder and also as the designated premises supervisor. Two other individuals also notified the Licensing department of their attendance – Mr Olayinka Soremi and Mr Victor Joseph, who described themselves as Mr Mebrahtu's "business partners". Mr Victor Joseph was the person who

addressed the Sub-Committee. It was noted however that the premises licence was in the name of Mr Mebrahtu alone, not a partnership.

Members heard the submissions of West Midlands Police, namely that the background to the certificate issued by the Chief Superintendent under s53A(1)(b) of the Act was that, in Birmingham, it had been observed that the death rate, the rate of infection, and the rate of hospital admissions were all steadily increasing; there were more Covid patients in Birmingham hospitals currently than there had been at the start of the March 2020 lockdown.

From the 4th July 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, information on how to trade was readily available to such premises - via the "gov.uk" website, and also the very many news reports, both on television and on general social media. The requirements included no loud music, no dancing, queue management, and 2m social distancing (or 1m with mitigation measures).

On the 16th August 2020, West Midlands Police observed a general failure by the Dahlak Lounge premises to follow the Government Guidance. Whilst dealing with an incident nearby in the early hours of the morning, Police found that loud music was emanating from Dahlak Lounge at a volume which could be heard in the street.

Upon entering, Police observed that there was no social distancing or limitation of numbers of patrons as per the Covid-19 requirements, to allow for safe operation. Police described the premises as "packed" with patrons. Under the fire risk assessment, the capacity limit was 120 patrons - 60 on the ground floor and 60 on the first floor. Far more than these numbers were estimated by Police to have been inside. Loud music was playing, making normal conversation impossible, and therefore requiring raised voices – a known risk for Covid transmission. The Police ascribed these failures to unsatisfactory management by the premises licence holder Mr Mebrahtu, who was also the designated premises supervisor.

Police offered advice and help to the licence holder via email, to assist him in understanding what was required to trade in a Covid-safe manner. Police also held a meeting with him on 26th August, and spent a lot of time explaining the social distancing requirements. Surprisingly, Mr Mebrahtu was not aware that his premises had any capacity limit for numbers of patrons. Police requested that he supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; Mr Mebrahtu stated that the risk assessments had been done for both Covid risk and fire risk.

Then from September 2020, the measures imposed by HM Government became stricter – closure at 22.00 hours, music to be limited to 85 decibels, no standing (table service only), wearing of masks, and participation in the

NHS Test and Trace programme. This information was readily available to licensed premises via the “gov.uk” website, television and on social media.

On 10th October 2020 Police received a complaint from a member of the public that loud music was emanating from the Dahlak Lounge and that there were numerous cars in the car park. Police attended at around 21.10 hours, which was within the permitted opening hours (closure required at 22.00). Police found that very loud music was indeed emanating from Dahlak Lounge, at a volume which could be heard in the street – despite the shutters to the premises being pulled down and locked, and the premises appearing to all intents and purposes to be ‘closed’. Around twenty people were in the car park. One individual inside the premises was seen to look out of an upstairs window; moments later, the volume of the music reduced significantly. A person, thought to perhaps be a security guard, then unlocked the door from the inside.

Upon entering, Police were astonished to find the situation inside to be even worse than that which had been observed on the 16th August. Around 150 people were found on the ground floor; no social distancing whatsoever was being observed and many patrons were standing or walking about. Others were seated together, either on long benches or in booths, but nobody was keeping a Covid-safe distance from others. The music being played had already been turned down, but the Police found that they still could not hear anything above it. Masks were not being worn by many customers, and even some of the staff, except for the security guards; smoking of shisha by patrons was going on.

Staff hurriedly began pulling patrons out of their seats, exhorting them to “move, move, you’ve got to move”, and ordering those seated in booths to “get out”, on the basis that the premises had exceeded its capacity limit.

Police observed that the door through which they had entered, which had been unlocked for them by somebody inside, was in fact a front fire escape. There was also a rear fire exit, but this was found to lead only to the outdoor smoking area – an entirely enclosed area, with no means of escape beyond that. A second front fire exit was also unsatisfactory to Police, given the small size of the door to it, and the presence of a trip hazard created by the flooring and the irregular-sized door. Emergency lighting and signage was not in place at the front fire exit; indeed sofas and benches had been placed in the path of the main escape route. The shutters had also been pulled down and locked. The premises’ view was that this was to stop people from getting in.

This was all completely unacceptable in terms of fire safety, but was made infinitely more serious by the fact that many patrons inside were smoking shisha, which by its nature increases the risk of fire. Moreover, as the Police explained, ventilation arrangements are key to compliance with the Health Act 2006 when smoking shisha, yet the Dahlak Lounge had the main shutters pulled down and locked. Any outbreak of fire would have

been a disaster even with social distancing and a proper limit of numbers - yet Police had observed around 150 people on the ground floor, which had a capacity limit of 60 persons.

The licence holder claimed to Police that the fire assessment had confirmed that he “could have more than 250 people inside”; upon examining the fire risk assessment document, Police observed that the capacity had changed to “220” in total for both floors (not 120 in total), yet the document was still dated July 2020. Also unsatisfactory was the reliance on what was called the “extra fire exit” to justify the increase in the capacity limit; this turned out to be the irregular sized door with the trip hazard.

The Covid risk assessment produced by the licence holder was also found to be wholly unsatisfactory. It was regarded by Police as having been approached by the licence holder as a mere tick-box exercise, rather than a proper consideration of what was required to trade safely during the pandemic. Police had requested CCTV from the premises, but this had not been forthcoming; the licence holder told Police that he had found that the files downloaded to his telephone were of a file size too big to be emailed to Police.

The Police were therefore concerned that the premises licence holder was being reckless in his style of operating, and was endangering public health by risking the spread of Covid-19. All in all, the scene discovered on the 10th October was quite a contrast to his declaration in September that the premises was both fully Covid-compliant and fully fire risk compliant.

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 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.

The Police also remarked that in recent dealings it appeared that the licence holder was perhaps trying to place some of the blame for his failings on the Police. The Sub-Committee looked askance at this. It was quite apparent that the Police had given the Dahlak Lounge a great deal of advice and help, including a meeting, in August 2020. However, attempts by the Police to advise those at the premises had not been accepted. The premises was completely unsatisfactory in terms of Covid, in terms of fire safety, and also in terms of compliance with shisha requirements. The recommendation of the Police was therefore that the Sub-Committee should suspend the licence pending the review hearing.

Mr Victor Joseph then addressed the Sub-Committee to state that the licence holder was in the process of instructing a legal representative, and that no submissions would be made until this had been arranged.

In deliberating, 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 found the Police observations relating to Covid, fire risk and shisha to be alarming, and not something that inspired the slightest confidence in the management arrangements at the premises. All in all, the Sub-Committee considered the licence holder to have failed to take his responsibilities seriously.

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

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

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

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

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

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

OTHER URGENT BUSINESS

5/011020 There was no other urgent business.

The meeting ended at 1118 hours.

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CHAIRMAN

BIRMINGHAM CITY COUNCIL

LICENSING SUB- COMMITTEE A, 19 OCTOBER 2020

**MINUTES OF A MEETING OF THE
LICENSING SUB-COMMITTEE A HELD ON
MONDAY, 19 OCTOBER AT 1000 HOURS, AS
AN ON-LINE MEETING.**

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

ALSO PRESENT

Joanne Swampillai – Committee Lawyer
Bhupinder Nandra – Licensing Section
Louisa Nisbett – Committee Manager

NOTICE OF RECORDING

1/191020 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items

DECLARATIONS OF INTEREST

2/191020 Members were reminded that they must declare all relevant pecuniary and non-pecuniary interests relating to any items of business to be discussed at this meeting. If a pecuniary interest was declared a Member must not speak or take part in that agenda item. Any declarations would be recorded in the minutes of the meeting. No interests were declared.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3/191020 No apologies were submitted.

LICENSING ACT 2003 PREMISES LICENCE – VARIATION **THE PAVILLIONS CLUB LIMITED, LOUNGE @ BOLDMERE, 112-116** **BOLDMERE ROAD, BOLDMERE, SUTTON COLDFIELD,** **BIRMINGHAM, B72 5UB**

The following persons attended the meeting: -

Those making representations:

Karen and Alan Young
Cathy Jury

On behalf of the Premises Licence Holder

Dean Wilson– Premises Licence Holder
Karen Hadley – (accompanying PLH)
Leo Charalambides (Barrister – Kings Chambers)
Carl Moore – Licensing Consultant CNA Risk Management Ltd

MINUTES

The minutes of meetings held on 14 September, 2020 and 1 October, 2020, having been previously circulated, were confirmed and signed by the Chairman.

The Chairman welcomed everyone and sought clarification regarding those present. Following introductions by the Chairman, the Chairman enquired if there were any preliminary points for the Sub-Committee to consider.

There being no preliminary points the Chairman then explained the hearing procedure following which the main points of the report were outlined by Bhapinder Nandra, Licensing Officer.

Leo Charalambides made the following points in support of the premises and in response to questions from Members:-

1. The application was a relatively straight-forward application to vary the physical characteristics of the premises.
2. The alterations will be to the toilets and bar area with additional tables and a reduction in licensable activities.

3. The changes between the old and new plan were detailed on page 57 paragraph 88 of the documents.
4. The premises were designed as a stand-up vertical bar. The area for licensable activities in the top right-hand corner will disappear. The kitchen etc will change. The changes were detailed on page 47 of the documents. The toilet area will be improved and a disability toilet added.
5. The fully functional kitchen will be operated by a local restaurant with a full menu being offered.
6. The servery hatch will allow waiters to cover the outside area with 6 spaces. The acoustic lobby will be retained. The live performance area will be blocked off.
7. In terms of the variation, S182 guidance states that small variations to the layout of a premises have no adverse impact to the licence. The capacity for drinking on the premises had been reduced with table service introduced to a restricted area.
8. The entrance and exit will be controlled by the DPS. These had been checked by the fire service. Barriers will be put up in the outer tabled area and the Acoustic lobby will be retained.
9. The Environmental Officer had visited the premises and suggested some conditions to reduce the noise impact. More stringent measures will be in place. The front will be triple glazed and have acoustic curtains.
10. A noise limiter had been agreed with Environmental Services. Letters had been sent to all residents in September from Carl Moore and a meeting had been attended by the local Councillor.
11. When the premises are complete they will promote the licensing objectives better than they did before.
12. On that basis the Licensing Sub-Committee is asked to grant the variation of the licence as requested.

13. In response to questions there were two fire exits at the back of the building. The area at the front of the premises will be controlled by staff and closed at 2200 hours.
14. The provisions for the sound limiter were on page 48. It will be tested by a representative from BCC and set at the appropriate level. The noise automatically turned off if the noise exceeded that level. The fire doors will protect the sound from escaping.
15. The operation will be Covid compliant and a risk assessment will be carried out.

In making representations against the application Mr and Mrs Young made the following points with regards to the application and in response to questions from Members:-

1. They had been residents of Heathlands Road close to Boldmere Road for 31 years and raised their family there. There were excellent amenities on their doorstep such as a school, Sutton Park and transport links.
2. Over the years there had been changes to the premises however this was the first time they had received information. They had completed the survey owing to their concerns on how the changes to the premises would impact their lives.
3. They were shocked about the current trading hours as they had not received notification from BCC. It was not mandatory for the premises to contact them so it had been left to chance.
4. They had been involved in a meeting on 10 October and expressed their concerns mostly about the live acts and the numbers of patrons.
5. They had been assured that there were no plans to develop the rear outdoor space. The plans made disturbing reading and they implored Members to put themselves in their place.
6. A decent class of people lived in Boldmere and was a desirable place to live. The application was for continued entertainment and the Lounge @ Boldmere was in fact a nightclub.

7. Although the schedule had been ticked to indicate there was no change to live music, there was a change. On the website there were 22 events listed to 22 December including parties this was an absolute change.
8. Who will check the noise escaping from the acoustic lobby and how will it be monitored by Environmental Health and enforced. A noise monitor should be installed.
9. Patrons smoke and take drinks out on to the terrace.
10. There was a lot of elderly people living opposite the premises.
11. The objectors were reminded by the Chairman that the hearing was to consider a variation of an existing licence and was not a review. The objectors will be given a chance to sum up their objection.

In making representations against the application Cathy Jury made the following points with regards to the application and in response to questions from Members:-

1. The Sub-Committee is asked to consider the objections from Mr and Mrs Young as they were relevant.
2. The Licensee and DPS remained the same. The premises would have live entertainment. Advertisements only a week and a half ago said live music on a Thursday, Friday, Saturday and Sunday. On Wednesdays there was a comedy act and private event starting at 1930 hours. There was clearly a change of use.
3. The premises were described as a bar and restaurant however a nightclub was a more accurate description. It was advertised as a live music venue.
4. At present consultation with residents was at the discretion of the licence holder.
5. The capacity was for up to 200 people who would make noise whilst leaving the premises.
6. The premises were at the back of her house. She had installed secondary glazing.

7. Prior to the lock down the number of live acts had increased. She had emailed the DPS twice, however no measures had been taken and he said there were no other complaints. The premises were reluctant to address the issues.
8. She had circulated a questionnaire to residents who replied that they found the volume too loud, the live sessions were intrusive, they had problems sleeping which was annoying. The questionnaire had been shared with the DPS however no response had been received.
9. She was disappointed with the changes to the building. This would affect the sound produced from the building. The solid wall would be removed allowing the sound to travel through the whole building.
10. The sound proofing was already there but there was a lot of noise. The building frontage glass is only standard glazing.
11. The area is a residential area with 17 flats for elderly people, sheltered housing, 13 flats, maisonettes and family sized homes. It was close to desirable schools. Some of the residents may not have the confidence to raise a complaint.
12. There had been 32 responses to the questionnaire from residents, 29 of whom were concerned. This showed the strength of feeling of local people. The premises prevented residents from enjoying their houses.
13. Cathy Jury had spent a year emailing Environmental Heath about the noise from the premises.
14. She had experienced the volume of music playing loud at 2313 hours with the vibrations disturbing her sleep. Residents could not leave their windows open. There was frequent problems with the customers from live entertainment events leaving and being on the street. A lot of residents had been affected.
15. In reply to a question she would suggest a change to the removal of the solid wall and the glass frontage. The removal of the wall would allow unhindered sound across the building.

In summing up Mr and Mrs Young made the following points:-

- The application said they were not seeking to vary licensable activities or times and that statement was not correct.

- Noise would increase with the removal of the wall and changes to the building.

In summing up Cathy Jury made the following points:-

- To say the variation was for physical aspects of the premises would not protect the residents.
- The Sub-Committee were asked to give residents some protection.

In summing up on behalf of the applicant Leo Charalambides made the following points:-

- He thanked everyone for attending the meeting.
- The premises licence holder was dedicated to working with the residents. A meeting had been held to address their concerns and they would work with the Environmental Health Officer.
- Assurances can be given that the premises would not operate until checks had been carried out by Environmental Health experts.
- The wall to be removed was never a solid wall it was a partition with a bifold door.
- There would be considerable improvements to the acoustics. The premises were no more than 50 yards from Wetherspoons and Harvester. The measures taken do improve matters. The Committee was asked to agree to the vary of the licence as requested.
- Cathy Jury was advised that the opportunity remained for her to communicate with her local Councillor although he was not a Member of the Sub-Committee.

At this stage and at 1113 hours the meeting was adjourned in order for the Sub Committee to make a decision. The Members, Committee Lawyer and Committee Manager conducted the deliberations in private. Notification of the determination of the application was sent out to all parties within 5 working days of the date of the meeting as follows: -

RESOLVED:-

That the application by The Pavilions Club Limited to vary the premises licence in respect of Lounge @ Boldmere, 112-116 Boldmere Road, Boldmere, Sutton Coldfield B72 5UB, under Section 34 of the Licensing Act 2003 **BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS** agreed with Environmental Health in advance of the meeting, namely:

1. Prior to any entertainment involving amplified music, speech or sound taking place, a Noise Limiting Device (NLD) of a type approved by the Environmental Protection Unit of Birmingham City Council shall be fitted to serve any area of the premises used for amplified music, speech or sound. The NLD shall be set at a level agreed with the Environmental Protection Section to ensure that the volume is controlled to avoid noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall be notified to the Environmental Protection Section prior to use and shall meet 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 or tampered with in any manner unless prior approval is given,

b) The device shall be capable of either:-

i) cutting off the mains power to the amplification equipment if the volume exceeds the pre-set level determined by the Environmental Protection Unit and shall not restore power to the amplification equipment until the NLD is reset by the DPS or their nominated person, or

ii) otherwise maintaining the volume of the music at the pre-set level determined by the Environmental Protection Unit,

c) where the NLD operates by cutting off the mains power to the amplification equipment, amplification equipment shall 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 equipment 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.

2. Before regulated entertainment takes place at the premises a lobbied area will be installed at the front entrance to ensure whilst entertainment is taking place that one set of doors remains closed.

3. There shall be no drinking on the outside front terrace area after 10pm.

The Sub-Committee's reasons for imposing the agreed conditions are due to the submissions made by the applicant company's legal representative. He explained that a great deal of investment had been put into structural alterations in order to improve the premises; he described these by comparing the old Plan and new Plan in the Report.

The Lounge @ Boldmere had been a vertical drinking establishment offering live entertainment. The plan was to retain the live entertainment, but with the addition of seating and a kitchen/ food element. Acoustic measures had been carefully considered; those, combined with the suite of conditions agreed with Environmental Health, meant that the potential for noise nuisance, which was the primary objection raised by those making representations, would be satisfactorily addressed. Operation would not begin until the Environmental Health officer was satisfied.

The Sub-Committee carefully considered the operating schedule put forward by the applicant and the likely impact of the application, but did not accept that there was evidence of a significant risk to the licensing objectives arising from the proposed variation of the premises licence. This was due to the cooperative attitude displayed by the applicant company, which had been keen to work with neighbours. It was noted that the applicant had engaged with the objectors prior to the hearing, by writing to them and even inviting them to a meeting. The local Ward Councillor attended the meeting. It appeared that in light of amendment via the proposed measures, no objection had been made by the Ward Councillor. There had also been no representations from West Midlands Police.

The Sub-Committee then heard from local residents who had submitted written representations; three of them also attended the meeting to address the Members directly. Whilst these objectors were keen to have additional conditions added to the Operating Schedule, the Sub-Committee determined this was not necessary as the relevant issue had been covered by the Environmental Health conditions. The Chairman reminded them that the meeting was to consider an application to vary the licence, not a review of the licence. The Sub-Committee considered the conditions imposed to be appropriate, reasonable and proportionate to address concerns raised.

In addition to the above conditions, those matters detailed in the operating schedule and the relevant mandatory conditions under the Licensing Act 2003 will form part of the licence issued.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued under s182 of the Licensing Act 2003 by the Home Office, the application for a premises licence, the written representations received and the submissions made at the hearing by the applicant via its legal representations and by those making representations.

All parties are reminded that under the provisions contained within Schedule 5 to the Licensing Act 2003, there is the right of appeal against the decision of the Licensing Authority to the Magistrates' Court, such an appeal to be made within twenty-one days of the date of notification of the decision.

OTHER URGENT BUSINESS

5/191020 There was no other urgent business.

The meeting ended at 1124 hours.

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CHAIRMAN

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A 26 OCTOBER 2020
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MINUTES OF A MEETING OF THE LICENSING SUB-COMMITTEE A HELD ON MONDAY 26 OCTOBER 2020 AT 1000 HOURS AS AN ON-LINE MEETING.

PRESENT: - Councillor Phil Davis in the Chair;

Councillors Mary Locke and Bob Beauchamp.

ALSO PRESENT

David Kennedy – Licensing Section
Joanne Swampillai – Legal Services
Mr James Rankin, FTB Chambers
Errol Wilson – Committee Services

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

NOTICE OF RECORDING/WEBCAST

1/261020 The Chairman advised, and the Committee noted, that this meeting would be webcast for live or subsequent broadcast via the Council's Internet site (www.civico.net/birmingham) and that members of the press/public would record and take photographs except where there are confidential or exempt items.

2//261020 **DECLARATION OF INTERESTS**

Members were reminded that they must declare all relevant and pecuniary and non-pecuniary interests arising from any business to be discussed at this meeting. If a disclosable pecuniary interest is declared a Member must not speak or take part in that agenda item. Any declarations will be recorded in the minutes of the meeting.

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

3//261020 There were no apologies submitted.

**LICENSING ACT 2003 PREMISES LICENCE – SUMMARY REVIEW PETITE
AFRIQUE (LA REFERENCE), 160 HOCKLEY HILL, BIRMINGHAM B19 1DG**

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

(See document No. 1)

On Behalf of the Applicant

Gary Grant – Counsel of FTB Chambers
Ms Jennifer Downing – West Midlands Police
Tim Woodward – West Midlands Police
PC Abdool Rohomon – West Midlands Police

Those Making Representations

Kyle Stott – Public Health, BCC (not in attendance)
Martin Key – Environmental Health, BCC
Shaid Ali – Enforcement, BCC

On Behalf of the Premises Licence Holder

Ms Sarah Clover – Counsel of Kings Chambers representing the Premises
Licence Holder
Mr Carl Moore – Licensing Consultant, CNA Risk Management
Mr Rodrigue Tankeu – Premises Licence Holder

The Chairman introduced the Members and officers present and then explained the hearing procedure. The Chairman then asked if there were any preliminary points for the Sub-Committee to consider. No preliminary points were raised. The Chairman then invited the Licensing Officer, David Kennedy to outline the report.

Mr Gary Grant, Counsel of FTB Chambers on behalf of West Midlands Police (WMP) made the following statements: -

- (a) On the 16 October 2020, when the challenge to the interim suspension was heard the Sub-Committee concluded that in continuing the suspension *“It is the view of the Sub-Committee that the licence holder was unable to run these premises according to law”*. He added that the Sub-Committee would of course make a fresh decision today based on much more evidence that the Police had supplied and the Licence Holder and all the other representations.
- (b) The Police suggested that at the end of this hearing the Sub-Committee would be justified in coming to the same conclusion. This was a Licence Holder who was also the Designated Premises Supervisor (DPS) who took over the premises licence in May 2020 during the lockdown, but he was unable to run this premises according to the law. He had made some efforts to make his premises Covid secure, but overall the Police asked

that Sub Committee conclude that those efforts were wholly inadequate in the circumstances we were all in.

- (c) In the current climate of the pandemic, we were in an extraordinary situation and one where there was a very heavy burden on the licensed trade to behave professionally and to the highest standards. The importance was so much more important for the hospitality trade, because hospitality by its nature was designed to bring people close together and the dark irony of the times, we were in was that bringing people close together was precisely what increased the risks of coronavirus spreading in our community.
- (d) This was why when you have the licensed trade, was allowed to reopened, most of it on the 4 July 2020, there were exceptions to nightclubs and similar, why it was so important and remained so the standards to be expected of licensees was higher now than it had ever been.
- (e) Failure to achieve a Covid secure environment and to comply with the regulations, particularly the 2200 hours curfew, failures of life and this was the case because the guidance that was issued to restaurants, pubs, bars made it clear that if you played the music too loudly. The importance of playing why it was so important the premises did not play very loud music as Mr Tankeu had repeatedly despite these warnings.
- (f) The guidance made clear that if you had to shout to be heard, you exhale aerosol and, in those droplets, as you shout that increased the risk of coronavirus spreading near to you. That was the importance and was one of the issues Mr Tankeu simply failed to take on board. It was another feature of this case that he would give lip service to the advice of the officers and then sure enough when officers turned up once again loud music was being played in spite of the engagement and the advice of WMP.
- (g) When you look overall at the Covid secure environment, that Mr Tankeu was legally obligated to supply, he did not say that every word of every piece of guidance that emanates from Whitehall needed to be followed to the letter, that was not what guidance was. Regulations needed to be followed to the letter and there were breaches of those in particular to the 2200 hours curfew. But what you had to do as an operator if you were a responsible one was to bring in sufficient measures and implement them in order to create a Covid secure environment having regard to all of the guidance that emanates from government.
- (h) I have set out in my written submissions the dynamic states of the regulations as they applied from March 2020 through to the 28 September 2020. These would be found in my written submission's pages 120 – 126. There was another feature – Mr Tankeu was not at all times completely straight with the officers when he spoke with them and made certain claims and that tarnishes his credibility when he made promises to the Sub-Committee that if you give him a chance everything was going to be fine.

The reasons the Police requested that the Sub-Committee revoked Mr Tankeu's licence were: -

1. Firstly, it was to promote the licensing objectives. They were all engaged in this case. Prevention of crime and disorder – it was a criminal offence to breached the regulations. Prevention of public nuisance – public nuisance could amount to increasing the risk of spreading a serious infection. Public safety – although public safety was not engaged with general public health, it was concerned with the safety of people on the premises.
2. The Police stated that if you were running your premises in a way that hugely increased the chance of catching Covid, on that premises which had probably breaches the public safety licence in effect. Protecting children from harm – children were impacted by coronavirus as well. This was the reason we say that the licensing objectives were engaged head on in this case. There were these things that the Police were asking the Sub-Committee to consider at the end of its considerations.
3. Bearing in mind the facts of this case, the history and the inability of Mr Tankeu to properly follow the Police advice, industry guidance and comply with the law, particularly in terms of the curfew. Do the Sub-Committee trust him to be able to run his venue in the future in a way that protects his staff, his customers and the wider community. Do the Sub-Committee trust him to do that. Do the Sub-Committee had confidence in him to do that. The Police say no, we had no confidence that Mr Tankeu had the ability to run this premises in a manner that could promote the objectives either now or in a month or in three months.
4. There was a second feature for the Sub-Committee's consideration and that was the deterrent purpose of any decision the Sub-Committee make. The primary function was to promote the licensing objectives in a manner that was appropriate and proportionate.
5. But the courts had said that the Sub-Committee was entitled to look at a second consideration - that of deterrence. This meant not only to deter Mr Tankeu, but to deter other operators who would be watching this case closely asking themselves what happened if they did not follow or did what the guidance stated. What happened to our licences if we breached the curfew.
6. The Sub-Committee was entitled to take that into account when the Sub-Committee assessed what the appropriate steps were in this case. As I indicated the Police's view was that there ought to be a revocation of the licence. When you look at other operators, the vast majority was making enormous efforts to provide Covid secure premises and they were doing an incredible job supported by the Council and the Police.
7. There were the bad operators who were the ones who were watching this and saying what happened to us if we chance our hand. Then there were the good operators who looked at the way Mr Tankeu was operating and say why were they being punished, as people like Mr Tankeu was running his venue in an unsafe manner because it was them who suffered if and as the infection rate increases in Birmingham contributed it to by negligent operators like Mr Tankeu. It was then the good operators who suffer as the restrictions had to tighten on the whole hospitality trade.
8. Turning to the facts of this case I will use as the format my written submissions which begins at page 109 of the Agenda papers. I have picked out the most relevant parts in the Agenda. At page 109 – the 8th August 2020 was the first visit after Mr Tankeu opened and it could be

- seen that this was despite Mr Tankeu now claiming that the Police were not trying to help or engaged and that they were only bothered about a pool table in this case that the opposite was true.
9. On the 8th August in the early hours Police Sergeant Nicholas Giess was deployed as an Acting Inspector on Operation Reliant as the Sub-Committee may know that that was the Police led operation to try and ensure compliance during the pandemic in licensed premises amongst other things.
 10. The Police had visited a number of premises but it was another operator who raised concerns about the way Petite Afrique was operating and that was why they headed there.
 11. When officers arrived on the 8th August, they saw a mix of people standing up, others seated and the guidance was encouraging people to be seated for obvious reasons. A few women were dancing. The guidance encourages against permitting people to dance as this could lead to a higher rate of infection.
 12. The music was being played “very loud” to the extent that the Police Officers had to shout to be heard when he spoke to Mr Tankeu. It looked to the officers as if Mr Tankeu were running his venue in the manner it was expected to be run pre-pandemic – not taking on the guidance that had been issued on the 3rd July 2020 and widely circulated in the hospitality trade.
 13. Contrary to Mr Tankeu assertions that the Police were hostile and did not want to help, Sergeant Giess spent about 15 to 20 minutes speaking to Mr Tankeu who by this time had turned the music down and had asked people to sit down and stop dancing. The officer went into the back office area with Mr Tankeu and took him through what he ought to be doing to make his premises more Covid safe including keeping the music down, something which was continually breached by Mr Tankeu as events unfolded.
 14. Sergeant Giess asked about the risk assessment in place and rather troublingly, Mr Tankeu had not conducted a risk assessment. There was a legal duty on all license holders and all business operators as the Sub-Committee was aware under the Health and Safety at Work Act to have a risk assessment undertaken.
 15. That legal duty applied prior to the pandemic, it applied after the pandemic but the risk of not going through the risk assessment process was that more serious and dangerous during the Covid pandemic.
 16. On the 8th August 2020 there were some 50 to 60 people inside that was below maximum capacity. It was clear there was no attempt at social distancing between people and groups within the venue. There were discussions about the pool table (I am not relying on whether you could or could not use the pool table at that particular time).
 17. Sergeant Giess explained that the team was there to assist him and gave him the contact details so that Mr Tankeu could contact him if he needed a bit more help.
 18. At this time as the Sub-Committee would know the infection rate in Birmingham was rising and the City was already on a Government watch list as areas that may need to suffer further restrictions which would have had disastrous economic consequences to the hospitality trade in

- Birmingham. It was so important that people like Mr Tankeu did not let the City down by dropping standards. As the Sub-Committee will see, he did.
19. The weekend of the 15 and 16 August 2020 Sergeant Giess paid his second visit to Petite Afrique. The Sub-Committee may expect that the officer was hoping that everything would now be in order, bearing in mind the time they had taken with Mr Tankeu. Sadly none of it was.
 20. The Sergeant's statement suggest that he could not see evidence of any additional efforts taken by Mr Tankeu to make the venue Covid secure. The venue was busier than before and there was about 80 customers inside. People were dancing together which potentially could cause impact on the social distancing issues.
 21. When you have people dancing in a venue with very loud music you were perilously close to being in a prohibited nightclub or similar dance venue which was not allowed to open at all and had not been since the 21 March 2020. There was a birthday party going on, the tables were far too close together to enable social distancing. Once again, the music was being played so loudly the Sergeant had to shout to make himself heard.
 22. There was no evidence of improvement despite the time that had passed. In fact the Sergeant stated that it appeared to have gotten worse from his first visit. Just less than two weeks later in the early hours of the 28th August there was a further visit as part of Operation Reliance. Petite Afrique was busy again with about 80 to 100 customers and the music was still being played far too loudly when the officer attended and people were still dancing. It was effectively being a prohibited club/dance venue.
 23. Sergeant Giess once again spoke with Mr Tankeu and asked him why the music was being played so loudly, given the earlier warnings he had given to him. Mr Tankeu used the first of his excuses – he said the DJ must have turned it up and Mr Tankeu who was there had not noticed. He said it was difficult to get his customers from dancing.
 24. If you are the licence holder and the DPS and you were on the premises and you did not notice that the music was being played far too loudly and people were dancing, how responsible were you. How could you be trusted in the future to get things right. He was asked about a risk assessment, bearing in mind the request that had been made a few weeks earlier.
 25. Mr Tankeu produced a generic but blank risk assessment that appeared to be a template and he promised to email a risk assessment to the Sergeant. Later that day Mr Tankeu did email a risk assessment which the experience Police officer who was also a trained risk assessor described with some justification *the worst attempt at a Covid risk assessment he had seen*.
 26. On the 4th September 2020, Police officers attended the venue again as part of Operation Reliance, just before 2300 hours. The music inside was once again being played very loudly with the dangers that flowed from that and despite all of the previous warnings and advice the Police had given Mr Tankeu. Customers were drinking at tables and PC Reader asked Mr Tankeu to come outside.
 27. The Sub-Committee would have noted in the witness statement of Mr Tankeu that he denied that the Police went into the venue and that the Police was at the entrance and that he came out to see them. The Sub-

- Committee had seen on the video this morning how the officer walked straight into the venue up to the bar before then leaving with Mr Tankeu.
28. The officers did go in and it was mysterious why Mr Tankeu think it right to produce a witness statement before the Sub-Committee stating that the officer did not come in and that he remained at the entrance. They then had a conversation which was seen on the Bodycam, why was the music being played loudly and then Mr Tankeu came up with yet another excuse – *that it was being tested*.
29. The Sub-Committee could see the officer's surprise on the video when that was said and chuckled as if to say that was an unfortunate coincidence that by the time, we came you were testing your music system. The Sub-Committee could make its own judgment with regard to the manner in which Mr Tankeu stated that it was being tested without him even believed it himself.
30. The Sub-Committee could aske itself if this was true and there was an engineer on site – Mr Tankeu in his statement insisted that he told the officer there was an engineer on site. The Sub-Committee had heard the Bodycam footage and Mr Tankeu did not say that there was an engineer on site. The question was why he would test the music system at 2300 hours whilst he was still operating and why did he not mention that there was an engineer there.
31. The difficulty was this that if Mr Tankeu was not entirely straight with the officers and that was not a good basis to trust him when he tells us about the big things and tells us to trust him, he will get things right if you gave him the chance to do so.
32. We then move on to the 26th September 2020, before then the Sub-Committee would know that on the 15th September 2020 because of the increased risk of infection in Birmingham, that special regulations were brought in just for Birmingham. Those have impacted on the facts of this case as they dealt with restrictions on households mixing in private dwellings.
33. Before we get to the 26th September it was probably worth taking stock as to what the laws were. As the Sub-Committee was aware the laws were the 2200 hours curfew came in for premises such as Petite Afrique to much publicity around the country on the 24th September.
34. Regulations also stated that customers could only order and be served food and drink whilst seated. The rule of six was in place and no mingling between those groups and the hospitality trade as well as individuals. Track and trace and mask needed to be worn, face coverings by staff in these venues who came into close contact with customers.
35. When this was borne in mind we do not know if there was any track and trace, but certainly the other regulations wee not simply guidance, all appeared to be breached on the 26th September. After all of these entreaties to Mr Tankeu that he needed to up his game.
36. The 26th September's visit Police drove past the venue at 2220 hours. There was a large number of vehicles outside, the metal shutters at the front were half way down covering the main doors. The officers went in a few minutes later at about 2223 as per the CCTV footage and found approximately 40 people still inside some 20 – 25 minutes after the curfew and the venue was still carrying on as a bar.

37. There were staff inside and social distancing measures were not taking place and people were in booths very close to each other with people from one group joining other groups. Customers were talking loudly and were standing around not sitting and they were drinking at tables as well. When the Police attended there was something interesting happened.
38. Someone inside shouted to bring attention to the Police presence. The question was why someone would shout to all the others that the Police was there. We suggest that the reason was the people and customers there and Mr Tankeu knew they were doing something wrong by still being there. As soon as the customers saw the Police and this will be seen by the Sub-Committee on the CCTV people left quickly.
39. The officers took the view and they had good reasons to do so that had they not turned up at 2223 hours this would have gone on for quite some time afterwards. The question was how responsible was Mr Tankeu for what went on while he claimed now in his witness statement that he simply asked people to leave from 2145 hours but they would not listen to him.
40. When we come to play the CCTV the Sub-Committee could make its own judgment about how carefully and robustly Mr Tankeu was making an effort to clear those customers who were still buying and paying for food and drink. It was not apparent from the CCTV that he made any serious efforts at all to get people to leave. With a single exception that he turned off some of the disco style lights.
41. Even if the Sub-Committee was to take Mr Tankeu's claim at face value that he did everything he could at 2145 hours the question was what did this suggest about his ability, not willingness, his ability to comply with Covid restrictions in the future. He appeared to exert no control and influence over his own customers. This was not someone the Police states who could be trusted to open in a month etc.
42. At 2200 hours he admitted that he allowed his door supervisors to leave. The question was why he would do that, why would you allow your door supervisors to disappear at 2200 hours when you still had 40 people who were refusing on Mr Tankeu's account to go from his premises. This did not add-up that someone who so wanted to comply with the curfew dismissed his door staff at 2200 hours.
43. The Police suggested that Mr Tankeu really did not mind if people stayed and continued paying after the 2200 hours curfew. In other words he prioritised his commercial interest over the law that was there to protect all of us. This showed a troubling disregard and contempt for the Covid regulations and the promotion of the licensing objectives.

At 1136 hours the meeting was adjourned for the Sub-Committee to view the CCTV footage of the 26th September of what had taken place at the premises.

At 1222 hours the meeting was reconvened.

Mr Gary Grant continued

44. Having seen the CCTV footage from the night of the 26th September, compare it if you would with the witness statement Mr Tankeu had provided the Sub-Committee and asking the Sub-Committee to accept it

(page 72 of the agenda pack). He read out the relevant paragraph of Mr Tankeu's statement.

45. That the Sub-Committee compare if they would that claim with what the Sub-Committee had seen on the CCTV because the Police suggested that those two did not marry. Compare also the excuse he gave why the music was so loud on the 4th September – the engineers testing it. The Sub-Committee may be surprised that despite the experienced legal representation he had no witness statement for that engineer was provided, no invoice or estimate.
46. If it was the Sub-Committee's conclusion that this was someone who not only did not provide a Covid secure place, but fibs about it, the ultimate question for the Sub-Committee was whether you entrust him to promote the licensing objectives if you were to permit him to reopen at any stage in the future. This was why the Police would invite the Sub-Committee to revoked the premises licence.

There were no questions from Councillors Bob Beauchamp and Mary Locke at this stage.

The Chairman requested clarification concerning the issue about the timings shown on the CCTV given this reference to the Bodycams not being alterable in terms of GMT. The Chairman further commented that as he understood it, all the CCTV footage the Sub-Committee had been shown was pre the clocks changing. The Chairman enquired whether he was correct.

Mr Grant advised that the Bodycam footage he believed was an hour out and the footage that was seen on the 4th September was an hour early. Whereas what we had just seen on the 26th September came from the premises own internal CCTV that was the correct time.

Martin Key, Environmental Protection Officer, Environmental Health, Birmingham City Council made the following statements:-

- (a) The Environmental Health Department covered a wide range of function and they had an active role in Covid-19 work. There was a small dedicated team that was currently doing nothing but Covid-19 work. Colleagues in the Food and Health Safety Team pick up Covid-19 activities as part of their general work.
- (b) The team he worked in dealt mainly with complaints about noise and licensing activities – premises licences, TENs and other similar activities. Our approach followed a risk based approach and the regulators code. We generally visit, give guidance and hoped that that achieved improvement and compliance with the regulation's standards.
- (c) We have a supply of local authorities issued guidance on reopening premises after lockdown issued on the 2nd July 2020 on the Council's web page with a #Brum is Back and that had been updated regularly to try and support businesses through this difficult time and for working their way through the regulations and controls.
- (d) Birmingham was a high risk zone and the virus thrives on social contacts and without social contact it would die out. Social contact was therefore

the main spread of the virus which was what the regulations and guidance focussed on.

- (e) There was clear evidence from government data and the Sub-Committee may have seen the maps on TV that the current wave had been primarily instigated through younger people and then moved towards older people which had a larger impact.
- (f) The controls in place were there to try and avoid this close contact to minimise the spread, but also to try and protect businesses by allowing them to open in a secure Covid-19 way. This was part of the regulatory control that we would approach.
- (g) In respect of this premises we had an active noise complaint which started in July 2020 although with all the changes in the regulations and the restrictions on hours that complaint was currently on hold and we will be doing no further investigations.
- (h) The Police approach outlined in the evidence that has been brought before the Sub-Committee followed the same approach that we would - advise, education and enforcement as the final straw when there was no improvement in activity or operations following intervention.
- (i) I have reviewed the evidence that had been supplied by the Police based on the CCTV footage and the submission from the premises licence holder and the evidence clearly showed the premises was not a Covid secure location. There were some examples of good practice in the photographs in the documents submitted by the premises licence holder.
- (j) However, having now reviewed the video footage that showed inadequate spacing of the seating area inside, service at the bar with no separation at the bar, disco lights going which would only encourage people to dance. People standing around in circulation areas blocking them and there was no evidence of anyone wearing masks.
- (k) The applicant had submitted a document which claimed to be a risk assessment which was in fact a checklist of how some one writes a risk assessment. Some of the information provided was a start of what would be a good operational control.
- (l) However, the evidence that had been supplied suggested that that had not been carried through. Without a proper risk assessment, there was no method and no control measures that could be put in place and therefore it was difficult to train staff.
- (m) There was a lot of guidance available from the Health and Safety Executive and the Council itself and the Government about how to write a risk assessment and the relevant procedures and legal controls that were in place on Covid-19.
- (n) Having reviewed all of the information it was my conclusion that there appeared to be a lack of adequate management, inadequate risk assessment and most importantly no control measures that seemed to be written, controlled and passed on to the operation of staff.
- (o) The question for the Sub-Committee had been summed up clearly that if the premises was allowed to continue to operate would this changed going forward.

Shaid Ali, Licensing Enforcement Officer, Birmingham City Council made the following statements:-

- a. That he first became aware that WMP had called for a review of the premises licence on the 1st October 2020 and that he was tasked with the delivery of the letter informing that the Police had called for a review of the licence.
- b. This was delivered to the premises and a public notice was attached to the premises and in and around the venue, giving members of the public an opportunity to put in a representation.
- c. From the statements of WMP, it appeared that the Police had visited the premises on a number of occasions to check that the premises were operating within the guidelines issued by the government in regard to measures licensed premises must take to prevent the spread of the Covid-19 virus.
- d. This was a highly infectious disease which had been declared a global pandemic by the World Health Organisation (WHO) and as a result there had been over 40,000 deaths related to this disease in the UK and was rising daily. PC Reader's statement advised that he had visited the premises on the 4th September 2020 and had spoken with Mr Tankeu.
- e. That PC Reader noted at the time that the music was very loud and customers were sat inside the premises and that Mr Tankeu had advised PC Reader that the reason the volume of the music was so loud was because it was being tested and was not normally this loud. That PC Reader enquired whether the premises were fitted with a noise limiter as per the conditions of the licence, but Mr Tankeu was unable to demonstrate this .
- f. The Government's Covid-19 guidelines advised premises not to play loud music as this would cause customers to shout in order to be heard and the louder the customer talked or shout then the greater the chance of the disease being spread from person to person.
- g. It was clear that during the visit Mr Tankeu refused to believe that the music was loud as it was being tested. The premises were clearly in breach of the Covid-19 guidance and Mr Tankeu was clearly responsible for this breach. The music could have been tested at any time during the times that the premises was closed. He did not see why it had to be tested at this particular time when the premises were opened to members of the public.
- h. On Monday 26th September PC reader and PC Jevons were deployed by the force on operation ... the officers observed Mr Tankeu serving customers just before 2200 hours and were seen taking payments for customers.

At this juncture, the Chairman interjected and advised that the Sub-Committee had all of this information from the Police's statement and enquired whether there was anything Mr Ali was going to add to the Police's statements or anything from enforcement that Mr Ali wanted to highlight.

Ms Clover stated that she welcomed the Chairman's intervention as she wondered whether there were any benefits with the Licensing Officer reading out the Police's evidence.

Mr Ali continued

- i. Having looked at the Police's evidence, he was of the opinion that Mr Tankeu was not a fit and proper person to hold a premises licence or a personal licence given what the Police officers had observed at the premises which was in breach of the government's Covid-19 guidance.
- j. By not adhering to the guidance and the conditions of the licence, Mr Tankeu was responsible for causing a public nuisance as specified in the Police report and has compromised public safety by endangering the lives and health of the general public, his customers and staff.
- k. He appeared to have prioritised his profits over the public and as such, especially after having viewed the CCTV footage he was of the belief that Mr Tankeu was not a fit and proper person to either hold a personal licence or a premises licence.

There were no questions from Councillor Locke in relation to the representation from Mr Key and Mr Ali.

Councillor Beauchamp stated that he would like to have it made clear what representations were taken to the premises at to the licence holder/the DPS and whether there were copies or whether it was manual or did they saw the people concerned, whether this was followed up with their recommendations.

Mr Key stated that he was unsure what he could add to that as he had commented on the evidence that was before us. That he had visited the premises to do a noise complaint recently but nothing to do with the Covid compliance. He was unable to respond to any questions in relation to what written information was provided as he did not.

Mr Ali stated that he was given a copy of the notice for displaying in and around the premises and a letter which he had not read from WMP that was sealed that he was tasked to deliver to the premises.

The Chairman stated that looking at the maps 43 and 44 on the documentations enquired how much of the property surrounding was residential and where the closest residential area was. Mr Key advised that the areas around he venue was largely commercial, but there were some isolated residential developments around the edge of the Jewellery Quarter. The primary streets that they had complaints from was a development on Barr Street which were converted buildings which had now got flats and a number of apartments. As you go back towards the City Centre pretty much every block of offices along there had now been converted into residential properties.

Ms Clover stated that it needed to be careful about what evidence was being given about noise complaints as she did not believe that that was what we were here for. That if we were going into new evidence about noise complaints that was something that she had to deal with.

Ms Sarah Clover, Counsel of Kings Chambers representing the Premises Licence Holder made the following statements:-

1. The first thing she would like to do was to take a step back and take a large dose of perspective and reality and just remember what we were doing here.
2. The Police had taken a good deep dive into evidential minutia from CCTV and statements as to who was standing where and who was drinking what and in what hand and standing next to whom and on what and what time and so forth which was fine.
3. However there was context to this that we had to bear in mind at all times. This was a full review that had not come about in and of itself, it was a full review off the back of a summary review.
4. The summary review was brought on the back of a public nuisance point - a serious crime – which we heard very little about today. There were three things going on in this hearing – the one was the factual background and context which informed the review element and what the Sub-Committee will choose to do to this licence and this licensee going forward.
5. This behaved like a normal review and typically a licensee being faced with a normal review would get their privileges under the Act to continue to trade pending appeal, to remedy things that had gone wrong, took advice, changing context and as the Sub-Committee knew the ultimate decision would take place as at the time of the appeal on a set of circumstances that would be confronting the decision then whether it be a District Judge.
6. The Sub-Committee would know as well as she do as it happened a lot on quite a few outings that she had had in Birmingham that by the time you get to the appeal in the Magistrates' Court, things were different even to the point where the Licensing Authority would negotiate an appropriate outcome and you did not have a full hearing at all.
7. Without checking my statistics that had probably taken care of 8 – 10 of the last appeals that she had done in Birmingham over the last couple of years. So that was the first reality check. That was in the context of Covid issues which sat outside of the normal Licensing Act remit that we were used to. It was a highly fluid complex situation which was changing for all of us on a weekly, if not a daily basis.
8. Anyone would know that by the time you come up for an appeal you would be talking about the middle of next year and who knows where on earth we will be by then, whether we were still going to be in a Covid secure situation or whether we would have a vaccine; whether premises would be opened or closed; existent or non-existent and surviving or not surviving etc. That was the review element and that was where the facts go - CCTV and all the rest of it.
9. Secondly, we had the added complication here of the interim steps element because this was a summary review and it was the interim steps that was the fatal bullet in this case because that would give rise to the

holding position that would pertain from this day forward to any appeal and rather negative or nullified everything that she had just stated.

10. That the business would not get that opportunity to remediate what had happened in an appeal context and came before the decision maker in the new world whatever it might be at that stage as they would be gone already as they did not have the opportunity to trade in the interim steps of suspension. That was dependent upon the interpretation of public nuisance as a serious crime.
11. The third element was the Public Sector Equality Duty (PSED) which had been studiously and roundly ignored so far today by all and any whom might be expected to address it. These were the three elements.
12. That that she was working in a context here whereby this was the fourth time that these arguments had been made in one way or another before this Sub-Committee or a version of it and that she was aware that her colleague Mr Charalambides on Friday 23 October 2020 had made submissions to which she had wholly concurred in relation to the premises known as Nakira.
13. Although there was a new Sub-Committee Member on the panel today the reality that she faced was that with the best will in the world even with and with the greatest respect and all due respect to anybody she could persuade to her way of thinking, it would make not a lot of difference because two Councillors who sat on Friday had demonstrated where their minds sat in relation to this issue.
14. This was not an accusation of prejudgment as she had made it very clear. This was a recognition of the definition of insanity on her part which was repeating the same thing over and over and expecting a different outcome was not good logic and it was in a situation whereby the Sub-Committee were being professionally, legally represented that legal advice was not going to change.
15. In deed there was an element of reality that she had to recognised that it could not change because if she was to sway the Sub-Committee and the casting vote and the legal advice today to do something different off the back of identical submissions on Friday that raises problems legally in and of itself.
16. That she recognised all of that and she was not simply going to go through motions and repeat what had been said previously as she was very clearly and overtly going to adopt the submissions of Mr Charalambides on Friday 23 October 2020.
17. That she had worked on them with him and had concurred with them and to a certain extent she had designed them and he and she had utterly in concordance upon them and she will summarise them for todays purposes and leave everybody in no doubt that the same submissions were being made here today.

18. So far as the facts were concerned, this was pertinent for the review element and the public nuisance summary review interim steps element nothing had happened in this case. What we were dealing with was an assessment and an analysis of speculations and risks.
19. In a normal review, in a normal licensing hearing the Sub-Committee would be dealing with something – a glassing or an underage sale; a fight or a brawl or would be dealing with something. Very rarely if ever, would the Sub-Committee be looking at a review scenario based on something that had not happened. A risk of something that could have happened but never did.
20. So far as these Covid regulations breaches were concerned, this was all about trying to prevent something from happening which might never had happened anyway - in other words the transmission of a disease.
21. All the hyperbole in the world and little of it had been spared, put in Police certificates and responsible authority representations that how dangerous this disease could be does not cross the threshold on something that could happen but had not to something that could occurred. That was important for a number of points of views.
22. It was important from a public nuisance point of view because the very definition of a public nuisance upon which this summary review and therefore the full review was founded, was an act or omission (and it was known that Mr Charalambides had raised these points on Friday 23 October 2020).
23. An act or omission was needed and nothing had happened that endangered public life or health. Mr Grant stated adopting the extravagant tone of the Police here – standards for licensees were higher than they had ever been because failure costs lives - no, it did not.
24. Failure to comply with the Covid regulations and much less the Covid guidance was reprehensible in certain circumstances because everybody had to take the steps that the government had decreed to attempt to assist to do what was not fully understood to slow the transmission of a disease which may or may not had transpired in those premises that were located for families of those people anyway.
25. Data that came out today from UK Hospitality demonstrating that of 12,500 premises surveyed, there were 780 detected customer infections out of an estimated 250 million customer visits. This represented 0.0003% of customer visits.
26. The most recent data on transmission within hospitality venues demonstrated that they were 5% on the scale of transmission location sources. Way behind care settings, education settings and many other settings.

27. Mr Key stated that this was a virus that was transmitted socially. That might be right but that was not the same as saying it was a virus that was being transmitted by being sociable.
28. In actual fact the evidence showed that the transmission within the hospitality venue was exceedingly low. That was not to say that people should not abide by the regulations, but this was to cut across this hyperbole that that one single transgression and failure to follow Covid regulations and guidance would cost lives, because it would not.
29. Or, at the very least you had no idea here what the consequence may be. It did not come anywhere close to the public nuisance threat threshold of an act or omission that could be causally connected to an endangerment of life or health.
30. What we had actually got here and this tied to the PSED point was a breach of a regulations if that was what it was and it was untested as it had not been through the proper protocols for that regime.
31. It was a breach of a different statutory regime the Covid regulations which was how it had been dealt with in other premises that happened to have a different demographic.
32. For those premises, any alleged regulatory breaches tied or otherwise to guidance breaches had been dealt with through the remit of the statutory regime that was created to deal with it namely the Coronavirus Regulations and the criminal regimes that had been set up within those regulations to deal with that very thing and punished people who would not abide by the rules.
33. It may well be that if Mr Tankeu or anybody in his premises had been pursued through the coronavirus regulations in accordance with that regime, they too would have fallen foul of one or the other of those penalties, but this was not what we were doing here.
34. What we had here were several different regimes in concert with each other moving around each other. We had the Covid Regulations which was a statutory regime, the Licensing Act 2003 a statutory regime and we had the Common Law of Public Nuisance and the entire regime that sat underneath that.
35. These were three different planets that may be moving around each other but were entirely separate and they operate separately. In the Licensing Act 2003 terms there were no problems with these premises. They had not come to the responsible authority attention before.
36. Mr Key's allegations about the noise nuisance she did not know anything about that. It was not the Licensing Act 2003 and nothing had been done about it and he knew as well as she did that if there was a nuisance the Environmental Protection Act provides a duty to investigate and pursue

that so one takes it that there was not otherwise something would have had to be done about it as it could not be parked.

37. None of the other responsible authorities had indicated that in pure Licensing Act 2003 terms there were any problems with these premises' breaches of conditions, underage issues, operating in a way that undermined licensing objectives outside the context of the Covid secure scenario.
38. Mr Ali and to certain extent the Police had muttered about breach of conditions. I do not know what condition was said to have been breached nor what anybody wishes to do about it, because if there was a breach of conditions there was a regime to deal with that.
39. There were interview provisions, prosecuting provisions and matters could be pursued in that way. It appeared to be limited to the noise limiter if she understood this correctly. That was refuted as there were no breach to the conditions.
40. The Sub-Committee might have heard although it was not sure what he was supposed to have heard or gleaned from the distorted and muddled sound recording played through the iPad which was apparently intended to indicate to Mr Tankeu's manner and would be surprised if the Sub-Committee had heard it clearly.
41. Let alone to do with anything a manner. There was some mention in the audio about incident logs, capacity and so forth and she was not aware that anybody had come back and said there was a breach of conditions.
42. This insinuation which manifested itself most pertinently during Mr Ali's representation was rejected and should not be the foundation of any decision or action that the Sub-Committee took. Ms Clover stated that she had an issue that she had made clear through representations previously and Mr Charalambides did the same thing on Friday.
43. The Licensing Act 2003 was not the correct vehicle, a legal vehicle to be enforcing Covid regulations much less Covid guidance as those issues were primarily health related.
44. But the Sub-Committee had already indicated as a part of a composition of a committee and as the licensing authority as a whole that the Sub-Committee rejected her submissions on that front and had accepted submissions on behalf of the Police and other responsible authorities that the Licensing Act 2003 was the correct vehicle to be policing and enforcing the Covid regulations.
45. Ms Clover reiterated that she had repeated her resistance to that position and in due course no doubt that will need to be played out elsewhere. Mr Grant stated of Mr Tankeu that the Sub-Committee should conclude that he was unable to run the premises in accordance with the law. Again, characteristically sweeping.

46. Ms Clover questioned whether this meant that Mr Tankeu was unable to follow any law for an indefinite period of time. Ms Clover further questioned whether Mr Tankeu was in other words a write-off. Whether the Sub-Committee was to conclude and she quoted *not without surprise*. The representation of Mr Ali that he was *not fit and proper*.
47. That she would have expected a more forensic and careful language from a licensing enforcement officer. We did not as we all very well knew to have a fit and proper test for licensees under the Licensing Act 2003, it was careless that at least for Mr Ali to be using that language in the context of his representation.
48. To be inviting the Sub-Committee to conclude that Mr Tankeu was not fit and proper to hold a personal licence in the context of a full licensing review, quite what the Sub-Committee ought to make of that representation she was not very clear – that was disappointing to say that.
49. At the very least a mixed picture the Police wished to conclude that Mr Tankeu did not engage at all, that he in Mr Grant's words were *criminally disregarding the rules and regulations*.
50. That she did not quite knew what he meant by this, but if he meant he was breaking the Covid regulations the penalty for that as other had seen was to pursue him under the Covid regulations. It was very clear there had been communications, had been engagement, Mr Tankeu was clearly not ignoring what he was told.
51. Mr Grant liked to skirt over the pool table incident because he acknowledges that the Police gave incorrect advice in relation to the pool table.
52. But what was noticeable about that was that Mr Tankeu obeyed him and that had been told incorrectly by Sergeant Giess to remove the pool table Mr Tankeu did that. That was engagement, that was compliance, that was respect for the Police's wishes even though it happened to be wrong.
53. The Police wishes to disregard all of that and Mr Grant wishes the Sub-Committee to take no regard of this whatsoever. The key point as far as a review was concerned was that it was not a punishment and this was said too many times to be repeated.
54. It was not about punishing a licensee for failing to comply with Covid regulations or anything else. It was about upholding and maintaining the licensing objectives and that was what brings us into the nob of this argument which had been made multiple times which was we were not talking about licensing objectives; we were talking about the common law offences of public nuisance and the Sub-Committee knew where she stood on that.

55. Public Nuisance as set out in the classic caselaw had summarised it very briefly. That she had adopted all of Mr Charalambides detailed and nuanced expressions on this front.
56. A public nuisance within the case law made it plain about itself that if there was a bespoke statutory regime to deal with a particular thing or incident then that was the statutory regime that takes precedent. In this case that was the Covid regulations.
57. It was inappropriate and unlawful (and she did not draw back from that submission) to be attempting to police a common law public nuisance through the medium of a Licensing Act summary review by calling it a serious crime and then playing it out in the context of the Licensing Act 2003.
58. Miss Clover highlighted that she will challenge this and that it needed to be tested in full in due course. That the last time she had made a submission to this effect the response was that her argument was interesting, but ultimately relevant as it was academic.
59. It was said to be academic because it was said that the Sub-Committee could not go behind the judge in **Lalli** and that where a senior Police officer had certified something to be a serious crime that was the end of the matter as far as the Sub-Committee was concerned and no further investigations or analysis could be made at that point.
60. Ms Clover maintained again that that was incorrect legal advice, but that she did not expect that submission to be met with any great favour today as it did in the previous case submission. That she would not seek to amplify it, but that she had repeated it and reiterated it and underline it and if need be that would be tested elsewhere.
61. Finally the PSED (Mr Charalambides had gone into quite some details on this on Friday). To have a statement by PC Abdool Rohomon that stated that he resented being called a racist was surprising on a number of accounts.
62. Firstly, it completely missed the point about PSED. What might have been more helpful was a written statement from PC Rohomon explaining that he did, how he did it and why he did it.
63. That he understood the PSED because having read his statement she was more than convinced that he did not.
64. Secondly, to turn it into a personal front that he (PC Rohomon) resents anything was not the kind of language anyone would expect in any Police statement as it was not about him. That would no doubt come as a surprise if it needed to be investigated at any point higher up that the officer did think it was about him.
65. This was not about racism, this was about the licensing authority, the Council's duty – I understood that that duty had been explained to the Sub-Committee) I did not see any evidence of it.

66. In the decisions that had been made and in the commentary that had emerged in any acknowledgements of requirements for an Equality Impact Assessment (EIA) which was something that PC Rohomon or Mr Key or Mr Ali could usefully have inputted into to explain.
67. The point of this was about public perception as much as anything else to explain why it should be and what possible explanation there might be as to why premises with one kind of demographic attract pursuance under the Covid regulations and a fine through those and premises with another type of demographics were pursued through the licensing regime with a view to ending their business.
68. Mr Grant on the last occasion in his submissions expressed surprised that this was a point being raised at all and she understood that he was making some criticism that he had not been given advanced warning. Licensing authority's decision makers did not need advance warning that the PSED was engaged because it was always engaged. What was disappointing was that it had not been grappled with in a meaningful way.
69. That Mr Grant now states in his written submissions that the issue of Black and ethnic minority identity as protected characteristics may have relevance as that demographics were more susceptible to Covid. That may well be a PSED point and again she saw no evidence that it was being grappled with.
70. Unless anybody think that this was excessive or sedimentary on her part for raising PSED they may or may not have followed the ***Spearmint Rhino*** case in Sheffield where the court found on two occasions that the Council in the course of their licensing decision making about ***Spearmint Rhino*** had failed adequately to address PSED and on the third challenge which was only now seeing the resolution, the court gave permission for a third time that an authority that you would think was a bit hot on this topic and a little bit on top of it by now still, was not complying by what the High Court regarded as their duty. This was not to be taken lightly.
71. Ms Clover stated that the Sub-Committee should not take the relative brevity of her submissions as being any kind of concession on any of these points. That she adopted and represented the case as being presented recently on behalf of Mr Tankeu but that she would leave it there for now given the particular circumstances we find ourselves in.

The Chairman commented that in regard to Ms Clover's comments about the PSED that the Sub-Committee will have due regard to the duty under the 2010 Equality Act. He added that the Sub-Committee took none of these matters lightly and that the Sub-Committee would decide on the facts placed before it and the arguments put before this hearing rather than some other hearing. The Chairman further stated that it should not be implied that the Sub-Committee would be doing anything different as that was the basis on which the Sub-Committee had to determine matters today.

There were no questions from Councillors Bob Beauchamp and Mary Locke

In summing up, Mr Key clarified the issue in respect of the noise complaint. He advised that Environmental Health had investigated the noise issue in July 2020 and the investigations carried out did not identify any issue and hence there were no further action taken.

Ms Clover interjected at this point and stated that she had grave concerns about new evidence being given in the context of closing submission even if Mr Key believed that this was anodyne it was still an inappropriate procedure.

The Chairman advised that Mr Key could not respond in a Q and A way and that he needed to summarised what he wanted to say in terms of the outcome he would like to see in terms of the Sub-Committee's ultimate decision.

Mr Key stated that he did make the point during his primary evidence that he did state that there were complaints at the time. Mr Key stated that his evidence and his submission accepted that there was evidence in the submission provided by the operator that there were some coronavirus controls in place and that there was evidence that other operational controls could be put in place. Mr Key stated that his summary basically was that the evidence had been provided by the Police showed a lack of adequate management, inadequate risk assessment and a lack of control measures. The point raised by Ms Clover was a crucial one was this gentleman able to change is operations and comply going forward. Mr Key submitted that that was a decision for the Sub-Committee.

Mr James Rankin, FTB Chambers representing the City Council requested clarification in relation to Ms Clover's position. Mr Rankin questioned Ms Clover of her position concerning the certificate. Firstly, whether the certificate as issued by the Superintendent was unlawfully issued. Secondly, whether her suggestion was that the Sub-Committee was entitled to go behind the certificate.

Ms Clover responded that it may or may not be unlawfully issued not of concern to her, not of concern to the Sub-Committee. That the Sub-Committee could not make any determination about the lawfulness of the certificate and must accept it and proceed with a summary review based upon it . That the Sub-Committee could go behind it in terms of its categorisation of serious crime they could and must make a determination of their own as to what they believed the situation to be in accordance with their discretion as decision maker.

Mr Rankin further questioned Ms Clover as to whether she was challenging the legality of the issue of the certificate. Ms Clover responded that this was correct and stated that she did not challenge the legality of the certificate but the legality of these proceedings to consider the certificate. That this was not a miniature judicial review that was what **Lalli** said. They must accept the certificate and proceed upon them, but they were fully entitled to go behind it and to reach a contrary conclusion to that of the senior officer as to whether tis was or was not a superior crime and that would be capable of taking on board all the points she had made and indeed Mr Charalambides before her.

In summing up, Mr Ali stated that he did not hear anything that had made him changed his mind and that he was still of his original opinion. That he did not believe that Mr Tankeu had taken his responsibility enough being a personal licence holder and a premises licence holder. Having looked at the CCTV footage and having read Mr Tankeu's statement which tried to refute some of the accusations made by the Police, he could not find anything that suggested that the Police had made the wrong decision calling for a review of the licence. That he fully supported the review being called.

In summing up, Mr Grant stated that the Police's case from the beginning was appropriate and proportionate step to invite the Sub-Committee to take was to revoke the premises licence. The Sub-Committee had heard nothing from the licensee to suggest that that was not the appropriate and proportionate step to take in order to promote the licensing objectives. The Sub-Committee heard that the licensing objectives were not engaged and that he went through each licensing objectives and explained why each one was engaged in this case. That he would add just one more point that was raised in his written submission.

The suggestion that somehow regulatory breaches may not engaged fully the licensing objectives was considered in a case called **Howitt v Blackpool Council**. That he had raised the reference to this in his written submission on page 118 of the agenda pack footnote 10. This was a case involving a publican who had decided that the smoking ban did not applied to his pub. This was a regulatory breach of the Health Act and the High Court determined that it did engaged the licensing objectives and it engaged crime and disorder. That it was a crime to breach a regulation in the same way as it was a crime for Mr Tankeu in this case to breached the Covid regulations and he need only point to one the 2200 hours curfew that was clearly breached on this occasion. The licensing objectives were engaged in this case.

Dealing with the PSED, he accepted that the PSED was engaged in this licensing decision as it was with everyone. That he had made submission in his written submission that the Sub-Committee will find at pages 127-128 of the agenda pack. Since reference was being made to the Nakira hearing last week, the Sub-Committee would recall the evidence of Carl Stott from Public Health in that case, the effect that the BAME community was disproportionately impacted both in health and socio-economic terms by the Covid pandemic. This was the reason he had repeated the submission he had made then. This would go somewhere to promote the safeguarding of the interest of the BAME community if the Sub-Committee did not permit premises such as Petite Afrique to continue operating in a dangerous manner.

The Sub-Committee had also heard during the Nakira hearing that there were plenty other premises in Birmingham that appealed to the BAME community. There was nothing unique about Petite Afrique. The Sub-Committee heard a submission that nothing had happened in this case and that we could not prove that a particular person was affected at this particular time in this particular premises. That submission with respect had no force. One example away from this case – lets imagined that the public safety was engaged by a nightclub that had a big hole in the middle of the dance floor and live electrical wires were sparking around. You do not need to wait for someone to be electrocuted or to

fall in the hole for the public safety objective to be engaged. By analogy the same is true here where you ... Covid unsafe premises you do not need to be presented with evidence of this person having been infected in this premises.

The objectives looked to the future promotion of the licensing objectives, but the Sub-Committee was entitled to look at the past behaviour of this licence holder in order to inform your view as to what was likely to happen in the future where the Sub-Committee to permit him to open at any time. To permit him to open bearing in mind the evidence of what we had seen, evidence of a reluctance towards incapability of following guidance, an inability to control his customers, also with regret any predilution towards telling little fibs about why breaches were taking place whether it was loud music being tested, yet no support was being brought before the Sub-Committee of the engineer he said had existed. Whether it was a more major fib when he claimed that at 2145 hours, he and his staff were endeavouring to get the recalcitrant customers out the venue.

The Sub-Committee now knew from the CCTV footage that was not what was happening. If the Sub-Committee could not trust Mr Tankeu to get it right in the past and trust him to remedy those faults even when they were brought to his attention on five visits by the Police, we say he simply could not be trusted to promote the objectives going forward in this case. There was an overriding public interest in this case that overrides the Sub-Committee's PSED duties that the Sub-Committee will engage with and had due regard to and that was to protect the overall public interest. Mr Grant stated that he had included a quote in his papers from the Guidance, Section 182, at page 124, paragraph 82 in the agenda pack which he then read to the Sub-Committee. That Guidance fits four-square with the facts before the Sub-Committee today.

It was indicated that there were no licence breaches, but he could indicate a few licence breaches and for the Sub-Committee's notes if they looked at the premises licence Annex 2, page 39 of the Agenda pack and read out the breaches that had taken place to the Sub-Committee. That Mr Tankeu thought it proper to released his door supervisors even though on his account which was false he still had recalcitrant customers in at 2145 hours refusing to leave on that night of the 26 September 2020. That there was an ambiguity whether there was a working noise limiter device when the officers attended on the 4th September. The Sub-Committee could base its decision on the twin aim: -

- To promote the licensing objectives in an appropriate and proportionate way.
- To deter both this operator and other operators who might be looking in today and may read about the Sub-Committee's decision from being tempted to create a Covid unsafe premises to breached the regulations that was there to protect us all in order to pursue their commercial interest.

This was why the robust steps of revoking the premises licence was both appropriate and proportionate in this case.

In Summing up, Ms Clover stated that there were a couple of points on the risk assessment. That the risk assessment was built into the conditions and a Covid risk assessment were two entirely different things. That Mr Grant conflates them wholly and appropriately. Mr Grant used as example the mysterious hole in the

middle of the nightclub floor with live cables around it demonstrated the point beautifully. That was a safety point and not a health point and as a direct causal connection. If you put your foot in the hole you would get electrocuted. If you did not socially distance you would not necessarily get Covid it proved the point rather than anything else. Mr Grant stated that something overrides the Sub-Committee's PSED, but nothing overrides the Sub-Committee's PSED. The Sub-Committee had a balancing exercise to conduct as ever.

Finally, the operators looking in on this meeting or reading about it afterwards would have no idea based on anything other than at the moment the obvious which was the demographics as to whether they would be fined under the Covid regulations or dragged before the Sub-Committee under a summary review for closure of their business. They might be deterred but they would not know what their fate was based on any other criteria than demographics at this point in time and that was the reason PSED was so important.

At 1331 hours the meeting was adjourned in order for the Sub-Committee to make its decision and all parties left the meeting. The Members, Committee Lawyers and Committee Manager conducted the deliberations in private.

At 1415 hours the meeting was reconvened and a brief decision was given by the Chairman who advised that a full written decision of the Sub-Committee would be issued by the 28th October 2020.

At 1417 hours the meeting was adjourned due to technical difficulties.

At 1432 hours the meeting was reconvened and the Chairman then invited Ms Clover to make submissions in relation to the interim steps.

In submission, Ms Clover stated that in relations to the interim steps that she would not repeat the submissions that she had made previously about public nuisance that serious crime and all of those points that goes to the propriety of the summary review and the analysis of it that there should be a serious crime and the public nuisance was not a serious crime this did not trigger the need for the interim steps. That she had reiterated everything that was said during the course of the hearing and on previous occasions as well and repeated by Mr Charalambides on Friday 23 October 2020.

In submission Mr Grant stated that the test under Section 53D was for the Sub-Committee to review the interim steps and consider whether the interim steps were appropriate for the promotion of the licensing objectives. That if the Sub-Committee's decision was based on the premise that this licence holder was unable to promote the Licensing objectives, then there was never a more important time than the coming months to ensure that he did not undermine them. That was the reason they asked for the interim suspension pending any appeal.

Ms Clover stated that if in the Sub-Committee's decision the Sub-Committee accepted Mr Grant's submission that for Section 53D there was no need to address serious crime for the purposes of renewing the interim steps for the Sub-Committee to make that plain in its decision.

At 1436 hours the meeting was adjourned due to technical difficulties.

At 1500 hours the meeting was reconvened and the Chairman gave the Sub-Committee's verbal decision concerning the interim steps to all parties. The Chairman further advised that the Sub-Committee will give its full written decision by the 28th October 2020

The full written decision of the Sub-Committee was notified to all parties as follows: -

4//261020 **RESOLVED:-**

That having considered a full review of the premises licence under s.53C of The Licensing Act 2003 following an expedited summary review under s.53A of the Act brought by West Midlands Police in respect of the premises licence held by Rodrigue Tankeu in respect of La Reference (Petite Afrique), 160 Hockley Hill, Birmingham B19 1DG, this Sub-Committee determines:

- That the premises licence shall be revoked
- Rodrigue Kouamo Tankeu shall be removed as the Designated Premises Supervisor.
- Having reviewed the interim steps imposed on 1st October 2020 (and not lifted on 16th October 2020), that it will not withdraw or modify the interim steps of suspension of the licence and the removal of the designated premises supervisor Mr Rodrigue Kouamo Tankeu under s.53D of The Act. Those steps remain in place pending any appeal.

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 were 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 Sub-Committee's deliberations. For the purpose of this hearing it only took into account regulations and guidance that were in force on 1st October 2020.

Miss Sarah Clover of counsel appeared for the premises licence holder. Also in attendance was Carl Moore and Rodrigue Kouamo Tankeu.

Mr Gary Grant of counsel represented the applicant for review, West Midlands Police (WMP). Also in attendance was PC Abdool Rohomon; Police Sergeant Giess and Tim Woodward.

Mr Grant on behalf of WMP provided the Sub-Committee with helpful detailed submissions on the facts and the law. Prior to the meeting commencing, the Sub-Committee fully read all of the papers in the agenda, including Mr Tankeu's statement and enclosures.

Since July, WMP officers have visited the premises on five occasions in line with the 4E's approach: engage, explain, encourage, enforce. In the first four of these visits Mr Tankeu was given advice and assistance on how to comply with the duties on him, as the licence holder, to provide a COVID-secure environment for his customers and staff and so help to protect the wider community. These included three visits from PS Nicholas Giess.

It was only after the fifth visit, when the venue was found to be operating after the 10pm curfew in breach of COVID regulations, and also failing to take proper account of guidance in order to provide a COVID-secure environment, that WMP instigated this summary review.

8 August 2020

In the early hours of 8 August, PS Nicholas Giess was deployed as an (acting) Inspector on Operation Reliant, which is WMP's response to licensing issues during the pandemic (among other things). WMP made a number of visits to licensed premises. Another operator raised concerns about the way Petite Afrique was operating and so police paid the venue a visit.

When they arrived, they witnessed a mix of people standing and others seated. A few women were dancing. The music was very loud, to the extent that the officer had to shout to be heard when he spoke to Mr Tankeu. It appeared that the venue was operating in a pre-pandemic fashion.

PS Giess spent about 15-20 minutes speaking with Mr Tankeu, who had the music turned down. Mr Tankeu asked anyone who was standing up or dancing to sit down. They went in the back office area where the officer explained that Mr Tankeu needed to keep the music at a much quieter level so that people did not have to shout, in order to reduce the risk of COVID infection spreading.

The high volume level of the music was of particular concern to WMP as the Government had issued guidance in July, designed to assist bar and restaurant operators to operate in a COVID-19 secure manner, which stated:

"All venues should ensure that steps are taken to avoid people needing to unduly raise their voices to each other. This includes, but is not limited to, refraining from playing music or broadcasts that may encourage shouting, including if played at a volume that makes normal conversation difficult. This is because of the potential for increased risk of transmission particularly from aerosol transmission."

PS Giess asked about the Covid Risk Assessment, which operators are required by law to undertake. However, Mr Tankeu had not conducted one at that point.

There were about 50-60 people inside. PS Giess advised Mr Tankeu about the need to ensure social distancing. At that time there were no social distancing measures in place. There was a discussion about the use of the pool table.

PS Giess spent in all 15-20 minutes in the venue speaking and advising Mr Tankeu. He explained that the licensing team were there to assist, and to contact them if he needed support.

At this time the COVID infection rate in Birmingham was rising. The City was on the government's watch-list of areas that may need to be subjected to a local lockdown if the infection rates increased with devastating economic consequences. Hence, it was particularly important for hospitality operators to responsibly implement COVID-secure measures.

15/16 August 2020

Over the weekend of 15/16 August, PS Giess paid another visit to Petite Afrique. He was disappointed to find that, despite his earlier advice, he could not see evidence of any additional efforts by Mr Tankeu to make the venue COVID-secure.

The venue was busier than the earlier visit, with about 80 customers inside. People were dancing together which potentially impacted on social distancing (and risked the venue being characterised as a prohibited nightclub or similar dance venue). A birthday party was taking place. Social distancing was not being encouraged by staff and tables were still too close to each other.

Once again, the music was so loud that PS Giess had to shout to make himself heard. There was no evidence of improvement in the way the venue was being operated. In fact, things appeared to be worse.

28 August 2020

As part of Operation Reliant, PS Giess attended Petite Afrique in the early hours of 28 August. The bar was busy again with some 80-100 customers. The music was still being played too loudly when the officer attended. People were dancing.

PS Giess spoke to Mr Tankeu and asked him why the music had been so loud given the earlier advice. Mr Tankeu said that the DJ must have turned it up and he “had not noticed”. He also said it was difficult to stop his customers from dancing.

4 September 2020

WMP officers attended the venue as part of Operation Reliant on 4 September at around 22:55hrs. This venue was causing WMP particular concern due to the way it had been operating in the past.

The music inside was, once again, being played very loudly.

Customers were in the premises drinking at tables. PC Reader asked Mr Tankeu to come outside so he could talk to him. Mr Tankeu told the officer that “*the music was just being tested and wasn’t normally that loud*”. In the light of previous experiences, the officer found that an improbable coincidence (and in the bodycam footage Mr Tankeu does not sound very convincing when he says it). As indicated above, he had previously been advised on several occasions about playing loud music. Mr Tankeu also said he “*definitely*” understood that music should not be played that loudly.

Mr Tankeu produced a generic *blank* risk assessment form that had not even been completed. He promised to email a Risk Assessment to the Sergeant.

Later that day Mr Tankeu did email through a Risk Assessment, which the experienced police officer (and a trained Risk Assessor) described as “*completely inadequate and sub-standard*”. He viewed it, with some justification, as “*the worst attempt at a COVID Risk Assessment that I have seen*”.

The Sub-Committee saw bodycam footage of this conversation. One of the members of the Sub-Committee had been unable to view the footage, and it could

only be played at the hearing without sound. An attempt was made to play it via the chairman's iPad during the hearing, which was unsatisfactory, and so, for the purposes of this hearing the Sub-Committee relied on PC Reader's account of the conversation as relayed in his statement.

The installation and use of a noise limiting device, set at a pre-set volume level, is a condition on the Premises Licence. The officer asked Mr Tankeu whether he had a noise limiter device fitted. He replied, *"I think we have one"*. He did not appear to fully understand what a noise limiter was (*"well the music comes out clearly"*). He then told the officer *"they told me they had one last time, when I had the talk with the DJ. I don't know whether he said it's broken or something like that. I'll have to double check within him today, if it's fixed"*.

There was no mention during this conversation of an engineer being on site sorting out the noise limiter or music equipment. The Sub-Committee would have expected Mr Tankeu to have mentioned to the officer at the time when the issue of the noise limiter was raised if this is, in fact, what Mr Tankeu is alleging.

26 September 2020

(The nationwide 10pm curfew on venues trading as bars or restaurants was now in force from 24th September).

On 26 September officers were again deployed on Operation Reliant. They drove past Petite Afrique at 22:20hrs and noticed a large number of vehicles outside. The metal shutters were halfway down covering the main doors.

PC Reader entered the premises a few minutes later (around 22:23-22:24hrs). He found approximately 40 people, including staff, still inside the venue. This was well after the curfew hour. Social distancing measures were not in place. Customers were talking loudly, standing around and drinking at tables.

When police attended someone shouted inside the venue. When customers saw the police they quickly began to leave (which suggested to the Sub-Committee that they were fully aware they should not still be in the venue at that time).

Officers took the view that, if they had not turned up, these customers would simply have remained in the venue for some time yet; the Sub-Committee agreed.

Mr Tankeu was present, clearing tables. He came up to speak to the officers. He said he had been trying to get people to leave since 21:45hrs, but they would not listen to him and “*didn’t want to go*”. He confirmed that his SIA security staff had left at 22:00hrs. The Sub-Committee formed the view that Mr Tankeu had little or no control over the operation of his premises or his customers. The Sub-Committee also questioned why Mr Tankeu released his door supervisors at 22:00hrs when he still had plenty of people remaining in the venue who were using it as a bar/restaurant. This is significant, because Mr Tankeu’s witness statement asserts that his customers were not listening to his requests to leave. (It is a condition of the premises licence that SIA requirements need to be risk assessed before 23:00hrs). The view that the Sub-Committee formed was that it is more likely that Mr Tankeu did not really mind if people remained in the venue after 22:00hrs. That is why he released his door supervisors. The Sub-Committee found that this displayed a troubling disregard, and contempt, for the COVID regulations during a national pandemic.

The Sub-Committee viewed extracts from the CCTV taken on the evening, but did not watch it in its entirety. It was open to Miss Clover to request that specific footage be played. She chose not to. The Sub-Committee relied on the findings contained in PC Reader’s statement as evidence of what the CCTV showed.

CCTV from 26 September 2020

There appear to be little or no efforts made by staff to ensure groups abide by social distancing or the Rule of 6. The Sub-Committee also formed the view that

- a. Individuals regularly mix with other groups – despite the demarcation strips on the floor - and are unchallenged by staff when they do so.
- b. With one or two exceptions, most the staff members, including Mr Tankeu himself, are not wearing masks even when in close contact with customers (they should have been wearing them).

- c. The bar area is congested with people standing up, some with drinks in their hands, and others are ordering from the bar whilst standing (under the regulations, they ought to order and be served whilst seated).
- d. Even after 22:00hrs customers drinking at the bar are left unchallenged and customers are served further drinks or takeaway food.
- e. 21:49hrs - the large group in the booth are still pouring themselves glasses of wine/champagne from bottles in coolers on their table. Two males are standing by the table drinking. At least one walks off to chat to others standing by the bar holding drinks. Mr Tankeu returns to the bar.
- f. 21:49hrs – Mr Tankeu sells bottles of beer to two men who stand by the bar as they drink the beer.
- g. 21:52hrs - the disco lights go off and most of the customers remain as before.
- h. 21:59hrs - staff are in very close contact with customers at the bar area who are paying by credit card/PDQ machine, none of whom are wearing masks whilst this takes place (they should have been).
- i. 22:01hrs – Mr Tankeu is at the till. Three men remain at the bar with drinks right in front of him.
- j. 22:05hrs – most of the customers remain in the venue drinking and chatting. There is no obvious sign that staff are challenging them. A waitress brings what is thought to be a takeaway food plate to a customer (this is not permitted, and happens on other later occasions too). Males remain at the bar with drinks in front of them.
- k. 22:06hrs - a male is standing by the booth with a drink in his hand talking to the rest of the group. One member pours another drink from the bottles on the table.
- l. 22:08hrs – female staff member hands over a takeaway food bag to a customer, takes cash from the customer and places it in the till.

- m. 22:10hrs – female staff member hands over a bottle of beer to male across the bar.
- n. 22:12hrs - Mr Tankeu (in a black shirt with white stripes) is seen talking to a male standing by the booth who hands him a series of banknotes. Mr Tankeu walks away and the male returns to talk to his friends with a drink in hand.
- o. 22:13hrs - a female comes out of the staff entrance and starts clapping as if to get people's attention. Another female has a white (food) bag in her hand and goes to sit down in the booth. Plates are collected from the table in the booth but customers remain seated whilst drinking. Mr Tankeu is standing next to the booth.
- p. 22:15 – 22:23hrs – Mr Tankeu stands by the bar. He remains there for over six minutes making no attempt to get customers to leave. Several customers remain at the bar with drinks during this period.
- q. 22:17-22:18hrs – two males, in two transactions, approach the bar and are supplied with drinks by the barman. Credit card payment is taken from the second male (possibly by using mobile phone payment).
- r. 22:19hrs – Mr Tankeu chats to a customer who is standing next to him. He takes a credit card payment from this customer.
- s. 22:23 – Mr Tankeu goes over to the booth and removes the wine cooler containing bottles from the table. This sudden action coincides with the time police entered the premises. Customers rapidly leave.

The Sub-Committee heard also from Martin Key on behalf of Environmental Health, Shaid Ali on behalf of Licensing Enforcement, and read the representation in support of the review from Kyle Stott of Public Health who did not attend but also supported the review.

Miss Clover, on behalf of Mr Tankeu, chose to make no submissions challenging the WMP evidence. This was in contrast to the hearing on 16th October 2020 where she made specific challenges to the evidence. The Sub-Committee therefore presumed that she was relying on Mr Tankeu's witness statement for

any “challenges” to the evidence. The Sub-Committee’s findings above were reached having read this statement.

The Sub-Committee does not accept that the only discussion on 8th August 2020 was about the pool table. In respect of 15th/16th August 2020 visit Mr Tankeu says: *“At no time did he spend a little time explaining what measures we were to have in place”*. The Sub-Committee did not accept this assertion and prefer the evidence of PS Giess who spent 15-20 minutes in the premises explaining Mr Tankeu’s obligations under the regulations and the Home Office Guidance. Nor did the Sub-Committee accept that PS Giess was *“hostile”*. In respect of 4th September 2020 Mr Tankeu says *“...PC Ben Reader & another officer attended. They did not go round the premises; they stood right at the entrance and then went back out. I went outside to speak to them. PC Reader told me that the music was too loud. I informed him that the sound engineers were on site and were testing the equipment”*. Both of these assertions were untrue. PC Reader is clearly shown on the CCTV entering the premises. PC Reader does not record any conversation about sound engineers being on site.

The Sub-Committee was not shown any invoice from any sound engineering firm and assumed that, if one had been available, the Sub-Committee would have been shown it.

With respect to the 26th September 2020 visit Mr Tankeu says, *“the bar had stopped serving drinks...a number of customers were being very difficult in vacating the premises”*. The Sub-Committee saw no evidence of that on the CCTV. Rather, it showed Mr Tankeu’s staff serving drinks beyond 10pm and him making no attempt to clear the premises. The Sub-Committee questioned again why, if customers were indeed being difficult about leaving, Mr Tankeu saw fit to release the door staff.

Mr Tankeu’s own timeline of the CCTV does not help his case. It records a considerable number of occasions when (unspecified) people are noted as *entering* the premises from the *front* door after 10pm (e.g. at 22.11, 22.14, 22.15, 22.16, 22.17, 22.19, 22.21hrs).

Miss Clover's verbal submissions on the facts were restricted to an assertion that "nothing happened". She said that the WMP case was "all about trying to prevent something that may never have happened".

THE LAW

Miss Clover maintained that the Licensing Act 2003 was not the correct vehicle for enforcing the Covid-19 regulations. The Sub-Committee disagrees; the Sub-Committee is specifically charged with a duty to promote the licensing objectives, which include crime and disorder, public safety and public nuisance. The Sub-Committee's view is that it is unarguable that these objectives are engaged in a case such as this. The Sub-Committee is engaged in an inquiry as to whether Mr Tankeu's conduct promotes these objectives, or whether, as the Sub-Committee find is the case, that to accede to WMP's submissions would promote these objectives. Miss Clover provided the Sub-Committee with a number of recent statistics which she maintained showed that the risk of anyone catching Covid-19 from attending licensed premises (and by analogy these premises) was minimal. The Sub-Committee is not concerned with quantifying risk using national statistics; it focused on the task in hand, which was to examine the facts of this case, apply them to the licensing objectives, and come to a decision on the evidence before it.

PUBLIC SECTOR EQUALITY DUTY ("PSED")

Miss Clover took an unusual approach which was to adopt the submissions that Leo Charalambides had made in respect of the Public Sector Equality Duty created by the Equality Act 2010 (PSED) in the Nakira case which two of the Sub-Committee had dealt with on 23rd October 2020. One of the Sub-Committee Members (Councillor Locke) had not sat on that hearing. Miss Clover was aware of this. Miss Clover indicated that this was for personal reasons.

In closing, Miss Clover said that the Sub-Committee should "decide on the facts put to you" as to whether there has been due regard to the PSED. The Sub-Committee was unsure as to whether she was submitting that it could not have regard to the exercise that it performed in the Nakira case as evidence that it had

discharged its duty in the present case. If she was, then the Sub-Committee disagree with her. It was the view of the Sub-Committee that she could not rely on submissions made in the Nakira hearing and then seek to exclude the findings in relation to the PSED.

Councillor Locke was given a full briefing in relation to the PSED duty generally, and the background in respect of the “white owned or operated premises” identified (incorrectly in the view of the Sub-Committee) by Mr Charalambides as receiving treatment which was different to the treatment given by WMP to premises owned or operated by the Afro-Caribbean community. The Sub-Committee sets out its findings on PSED in relation to that case below:

“Public Sector Equality Duty

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

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

In broad terms, Mr Charalambides identified two premises which he said had a white clientele, but which had been treated differently from his clients, who operate a premises for the Afro-Caribbean community. These other premises were The Bricklayers Arms and The Greyhound. He maintained that Black Asian and Minority Ethnic (“BAME”) venues were treated more harshly. He made assertions about other unidentified cases that he had been involved with in Birmingham where it had been suggested “off the record”, by unidentified police officers, that the operator agree to a condition that no urban or bhangra-style music be played. He drew an analogy with

*the “stop and search” powers, which he said were exercised more usually against members of the BAME community. He said that it seemed to be the case that if premises in Birmingham were operated by black or Asian operators, then they would be dealt with more harshly. In closing he said that he was **not** accusing WMP of being racist, but that he was just making it clear that he has been pulled aside on numerous occasions on the issue of the style of music being played in venues.*

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

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

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

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

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

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

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

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

The Sub-Committee's view was that there is an overriding duty to promote the licensing objectives in an appropriate and proportionate manner in this case, having had due regard to the PSED, not least because the increased risks of COVID-19 infection as a result of acts and omissions by Nakira's operators

impacts on all communities, including the BAME community itself who frequents Nakira”.

The Sub-Committee makes the same findings in this case.

WMP rely on PC Rohomon’s statement again in this case, which makes the point that he himself has a BAME background. Miss Clover expressed surprise that this was referenced in his statement. She said that “it is not about him”. The Sub-Committee took the view that the importance of this evidence was that the officer was more likely than not to be alive to issues relating to the PSED, given his own background.

The Sub-Committee weighed up its duties in respect of the PSED, and its duties under the Licensing Act 2003. It had regard to the relevant principles and law with respect to its duties under The Equality Act 2010 in the present case and forms the view that they have been discharged.

THE LEGALITY OF THE CERTIFICATE

Miss Clover indicated that she was going to adopt the submissions of Mr Charalambides in relation to the certificate in the Nakira case. The Sub-Committee sets out its findings in relation to that case on the issue of the Superintendent’s certificate:

“Mr Charalambides made a number of submissions as to the legality of the certificate issued by the Superintendent. In essence it was said that the Superintendent had relied upon the common law penalty for public nuisance (life imprisonment) without applying his mind to the Crown Prosecution Service Guidance for prosecuting breaches of the Covid Regulations which, he pointed out, stated that these were summary only offences and punishable with a fine, and which urges a ‘light touch’ approach. He pointed out the other remedies available, prohibition notices or directions in respect of gatherings. He categorised the route selected by the Superintendent as “The Victorian Road”. He drew the attention of the Sub-Committee to the Guidance issued by the Home Office under s.182 of the Act, to which the Sub-Committee of course had regard.

The Sub-Committee found these arguments academic because it was bound by the High Court decision in **Lalli v Metropolitan Police Commissioner [2015] EWHC 14 (Admin)** in which Deputy High Court Judge John Howell ruled on three occasions in his judgment (paragraphs 62, 70 and 75) that:

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

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

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

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

(2)The relevant licensing authority must—

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

(3)Those steps are—

(a)the modification of the conditions of the premises licence,

(b)the exclusion of a licensable activity from the scope of the licence,

(c)the removal of the designated premises supervisor from the licence,

*(d)the suspension of the licence for a period not exceeding three months,
or*

(e)the revocation of the licence.

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

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

"The fact (if it be the case) that the licensing authority does not itself consider that any reasons provided for giving the certificate establish that there is an association between the licensed premises and serious crime or serious disorder is not of itself necessarily decisive for any decision about interim steps or for the determination of the summary review itself. The licensing authority may consider interim steps are necessary or appropriate for the prevention of crime and disorder (which is one of the licensing objectives) given further information provided, or representations made, by the chief officer of police or, when determining the summary review, by others... When doing so, as explained above, the authority may consider representations that do not relate to the crime prevention objective (as well, of course as those which do) and, as section 53C(2)(b) of the 2003 Act states, the authority must then take any steps as it considers appropriate for the promotion of the licensing objectives, not merely the crime prevention objective."

The Sub-Committee's findings on the law in this case are the same as in the Nakira case. Miss Clover's position on the law as of 16th October 2020 when

she represented the premises licence holder for Nakira has changed. On that day she submitted that the certificate had been issued unlawfully and that **Lalli** could be distinguished (but did not explain how). In relation Petite Afrique, if she is adopting Mr Charalambides's arguments, she is not saying that the certificate was issued unlawfully (although she did submit that it was "inappropriate and unlawful" for the police to say that the common law nuisance was serious crime in the context of the licensing regime"). When asked about her position on this point she said that she did not challenge the legality of the certificate, but that the Sub-Committee was "fully entitled to go behind it". She said that the Sub-Committee's legal advice was incorrect. The Sub-Committee disagrees. This is at variance with what Deputy High Court Judge said at paragraph 63 in Lalli above.

The Sub-Committee applied its mind to the task in hand which was to take such steps as were appropriate and proportionate under s.53C in order to promote the licensing objectives. It also bore in mind paragraphs **11.1** and **11.26** of the Guidance issued under s182.

It was mindful that 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 [2008] EWHC 3300 (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:

"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."

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 Sub-Committee agrees with Miss Clover that the approach should not be to punish Mr Tankeu. The revocation of his licence is not a punishment. It is an appropriate and proportionate response to take in circumstances where a licence holder appears unwilling or unable to comply with the Covid-19 regulations and guidance, in circumstances where he has been given four opportunities to do so.

The Sub-Committee finds that the licensing objectives of the prevention of crime and disorder is engaged. A breach of the Regulations is a criminal offence and so engages the prevention of crime and disorder licensing objective. The attention of the Sub-Committee was drawn to the case of ***R (Blackpool Council) v Howitt [2008] EWHC 3300 (Admin)*** where breaches of the newly imposed smoking ban were a criminal offence. There does not have to be a criminal prosecution or conviction for this objective to be engaged.

All in all, the Sub-Committee considered the licence holder to have failed to take his responsibilities seriously. It found that the activities identified above amounted to a flagrant disregard for the licensing objectives, including those of public safety and public nuisance.

It looked at the question of imposing a lesser step than revocation even though this was not urged by Miss Clover. A suspension of up to 3 months is one of the steps that it could have taken. However, the Sub-Committee viewed the activities of the premises licence holder as so serious that the only appropriate and proportionate course for it to take was to revoke the licence. The Sub-Committee had no confidence or trust in the management of the premises. The revocation of the licence and the removal of the DPS removed the threat to the licensing objectives of crime and disorder, public nuisance and public safety which would otherwise prevail if Petite Afrique was allowed to continue operating under the current management.

In reaching this decision, the Sub-Committee has given due consideration to the City Council's Statement of Licensing Policy, the Guidance issued by the Home Office under s182 of the Licensing Act 2003, the Public Sector Equality Duty created by the Equality Act 2010, and the submissions made by the Police, Environmental Health, Licensing Enforcement and Public Health. The Sub-Committee listened carefully to the submissions of the representative of the premises licence holder.

The Sub-Committee is required under s.53D of the Act to review the Interim Steps that have been taken by the Licensing Sub-Committee under s.53B. In conducting a review of the Interim Steps, s.53D(2) sets out how it should approach such a review:

*In conducting the review under this section, the relevant licensing authority **must**—*

- (a) consider whether the interim steps are appropriate for the promotion of the licensing objectives;*
- (b) consider any relevant representations; and*
- (c) determine whether to withdraw or modify the interim steps taken.*

The Sub-Committee took the view that, given the conduct of the operators of these premises, that it is appropriate and proportionate that these steps remain in place.

All parties are advised that there is a right of appeal to the Magistrates' Court against the Licensing Authority's decision within 21 days of being notified of these reasons.

The meeting ended at 1504 hours.

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CHAIRMAN

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee A
Report of:	Interim Assistant Director of Regulation & Enforcement
Date of Meeting:	Monday 11th January 2021
Subject:	Licensing Act 2003 Premises Licence – Transfer
Premises	Costcutter, 442 – 444 Birchfield Road, Perry Barr, Birmingham, B20 3JG
Ward affected:	Birchfield
Contact Officer	Bhapinder Nandhra, Senior Licensing Officer 0121 303 9896 licensing@birmingham.gov.uk

1. Purpose of report:
To consider an application to Transfer a Premises Licence.

2. Recommendation:
To consider and determine the Transfer Application.

3. Brief Summary of Report:
A transfer application was received on 26 th November 2020 in respect of Costcutter, 442 – 444 Birchfield Road, Perry Barr, Birmingham, B20 3JG. An objection notice to this application has been received from West Midlands Police.

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:

An application to transfer a premises licence was received from Ashiq Hussain on 26th November 2020 in respect of Costcutter, 442 – 444 Birchfield Road, Perry Barr, Birmingham, B20 3JG.

Consent to transfer the licence was received from Waqas Asam.

As the application sought to have immediate effect since the time of the application, Ashiq Hussain has been responsible for the provision of licensable activities at the premises, pending the determination of the transfer application by this Sub Committee.

In line with statutory requirements the application was served on West Midlands Police who have subsequently given an objection notice to the transfer application on the basis that the exceptional circumstances of the case are such that granting the application would undermine the crime prevention objective under the Licensing Act 2003.

Ashiq Hussain's transfer application is attached, see Appendix 1.

West Midlands Police Notice of objection is attached at Appendix 2.

The current Premises Licence is attached at Appendix 3.

Site location plans are attached at Appendix 4.

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.

When holding a hearing to consider an objection notice under s44 (5) a licensing authority is confined to consideration of the crime prevention objective in the Licensing Act 2003. Members must therefore only consider matters that relate to the crime prevention objective.

6. List of background documents:

Transfer Application form, Appendix 1
West Midlands Police Objection, Appendix 2
Current Premises Licence, Appendix 3
Site location Plans, Appendix 4

7. Options available

To Grant the transfer application.
To Reject the transfer application.

Application to transfer premises licence to be granted under the Licensing Act 2003

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 this 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. You may wish to keep a copy of the completed form for your records.

I/We **Ashiq Hussain**

(Insert name of applicant)

apply to transfer the premises licence described below under section 42 of the Licensing Act 2003 for the premises described in Part 1 below

Premises licence number

3232

Part 1 – Premises details

Postal address of premises or, if none, ordnance survey map reference or description

Costcutter
442-444 Birchfield Road,
Perry Barr, Birmingham, B20 3JG

Post town

Post code

Telephone number at premises (if any)

Please give a brief description of the premises (see note 1)

Convenience Store & Off Licence

Name of current premises licence holder

Waqas Asam

Part 2 – Applicant details

In what capacity are you applying for the premises licence to be transferred to you?

a) an individual or individuals*

Please tick ☒ yes☒ please complete section (A)

b) a person other than an individual *

i. as a limited company

☐ please complete section (B)

ii. as a partnership

☐ please complete section (B)

iii. as an unincorporated association or

☐ please complete section (B)

- iv. other (for example a statutory corporation) ☐ please complete section (B)
- c) a recognised club ☐ please complete section (B)
- d) a charity ☐ please complete section (B)
- e) the proprietor of an educational establishment ☐ please complete section (B)
- f) a health service body ☐ please complete section (B)
- g) an individual who is registered under Part 2 of the Care Standards Act 2000 (c14) in respect of an independent hospital in Wales ☐ please complete section (B)
- ga) a person who is registered under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (within the meaning of that Part) in respect of an independent hospital in England ☐ please complete section (B)
- h) the chief officer of police of a police force in England and Wales ☐ please complete section (B)

*If you are applying as a person described in (a) or (b) please confirm:

Please tick ☒ yes

- I am carrying on or proposing to carry on a business which involves the use of the premises for licensable activities; or ☒
- I am making the application pursuant to a
 - statutory function or ☐
 - a function discharged by virtue of Her Majesty's prerogative ☐

(A) INDIVIDUAL APPLICANTS (fill in as applicable)

Mr ☒ Mrs ☐ Miss ☐ Ms ☐ Other title (for example, Rev)

Surname
Hussain

First names
Ashiq

Date of birth
Nationality
Current residential address if different from premises

I am 18 years old ☒ Please tick ☒ yes

address

Post town

Post code

Daytime contact telephone number

E-mail address
(optional)

SECOND INDIVIDUAL APPLICANT (fill in as applicable)

Mr ☐

Mrs ☐

Miss ☐

Ms ☐

Other title

(for example, Rev)

Surname

First names

Date of birth

I am 18 years old or over

Please tick ☒ yes

☐

Nationality

Current
residential
address if
different from
premises
address

Post town

Post code

Daytime contact telephone number

E-mail address
(optional)

(B) OTHER APPLICANTS

Please provide name and registered address of applicant in full. Where appropriate please give any registered number. In the case of a partnership or other joint venture (other than a body corporate), please give the name and address of each party concerned.

Name
Address
Registered number (where applicable)
Description of applicant (for example partnership, company, unincorporated association etc.)
Telephone number (if any)
E-mail address (optional)

Part 3

Please tick ☒ yes

Are you the holder of the premises licence under an interim authority notice? ☐

Do you wish the transfer to have immediate effect? ☒

If not when would you like the transfer to take effect?

Day	Month	Year

Please tick ☒ yes

I have enclosed the consent form signed by the existing premises licence holder ☐

If you have not enclosed the consent form referred to above please give the reasons why not. What steps have you taken to try and obtain the consent?

Please tick ☒ yes

If this application is granted I would be in a position to use the premises during the application period for the licensable activity or activities authorised by the licence (see section 43 of the Licensing Act 2003) ☒

Please tick ☒ yes

I have enclosed the premises licence ☒

If you have not enclosed premises licence referred to above please give the reasons why not.
License is lost

- I have made or enclosed payment of the fee ☒
- I have enclosed the consent form signed by the existing premises licence holder or my statement as to why it is not enclosed ☐
- I have enclosed the premises licence or relevant part of it or explanation ☒
- I have sent a copy of this application to the chief officer of police today ☒
- I have sent a copy of this form to Home Office Immigration Enforcement today ☒

IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.

IT IS AN OFFENCE UNDER SECTION 24B OF THE IMMIGRATION ACT 1971 FOR A PERSON TO WORK WHEN THEY KNOW, OR HAVE REASONABLE CAUSE TO BELIEVE, THAT THEY ARE DISQUALIFIED FROM DOING SO BY REASON OF THEIR IMMIGRATION STATUS. THOSE WHO EMPLOY AN ADULT WITHOUT LEAVE OR WHO IS SUBJECT TO CONDITIONS AS TO EMPLOYMENT WILL BE LIABLE TO A CIVIL PENALTY UNDER SECTION 15 OF THE IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND, PURSUANT TO SECTION 21 OF THE SAME ACT, WILL BE COMMITTING AN OFFENCE WHERE THEY DO SO IN THE KNOWLEDGE, OR WITH REASONABLE CAUSE TO BELIEVE, THAT THE EMPLOYEE IS DISQUALIFIED.

I understand I am not entitled to be issued with a licence if I do not have the entitlement to live and work in the UK (or if I am subject to a condition preventing me from doing work relating to the carrying on of a licensable activity) and that my licence will become invalid if I cease to be entitled to live and work in the UK (please read guidance note 2)

Part 4 – Signatures (please read guidance note 3)

Signature of applicant or applicant's solicitor or other duly authorised agent (See guidance note 4). If signing on behalf of the applicant please state in what capacity.

Signature

Date 24/11/20

Capacity Agent for the Applicant

For joint applicants signature of second applicant, second applicant's solicitor or other authorised agent (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature

Date

Capacity

Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6) PMB LICENSING	
Post town	Post Code
Telephone number (if any)	
If you would prefer us to correspond with you by e-mail your e-mail address (optional)	

Notes for Guidance

1. Describe the premises. For example the type of premises it is, its general situation and layout and any other information which would be relevant to the licensing objectives.
2. **Right to work/immigration status for individual applicants and applications from partnerships which are not limited liability partnerships:**

A licence may not be held by an individual or an individual in a partnership which is not a limited liability partnership who:

- does not have the right to live and work in the UK; or
- is subject to a condition preventing him or her from doing work relating to the

Consent of premises licence holder to transfer

I/we Waqas Asam

[full name of premises licence holder(s)]

the premises licence holder of premises licence number 3232

[insert premises licence number]

relating to

Costcutter

442-444 Birchfield Road,

Perry Barr, Birmingham, B20 3JG

[name and address of premises to which the application relates]

hereby give my consent for the transfer of premises licence number

3232

[insert premises licence number]

to

Ashiq Hussain

[full name of transferee]

signed

name

(please print)

Waqas Asam

dated

18/11/20

From: bw licensing
Sent: 10 December 2020 13:49
To: Licensing Online
Subject: RE: [External]: RE - Trans/DPS APPn - COSTCUTTER - 424 -444 Birchfield Road Perry Barr
Birmingham B20 3JG LIC/NO - 3232

Licensing,

West Midlands Police object to this transfer.

The premises is subject to enforcement action following a warrant executed at the premises.

The proposed licence holder already has ties to this premises. This means there will not be a new operator at the premises and practices which have occurred here may continue.

It is believed that the crime and disorder licensing objective would be undermined if this transfer proceeds, therefore, WMP object to this transfer.

Regards

Ben

2413 PC Ben Reader

Birmingham Central Licensing Team

Force Public Order & Public Safety Tactical Advisor

LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

3232 / 5

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description Costcutter 442-444 Birchfield Road Perry Barr	
Post town: Birmingham	Post Code: B20 3JG
Telephone Number:	

Where the licence is time limited the dates N/A

Licensable activities authorised by the licence M2 Sale of alcohol by retail (off the premises)
--

The times the licence authorises the carrying out of licensable activities Monday - Sunday 00:00 - 23:59 All
--

The opening hours of the premises Monday - Sunday 00:00 - 23:59
--

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

Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Mr Waqas Asam	
Post town:	Post Code:
Telephone Number: Not Specified	
Email Not Specified	

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

Name, address, telephone number of designated premises supervisor where the premises licence authorises for the supply of alcohol Mr Waqas Asam	
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 10896	Issuing Authority BIRMINGHAM CITY COUNCIL

Dated 03/08/2020

SHAID YASSER
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

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

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

The 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.

(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.

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

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

Conditions as stated below under the appropriate licensing objective.

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

The licence holder shall install and maintain internal and external CCTV, recordings of which are to be retained for thirty one days.

There will be external frontage roller shutters and the premises will be fully alarmed.

The licence holder shall ensure that any staff involved in the sale of alcohol are fully aware of their responsibilities under the Licensing Act 2003.

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

The licence holder shall ensure the premises will have fully maintained fire fighting equipment on site with a maintenance contract along with emergency lighting and smoke detectors.

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

Internal and particularly external CCTV will act as a deterrent in the terms of any anti - social activities regarding the outlet's frontage and the immediate vicinity of the premises.

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

The licence holder shall ensure the layout of the shop will give consideration to the prevention of children accessing alcohol and any alcohol displayed will not be obstructed from the view of the sales assistants.

The premises will operate a proof of age scheme via acceptable forms of identification and incorporate 'The Challenge 21' system.

The licence holder shall ensure a sales refusal book will be fully maintained at the premises at all times.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

The following conditions have been imposed by Licensing Sub Committee B on Tuesday 23rd January 2018, following a review of the premises:

Following the period of suspension, the training arrangements are to be reviewed at monthly intervals and refresher training arranged as and when required

A comprehensive Training Programme must be implemented, and completed by all staff during the three-month period of suspension

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

3c) Committee conditions to promote public safety

N/A

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

N/A

All those employees of the premises who handle the sale of alcohol products to customers at the till must be Personal Licence Holders

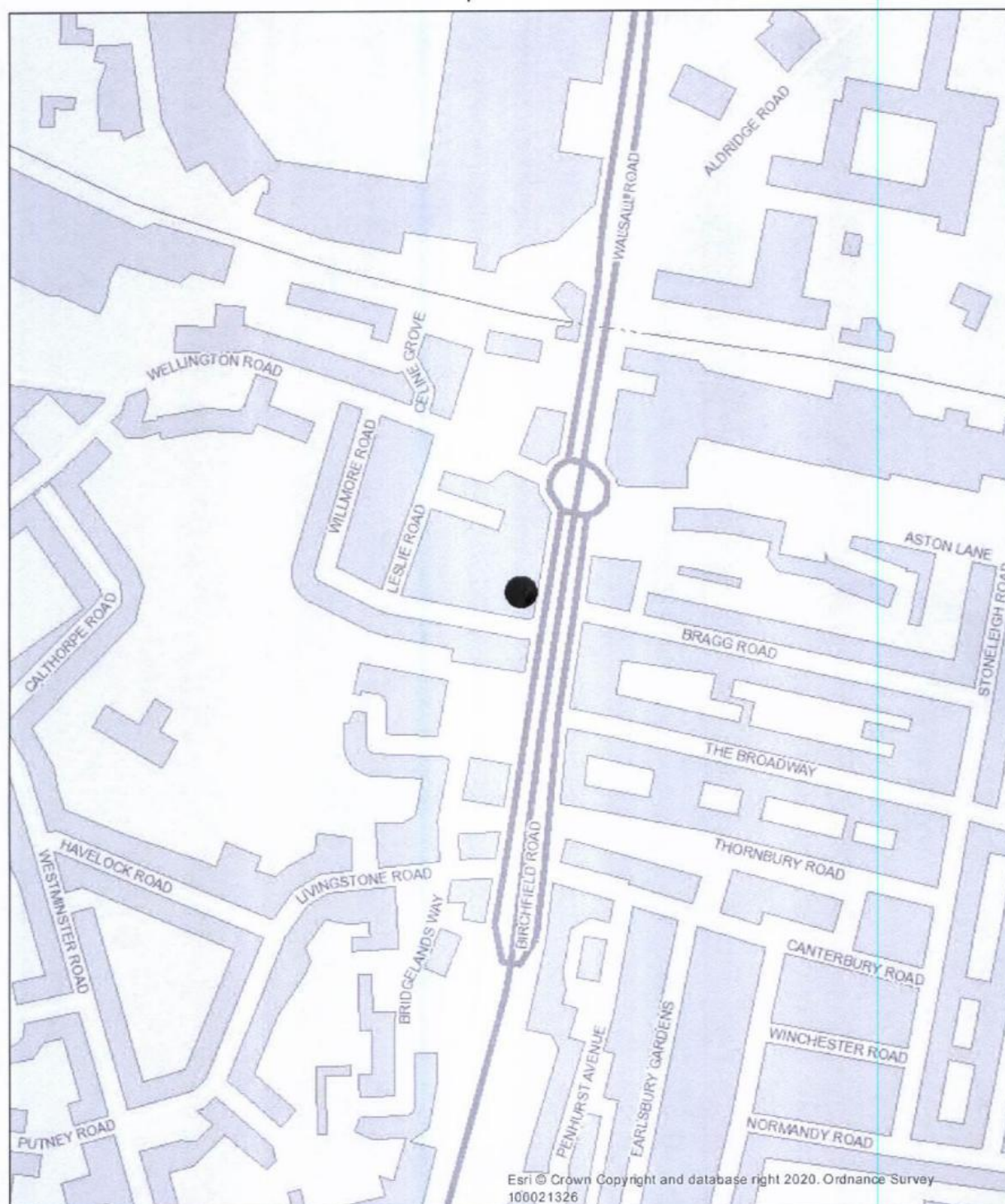
3e) Committee conditions to promote the protection of children from harm

A Challenge 25 procedure must be adopted and implemented

The arrangements regarding the Refusals Log must be comprehensively reviewed during the three-month suspension period; after the three-month suspension period the arrangements must be checked at regular intervals to ensure that the refusals system is working properly

Annex 4 – Plans

The plan of the premises with reference number **115821-3232/5** 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.



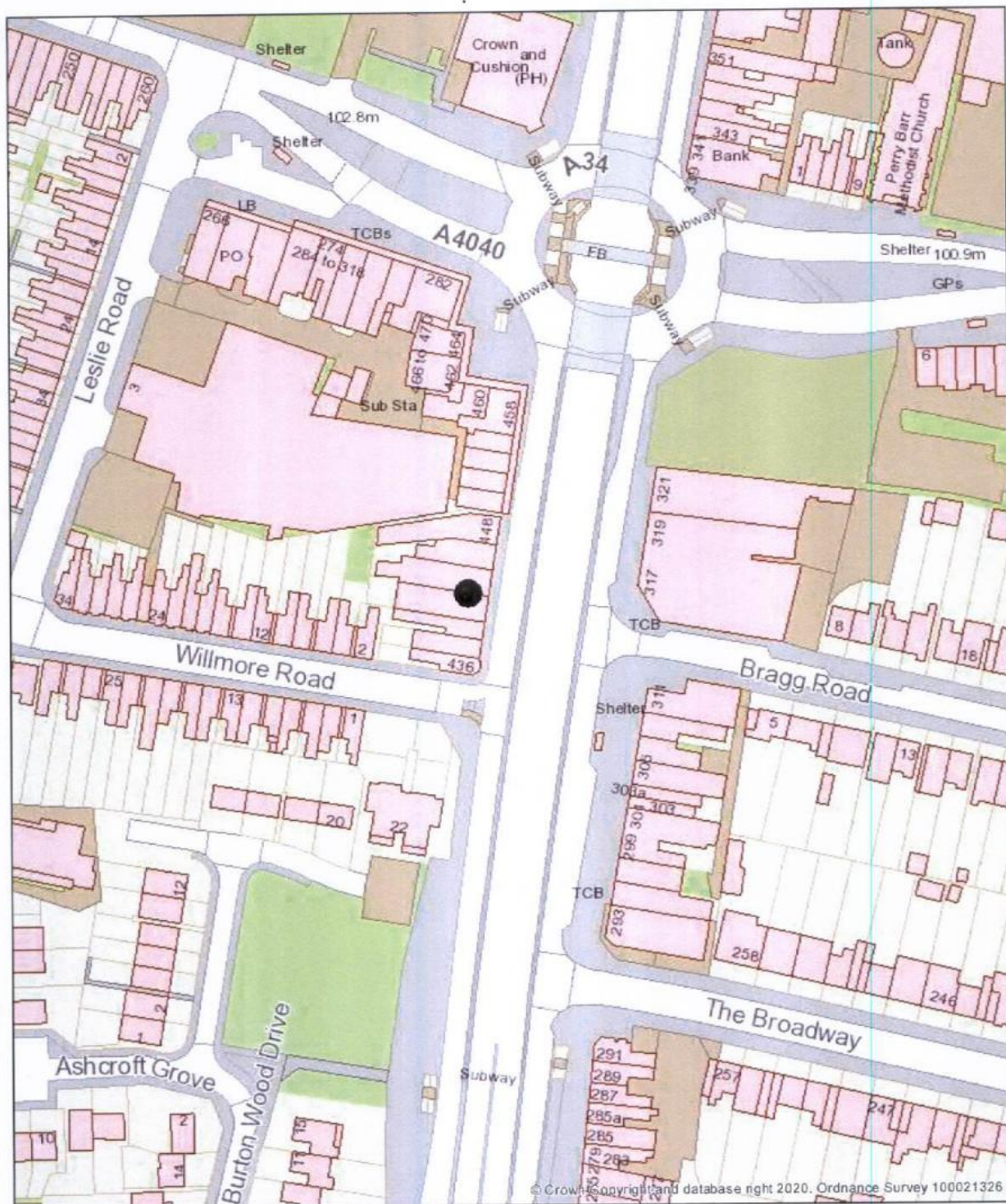
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Birmingham
City Council

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Scale: 1:1,250



WITNESS STATEMENT

Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

Crime No. URN

Statement of Ben Reader

Age if under 18 Over 18 (if over 18 insert "over 18")

Occupation Police Constable 2413

This statement (consisting of 1 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false, or do not believe to be true.

Signature: (witness)

Date 06/01/2021

Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

I am PC 2413 Reader a specialist licensing officer based at Lloyd House, Police Headquarters, Birmingham.

This statement relates to the licence transfer for 442 – 444 Birchfield Road, Perry Barr.

WMP have objected to this transfer.

WMP have had ongoing crime and disorder issues linked to this location, this led to an ASB closure notice being applied for. The evidence for this is covered in significant detail in a statement by PC 9255 Ali Wood, a local neighbourhood officer.

The new licence holder needs to ensure that such incidents no longer occur and that the licensing objectives are promoted. In order to do this, there needs to be evidence of new ownership and not just a paper exercise to make it appear ownership has changed.

To date, WMP have not seen any evidence of new ownership such as lease agreements, utility changes or contract of sale.

WMP object to Mr Nazbit ALI being the DPS, as Mr ALI is linked to the old operators as he has been the DPS there before and was listed as a joint director of SAFF UK Ltd and Banff Retail Ltd, both of which are linked to Costcutter ownership as evidenced in PC Woods statement.

WMP understand that Ashiq HUSSAIN is making an application for a personal licence which has not yet been granted.

Signature

Signature witnessed by

03/2016

OFFICIAL – (when complete)

