



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE - A

THURSDAY 1 OCTOBER 2020

**LA REFERENCE (PETITE AFRIQUE), 160 HOCKLEY HILL,
BIRMINGHAM B19 1DG**

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 Rodrigue Kouamo Tankeu in respect of La Reference (Petite Afrique), 160 Hockley Hill, Birmingham B19 1DG, 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 Rodrigue Kouamo Tankeu 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. In recent weeks 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.

Members heard the submissions of West Midlands Police, namely that from 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, the approach taken by West Midlands Police was to advise and offer guidance to licence holders and designated premises supervisors to assist them in following the new requirements.

However, this approach had not seemed to be working in terms of La Reference (Petite Afrique). Despite conducting numerous visits since the 4th July 2020, to explain the restrictions, Police had observed a general failure by the La Reference (Petite Afrique) premises to follow the Government Guidance. There were 5 visits in total from West Midlands Police - including three visits from the licensing Sergeant in August 2020.

Upon visiting the premises on the 4th September 2020, Police found that loud music was playing at a volume which made conversation difficult. The licence holder, who is also the designated premises supervisor, was unable to confirm whether a noise limiter (required as a condition of the licence) was in operation. He claimed that the music levels were simply "being tested" and would not usually be played at that volume.

On the 26th September the Police attended again, at 22.25 hours, only to discover that La Reference (Petite Afrique) was trading, in direct defiance of the order from HM Government that all premises serving food and drink must close by 22.00 hours. Around 40 people were found inside the premises, many of whom left hurriedly upon seeing Police arrive. Masks were not being worn by customers, and social distancing was not being observed.

The explanation given by the premises licence holder was that he had been trying to get customers to leave from 21.45 hours onwards, but the customers "would not listen to him, and did not want to go". This explanation was not accepted by the Police Officers once they examined the CCTV footage, which showed Mr Tankeu serving behind the bar shortly before 22.00 hours, not trying to get customers to leave. CCTV also showed that there was no table service in operation and customers were sitting at the bar drinking. Social distancing rules were not being observed, and even some bar staff were not wearing masks.

The Police ascribed these failures to unsatisfactory management by the premises licence holder. The Police explained that the licence holder's 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 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.

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 succeeded. Police had requested that the premises supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; the document supplied had been generic and the licence holder had stated that the document would be reviewed and updated on a weekly basis. All in all the Police had concluded that the licence holder was either unable or unwilling to comply with the Government Guidance; accordingly they had no confidence in him to trade safely. The recommendation of the Police was therefore that the Sub-Committee should suspend the licence pending the review hearing.

The licence holder did not attend the meeting and did not send a representative. The Sub-Committee agreed with the Police that the licence holder had 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.