

BIRMINGHAM CITY COUNCIL

PUBLIC REPORT

Report to:	Licensing Sub Committee C
Report of:	Interim Assistant Director of Regulation and Enforcement
Date of Meeting:	Wednesday 11th November 2020
Subject:	Licensing Act 2003 Premises Licence – Summary Review
Premises:	Dahlak Lounge, Hampton Street, Birmingham, B19 3LS
Ward affected:	Newtown
Contact Officer:	David Kennedy, Principal Licensing Officer, licensing@birmingham.gov.uk

1. Purpose of report:

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

2. Recommendation:

To consider the review and to determine this matter.

3. Brief Summary of Report:

An application under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006) was received on 14th October 2020 in respect of Dahlak Lounge, Hampton Street, Birmingham, B19 3LS.

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

4. Compliance Issues:

4.1 Consistency with relevant Council Policies, Plans or Strategies:

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

5. Relevant background/chronology of key events:

On 14th October 2020, Superintendent Churchill, on behalf of West Midlands Police, applied for a review, under Section 53A of the Licensing Act 2003 (as amended by the Violent Crime Reduction Act 2006), of the Premises Licence granted to Biniam Yemane Mebrahtu in respect of Dahlak Lounge, Hampton Street, Birmingham, B19 3LS.

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

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

Licensing Sub-Committee A met on 15th October 2020 to consider whether to take any interim steps and resolved that the Designated Premises Supervisor be removed and that the Premises Licence be suspended pending a review of the Licence. A copy of the decision is attached at Appendix 2.

The review application was advertised, by the Licensing Authority in accordance with the regulations; the closing date for responsible authorities and other persons ended on the 29th October 2020.

A representation has been received from Environmental Health, as a responsible authority. See Appendix 3.

A copy of the current Premises Licence is attached at Appendix 4.

Site location plans at Appendix 5.

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

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

6. List of background documents:

Review Application and Certificate from West Midlands Police, Appendix 1
Sub-Committee Interim Steps Meeting decision of 15th October 2020, Appendix 2
Copy of representation from Environmental Health, Appendix 3
Current Premises Licence, Appendix 4
Site location plans, Appendix 5

7. Options available:

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

In addition the Sub Committee will need to decide what action, if any, should be taken regarding the interim steps imposed on the 15th October 2020.



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

I - Superintendent 9919 Chruchill

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

1. Premises details: **Dahlak Lounge**

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

Hampton Street

Post Town: **Birmingham**

Post Code (if known): **B19 3LS**

2. Premises Licence details:

Name of premise licence holder (if known):

Mr Biniam Mebrahtu

Number of premise licence (if known):

5185

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

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

(Please tick the box to confirm)



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

This year has seen a pandemic disease, covid 19 infect vast numbers of people in the World, with the UK not being immune to its effects.

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

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

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

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

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

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

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

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

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

The premises came to the attention of the Police in the early hours 16th August 2020 when officers (including PC Reader) dealing with another incident heard loud music whilst in the street. Officers traced the music to the Dahlak Lounge.

As officers entered the premises they state that the music was very loud, people standing and a complete lack of social distancing. They also state the premises was packed and appeared overfull.

At the time the premises licence holder was spoken too, it was explained to him what measures he needed to put in place and what was expected from him to trade in a covid safe manner.

A meeting was then arranged on 26th August with officers from West Midlands Licensing Team (including PC Reader) and the premises licence holder.

Prior to this meeting, on 25th August the premises licence holder was emailed (by PC Reader) with detailed information of how a licenced premises should operate to be covid safe, what should be included in their covid safe risk assessment and links to the government website for covid safe guidance in pubs and bars.

Several representatives from the premises attended the meeting including the premises licence holder. At this meeting officers again spent a significant amount of time talking through what should be contained in a covid safe risk assessment and clarifying any points that the premises did not understand.

A lot of time was spent on explaining the social distancing rule and the 2 metre distance or 1 metre with mitigation between different groups of customers.

At this meeting the premises were asked for a copy of their fire risk assessment. In this document it clearly stated that the capacity of the venue was 60 persons upstairs and 60 persons downstairs. (When officers visited on 16th August they will state that there was clearly a lot more people in the premises than what was legally allowed by the premises own fire risk assessment.)

PC Reader asked the premises licence holder about the number of people on 16th August and Mr Mebrahtu was completely unaware of his legal capacity until it was pointed out to him. Officers left the meeting asking the premises to send, by email a copy of the premises updated covid safe risk assessment.

The premises sent a copy of the risk assessment on 3rd September. In this email the premises licence holder stated 'all the risk assessments are done and the venue is complying with all fire and risk regulations'

On Saturday 10th October officers again were at the premises at approximately 21.10hrs. This was as a result of a member of the public contacting West Midlands Police concerned that there was a large number of cars parked on the car park and loud music could be heard.

Officers attended the location and from the outside the premises looked closed with shutters down.

Loud music could be quite clearly heard from within the building as officers were in the car park walking towards the building. Officers noted 'countless cars' in the car park and around 20 people milling around. This led officers to believe that there were people inside albeit the premise looked locked and closed.

Officers tried to gain entry to the premises but all the doors were locked and shutters down. Officers could hear people inside. As officers waited outside the premises they saw someone looking out of an upstairs window and then the volume of the music was turn down.

A door to the premises was eventually opened from the inside by a male who appeared to be door staff.

Inside the premises on the ground floor officers describe there being approximately 150 people downstairs.

Seating on the ground floor was bench style or sofa type seating with no social distancing between different groups and no mitigation.

Officers state once inside the premises and on entering the ground floor they saw a DJ booth with 3 men stood behind it, no social distancing and no masks being worn.

Officers observed a number of people walking round inside the premises inside the premises again with no face covering.

Officers describe person after person sat in a large row with no social distancing measures.

Officers noted that customers were smoking shisha pipes within the premises and could see the coals glowing.

Officers state that a group of more than 6 people were sat within a booth style seating area clearly breaching covid regulations.

Officers then saw what they believe was a member of staff pulling two men out of a booth area telling them 'there is too many, get out' Officers also heard other voices from within the premises saying 'move, move, you've got to move'

A vast difference in the style of operation than the premises claimed in their email on 3rd September 'the venue is complying with all fire and risk regulations'

The premises state at the time of the officers visited they had 152 people inside the whole of the premises including the first floor.

The premises was selling shisha which by its nature increases the risk of a fire in the premises, in a venue that had limited if any means of escape and therefore making it vastly over capacity with the amount of available fire exits.

Ventilation is a key element to compliance with the Health Act 2006 and smoking of shisha, this was not being achieved with the shutters being closed shut.

The venue has been contacted in order their CCTV can be viewed and downloaded and also so that current copies of their risk assessment can be obtained.

Officers arranged a meeting at premises with the licence holder on 13th October to collect the CCTV and view the premises fire risk assessment and covid risk assessment.

The premise was closed and appeared set up as it was on the night that officers found it open, from what can be seen on officers body worn cameras. The premises also indicated the numbers allowed in each area, which again led officers to believe the set up was as it would be normally.

The premises state that the CCTV cannot be downloaded onto memory stick to DVD as there is no facility on the hard drive. The premises were saving the footage on to a mobile phone and were then going to email the clips over.

The premises were informed that the clips would probably too large to email and at the time of writing no emails have been received.

It was noted by officers at the meeting that the seating within in the premises was not 2 metres apart. The widest gap between seating was actually only 1.17 metres with the majority of seating closer together than that, some with no gaps what so ever.

The rules are clear that to go below 2m there must be a level of mitigation in place, which describes the use of screens; there was no evidence of this in place.

Officers saw that sofas / benches had been placed in what should have been the sterile fire route area for access to the fire exit.

Officers noted that emergency lighting and signage was not covering the front fire exit. Also that fire exit signage to the exit at the rear of the premises only led to the premises smoking area which is completely enclosed offering no means of escape.

Officers have concerns regarding the front fire exit on the left of the building that the door appears to be smaller than a standard size fire exit door and also as you approach the door the flooring in conjunction with the ill-fitting door causes a trip hazard.

Both the premises fire risk assessment and covid safe risk assessment were viewed by officers.

It was noted that the capacity figures had changed in the fire risk assessment from the meeting on 26th August. The capacity now stated 160 persons on the ground floor and 60 persons on the first floor. The premises stated this was due to the installation of a new fire exit door at the front of the building, (The exit previously mentioned which was blocked and a trip hazard.)

The fire risk assessment was still dated July 2020, the same date that officers saw on it when they visited in August 26th (where it indicated 60 people), it had not been re-dated or signed to show the new capacity figure

Officers have concerns with the premises fire compliance and question about the capacity figure quoted within the fire risk assessment and are referring them to fire safety.

The premises covid safe risk assessment was nothing more than a 'tick box' sheet which in the opinion of officers is not fit for purpose and did not have any detail around the management and enforcement of a safe environment. This was borne out by the lack of understanding of the premises on the 2 metre distancing rule.

The premises tried to defend their lack of covid safe trading and poor risk assessment by saying it was sent to West Midlands Police Licensing Team and that they should have told them at the time.

It was pointed out to the premises that due to workload it is impossible to look at all the risk assessments sent and that it was not the responsibility of West Midlands Police to manage their business and that we had previously spent a lot of time speaking to them face to face where they had the opportunity to ask about anything they didn't understand or was not sure about.

West Midlands Police have engaged with the premises and educated the premises licence holder with regard to his responsibility within the covid regulations with little current success putting, customers and the wider public at risk of infection.

The covid infection rate in Birmingham continues to rise, as well as the West Midlands region. As of the 12th October Birmingham has been categorised as Tier 2 on the threat pyramid which is High Level.

It has been widely reported that the hospital admission rate is raising for covid patients and that as of 13th October 2020 there were more people in hospital with the virus than before the lockdown was announced in March.

It is crucial that hospitality trade act in a responsible manner, complying with the rules set down by the government, to curb the spread of this virus.

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

The case quotes "a person is guilty of a public nuisance (also known as a common nuisance) who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to **endanger the life, health, property, morals**

or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects" (Rimmington at [3]).

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

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

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

Signature of applicant: [REDACTED]

Date: 14/10/20

Rank/Capacity: T/Supt Catherine

Contact details for matters concerning this application: BW Licensing

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

Notes for guidance:

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

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

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

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

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

West Midlands Police

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

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

Premises: Dahlak Lounge

Premise Licence Number: 5185

Premise Licence Holder: Mr Biniam Mebrahtu

Designated Premise Supervisor: Mr Biniam Mebrahtu

I am a Superintendent in West Midlands Police.

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

The actions of the premise took in deciding not to follow covid safe trading and social distancing has placed an unnecessary risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. This is causing a public nuisance.

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

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

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

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

Signed



TISUPT Cthreathu



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE A

THURSDAY 15 OCTOBER 2020

DAHLAK LOUNGE, HAMPTON STREET, BIRMINGHAM B19 3LS

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.

From: Martin Key
Sent: 29 October 2020 08:59
To: David Kennedy; Licensing
Cc: Pollution Team
Subject: RE: Licensing Act 2003 - Section 53A Expedited Review Application - Dahlak Lounge, Hampton Street, Birmingham, B19 3LS
Importance: High

Hi

I am responding on behalf of the Environmental Health team as a responsible authority. I am aware that on 14 October 2020 West Midlands Police lodged an application for the expedited review of the premises licence granted to Mr Biniam Mebrahtu in respect of Dahlak Lounge, Hampton Street, Birmingham, B19 3LS under Section 53A of the Licensing Act 2003. The application alleges that the licensed premises have been associated with serious crime and disorder.

West Midlands Police have submitted evidence that on 16th August 2020, West Midlands Police observed a general failure by the Dahlak Lounge premises to follow the necessary controls to maintain a COVID-secure premises. 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 the music was very loud and there was no social distancing or limitation of numbers of patrons as per the Covid-19 requirements. Police described the premises as packed and overfull. Under the fire risk assessment, the capacity limit was 120 patrons - 60 on the ground floor and 60 on the first floor. The Police estimated far more than these numbers were inside and loud music was playing, making normal conversation impossible, and therefore requiring raised voices. The Police offered advice and help to the licence holder via email and also held a meeting with him on 26th August and spent a lot of time explaining the social distancing requirements. Mr Mebrahtu was not aware that his premises had any capacity limit for numbers of patrons. Police also requested that he supply the Covid-19 risk assessment.

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 and heard very loud music emanating from Dahlak Lounge, at a volume which could be heard in the street – despite the premises appearing to be closed with shutters pulled down and locked. When the Police entered they found around 150 people 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 with inadequate social distancing. Masks were not being worn by many customers, (and some staff) and patrons were smoking shisha with poor ventilation.

Police observed that sofas and benches had been placed in the fire escape route and that the rear fire exit only led to the outdoor smoking area which is an entirely enclosed area, with no means of escape beyond that. The shutters had also been pulled down and locked. This was all unacceptable in terms of fire safety and was made more serious by the fact that many patrons inside were smoking shisha, which by its nature increases the risk of fire and there was inadequate ventilation arrangements which are key to compliance with the Health Act 2006 when smoking shisha.

The Police noted that the fire assessment capacity had changed to 220 in total for both floors, even though it was dated July 2020 and appeared to be the same as the previously supplied assessment with a capacity of 120.

The Covid risk assessment produced by the licence holder was also found to be wholly unsatisfactory. It was described by Police as a tick-box sheet and had no details of the measures to manage a COVID-secure premises. I have reviewed the risk assessment and it is guidance on what needs to be included in a COVID risk assessment rather than an assessment with risk evaluation, mitigation and the controls put in place to provide a COVID-secure premises.

The Police were therefore concerned that the actions of the premises licence holder were contributing to the spread of the virus and were ignoring rules set to reduce the spread placing customers and staff at risk.

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

The premises are subject to Premises Licence reference 5185/1 issued on 12 March 2020. This licence includes a number of conditions including in 2a) a requirement for training on the four licensing principles and also a requirement for a risk assessment and in 2d) to monitor levels of noise from both inside and outside the premises and remedial action will be taken as appropriate. I dealt with the original application for the premises licence and submitted no objections on the basis that the application referred to background music which would be inaudible outside the premises.

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

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

The Environmental Health team therefore submit this representation in support of the West Midlands Police application for the expedited review of the premises licence granted to Mr Biniam Mebrahtu in respect of Dahlak Lounge, Hampton Street, Birmingham, B19 3LS under Section 53A of the Licensing Act 2003.

Best Regards

Martin Key
Environmental Protection Officer

Environmental Health | Regulation & Enforcement Division

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LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

5185 / 1

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description Dahlak Lounge Hampton Street	
Post town: Birmingham	Post Code: B19 3LS
Telephone Number: Not Specified	

Where the licence is time limited the dates N/A

Licensable activities authorised by the licence	
F	Recorded music
L	Late night refreshment
M1	Sale of alcohol by retail (on the premises)

The times the licence authorises the carrying out of licensable activities				
Sunday - Thursday	16:00	-	02:00	F ,M1
	23:00	-	02:00	L
Friday - Saturday	16:00	-	04:00	F ,M1
	23:00	-	02:00	L

The opening hours of the premises				
Sunday - Thursday	16:00	-	02:30	
Friday - Saturday	16:00	-	04:30	

Where the licence authorises supplies of alcohol whether these are on and/or off supplies On Supplies Only
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Part 2

Name, (registered) address, telephone number and email (where relevant) of holder of premises licence Mr Biniam Yemane Mebrahtu	
Post town:	Post Code:
Telephone Number: Not Specified	
Email N/A	

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 Biniam Yemane Mebrahtu	
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 11701	Issuing Authority BIRMINGHAM CITY COUNCIL

Dated 12/03/2020

Bhapinder Nandhra
Senior Licensing Officer
For Director of Regulation and Enforcement

Annex 1 – Mandatory Conditions

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

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

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

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

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

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

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

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

Annex 2 – Conditions consistent with operating schedule

2a) General conditions consistent with the operating schedule

All members of staff must receive training regarding the:-

- Four licensing principles contained in the Licensing Act 2003
- Responsible retailing of alcohol, and the law
- Protection of children from harm and this must include how to competently check customers identification where necessary
- Authorised hours for licensable activities and the conditions attached to the premises licence.

All training provided to staff will be recorded and each member of staff will sign and date the training records to confirm they have received and understood the training and on-going refresher training every six months.

The staff training records will be maintained at the premises and made available to any Responsible Authority upon request.

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

The Premises Licence holder shall ensure CCTV is installed inside and outside the premises. CCTV will be recording at all times the premises are open for any licensable activities and images will be held for a minimum of 28 days and made available immediately on request by any of the Responsible Authorities. The Premises Licence holder shall ensure that a trained member of staff will be on duty and be available to download the CCTV to any of the Responsible Authorities.

The Premises Licence holder shall ensure any person who appears drunk/aggressive will not be permitted on the premises.

An incident register/book will be kept at the premises and be made available to an authorised Officer of a Responsible Authority on request.

All alcohol sale refusals will be noted in a refusal register, which will be maintained at the premises and must be available for inspection by any of the responsible authorities.

The premises shall risk assess its standard operating procedure covering seven days a week, and any security provisions shall be included in this risk assessment, a copy of which shall be made available to WMP Licensing Department.

Door supervisors must sign on and off duty every time they work. The signing sheet shall include badge numbers and the sheet shall be retained on the premises for a minimum of 30 days.

If the venue wishes to hold an under 18 event, then the venue must provide WMP Licensing Department with 28 days notice, together with a risk assessment. West Midlands Police shall have a power of veto over any under 18 event.

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

No enforceable conditions identified from operating schedule.

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

The Premises Licence holder shall ensure all deliveries will be received during daytime prior to 6pm to control noise nuisance. In conjunction with steps proposed for the prevention of crime and disorder objectives, the Licensees and staff will at all times remain responsible for the prevention of public nuisance in and around the premises.

The Designated Premises Supervisor will arrange to monitor levels of noise from both inside and outside the premises and remedial action will be taken as appropriate. Any action taken will be recorded and made available to responsible authorities.

Doors and windows will be kept closed as deemed necessary by the Designated Premises Supervisor.

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

The Designated Premises Supervisor and staff will at all times remain aware of their responsibilities under the objective, including that alcohol shall not be sold to anyone under the age of 18.

Staff on duty will be trained and made aware of a Challenge 25 policy and the requirements and the need to demand an acceptable form of age ID.

Training records will be maintained and updated by DPS every 6 months.

No adult entertainment is permitted at these premises.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

N/A

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

N/A

3c) Committee conditions to promote public safety

N/A

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

N/A

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

N/A





