

BIRMINGHAM CITY COUNCIL

LICENSING SUB-COMMITTEE A

MONDAY, 26 OCTOBER 2020 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 - 132

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

Report of the Interim Assistant Director of Regulation and Enforcement.
N.B. Application scheduled to be heard at 10:00am.

5 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

PUBLIC REPORT

Report to:	Licensing Sub Committee A
Report of:	Interim Assistant Director of Regulation and Enforcement
Date of Meeting:	Monday 26th October 2020
Subject:	Licensing Act 2003 Premises Licence – Summary Review
Premises:	Petite Afrique (La Reference), 160 Hockley Hill, Birmingham, B19 1DG
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 30th September 2020 in respect of Petite Afrique (La Reference), 160 Hockley Hill, Birmingham, B19 1DG.

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

4. Compliance Issues:**4.1 Consistency with relevant Council Policies, Plans or Strategies:**

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

5. Relevant background/chronology of key events:

On 30th September 2020, Chief Superintendent Green, 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 Rodrigue Tankeu in respect of Petite Afrique (La Reference), 160 Hockley Hill, Birmingham, B19 1DG.

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

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

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

The Premises Licence Holder was notified of the interim steps taken by the Licensing Authority and subsequently made a representation at 23:22hours on 14th October 2020. See Appendix 3.

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

The review application was advertised, by the Licensing Authority in accordance with the regulations; the closing date for responsible authorities and other persons ended on the 15th October 2020.

A representation has been received from Public Health, as a responsible authority. See Appendix 5.

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

A representation has been received from Birmingham City Council Licensing Enforcement, as a responsible authority. See Appendix 7.

A copy of the current Premises Licence is attached at Appendix 8.

Site location plans at Appendix 9.

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

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

6. List of background documents:

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

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 1st October 2020 and subsequently maintained on the 16th October 2020.



PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST

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

I - Chief Superintendent 1218 Green

(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: Petite Afrique (La Reference)

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

**160 Hockley Hill
Birmingham
B19 1DG**

2. Premises Licence details:

Name of premise licence holder (if known):

Mr Rodrigue Tankeu

Number of premise licence (if known):

4155

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

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

(Please tick the box to confirm)



4. Details of association of the above premises with serious crime, serious disorder or both:

(Please read guidance note 2)

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

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

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

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

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

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

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

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

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

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

This has been widely publicised.

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

The police approach has been around the 4 E's principle, Engage, Explain, Encourage, Enforce.

Officers have visited Petite Afrique numerous times since the 4th July when venues reopened. The visits have been to engage with the venue and explain the restrictions and guidance in place.

Sgt Nick Giess, the licensing Sgt attended the venue and spoke with the licence holder (Rodrigue Tankau) at the end of August. Following this visit, the licence holder sent a very generic risk assessment to Sgt Giess. The licence holder stated that he planned to 'review and update it weekly'.

On the 4th September at approximately 22:55 hours, PC 2413 Reader attended the venue and spoke with Rodrigue Tankeu again. PC Reader noted that the music was very loud whilst customers were sat inside the premises. Rodrigue Tankeu told the officers that the music was just being tested and wasn't normally that loud. He was unable to state to the officer if he had a noise limiter in place, as per his licence conditions.

On the 26th September, PC 2413 Reader and PC 2853 Jevons were deployed on Op Reliant, a force wide operation to respond to suspected Covid guidance breaches. The officers drove past the location at around 22:20 and noticed a large number of vehicles outside. Officers noticed that the metal shutters were half way down covering the main doors.

Officers entered the premises at 22:25 and found approximately 40 people, including staff, inside the venue. Social distancing measures were not in place and the premises had failed to close at 22:00 as per the government measures. Customers were drinking at tables. Upon police attendance, customers quickly began to leave. These customers who left were not wearing facemasks as per guidelines.

Rodrigue Tankeu told officers he had been trying to get people to leave since 21:45, he stated they would not listen to him and didn't want to go. He also confirmed that his security staff had left at 22:00. If this was true, then he had no control of the venue.

Licensing officers have viewed the CCTV for the venue and have seen people at the bar being served just prior to 22:00. Rodrigue Tankeu is working behind the bar taking payments from people. This appears to contradict his account to officers that he had been trying to get people to leave. There appears to be no table service in operation and staff behind the bar are not all wearing face masks. Customers are sat at the bar drinking.

This venue is ignoring the guidance and hosting customers inside the premises post 22:00 with shutters half down.

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

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

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

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

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

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

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

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

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

Signature of applicant:

Date: 30-9-2020

Rank/Capacity: C/Supt 1218 GREEN, SW COMMAND.

Contact details for matters concerning this application: BW Licensing

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

Telephone Number(s): 0121 626 6099

E-mail - bw_licensing@west-midlands.police.uk

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: Petite Afrique (La Reference)

Premise Licence Number: 4155

Premise Licence Holder: Mr Rodrigue Tankeu

Designated Premise Supervisor: Mr Rodrigue Tankeu

I am a Chief 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.

This venue has been visited on a number of occasions when officers have attempted to engage and explain the updated guidance. Officers have not been confident that measures are being followed or that licensing conditions are being complied with.

On Saturday 26th September this premises operated without properly implementing social distancing guidance. The venue still had numerous customers present at 22:25 hours when the well-publicised time for licensed premises to close is 22:00. This has caused 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 circumstances 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



C/Supt 1218 ECTW



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.

From: Carl Moore
Sent: 14 October 2020 23:22
To: David Kennedy; Licensing; Bhapinder Nandhra
Cc: Jake Brooke
Subject: Appeal Notice for Interim Steps for PETITE AFRIQUE BAR & RESTAURANT (La Reference)

Dear David,

Re: PETITE AFRIQUE Bar & Restaurant (formerly known as LA Reference), 160 Hockley Hill, Birmingham, B19 1DG

I now act on behalf of **Mr Rodrigue Kouamo Tankeu** the Premises License Holder for the above premises.

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

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

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

Many thanks

Carl

Carl Moore

C.N.A. Risk Management Ltd



BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE C

FRIDAY 16th OCTOBER 2020

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

That having considered an application made on behalf of the licence holder under Section 53B(6) of the Licensing Act 2003 to make representations against the interim steps imposed by the Licensing Sub-Committee on 1st October 2020 following an expedited summary review brought by West Midlands Police in respect of the premises licence held by Mr Rodrigue Tankeu in respect of Petite Afrique (La Reference) at 160 Hockley Hill, Birmingham B19 1DG, this Sub-Committee determines:

- that it will not lift the interim step of suspension imposed on 1st October 2020 and in consequence the licence remains suspended pending the full review hearing on 26th October 2020.

and

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

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

The Sub-Committee was also aware of the special local lockdown measures (specifically for Birmingham) which had been announced by HM Government on Friday 11th September 2020, then introduced on Tuesday 15th September

2020. These measures were an attempt to control the sharp rise in Covid-19 cases in the city.

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

The pandemic had continued to be the top story in the national news across the Spring, Summer and now into the Autumn of 2020; the Birmingham lockdown, and also the new national measures announced on 22nd September, had been very widely publicised and discussed both in news reports and on social media. The Prime Minister, together with HM Government's Chief Medical Officer and Chief Scientific Officer, had recently resumed the televised 'Coronavirus Briefing' broadcasts which had been a feature of the first few months of the pandemic.

The Sub-Committee was also aware that since 1st October 2020 further HM Government Guidance and regulations 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.

Sarah Clover of counsel appeared for the applicant. Also in attendance were Carl Moore and Rodrigue Kouamo Tankeu.

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

An initial ruling was required on the admissibility under Regulation 18 of The Hearings Regulations of two further statements from officers who had visited the premises on the dates mentioned. These statements were served by WMP in the early hours of this morning on Ms Clover and officers of the council. The Sub-Committee determined not to allow them to be admitted. WMP may of course rely upon them at the forthcoming review hearing.

Ms Clover then indicated that she would be challenging some of the evidence, as well as making legal submissions on the legality of the issuing of the Certificate under s.53A of The Licensing Act 2003 and signed by The Chief Superintendent.

In respect of the evidence Ms Clover submitted that:

Mr Tankeu was a former student at Coventry. The police had targeted a number of premises in operations. In early August PS Giess had visited the premises. Reference had been made to the police's 4Es principle (Engage, Explain, Encourage, Enforce). In Ms Clover's submission the officer was only concerned about the pool table which she says was not part of the Guidance at the time. She alleges that the officer came back in September and said that the pool table needed to be removed. It was said that Mr Tankeu complied even though this was "not a proper request to be made". No advice was given on the Guidance or the regulations. On 4th September 2020 PC Reader visited; he did not enter the premises; but he voiced the opinion that the music was too loud. Mr Tankeu explained that an engineer was on site putting a new noise limiter back on the wall. It was denied that he said that he had no noise limiter. PC Reader said that he would come back. The fact that the outside shutters were down was a good thing. Ms Clover said that it was "dissuasive". The SIA security had left the premises. Mr Tankeu was not serving drinks. He was dealing with customers. He is himself SIA registered. The CCTV showed 32 people in the premises at 22.23 hours. They were leaving. Some were wearing masks; some were not. There was table service. He did his best with the Covid-19 Guidance and regulations which are complicated. He does not accept that he was ignoring advice. He did as he was told, by removing the pool table (for example). It was not accepted that there was a breach of conditions.

In respect of the legality of the certificate Ms Clover submitted that whilst the maximum penalty for public nuisance at common law was life imprisonment, this was not so in the context of a summary review and would not attract a sentence of 3 years.

Ms Clover then addressed the other limbs of s.81 of The Regulation of Investigatory Powers Act 2000 which provides the statutory definition of "serious crime":

- *Results in substantial financial gain*; Ms Clover said that the premises was operating at less than half its capacity of 150 and had taken a huge financial hit.
- In respect of *Conduct by a large number of persons acting in pursuit of a common purpose* Ms Clover said that the WMP would have to show that they were all acting together to endanger the health of others.

She then repeated her point about the unlikelihood of anyone (as yet unidentified) receiving a 3 year custodial sentence.

Ms Clover said that she was not saying that the LSC had no jurisdiction, otherwise “we would not be here”. She continued: “If you are saying that you are bound by the certificate of the senior officer and that you cannot go behind that, then I would like to see that in your reasons”.

Ms Clover maintained that *Lalli* could be distinguished, but did not explain how.

Ms Clover said that “it was for the committee to decide what serious crime is and it can reject the certificate qualitatively”.

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

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

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

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

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

- (a)the certificate that accompanied the application;*
- (b)any representations made by the chief officer of police for the police area in which the premises are situated (or for each police area in which they are partly situated); and*
- (c)any representations made by the holder of the premises licence.*

Mr Tankeu, in response to questions from Members, said that he had 60-80 covers inside, and that he had removed some tables and chairs to promote social distancing. He said that on 26th September 2020 he had 32 “in the book” and maybe about 45 in total. Not too busy. All guests are requested to take a seat. If anyone comes in they are told to take a seat. He tells them that it is table service only, but that some come to the bar anyway. He tells these to go away and that they will be served at the table. Some stand up to go to the toilet, and some stand up to pay their bill. He said that his clientele was primarily from Africa.

Ms Clover raised an argument under the Public Sector Equality Duty created by the Equality Act 2010 maintaining that WMP had targeted 3 premises that were owned or operated by members of the black community. These arguments were never raised in the written application before the Sub-Committee.

Whilst the Sub-Committee acknowledged that its duty under the Public Sector Equality Duty created by the Equality Act 2010 is a continuing one, it was of the view that if Ms Clover was going to take a PSED point, then it was incumbent upon her to have indicated that this was her position in the grounds of her application. Statute compels the LA to hold a hearing within 48 hours to determine whether interim steps should continue pending review. Today was the last day on which a hearing could take place.

The Sub-Committee was impressed by the number of visits that the police had made to the premises. It accepted the arguments of Gary Grant on behalf of WMP who submitted that the PSED duty was not engaged, and that the facts suggested the opposite: namely, that the police had bent over backwards to assist Mr Tankeu with advice and support.

In the view of the Sub-Committee, even if the PSED was engaged, the Sub-Committee had discharged our duty given the time available to it. It had

regard to the protected categories under The Act; it was informed of '*The Brown Principles*' and it accepted the assurances of the officer. It may be that when this matter comes before the LSC for the full review hearing on 26th October 2020, PC Rohomon will have more information available in respect of other premises that he has visited and their cultural background.

This Decision Notice will not rehearse all of the submissions of West Midlands Police. In broad terms, they were these: 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 of 1st October 2020 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 on 1st October 2020 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.

There was some discussion towards the end of the instant hearing about whether the regulations required the closure of premises at 22.00. Regulation 4(A) of *The Health Protection (Coronavirus restrictions)(No.2)(England) Regulations 2020* states that *"a person responsible for carrying on a restricted business ..must not carry on that business....between the hours of 22.00 and 05.00"*. The Sub-Committee took the view that Mr Tankeu was *"carrying on"* a restricted business outside of those hours.

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

The Sub-Committee determined that the removal of the designated premises supervisor was a very important safety feature given that it was this individual who was responsible for the day to day running of the premises, ie the decision to defy the Government Guidance in order to trade as usual. Therefore the risks could only be properly addressed first by the suspension of the Licence, and secondly by the removal of the DPS, pending the full Review hearing on 26th October 2020.

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

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



Birmingham Public Health

Petite Afrique B18 5AN

Expedited Review Response

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

14th October 2020



Making a positive difference everyday to people's lives



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

Contents

Contents	1
1 Premises or club details	3
2 Overview of the Grounds for Review	3
3 Public Health response	5
4 References	6

Petite Afrique (La Reference)

Public Health's Response to Expedited Review

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

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

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

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

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

Any queries relating to this report should be addressed to:

Kyle Stott
Licensing Lead
Birmingham Public Health
PO Box 16732, Birmingham B2 2GF
publichealth@birmingham.gov.uk

1 Premises or club details

<i>Name of premises</i>	Petite Afrique (La Reference)
<i>Postal address of premises</i>	160 Hockley Hill Birmingham B18 5AN
<i>Premises licence holder</i>	Mr Rodrigue Tankeu
<i>Premises licence number</i>	4155
<i>Designated Premises Supervisor</i>	Mr Rodrigue Tankeu

2 Overview of the Grounds for Review

Officers have visited Petite Afrique numerous times since the 4th July when venues reopened. The visits have been to engage with the venue and explain the restrictions and guidance in place. Sgt Nick Giess, the licensing Sgt attended the venue and spoke with the licence holder (Rodrigue Tankeu) at the end of August. Following this visit, the licence holder sent a very generic risk assessment to Sgt Giess. The licence holder stated that he planned to 'review and update it weekly'.

On the 4th September at approximately 22:55 hours, PC 2413 Reader attended the venue and spoke with Rodrigue Tankeu again. PC Reader noted that the music was very loud whilst customers were sat inside the premises. Rodrigue Tankeu told the officers that the music was just being tested and wasn't normally that loud. He was unable to state to the officer if he had a noise limiter in place, as per his licence conditions.

On the 26th September, PC 2413 Reader and PC 2853 Jevons were deployed on Op Reliant, a force wide operation to respond to suspected Covid guidance breaches. The officers drove past the location at around 22:20 and noticed a large number of vehicles outside. Officers noticed that the metal shutters were half way down covering the main doors. Officers entered the premises at 22:25 and found approximately 40 people, including staff, inside the venue. Social distancing measures were not in place and the premises had failed to close at 22:00 as per the government measures. Customers were drinking at tables. Upon police attendance, customers quickly began to leave. These customers who left were not wearing facemasks as per guidelines. Rodrigue Tankeu told officers he had been trying to get people to leave since 21:45, he stated they would not listen to him and didn't want to go. He also confirmed that his security staff had left at 22:00. If this was true, then he had no control of the venue. Licensing officers have viewed the CCTV for the venue and have seen people at the bar being served just prior to 22:00. Rodrigue Tankeu is working behind the bar taking payments from people. This appears to contradict his account to officers that he had been trying to get people to leave. There appears to be no table service in operation and staff behind the bar are not all wearing face masks. Customers are sat at the bar drinking.

This venue is ignoring the guidance and hosting customers inside the premises post 22:00 with shutters half down. The infection rate in Birmingham continues to rise, as of the 29/9/20 it has risen to 145.1 per 100,000, compared to last week's figure of 96.2. It is imperative that hospitality trade comply with the rules set down, to curb the growth of the disease.

Government guidance¹ states that:

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

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

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

3 Public Health response

Licensing Objective	Response
<i>The prevention of crime and disorder</i>	
<i>Public safety</i>	
<i>The prevention of public nuisance</i>	<p>The risk of spreading infections is deemed a "public nuisance". In the case of <i>R v Rimmington & Goldstein</i> (2005) UKHL 63, it quoted the leading modern authority on public nuisance as <i>Attorney general v PYA Quarries Ltd</i> (1957) 2 QB 169. The case quotes "a person is guilty of a public nuisance (also known as a common nuisance) who (a) does an act not warranted by law, or (b) omits to discharge a legal duty, if the effect of the act or omission is to endanger the life, health, property, morals or comfort of the public, or to obstruct the public in the exercise or enjoyment of rights common to all Her Majesty's subjects" (<i>Rimmington</i> at [3]).</p> <p>The statement submitted by West Midlands Police to the Licensing Committee to call for an expedited review suggests that there are numerous failures of the licence holder to promote the licensing objectives, and to adhere to, and implement the guidance from HM Government '<i>Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services (6 October 2020)</i>'.</p> <p>It is reported that the non-compliance and non-implementation include:</p> <ul style="list-style-type: none"> • The lack of a suitable COVID-19 risk assessment • The operation of the venue outside of Government specified guidelines (after 10.00pm) • The lack of people wearing facemasks or implementation of social distancing measures • The lack of table service • Customers sat at the bar, whilst others are being served at the bar • The playing of loud music

Summary

There appears to be clear evidence from West Midlands Police that the premises is not operating to the guidance previously referred to¹. The guidance has been available to all premises since 11th May 2020 in preparation for reopening on 4th July, it is now October and WMP do state that they have visited the premises on numerous occasions since the 4th July to advise and guide the licence holder on being COVID-19 compliant.

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

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

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

4 References

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



Public Health

PO Box 16732
Birmingham
B2 2GF

publichealth@birmingham.gov.uk

www.birminghampublichealth.co.uk
www.birmingham.gov.uk



Making a positive difference everyday to people's lives



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

Sent: 12 October 2020 16:56

To: Licensing: bw_licensing

Cc:

Subject: RE: Licensing Act 2003 - Section 53A Expedited Review Application - Afrique Petite (La Reference), 160 Hockley Hill, Birmingham, B19 1DG

Importance: High

Hi

I am responding on behalf of the Environmental Health team as a responsible authority. I am aware that on 30 September 2020 West Midlands Police lodged an application for the expedited review of the premises licence granted to Mr Rodrigue Kouamo Tankeu in respect of La Reference (Petite Afrique), 160 Hockley Hill, Birmingham B19 1DGRP Restaurant Ltd 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 despite conducting numerous visits since the 4th July 2020 to explain the COVID-19 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.

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 CCTV footage on this evening 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 had requested that the premises supply the COVID-19 risk assessment (a mandatory requirement) and the document supplied had been generic and the licence holder had stated that the document would be reviewed and updated on a weekly basis.

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 a Premises Licence reference 4155/3 most recently issued in July 2020 due to change in DPS but originally issued in 2014. This licence includes a requirement (amongst others) that a Noise Limiting Device (NLD) of a type approved by the Environmental Protection Unit of Birmingham City Council shall be fitted to the amplification system and set at a pre-set volume level agreed with the Environmental Protection Section. This has not been carried out. The premises has been subject to previous noise complaints between 2011 and 2016. Furthermore the Council began receiving noise complaints from nearby residents in July 2020 and visits have been made to the premises. However due to the recent lockdown and restricted hours of operation further complaints have not been received and further investigation has not been undertaken.

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

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

The Environmental Health team therefore submit this representation in support of the West Midlands Police application for the expedited review of the premises licence granted to Mr Rodrigue Kouamo Tankeu in respect of La Reference (Petite Afrique), 160 Hockley Hill, Birmingham B19 1DGRP Restaurant Ltd under Section 53A of the Licensing Act 2003.

Best Regards

Martin Key
Environmental Protection Officer

Environmental Health | Regulation & Enforcement Division

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

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

From: Shaid Ali
Sent: 09 October 2020 12:44
To: Bhapinder Nandhra
Cc: Licensing ; 'BW_licensing; Pollution Team
Subject: Representation - Petite Afrique (La Reference), 160 Hockley Hill, Birmingham B19 1DG

Good morning,

I have been made aware that West Midlands Police (WMP) have called for a review of the Premises Licence number 4155 issued to Mr Rodrique Kouamo Tankeu in respect of the Premises known as Petite Afrique (Formerly La Reference), 160 Hockley Hill, Birmingham B19 1DJ. As well as being the Premises Licence Holder (PLH) Mr Tankeu is also the Designated Premises Supervisor (DPS) and has been issued a Personal licence number CV220000303 by Coventry City Council.

WMP have visited the premises on a number of occasions to check if the Premises was operating within the guidelines issued by the Government in regards to measures licensed premises must take to prevent the spread of COVID 19. This is a highly infectious disease and has been declared a global pandemic by the World Health Organisation. The disease is spread from person to person and has resulted in over 40000 deaths in the UK alone and has left many others with long term health effects.

On Friday 4th September 2020, PC 2413 Reader attended the premises and spoke with Mr Tankeu. PC Reader noted that the music was very loud whilst customers were sat inside the premises. Mr Tankeu advised PC Reader the reason why the music was so loud was because it was being tested and was normally not this loud. PC Reader asked if the premises had fitted a noise limiter as per the conditions of the licence but Mr Tankeu was unable to demonstrate this. The Governments COVID 19 guidance advises premises not to play loud music as this would cause customers to shout in order to be heard and the louder the customers talk or shout then the greater the chance of the disease being spread person to person. It is clear that during this visit even if Mr Tankeu's excuse was to be believed that the music was loud because it was being tested the premises was clearly in breach of the COVID 19 guidance and Mr Tankeu was clearly responsible for this breach.

On Monday 26th September PC Reader and PC 2853 Jevons were deployed on a force wide operation to respond to suspected COVID 19 guidance breaches. PC Reader and PC Jevons drove past the premises at around 22:00 hrs and noted a large number of vehicles outside and noted the metal shutters to the main entrance were only half way down. At 22:25 the Officers entered the premises and found approximately 40 people inside the venue. The Officers observed no social distancing measure and the premises had failed to close at 22:00 hrs as required by the COVID 19 guidance. Customers were observed drinking at the tables and they quickly began to leave. It was also noted that the customers were not wearing any face masks as per the guidance. Mr Tankeu told the Officers he had been trying to get the customers to leave since 21:45 hrs but he could not get them to listen to him and confirmed the security staff had left at 22:00 hrs. This meant that he had no help with the security arrangements and was not in control of the premises or his customers.

Upon viewing the CCTV footage the officers observed Mr Tankeu himself serving customers just before 22:00 hrs and was seen taking payments from customers. This clearly contradicted his account that he had been trying to get the customers to leave. Staff were observed not wearing masks, there did not appear to be any table service and customers were sat at the bar drinking.

I am of the opinion that Mr Tankeu is not a fit and proper person to hold a Premises Licence or a Personal Licence given what the Police Officers have observed at the premises which is clearly in breach of the Governments guidance and in breach of the conditions attached to the licence.

By not adhering to the guidance or his conditions of licence Mr Tankeu is responsible for causing a Public Nuisance as defined in the Police report and has seriously compromised Public Safety by endangering the life and health of the wider general public, his customers and staff. He has prioritised profits over the wellbeing of the public.

Please accept this as my representation in support of the Review of the Premises Licence called by WMP.

Regards

Shaid Ali - Licensing Enforcement Officer

LICENSING ACT 2003**PREMISES LICENCE**

Premises Licence Number:

4155 / 3

Part 1 - Premises details:

Postal address of premises, or if none, ordnance survey map reference or description La Reference 160 Hockley Hill	
Post town: Birmingham	Post Code: B19 1DG
Telephone Number: Not Specified	

Where the licence is time limited the dates

N/A

Licensable activities authorised by the licence

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

The times the licence authorises the carrying out of licensable activities

Sunday - Wednesday	10:00	-	03:00	A ,B ,C ,E ,F ,G ,H ,M3
	23:00	-	03:00	L
Thursday - Saturday	10:00	-	05:00	A ,B ,C ,E ,F ,G ,H ,M3
	23:00	-	05:00	L

The opening hours of the premises

Sunday- Wednesday	10:00	-	03:30
Thursday - Saturday	10:00	-	05:30

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

On and Off Supplies

Part 2

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

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 CV220000303	Issuing Authority COVENTRY CITY COUNCIL

Dated 05/06/2020

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 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.

The admission of children under the age of 18 to film exhibitions permitted under the terms of this licence shall be restricted in accordance with any recommendation made: (a) By the British Board of Film Classification (BBFC), where the film has been classified by that Board, or (b) By the Licensing Authority where no classification certificate has been granted by the BBFC, or, where the licensing authority has notified the licence holder that section 20(3)(b) (s74(3)(b) for clubs) of the Licensing Act 2003 applies to the film.

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

Regulated entertainment and Late night refreshment shall take place indoors only.

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

All staff to be trained on their responsibilities under the Licensing Act 2003, a record to be maintained and produced to responsible authorities upon request.

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

The premises licence holder will provide West Midlands Police (Birmingham Central Police Station) 28 days notice, if they propose to show any sporting event with international/national/local significance.

A refusal log to be maintained at the premises which will be available for inspection by any of the responsible authorities. Staff to record all refusals of sale of alcohol.

The premises licence holder/DPS will supply a monthly risk assessment for standard operation of the premises to the West Midlands Police Licensing Department at Steelhouse Lane Police Station, or such other officer or Police Station as shall have been notified to the Designated Premises Supervisor in writing. For any non-standard event after midnight the DPS will provide a risk assessment of the night/event to West Midlands Police (as above) at least 28 days before the event.

External Promoted Events: If the premises has any late night external promoter event which is not part of the standard operating procedure, then a separate risk assessment will be completed and forwarded to the Licensing Department at Steelhouse Lane Police Station at least 28 days, or such other time as agreed with West Midlands Police Licensing Department, before the event. Any additional conditions (in writing) required by West Midlands Police will become a condition of the premises licence for the purposes of that event.

The premises will implement and put in practice a drugs policy.

An incident log book will be kept and maintained on the premises, and will be made available for inspection by West Midlands Police and responsible authorities.

Members of staff will receive regular training in their responsibilities under the Licensing Act 2003, to include use of the proof of age scheme adopted by the premises. Such training to be documented and records shall be retained at the premises and produced to responsible authorities upon reasonable request.

The premises licence holder will ensure that the Designated Premises Supervisor, or such other member of staff as may be nominated by him/her, attends local Pubwatch (or such other similar scheme).

CCTV to be installed and maintained to the satisfaction of West Midlands Police. The CCTV system to be in full working order at all times when the premises are open for licensable activities.

The CCTV system shall record and store images for a minimum of 28 days. Images to be made available to West Midlands Police and Local Authority officers upon request.

The premises will risk assess its standard operating procedures covering seven days a week, included in this risk assessment will be any security provisions. A copy of risk assessments to be made available to West Midlands Police Licensing Department (Steelhouse Lane).

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

SIA registered door supervisors will be engaged at the premises in accordance with the standard operating procedures risk assessment. Door staff profiles will be retained for all staff that are working in the premises or have been working at the premises in the last 3 months. Profiles are to be proof of identity (photocopy of driving licence or passport) and proof of address (utility bill or bank statement). Proof of address is not required when proof of identity is a new photo driving licence. Profiles are to be available for inspection on request by a responsible authority.

When door supervisors are engaged at the premises they shall wear Hi-Vis armbands at all times.

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

A Noise Limiting Device (NLD) shall be fitted to the amplification system and set at a pre-set volume level, ensuring the volume of music is pre-set so as not to cause a noise nuisance to the occupiers of nearby buildings. The installation of the NLD shall fulfil the following criteria:

- a. The device shall be fitted by a competent person and once fitted shall not be moved unless prior approval is given.
- b. The device shall be capable of cutting off the mains power to the amplification system if the volume exceeds the pre-set level or shall be capable of maintaining the volume of the music at the pre-set level and shall not restore power to the sound system until the NLD is reset by the licensee or their nominated person.
- c. The amplification system shall only be operated through the sockets/power points linked to and controlled by the NLD at all times.
- d. The NLD shall be maintained in full working order and at the pre-set volume during regulated entertainment.
- 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.
- f. Any amplified regulated entertainment within the premises shall be controlled by the NLD.

There shall be adequate supervision of the external area, and security provision will be assessed within the standard operating procedure risk assessment (see above).

All windows are to be closed from 2300 hours.

The premises licence holder shall ensure that a written agreement is made with a reputable taxi company/ companies requiring that when taxis pick up and drop off customers from the licensed premises that noise from these vehicles does not cause a nuisance to local residents.

Customers who require a taxi from the site shall be advised by staff to use taxi companies specified by the licensee.

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

No enforceable conditions identified from operating schedule.

Annex 3 – Conditions attached after hearing by licensing authority

3a) General committee conditions

Qualified door supervisors shall be employed to control persons queuing to enter and exit the venue, from 11pm onwards. The number of qualified door supervisors to be employed shall be in accordance with that required by the risk assessment but shall not be less than two.

The premises shall adopt the Challenge 25 Scheme and appropriate signage will be placed at the entrance to the premises and adjacent to the bar servery.

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

N/A

3c) Committee conditions to promote public safety

N/A

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

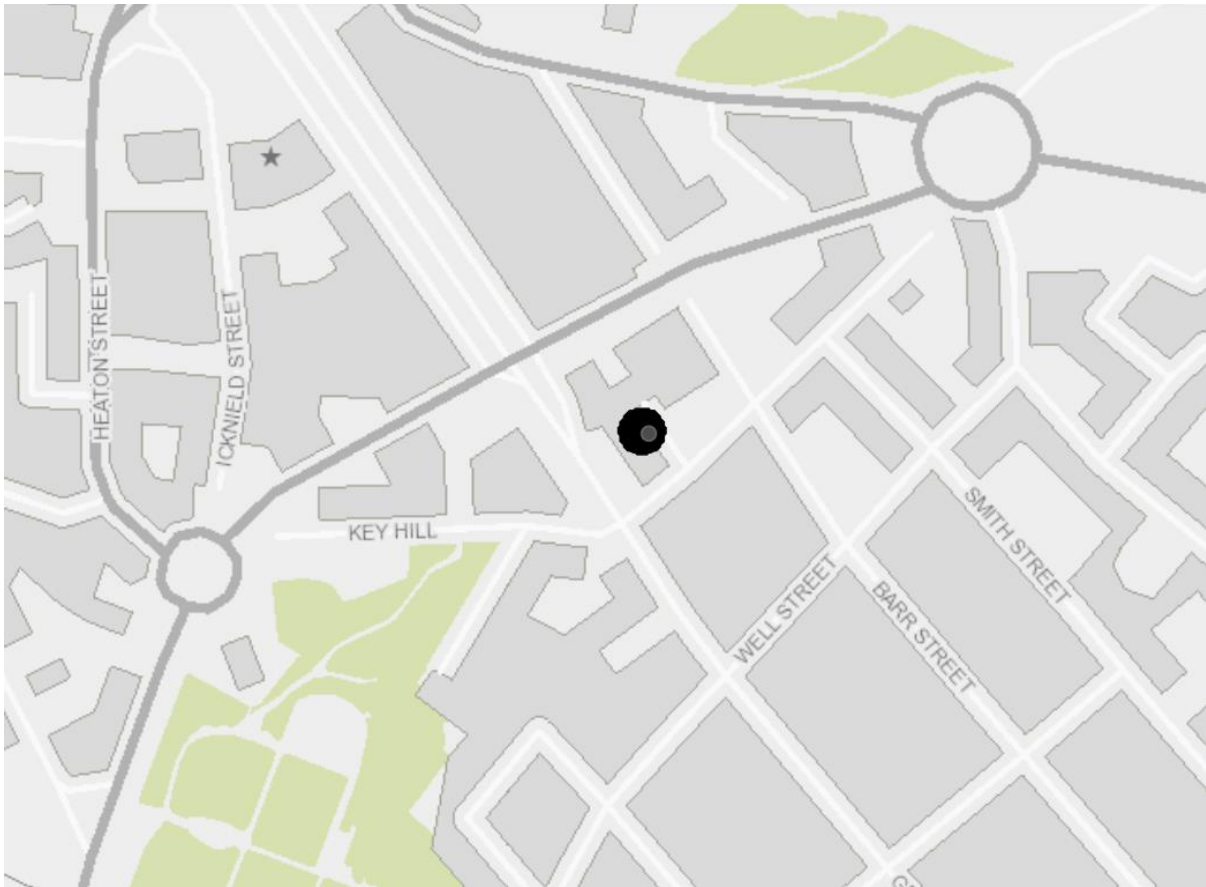
N/A

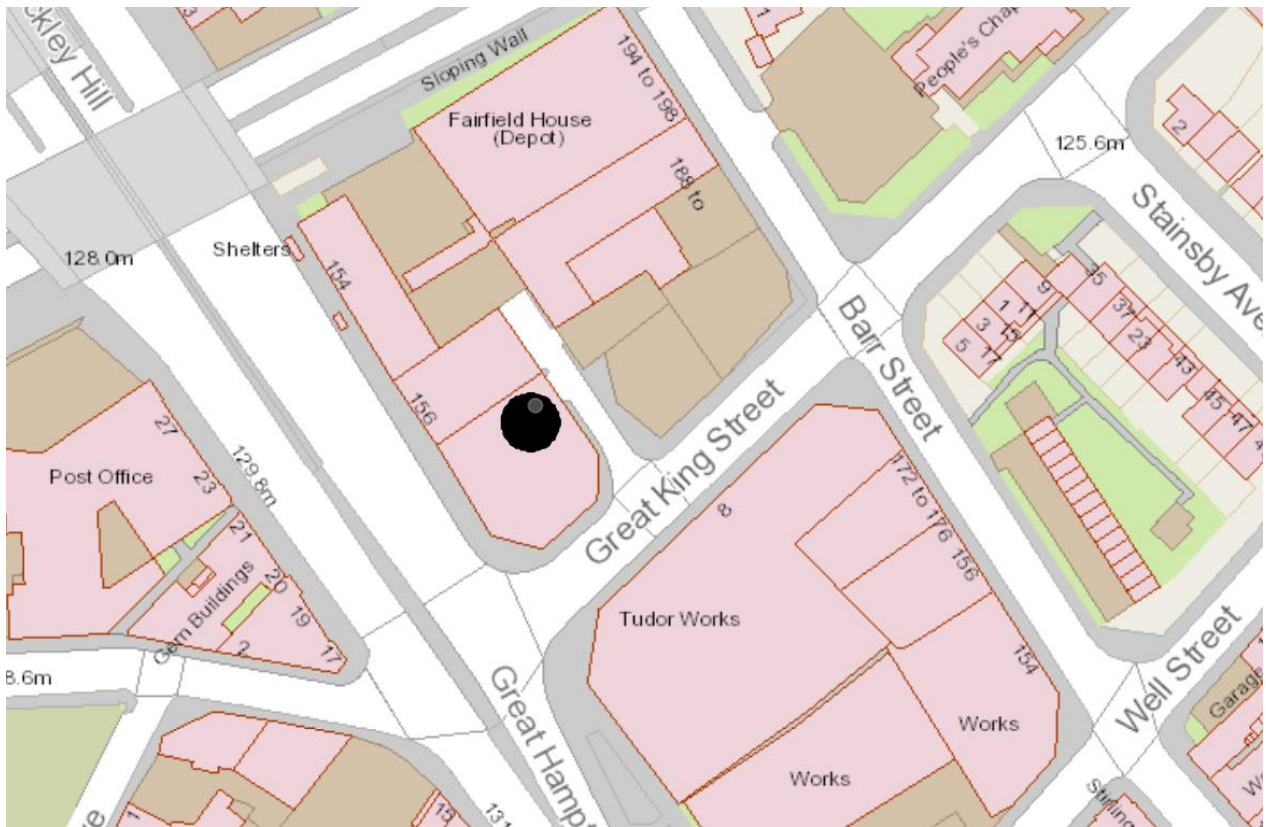
3e) Committee conditions to promote the protection of children from harm

N/A

Annex 4 – Plans

The plan of the premises with reference number **115412-4155/3** which is retained with the public register kept by Birmingham City Council and available free of charge for inspection by appointment only. Please call the Licensing Section on 0121 303 9896 to book an appointment.





OFFICIAL (when complete)

MG11 (2016)

WITNESS STATEMENT

Crime Number:.....

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

--	--	--	--

Statement of: Pc Abdool Rohomon. BEM

Age if under 18: over 18 (if over 18 insert 'over 18') Occupation: Police Officer (4075)

This statement (consisting of 2 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: at E BEM. Date: 20.10.20Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

This statement is made in direct response to the implication of submissions made at the interim steps challenge hearings on 16 October 2020, on behalf of the licence holders of Nakira and Petite Afrique, that West Midlands Police may have unfairly targeted certain venues because they are used or operated by members of the black community. The suggestion was made without any supporting evidence and is false. As an officer with a BAME background myself, I personally resent the accusation that we have targeted these particular venues because of the ethnic background of their customers or operators.

WMP follow the approach set down by our Senior leadership team: to engage and educate and only taking enforcement action if the problems continue with little or no effective response by operators. We have done this with premises across the whole of Birmingham, including venues in the City centre, Moseley, Broad St, Southside, and Sutton to name a few. Most venues take their community responsibilities seriously and have responded well to police (and local authority) engagement, advice and warnings and operate in a compliant fashion. Nakira and Petite Afrique are two notable exceptions.

In the cases of Nakira and Petit Afrique, both involved deliberate, clear, repeat and serious breaches of the Covid regulations and guidance by the venues. This was despite prior police engagement with the operators in an effort to engage, educate and advise them in order to assist them with their compliance duties, risk assessments, and operating procedures. This was all done with the aim of reducing the spread of this pandemic disease in our community.

It was only after the failure by them to properly and responsibly respond to police engagements that applications for summary reviews were launched. This was because it became clear that the operators were either unable or unwilling to comply with Covid regulations and guidance and so immediate steps needed to be taken to prevent future breaches and so promote the licensing objectives. The summary reviews were launched following the approval of a Superintendent of WMP.

at E BEM105

WMP have spoken to numerous licensed operators who have expressed annoyance at other premises who are not playing by the rules, and are seen to be getting away with flagrant non-compliance, whilst they are struggling to do their best in a law-abiding fashion.

We have also received numerous complaints from members of the public about non-compliant licensed premises. These have been actioned by officers on patrol and also in dedicated Police operations. The have been sent through to the licensing department.

It is our policy to only take high-level direct enforcement action against premises licences (such as by applying for a summary review), where there has been prior engagement, advice and education in the first instance and this has not been complied with, and/or where a particular breach is very serious and poses serious risks to the public.

WMP have approached the enforcement of Covid related breaches in licensed premises without discriminating on the basis of the race or ethnic background of the customers or operators of these venues.

However, based on the evidence, the police have no confidence that Nakira or Petit Afrique would operate in a compliant manner if they were permitted to continue to operate as licensed premises in the future. Urgent licensing procedures were required to promote the licensing objectives. That is the reason why summary reviews were launched in these cases, irrespective of the ethnicity of their clientele or operators. Any particular impact of these summary reviews on BAME operators and customers needs to be weighed against the strong public interest in protecting the whole community during the Covid pandemic

St Bon

Signature: *St Bon*

Signature witnessed by:

106

PETITE AFRIQUE BAR & RESTAURANT
SUPPORTING DOCUMENTS
FOR
REVIEW HEARING ON
MONDAY 26TH OCTOBER 2020

PAGE	DOCUMENTATION
1-19	PHOTOS SHOWING COVID 19 PRECAUTIONS TAKEN
20-23	CCTV SCHEDULE FROM PETITE AFRIQUE
24-27	STATEMENT FROM RODRIGUE TANKEU



NHS QR Code on front entrance



Social Distancing Poster



Hand sanitiser on wall reception area



Yellow directional tape on floor



Booths with yellow tape on floor



Fixed seating and tables social distancing



Large booth with yellow tape



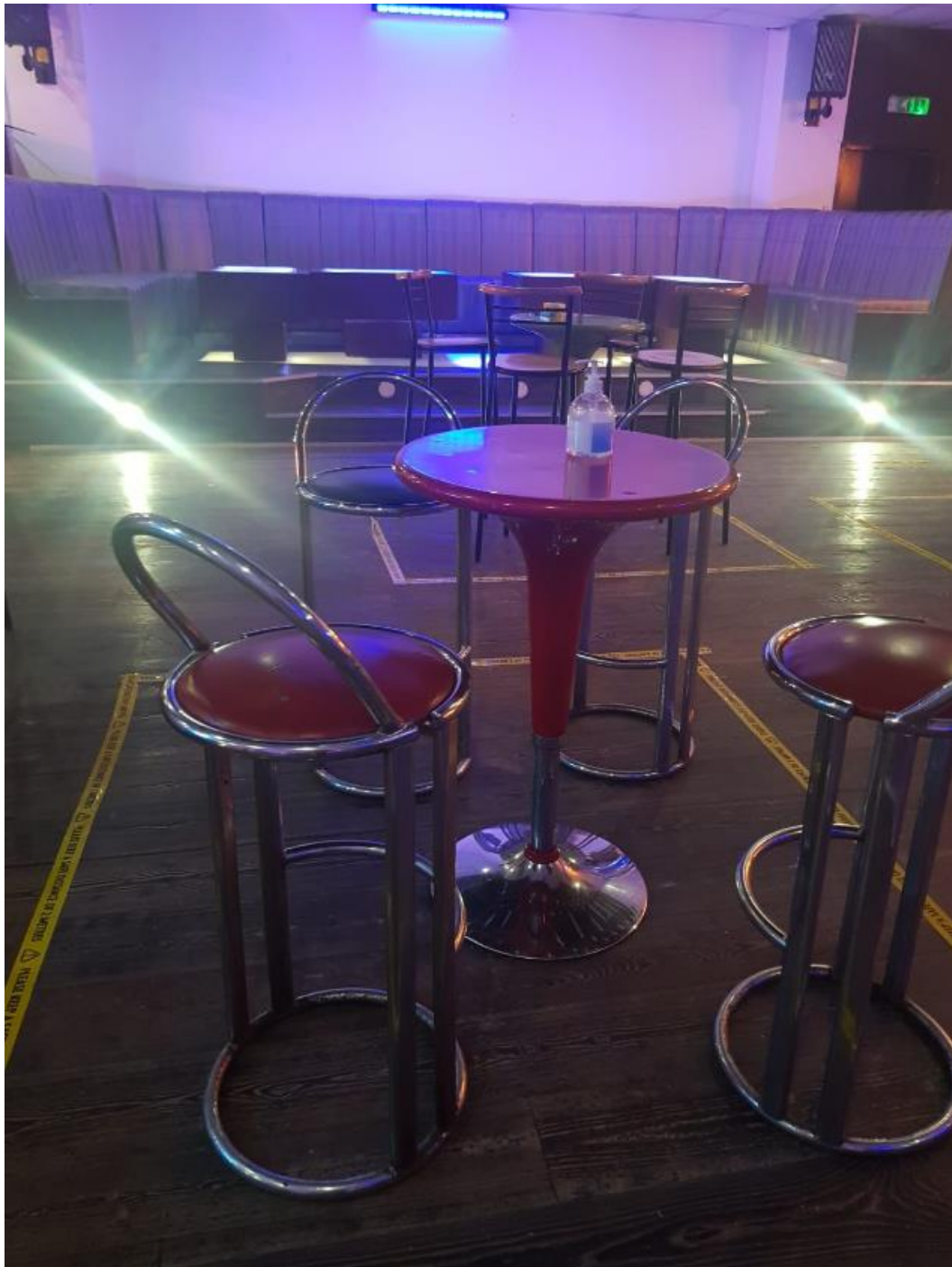
Further view of large booth seperated



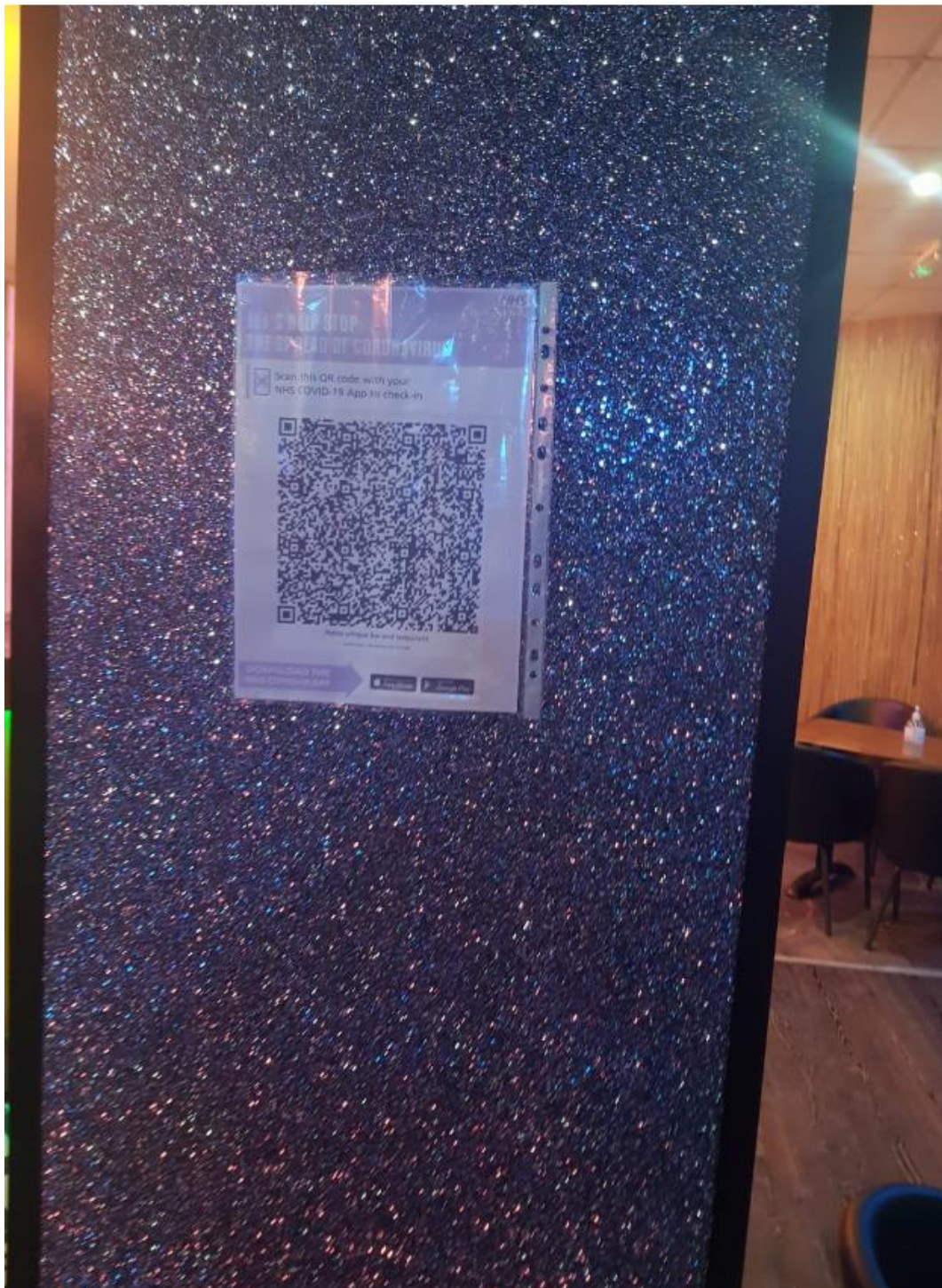
Tape around tables near bar area



Single high table showing social distancing



Single table showing social distancing



NHS QR code inside premises



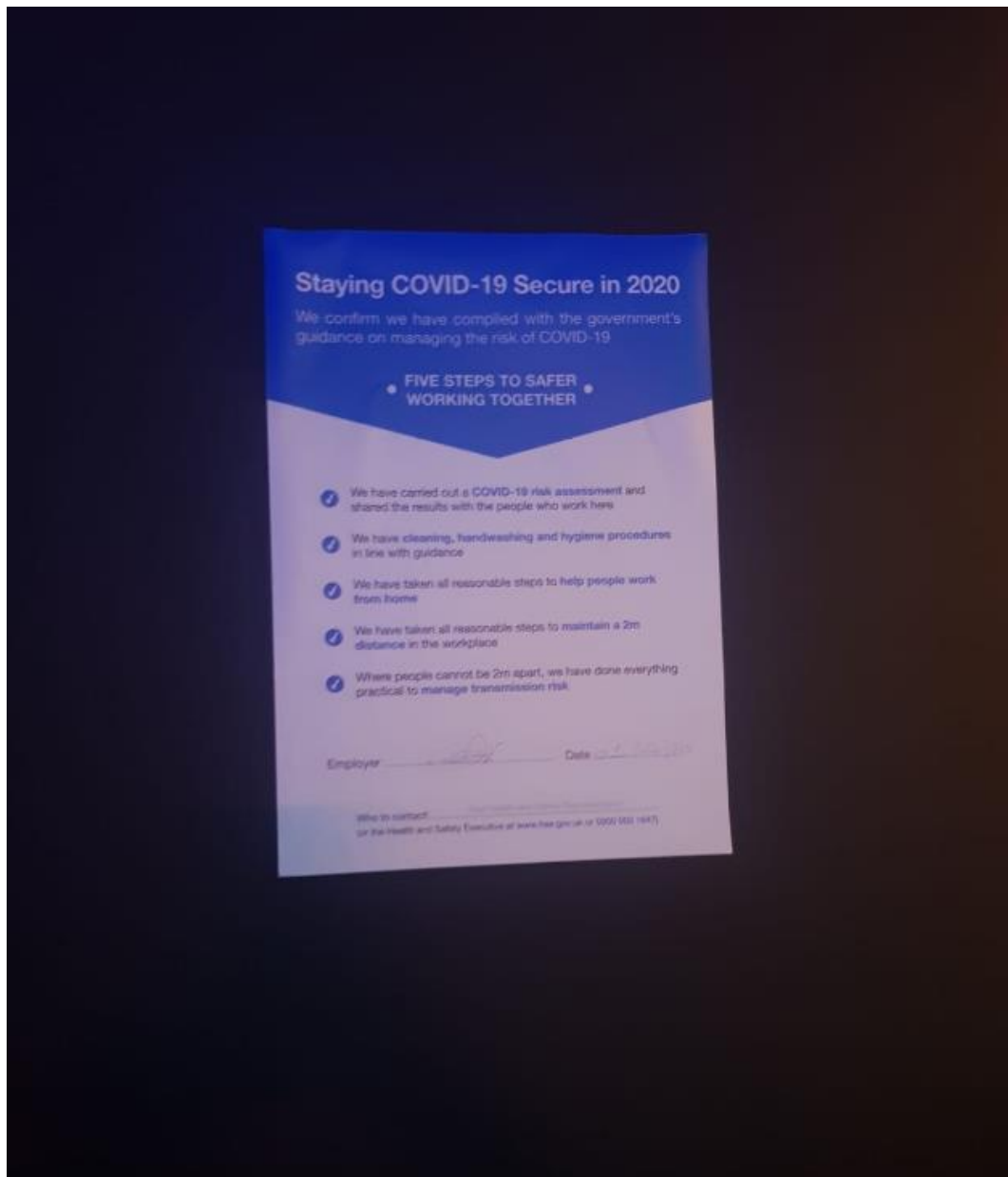
Showing main room



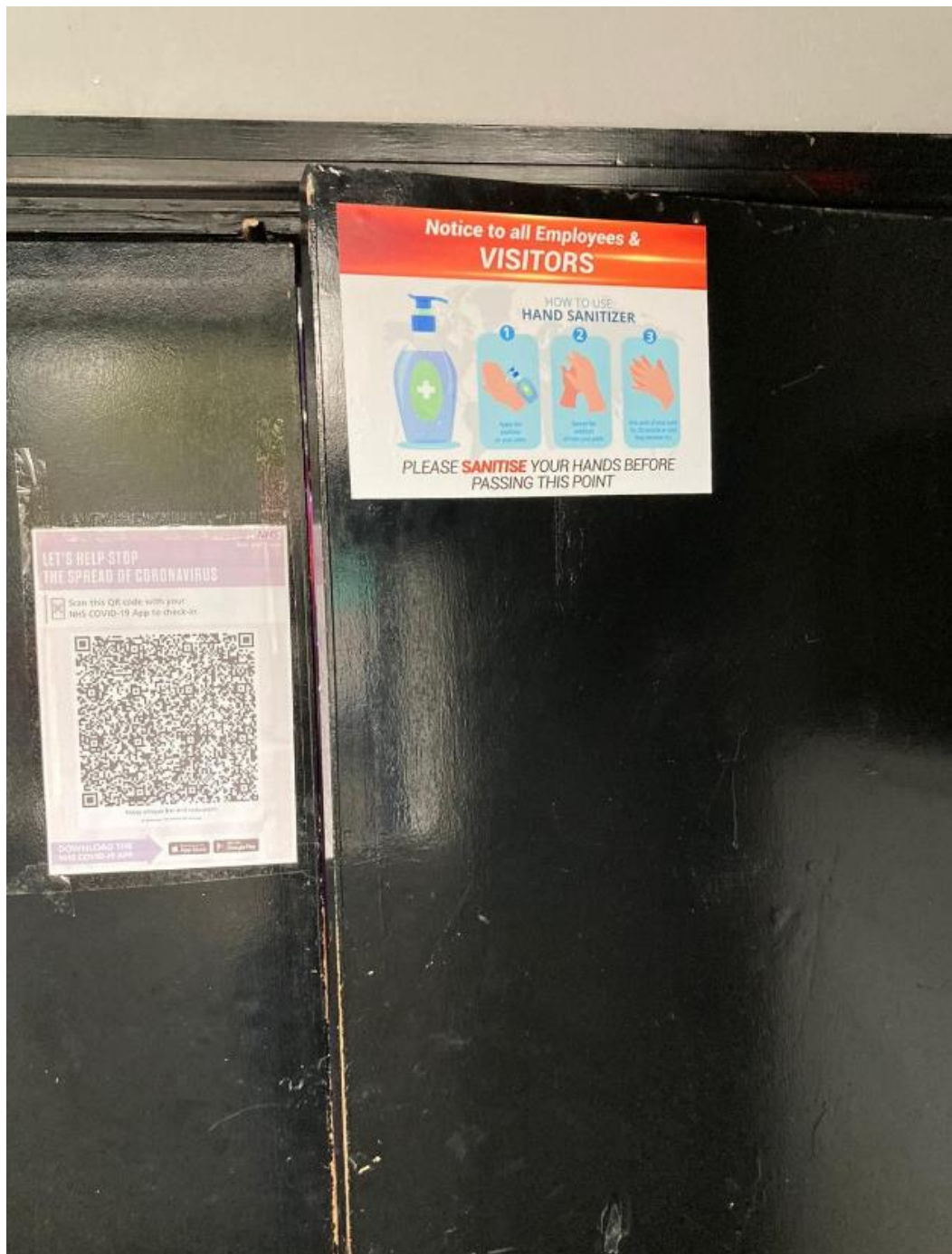
Showing bar area roped



Directional tape on floor



Covid 19 blue poster



Wash hands poster



Hand sanitiser on table

30/09/2020

Hockley Hill - Google Maps



Hockley Hill

PETITE AFRIQUE BAR/RESTAURANT, 160 HOCKLEY HILL, BIRMINGHAM



Image capture: Mar 2019 © 2020 Google

Birmingham, England

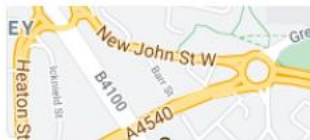


Street View

<https://www.google.co.uk/maps/@52.4922764,-1.911911,3a,75y,23.67h,91.85t/data=!3m6!1e1!3m4!1sQRRgxZA7CsFQvgRpJpT2Q!2e0!7!13312!8!6656>

1/2

30/09/2020



PETITE AFRIQUE

- Comments highlighted in red made by Rodrigue.
- Comments in black are observations by Carl Moore

CCTV	1	VIEW OF OUTSIDE FRONT DOOR
TIME	COMMENTS	
22.00.02	2 Males outside front entrance smoking	
22.03.50	The above males go back inside the premises	
22.03.54	Shutters to front entrance are closed halfway down.	
22.05.23	Male walks up to entrance on the phone and walks under the shutter into premises	
22.06.56	Female walks out from under the shutter	
22.07.42	A further 2 females and three males leave the premises and join up with female above.	
22.10.07	2 males leave the premises and walk towards the city	
22.10.36	2 further males leave the premises	
22.11.38	2 Males walk into premises	
22.11.56	Female leaves premises and walks off down the side street	
22.12.14	1 male walk's out of premises and down the side street	
22.12.55	1 male walk's out of premises and down the side street	
22.13.25	1 female and 2 males leave the premises and walk off towards the city	
22.13.44	1 female leaves the premises and walks towards the city	
22.13.27	2 males leave the premises and walk down the side street	
22.14.11	Female trots into the premises	
22.14.18	Followed by a male	
22.14.40	Male out of premises on the phone	
22.14.43	Female that trotted in now trots out of premises	
22.15.27	Male on phone goes back into premises followed by another male	
22.15.49	Male & 2 Females leave the premises and walk off down the side street	
22.15.58	2 Males walk out of premises and down towards side street	
22.16.21	1 Male/Female walk out of premises, male carrying 2 cases which he places into a vehicle. Appeared to be decks. Could be the DJ.	
22.16.22	1 Male walks into premises	
22.17.00	Both male/Female then walk away from there vehicle and into the city.	
22.17.08	Male walks out and Male walks in	
22.17.13	Male walks out	
22.17.23	Male back into premises	
22.18.22	Male out of premises with white carrier bag (Takeaway)	
22.19.06	Male into premises	
22.19.38	Male out of premises	
22.19.41	Male out of premises	
22.20.26	Male out of premises	
22.21.30	Male into premises	
22.22.20	Group of people outside spot a dark coloured vehicle pulls into side street. They then leave quickly towards the city	
22.23.29	Two Police officers enter the premises.	
	A number of people leave the premises whilst Police are inside. Some are wearing masks	
22.37.00	Officers leave the premises	
22.43.20	Barman with glasses outside clearing bottles from outside.	
22.45.30	Staff seen leaving, and appears to be the maintenance man with his tools	
22.47.43	Shutters close. All staff are out	

CCTV	3	VIEW OF BAR
TIME	COMMENTS	
22.00.00		
22.00.23	Rodrigue at the till on the radio, Barmaid also at till	
22.03.35	Rod walks from behind the bar	
22.03.55	Barmaid serves male at the end of the bar a bottle (The Barmaid handed over a prepaid bottle as part of their takeaway, as she was doing end of the night report)	
22.05.15	Barmaid comes out of kitchen with a takeaway	
22.06.20	Barman with glasses at the till	
22.06.21	Male who was standing at bar now behind bar collecting coat	
22.07.13	Male above puts on coat and leaves.	
22.07.21	Barmaid comes from kitchen and hands male with dreads a bag believed takeaway	
22.07.50	Barmaid calls Rodrigue over to bar and is then seen talking to male with dreads over the takeaway.	
22.07.55	Barmaid appears to be cashing up at till	
22.08.13	Barmaid walks to fridge and back to male with dreads and hands over 2 x bottles. No money changes hands. Rodrigue is in conversation with male and appear to be looking at the takeaway order.	
22.09.48	Another male goes up to bar, he appears to speak to Barmaid who then goes to the fridge and comes back with a bottle and hands it to him, he then places it under his jacket. (This was a takeaway prepaid by his friend with dreadlock hair)	
22.10.20	Rodrigue stood at the bar	
22.10.48	Rodrigue is then seen going over to table and appears to be asking them to leave, and then to other customers.	
22.12.55	Rodrigue is back at the bar	
22.13.50	Barmaid appears to be asking people to leave, at the same time as clearing the tables.	
22.14.10	Rodrigue moves away from the bar	
22.15.01	Rodrigue is seen tables whilst Barmaid is seen handing out what appears to be takeaways.	
22.17.55	Male who was earlier getting his coat from behind the bar is then seen mixing a drink for a customer at the end of the bar. No money changes hands. (Both were staff, the one bartender was mixing a drink for the kitchen staff and were getting ready to leave the premises)	
22.18.19	Same male above behind the bar is then seen to serve a further male 2 x bottles of water, no money changes hands.	
22.19.04	Rodrigue is with a couple at the bar who appear to be settling a bill by card.	
22.20.51	Barman with glasses puts coat on behind the bar and leaves via the back of the bar.	
22.22.55	Rodrigue is at the table where the champagne people were seated. He appears to be asking them to leave and at the same time clearing the table	
22.24.15	Barmaid approaches the 2 males who have been at the end of the bar since 22.00hrs. She appears to ask them to leave. They walk out`	
22.24.31	The lights appear to go out.	
22.29.48	Rodrigue appears with both officers at the bar	
22.30.04	Officers appear to be viewing the CCTV	
22.31.00	One officer goes for a walk round the premises	
22.31.31	Officer comes back to the bar as PC Reader goes behind the bar	
22.31.42	PC Reader appears to be looking at the till screen with the barmaid and asking questions.	
22.31.49	Rodrigue appears from the kitchen area.	
22.33.34	The officer finishes looking at the till.	
22.33.48	The officers start looking at the CCTV monitor	
22.35.53	The officers finish looking at the CCTV, & PC Reader walks back to the front of the bar	
22.36.42	The officers finish talking to Rodrigue and walk off towards the entrance	

CCTV	10	VIEW OF INSIDE FRONT ENTRANCE
TIME	COMMENTS	
22.00.00		
22.01.20	Barman with glasses seen going out of double doors then back pulling the doors behind him.	
22.02.29	2 females seen drinking by front entrance, no face masks	
22.03.44	Rodrigue & Barman with glasses to the front entrance	
22.03.54	2 males walk back into premises past Rodrigue carrying glasses. (At this point I saw the two males outside drinking and was about to leave but I told them they should not be drinking outside, let alone taking the glasses away from the premises. So, the customer agreed and made his way in to drop the glass).	
22.04.14	Rodrigue pulls to the front door, light in reception goes off & barman returns to main room.	
22.04.20	Males leaving the premises, Rodrigue stays at door to see them out.	
22.04.44	Rodrigue seen walking back to main room	
22.06.49	Female leaving the premises	
22.07.28	2 Females & 3 Males leave the premises.	
22.09.55	2 males leaving	
22.23.35	Police Officers enter the premises. They stand at the entrance inside the premises looking over to the bar	
22.23.37	32 customers counted leaving the premises when the police are stood inside.	
22.24.34	Male on leaving hands officer hand sanitiser to use. He accepts. (The male handing out the hand sanitiser is our house DJ)	
22.25.03	Female wearing face mask, some wearing, some carrying the masks.	
22.25.23	Officers walk towards the bar area	
22.27.58	Officer appears walking towards entrance, he waits in the reception area	
22.28.25	Officer walks back towards bar area	
22.36.51	Officers walk towards entrance and leave the premises	
22.41.42	Barman with glasses goes to reception and turns lights off	
22.47.15	Staff seen leaving with maintenance male and tools.	
22.47.31	Doors to reception closed.	

CCTV	11	VIEW OF TOP OF BAR
TIME	COMMENTS	
22.00.00	Picture Freezes	

CCTV	12	VIEW OF MAIN ROOM
TIME	COMMENTS	
22.00.00		
22.03.00	Shows no masks or social distancing inside the premises	
22.07.32	Rodrigue approaches table in front of CCTV and appears to be asking them to leave	
22.15.36	Barmaid with long hair approaches table claps hands and appears to be asking them to leave. She points to her watch.	
	She is seen walking to other tables in view of this CCTV	
22.16.53	Rodrigue walks up to bar maid they have a discussion, and both walk off round the room.	
22.24.15	Customers at table in front of CCTV stand up and walk away towards entrance.	
22.24.35	Rooms clears of customers	
22.25.30	The officers appear in view of the CCTV, PC Reader is seen using his radio and looking at his watch.	
22.25.45	Rodrigue is seen speaking to PC Reader and another officer.	
22.29.42	Officers with Rodrigue walk towards bar area	
22.31.02	One officer seen walking round the main room.	
22.31.27	Officer walks back over to bar area	
22.36.46	Both officers seen to walk past CCTV and towards the entrance.	
22.44.20	All lights in premises go out and staff seen walking towards entrance	

CCTV	15	VIEW FROM DJ BOOTH
TIME	COMMENTS	
22.00.00	Video Freezes on below frame	
22.00.01	Shows male dismantling mixer and decks in DJ Booth.	
22.00.01	Customers can be seated, social distancing, however no face masks.	

STATEMENT OF RODRIGUE TANKEU

MADE ON FRIDAY 9th OCTOBER 2020

My name is Rodrigue Tankeu. I was born on _____ in _____

I came to the U.K in _____ I am currently studying at _____ University.

I am the Premises License holder for PETITE AFRIQUE. I was also the Designated Premises Supervisor for the same premises at the time of the visit by Police Officers on the 26th September 2020

Since re-opening on Saturday 4th July 2020, due to Covid-19 lock down West Midlands Police have visited PETITE AFRIQUE on four occasions. Those visits are as follows:

1. Beginning of August 2020. The officer attending was Police Sergeant Geiss, he came across quite hostile, he made a comment regarding the pool table that we had in a small area off the main room. He told us to not allow anyone to use it as the equipment used, the cues and balls could carry Corona Virus.
2. Second visit, a fortnight after the first visit. The same officer came into the premises. Again, his attitude was hostile. A couple of customers were standing at the bar ordering Food and drinks. The officer remarked about the social distancing, and that it could be improved. The pool table was still in the same place, but no one was using it. The officer told me it would be better if the table was removed. We arranged for the table to be removed the next day. We also removed further tables from the main room to allow better social distancing. The officer asked for me to e-mail him a copy of the COVID – 19 Risk assessment. At no time did he spend a little time explaining what measures we were to have in place.
3. Third visit was about 11pm on Friday 4th September 2020, 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. This was being done because the premises had been decorated and a new sound system had been installed. PC Reader then asked me if the Noise Limiter Device was fitted. I told him that I was unsure if the engineers had refitted the device back on the wall. When I had finished with the officers I went back into the premises and saw that the limiter was in fact back on the wall. If the officers had come into the premises, then they would have seen this for themselves. PC Reader told me that he would return the following week to check if the limiter had been re-fitted. He did not return.

4. The fourth and final visit was about 10.23pm on Saturday 26th September 2020, PC Reader & PC Jevons had attended the premises.

I shall refer to the report submitted by Chief Superintendent Green, which is in the hearing bundle.

- The report states that a large number of vehicles were seen outside the premises.
 - a) These vehicles he refers to were in the side road. Petite Afrique is on a corner. Many of these vehicles belonged to customers who were attending other nearby venues. From CCTV footage we have viewed that most of our customers were picked up by taxi.
- Reference is made to the shutters at the front of the premises which were halfway down covering the front doors.
 - a) The shutters at the front of the premises were partially down. People were still able to get out with ease. The staff at the premises had been attempting to get the customers out of the premises since 9.45pm, the lights were on inside, the bar had stopped serving drinks and the background music had stopped. A number of customers were being very difficult in vacating the premises.
- The report then states that the security staff had left the premises at 22.00hrs.
 - a) I felt that I was able to control the people that were left inside. We do not have any trouble inside our premises all night, everyone knows each other you can see that from the CCTV footage. I hold an SIA registered door badge and took the view that it was best not to be heavy handed with removing these people. I did not want a disorder on my hands. They eventually left peacefully.
- Officers had found approximately 40 people inside the venue.
 - a) At 22.23hrs 32 customers were counted leaving the premises. Those customers panicked when the Police arrived and started to leave immediately.
- Those customers that were leaving the premises were not wearing face masks.
 - a). There were some customers that were not wearing face masks. When customers entered the premises; they were told to wear face masks. They removed them when they were eating & drinking.
- The officer then states that there appears to be no table service.
 - a) There was table service, staff were waiting on tables and cleaning them periodically.

- The officer states that before 10pm I had been seen on CCTV working behind the bar taking payments from people.
- a) This only occurred on one occasion when I am seen talking to a couple who had come up to the bar to pay for their bar tab. They wanted to take with them the champagne they had bought.
- PC Jevons asked me if customers brought their own drinks into the premises, as he had observed cans and bottled beer on the tables.
- a) I have no idea why he made that comment. He must have known we were licensed to sell alcohol.
- The report then goes onto state that I had been seen taking payments from people.
- a). As I have mentioned earlier, I had taken one payment off a couple who were settling their bill. The other times that I am seen at the till is when I am cashing up.

I would like to add that there were customers coming up to the bar to collect their takeaways before leaving to go home. Payments for these would have been made at the time of the order, earlier in the evening.

I also refer to the attached CCTV Document showing times and comments of CCTV footage which Mr Moore has put together, from the premise's CCTV for the night in question and what can be seen. My comments are in red.

I have provided a list of the COVID precautions the premises have in place together with photographs which I shall refer to:

1. Marked out around each table, the front of the bar and the entrance is floor tape stating, 'Please keep a safe distance of 2mtrs'. Each of the tables were measured out to comply with social distancing.
2. Signage on floor indicating entry and exit, In a clockwise direction
3. New NHS track & Trace procedure in place. Those without apps would need to have their details recorded.
4. Hand sanitisers at the entrance on the tables and in the toilets.
5. Temperatures of each customer is taken at the entrance to the venue.
6. The venue has a box of face masks which if the customer wants to come in we will provide them with a face mask free of charge.
7. We have a social media site where people can book before attending the venue. COVID guidelines are mentioned when booking. People who do not book but turn up, are allowed in if there is room at the premises. Details are taken via the track & Trace app or recorded in the Track & trace book.

According to our Track & Trace booking system we had 30 names with mobile numbers. Others would have booked with the app on entering the venue at the entrance.

The capacity in the premises is 150, during COVID however, we try and keep a low number of customers in, which is between 60 and 80 at any one time with social distancing

With regards to the comment that the venue was ignoring the guidance, that is not true. It is very difficult to operate licensed premises during the COVID pandemic, apart from having to comply with the conditions on your license, we are being told by word of mouth about conditions that the government are coming out with and imposing on businesses. We have no assistance from anyone in relation to keeping us up to date with these conditions. When I e-mailed the officer a copy of our COVID Risk Assessment I had no feedback that there was a problem. I just feel that the premises were an easy target.

We feel that we have been unfairly treated, we know how sever COVID is, we have taken all precautions available since we have been open. We have had no guidance or help from anyone since opening, we just monitor the news. We have visited other venues to gain some knowledge, but they do not appear to have much in place.

It can be difficult towards the end of an evening when people have consumed alcohol, for them to accept that they have to leave when asked. I have an SIA badge which I understand I cannot use force to remove people from a premise.

The report mentions the 4 E's principle, Engage, Explain, Encourage and Enforce. The only E's that I believe have taken place is to engage, which was the first visit where we were told about the Pool Table and level of music. No one from any of the authorities have explained to us what the guidance or regulations are, and there certainly have been no encouragement.

Name: _____

Signed: _____

Date: 09/10/2020

WMP Evidence Bundle for Petite Afrique

Page	Content
1 – 6	PC Reader Statement 15 th October
7 – 8	PC Reader statement 19 th October
9 – 14	PS Giess Statement
15	PC Reader Statement 2 19 th October
16 – 17	Email to National Hospitality Academy
18 – 31	Risk Assessment

1

WITNESS STATEMENT

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

Crime No. URN

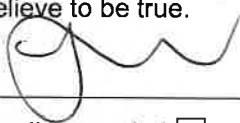
Statement of Ben Reader

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

Occupation Police Constable 2413

This statement (consisting of 6 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)

 2413Date 15th October 2020Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

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

This statement relates to Petite Afrique, a licensed premises located at 160 Hockley Hill, Birmingham B19 1DG. The licence is held in the old company name of La Reference and has a licence number of 4155.

Mr Rodrigue Tankeu made a transfer application in May 2020, during lockdown when the premises was closed. Since the premises has re-opened when the national lock down was lifted, Mr Tankeu has been the licence holder and the DPS.

The police approach has been around the 4 E's principle, Engage, Explain, Encourage, Enforce.

Officers have visited Petite Afrique numerous times since the 4th July when venues reopened. The visits have been to engage with the venue and explain the restrictions and guidance in place.

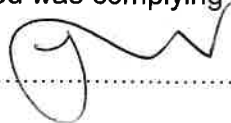
Sgt Nick Giess, the licensing Sgt attended the venue 3 times and spoke with the licence holder (Rodrigue Tankeu) he raised issues about volume of music, people dancing in the venue and the use of the pool table.

Following the third visit, the licence holder sent a very generic risk assessment to Sgt Giess. The licence holder stated that he planned to 'review and update it weekly'.

On the 4th September at approximately 22:55 hours, I attended the venue as part of Op Reliant. I went to this venue as it was one that was causing WMP concerns due to the way it had been operating. The music was very loud inside so I asked Rodrigue Tankeu to come outside so that I could talk to him. There were customers sat inside the premises. Rodrigue Tankeu told me that the music was just being tested and wasn't normally that loud. I found this improbable, especially as he had been advised about this before.

I asked Rodrigue Tankeu about his conditions and he told me that he had sent a RA to Sgt Giess. He could not give me an answer about the noise limiter which should have been in use. I didn't have confidence that Rodrigue Tankeu was complying with his licence or that he was complying with the Covid guidance.

Signature

 2413

Signature witnessed by

03/2016

Page 76 of 132
OFFICIAL – (when complete)

Crime No.

2

URN

Statement of Ben Reader

On the 26th September, I was again deployed on Op Reliant, a force wide operation to respond to suspected Covid guidance breaches.

We drove past the location at around 22:20 and noticed a large number of vehicles outside. The metal shutters were half way down covering the main doors. I found this strange, as the venue should have been closed.

I turned on my bodycam and entered the premises at 22:25 and found approximately 40 people, including staff, inside the venue. Social distancing measures were not in place and the premises had failed to close at 22:00 as per the government measures. Customers were talking loudly, standing around and drinking at tables. Upon police attendance, someone shouted inside the venue. Customers turned to see me and my colleague in the corner and quickly began to leave. I did not say anything or direct people to leave, they just started to go. These customers who left were not wearing facemasks as per guidelines. I was really disappointed to see this happening.

I could see Rodrigue Tankeu, he was clearing up the tables. He came to speak to myself and my colleague. As the licence holder and DPS I was disappointed to see he did not have any form of face covering on. He said he had been trying to get people to leave since 21:45, he stated they would not listen to him and didn't want to go. I found this surprising as I know that this venue uses SIA door staff. He confirmed that his security staff had left at 22:00. I was surprised that he would let his doorstaff leave if he still had patrons inside the premises. This led me to believe that either Tankeu had no control of his venue, or that he did have control and that this was a conscious decision to send his door staff home and allow customers to stay past 22:00 for a 'lock in'.

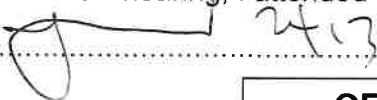
I asked Rodrigue Tankeu to show me the CCTV but he could not work it. I wanted to review the CCTV from earlier in the evening to see if the venue was operating properly. Whilst doing this, 4 members of staff were present inside the venue, none of whom were wearing masks.

I have been back to the venue and viewed some CCTV for the venue and have seen people at the bar being served just prior to 22:00.

The technician was in a rush to go elsewhere so the CCTV was requested to be burnt down. In the parts that I did see, I noticed that Rodrigue Tankeu was working behind the bar taking payments from people. There appears to be no table service in operation and only one member of staff behind the bar was wearing a face mask. Customers are sat at the bar drinking whilst other customers are at the bar paying. There was no social distancing in place.

Following the initial review hearing, I attended the venue at 14:00 on Tuesday 6th October to meet Rodrigue

Signature



Signature witnessed by

03/2016

Crime No.

3

URN

Statement of Ben Reader

Tankeu. Whilst outside the venue I noticed that there was no blue notice displayed outside of the venue. Rodrigue Tankeu stated that there was one but it must have fallen off. He handed me a USB stick which he had burnt down at my request. The footage is from 21:30 – 22:30 from 3 different cameras inside the venue.

I have viewed the CCTV from the venue and can offer the below summary –

Camera 11 is from the corner of the premises, it is situated above the door which leads from the bar to the staff area. It shows the end of the bar area. At 21:30, a female member of staff (I will refer to as Staff 1) is stood next to the door at the end of the bar. She does not have any visible PPE on. She is very close to customers and other staff, on occasion, touching and leaning in to talk to others. People are walking around, there is a large group sat at a booth on the right hand side of the camera. There are several people standing up engaging with people in this booth. Some of these people are dancing. One male is seen sharing a phone with at least two other people. This male and a second male are part of the group within the booth for several minutes. They then move off and go directly to the bar where they mix with other people.

At 21:39 people can be seen ordering at the bar.

At 21:45, a male goes over to the booth and shakes hands and greets two males who are sat down.

At 21:48, people are topping up their drinks from a bottle on the table, they appear to be filming on their phones.

At 21:52 it appears some of the disco lights are turned off.

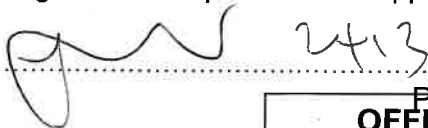
At 21:59 a male is at the bar, he pays cash to a member of staff who is standing on the public side of the bar area.

At 22:05, a female member of staff in a dress (I will refer to as Staff 2) leaves the staff area with what looks like a large oval container inside a white bag. She gives this to someone in the bar area. I believe that this is food.

At 22:06 customers in the booth reach for what looks like a glass bottle with a screw cap, which they open and top up their drinks, they then reach for a bottle of what looks like a soft drink/mixer to top up the drink further.

At 22:07 a male is standing at the end of the bar with something in his hand (possibly a receipt or cash), he gives this to a member of staff and is handed a white parcel which I believe is food. This male then chats with Rodrigue Tankeu. At 22:08, he is handed a second white parcel and two bottle. Rodrigue Tankeu is still there and is looking at the receipt. The male appears to hand over some cash from his back pocket and

Signature



Signature witnessed by

03/2016

Crime No.

4

URN

Statement of Ben Reader

leave.

At 22:09 a further white parcel is placed on the counter by staff, Rodrigue takes hold of this. He then takes this to a customer in the venue.

At 22:12, Rodrigue Tankeu is talking with a customer who takes out some notes and gives them to Rodrigue Tankeu. He speaks to a couple of males and then walks back to the bar.

At 22:13 two females come out of the staff area, one female (Staff 1) starts clapping as if to get people attention. The other has a white bag in her hand and goes to sit down.

At 22:14 Staff 1 and Rodrigue Tankeu are picking up plates of food and returning them to the bar.

At 22:15, staff 1 brings a further white bag out and hands it to a female sat in the booth.

At 22:22, Rodrigue Tankeu is still at the end of the bar, he has been there for almost 6 minutes as is not attempting to get people to leave. He then walks across to the booth and starts talking to people and checking on drinks in the ice bucket.

At 22:22:38, Rodrigue Tankeu turns and looks towards the door, at this point people start to get up. I believe that this is the point that I entered the premises. People then disperse very quickly. There is still alcohol in the glasses on the tables.

At 22:25, female 1 leaves the staff area with two further white bags.

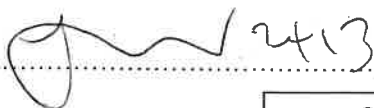
Camera 12 shows part of the dance floor area. The dance floor has tables spaced out on it, with tape on the floor. I would think that this tape is to demark the zones for social distancing. Customers are ignoring the tape and are moving between tables they are carrying their drinks and none are wearing masks. There appears to be no enforcement of any covid safe rules. This camera shows multiple people entering the vicinity of the table in front of the camera. These customers then 'mingle' with other customers. Right up until the point that I enter the premises, people are seen to be drinking from bottles at this table.

Camera 14 shows the main bar area.

At 21:30 Rodrigue Tankeu is working behind the bar. He is serving people who walk up to the bar. He is taking money, serving drinks and giving change. Only one member of staff behind the bar is wearing a face mask. Rodrigue Tankeu is not. Several people are at the bar, standing and drinking. They are not being served via table service. They are not wearing a mask when not seated.

At 21:33, there are still 3 members of staff behind the bar. They are continuing to serve customers at the bar and take payment.

Signature



Signature witnessed by

03/2016

Crime No.

5

URN

Statement of Ben Reader

At 21:39 a group of males walk from the door area over to the bar. A female walks over and hugs one male, they then begin talking. Rodrigue Tankeu is behind the bar, serving, he is within a few metres of this group of males so would clearly see them and see they had no masks on and were not practicing social distancing. The group wait to get to the bar. At 21:41 there are at least 11 customers standing at the bar. For several minutes, staff behind the bar are serving customers. At 21:48 Rodrigue Tankeu serves this group of males himself, directly at the bar. They have been standing at the busy bar for over 8 minutes. These males don't go and sit down, they stay at the bar area and then talk with other customers in the bar. Rodrigue Tankeu stays behind the bar from this point.

At 21:56 he can be seen processing card payments from customers at the bar.

At 21:57 Rodrigue Tankeu appears to be taking cash out of both of the tills.

At 22:00, Rodrigue Tankeu uses a radio to talk to someone, he looks up at the CCTV screens. This could be the point at which he liaises with his door staff. The venue is still busy at this point. Rodrigue Tankeu look around, speaks to a member of staff, rechecks the CCTV and then uses the radio again. It is past 22:00, it is still busy in the venue and customers are still drinking.

At 22:01 another male with a radio comes to the customer side of the bar and talks to Rodrigue Tankeu. He then comes behind the bar and continues the conversation. He is not wearing a mask.

At 22:08 you see the transaction for food form the other angle. Staff 1 clearly takes money from the male who she has given the white parcels to. She puts the money into the till.

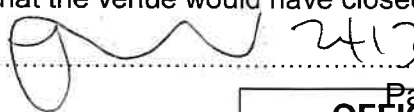
At 22:18 a male approached the bar and holds up two fingers whilst talking to bar staff. He is passed two bottles which he clearly pays for by tapping his phone against the machine.

At 22:23 you can see people start to leave, this coincides with my arrival.

You see two males at the bar, nearest to the camera. These two males have been at this location since the clip started at 21:30. They have not been challenged and have continued to drink and have a conversation. Sometimes seated and sometimes standing. One is drinking from a bottle and the other from a glass. The glass appears almost full at the time I walk in. The male 'downs' the contents of the glass. The other male secretes the bottle under his jacket and both then walk off.

I believe that customers are so comfortable in the venue that the only reason that the customers finished drinks and left so quickly was due to the presence of uniformed police officers walking in. This certainly led to people quickly leaving. If my colleague and I had not gone into the premises at 22:25, I have no confidence at all that the venue would have closed at any time soon. The tills had been emptied of cash, yet

Signature



Signature witnessed by

03/2016

Page 80 of 132
OFFICIAL – (when complete)

Crime No.

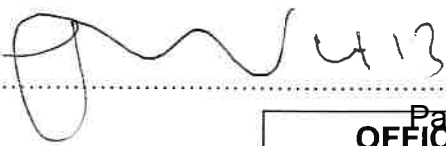
URN

Statement of Ben Reader

further transactions take place. At 22:08 a customer pays cash for food, at 22:12 Rodrigue Tankeu took cash from a customer in the venue, a further card payment for two drinks was processed at the bar at 22:18.

This venue is ignoring the guidance and hosting customers inside the premises post 22:00 with shutters half down. As yet, I do not know whether track and trace details have been collected, or whether the venue can evidence that they have been checking booking details and keeping bookings under 6.

Signature



Signature witnessed by

03/2016

7

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 2 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** 19th October 2020Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

This statement is to dispute evidence given on behalf of Rodrigue Tankeu, at the licensing hearing on Friday 16th October.

The decision notice by the council contains the following –

'On 4th September 2020 PC Reader visited; he did not enter the premises; but he voiced the opinion that the music was too loud. Mr Tankeu explained that an engineer was on site putting a new noise limiter back on the wall. It was denied that he said that he had no noise limiter.'

This visit was captured on my body worn video.

I did go inside the premises, it was loud and I asked Rodrigue Tankeu to come outside so I could hear him.

As I left the premises I spoke with a member of door staff, he confirmed that there would be 4 door staff on and told me that the capacity for the venue was 250.

Rodrigue Tankeu came outside. We started talking about the operation of the premises. He told me that he would be having 80 people as a capacity. This is very different to the figure given by the door supervisor.

Rodrigue Tankeu stated that it was loud inside and that was because the music was being tested.

I started to go through the licence conditions with Rodrigue Tankeu. I said to him

BR 'Have you got a noise limiter fitted?'

RT 'I think we have one'

BR 'You would know if you had one'

RT 'Well the noise doesn't come out, the sound is quite clear'

Signature

Signature witnessed by

03/2016

Page 82 of 132
OFFICIAL – (when complete)

Crime No.

8

URN

Statement of Ben Reader

BR 'No, its ok whether it comes in or out or not, but there's a condition that says a noise limiting device shall be fitted'

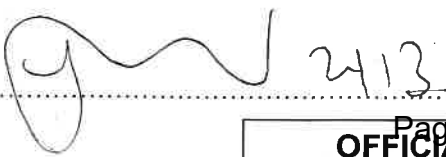
RT 'They told me they had one last time, when I had the talk with the DJ. I don't know whether he said it's broken or something like that. I'll have to double check with him today, if it's fixed'

He did not state that an engineer was on site and did not explain that a new noise limiter was being fitted.

Due to his unclear answer, I did not have confidence that Rodrigue Tankeu was complying with his condition of having a noise limiter in place.

At the time of my visit, the venue was open, customers were inside drinking at the tables and the music was loud. The PLH should have confidence as to whether the licence was being complied with and whether a noise limiter was in place and being used.

Signature



Signature witnessed by

03/2016

9

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 Nicholas Giess

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

Occupation Police Sergeant 1041

This statement (consisting of 6 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: Nick Giess (witness)

Date 07/10/2020

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

I am the aboved named Police Sergeant residing at the address overleaf.

I am the Sergeant in charge of the Licensing Team for Birmingham based within the Pan Birmingham Partnerships Team at Lloyd House.

I have been a Police Officer for nearly 28 years and have extensive relevant experience in dealing with Licensed Premises across Birmingham.

Whilst I am routinely deployed as a Police Sergeant on a day to day basis I am qualified by exam to the rank of Police Inspector and and I have a specific authority from Chief Superintendent Graham (the Police officer in charge of Birmingham West Neighbourhood Policing Unit) to perform the role and duties of Acting Inspector when required to do so.

This is recognised and permissible in law because of the qualifications that I hold and when deployed in that capacity (as an acting Inspector) I am able to exercise all of the additional powers that are available to a substantive Police Inspector. This is relevant as I am sometimes required to utilise powers available to an Inspector to close licensed premises.

This statement is in relation to "Petite Afrique" which is located at 160 Hockley Hill, Hockley, Birmingham B18 5AN.

This location has a premises licence from Birmingham City Council, licence number 115412. It is licensed for activity from 10:00 until 03:00 from Sunday until Wednesday and 10:00 until 05:00 Thursday to Saturday.

The premises have a number of operating conditions on the licence. It also had a number of committee imposed conditions including 'Challenge 25'

The DPS for the premises is Mr Rodrigue TANKEU. The premises does not sit within one of the city's night

Signature

Signature witnessed by

03/2016

Crime No.

10

URN

Statement of Nicholas Giess

time economy areas, it is a standalone premises on Hockley Hill opposite the junction with Key Hill.

Since the reopening of bars following the national lockdown due to the Coronavirus Pandemic on 4th July 2020, all premises have had to amend their operating models to offer adequate additional covid safeguarding to their customers. I have been made aware of many repeated concerns from assorted members of the public and Police Officers over the way in which Petite Afrique were operating.

Effectively Petite Afrique was trading in much the same way it did pre-lockdown and had not amended its operations sufficiently to take into account the government guidance and legislation for licensed premises.

There are over 5000 licensed premises in Birmingham and Petite Afrique is not the only licensed premises in Birmingham that I or my staff have been in contact with and offering advice to regarding this. It is of note that nearly all premises we have engaged with have made an effort to comply with the legislation and government guidelines.

On Friday 7th August 2020 between 1800hrs and 0330hrs I was deployed in uniform as the Inspector in charge of the Police Support Unit (PSU) YM19 on Operation Reliant (which is the police response to Unlicensed Music Events (UME), licensing issues and house parties during the Pandemic.)

In the early hours of the morning on Saturday 8th August 2020 I visited another local venue (PB's which has since been closed for Breaches of covid legislation and was located virtually opposite Petite Afrique) the DPS for that venue (Nickesha REID-DAVIDSON) told me that I should "...look at them over the road as they are far worse than me, and the massage parlour up the road"

Because of the concerns raised I decided to visit Petite Afrique and offer support to Tankeu to assist him to bring the premises up to standard.

Petite Afrique's is accessed by a single door that front's onto Hockley Hill. There are usually 2 door staff outside with a small roped off area to assist with queue management.

It is a single storey premises and is not very large inside, with the Bar in the corner diagonally opposite to the entrance. There are tables and seating to the right as you enter and a dance floor area with a raised DJ Booth surrounded by seating on the left. The premises were well lit and I had a good clear unobstructed view around the inside. There is a small area that is boxed off on the left corner immediately opposite the bar and main door where there is a pool table but it is not visible from the entrance. There was a mix of people stood and seated and there were a few women dancing, the music was very loud to the extent that I had to shout to be heard when I spoke to TANKEU the DPS.

I spent about 15-20 min speaking with TANKEU who had the music turned down at my request, and he

Signature

Signature witnessed by

03/2016

Crime No.

11

URN

Statement of Nicholas Giess

asked anyone who was stood up or dancing to sit down.

He took me into the back office area (behind the bar) and I explained that he he could have people stood up whilst drinking or dancing and that he needed to keep the music at a much quieter level so that people did not have to shout as this reduced the probability of covid infection.

I asked about a Risk Assessment and he had not conducted one at that point. I explained the sort of issues that he needed to cover in his Covid Risk Assessment and explained that it was a legal requirement that he conduct one.

I estimate that there were between 50-60 persons inside the premises at the time and I explained that there needed to be 2 metre social distancing in place or that could be reduced to 1 metre plus if an additional control measure was put in place, (like persons being sat back to back or safety screens.) At that time there was inadequate social distancing with lots of table less than 1 metre away from each other and no additional safety measures were in place.

As we exited the back office area behind the bar I noticed a group of older looking men sat around what looked like a pool table, but no-one was playing at that time. I asked if the pool table was in use and explained that it could not be and Tankeu explained that it wasn't in use they were just sat around it. I could not see anyone holding a cue or standing near to the table at that time and I had no reason to doubt what Tankeu was telling me. I explained that the licensing team were there to assist and told him to contact us if he needed support. This matter was recorded on Police bodycam nowever I did not save it so it was automatically deleted 28 days later.

To clarify my point of reference and thought process at that time. The covid infection rate for Birmingham was around 20 people per 100,000 population at that point and Birmingham was about to be placed on the government's watch list for areas of the country that may need to be subject of a local lockdown which would be devastating to the regional economy. I was acutely aware that any venue operating without have adequate control measures in place were quite literally the breeding grounds for and cause of the spread of coronavirus, and because of this my team as well as other officers were investing significant time and effort in attempting to encourage all licensed premises to operate in a manner that was not a threat to public health.

In the early hours of the morning on either Saturday 15th or Sunday 16th August 2020 I was again deployed in uniform as the Inspector in charge of the Police Support Unit (PSU) YM19 on Operation Reliant. Due to an error on my part I did not record which specific day over that weekend that I visited Petite Afrique.

I was disappointed to see that despite having discussed a number of required improvements with Tankeu I

Signature

Signature witnessed by

03/2016

Page 86 of 132
OFFICIAL – (when complete)

Crime No.

12

URN

Statement of Nicholas Giess

could not see evidence of any additional efforts to control the spread of the virus at the premises which were in fact busier than the last time I had attended.

There were about 80 customers inside. People were once again dancing and were stood up inside in breach of the covid guidance. As I walked in there were helium balloons around a party of about 10 women which looked like a birthday party. There was no evidence that the advice that I had given regarding social distancing had been complied with as the seating areas were still too close together without additional control measures. Again the music was so loud that I had to shout to make myself heard but this time when the DJ saw me, raised his hand as if to say sorry and turned the volume down. At the same time people stopped dancing and returned to their seats. I walked to the bar and spoke to Tankeu. We stood near to the bar and as I turned I could see a group of men stood drinking opposite me playing pool at the table that Tankeu had previously told me was not in use.

I again explained that people could not be stood up drinking in a licenced premises and that no dancing was allowed. I also explained that the music was too loud and that because of the volume it encouraged people to shout which meant that an infected person's saliva would travel further as they were forced to project their voice to be heard increasing the probability of infection. I explained that playing pool was not allowed as the customers could not play pool whilst seated. We were very busy that night and I was fitting the visit in between responding to incidents on the radio and did not ask to see the Covid Risk Assessment. I did stress to Tankeu that I was not happy that I could not see an improvement in the level of compliance and I was concerned as if anything the level of covid compliance had worsened between my first and second visit.

In the early hours of the morning on Saturday 28th August I was once again deployed in uniform as the Inspector in charge of the Police Support Unit (PSU) YM19 on Operation Reliant and I again attended Petite Afrique.

The bar was busy again with about 80-100 customers inside the music was still on too loud although upon seeing me enter the DJ turned it down straight away. There were people once more dancing although when I first entered I could not see anyone stood around as I had on previous occasions.

I walked to the bar and asked to speak to the DPS. As I waited for him to come out I could see people stood playing pool. In the recessed area opposite me and the door.

When he joined me I took Tankeu to the pool table (which I could see was a normal coin operated type that is often found in bars) and asked why people were being allowed to play pool when he had told me that the pool table was not in use and I had previously explained to him that they were not allowed to.

Signature Signature witnessed by

Crime No.

13

URN

Statement of Nicholas Giess

"Well how am I supposed to stop them?" Tankeu replied to me.

I explained that he could cover the table, remove the balls, take away the cues, move the table to the side, or even just put a sign on the table saying 'out of use' and that any of those control measures would achieve that.

I asked why the music had been so loud after I had explained previously why it need to be at a background level. Tankeu said that the DJ must have turned it up and he had not noticed.

I asked why people were being allowed to dance and he told me that it was difficult to stop them.

I asked to see the Covid Risk Assessment. Tankeu took me to the back office but was unable to find a copy he then said oh I have it on my phone and showed me a PDF file on his phone.

I read the PDF. It was a poorly written generic blank risk assessment form that had not even been completed. I pointed this out to Tankeu and he said that he would email me the completed version later that day. He did so at 1509hrs later that day and I produce a copy of that risk assessment as exhibit () reference (NPG1.)

The text that was included in that email is below:

From: Kouamo Rodrigue [mailto:]

Sent: 29 August 2020 15:09

To: Nick Giess

Subject: [External]: Petite Afrique 10.08.20 Safe to open risk assessment 2.pdf

CAUTION: This email originated from outside of West Midlands Police. Do not click links or open attachments unless you are sure the content is safe.

Dear Sir,

Apologies for not being able to supply you with a printed copy last night. However, here is an electronic copy attached to this email. We will ensure to have a hard copy available on the premises at all time in the future and also, we aim to review and update it weekly. I would be more than happy to answer any further queries you may have.

Signature

Signature witnessed by

03/2016

Page 88 of 132
OFFICIAL – (when complete)

OFFICIAL – (when complete)

MG11

Crime No.

14

URN

Statement of Nicholas Giess

Yours Faithfully.

Rodrigue Tankeu

Sent from Yahoo Mail on Android

I am a Police Trained Risk Assessor and have been for the last 19 years. In my role as the Licensing Sergeant I have seen a large number of Covid risk assessments for Licensed Premises. This one is in my professional opinion completely inadequate and sub standard, it is infact the worst attempt at a Covid Risk assessment that I have seen.

I am aware that since then other officers have attended the venue and that they have also seen little evidencem of any effort being made to improve the levels of covid security despite the infection situation in Birmingham worsening significantly.

Signature

Signature witnessed by

03/2016

Page 89 of 132
OFFICIAL – (when complete)

15

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 19th October 2020Tick if witness evidence is visually recorded ☐ (supply witness details on rear)

This statement is in relation to the risk assessment for Petite Afrique.

Following a visit from Sgt Giess, Rodrigue Tankeu sent an electronic copy of his risk assessment to Sgt Giess on 29th August at 15:09 hours, along with the following email -

Dear Sir,

Apologies for not being able to supply you with a printed copy last night. However, here is an electronic copy attached to this email. We will ensure to have a hard copy available on the premises at all time in the future and also, we aim to review and update it weekly. I would be more than happy to answer any further queries you may have.

Yours Faithfully.

Rodrigue Tankeu

This document is a Safe To Open checklist provided by the National Hospitality Academy. This document is not a RA specific to the venue.

I have contacted the training provider and asked if a site specific risk assessment was completed by the NHA for this venue.

Company director Mark Bowden replied and his email is attached.

Signature

Signature witnessed by

03/2016

Page 90 of 132
OFFICIAL – (when complete)

Hi Ben

Just to confirm, and as you can see from the COVID guide we send out, this is a guide of ideas as to what to look to do when assessing a venue for COVID risk. We've provided some tick sheets for businesses to utilise in their own business risk assessment. The guide is on open access over social media, its not something we sell.

We don't provide actual risk assessments for businesses as we would have to attend the business and formally build one for that particular place, which is something we don't offer. What he should have done is used ideas from guides and government advice and done his own risk assessment based on his own venue. If he didn't know what a risk assessment was then a course on that very subject is suggested. In fact there is a link in the guide.

We provide paid training courses on risk assessment, health and safety, first aid and many others for the hospitality industry, but this company hasn't bought any, taken any or sought any assistance or guidance from us in COVID or anything else. It's clear that perhaps they should have!

I hope that helps.

Regards

Mark Bowden

Director

e-Learning | National Hospitality Academy

"The World's Leading Hospitality Training Platform"



www.nha.training



3 New Mill Court, Swansea Enterprise Park, Swansea, Wales, SA7 9FG

From: Ben Reader <b.reader@west-midlands.pnn.police.uk>

Sent: 19 October 2020 11:06

To:

Subject: Petite Afrique

Hello Mark,

As per our discussion, the above venue based in Birmingham has produced a document that they have classed as a 'risk assessment' which has your company details on it.

Is this a formal risk assessment completed by your company?

Thank you

Ben

2413 PC Ben Reader

Birmingham Central Licensing Team

Force Public Order & Public Safety Tactical Advisor

T: 101 (ext. 801 1669) Direct 0121 626 6099

Preventing crime, protecting the public and helping those in need.

If it's not 999, search WMP Online



[View all our social network links](#)



Provided By



NATIONAL
HOSPITALITY
ACADEMY

COVID-19 RISK ASSESSMENT

BUSINESS NAME

Petite Afrique bar & restaurant

Date Distributed

10.08.20

COMPLETED BY

Name

Rodrigue kouamo tankeu

Signature

Rodrigue tankeu

Date

10.08.20

REPRESENTATIVE

Name

Signature

Introduction

19

This risk assessment template identifies controls to minimise the hazard of COVID-19 spread.

COVID-19 is a novel virus that can affect your respiratory system. Various symptoms are associated, which can range from asymptomatic (none displayed) to severe. It can be transmitted from small droplets that are created when an infected person sneezes or coughs. These can be directly transmitted to another person through the air, or via a surface if a person touches their eyes, mouth or nose after coming into contact.

A competent person must carry out an appropriate COVID-19 risk assessment to help decide the control measures to implement within your business. This form will help you address what risks of COVID-19 are applicable to your business and identify suitable measures to control them.

You must consult with the health and safety representative selected by a recognised trade union or, if there isn't one, a representative chosen by employees. You must also share the results of this risk assessment with your employees. If possible, you should consider publishing the results publicly as well, e.g. on your website.

The risk assessment should be reviewed if the nature of the operation changes, or if the UK Government advice on COVID-19 changes.

People at Risk

Please place a tick next to each group at risk of exposure.

- | | |
|---|---|
| <input checked="" type="checkbox"/> Employees | <input type="checkbox"/> Members of the Public |
| <input type="checkbox"/> Contractors | <input checked="" type="checkbox"/> Visitors / Guests |
| <input type="checkbox"/> Vulnerable Groups | <input type="checkbox"/> Extremely Vulnerable Groups |
| <input type="checkbox"/> Other, please state: | |

For all vulnerable and extremely vulnerable employees please ensure a specific risk assessment and health declaration form has been completed.

Please tick to confirm (if necessary):

- ☐ A specific risk assessment has been carried out
- ☐ A health declaration form has been completed

*Vulnerable groups have been classified by the NHS as at moderate risk from COVID-19, for example those pregnant or aged 70 or older. Vulnerable Employees who cannot work from home must be offered the safest on-site roles to enable social distancing.

**Extremely vulnerable groups are classified by the NHS as at high risk from COVID-19. They will have been informed by their GP that they are extremely vulnerable and will have received a letter confirming this, placing them in what is commonly known as the 'Shield' group. Generally, these individuals have been advised to not leave their home for any reason and therefore must not return to the workplace.

Control Measures

What facilities and/or procedures will you put in place to enhance the implementation of effective hand-washing practices by all employees to prevent the spread of COVID-19?

- ☒ Wash hand basins are provided to ensure that hand washing can be achieved.
- ☒ Wash hand basins to be supplied with soap and an effective means of drying hands.
- ☐ Paper towels are used for drying hands.
- ☒ Wash hand basins are supplemented with alcoholic hand gel.
- ☒ Hand sanitiser is provided at the entrance of the business and at suitable locations throughout.
- ☐ Employees carry their own personal hand sanitiser personal use.
- ☒ Gloves are provided and training has been given on their use.
- ☐ Other practices please state below:

Hand sanitiser is provided for all staff and customers on the bar area.

Social Distancing

What procedures will you put in place to ensure appropriate social distancing is maintained between employees in their work space?

- ☒ Wherever possible, social distancing must be maintained. This includes all work areas, entrances, exits and rest areas and is also applicable to visitors to the site.
- ☐ Where social distancing cannot be achieved, alter the task so people are stood side to side or back to back.
- ☐ Where social distancing cannot be achieved physical barriers (for example perspex screens) have been installed.
- ☐ Implemented measures to prevent non-essential movement between work areas.
- ☒ Created floor markings to ensure separation.
- ☐ Re-designed the workflow.
- ☐ Other practices please state below:

Cleaning and Disinfection

What changes will you make to your cleaning and disinfection procedures to ensure they are capable of controlling the potential spread of COVID-19?

- ☒ Touch points, such as door handles, keyboards and fridge handles are disinfected regularly throughout the day and as a minimum the start and end of the day.
- ☒ Disinfectant used is effective against viruses such as COVID-19 and the contact time is adhered to.
- ☒ All touch points to be cleaned with hot soapy water as a minimum of once a day.
- ☐ Shared entrances to the business are part of the enhanced cleaning regime. This may require co-ordination with the landlord or other users of the space.
- ☒ There is sufficient supply of cleaning materials, recognising increased usage compared to normal.
If a person displays symptoms of COVID-19 in workplace or there is a confirmed case of someone with COVID-19 having recently visited the premises, then enhanced cleaning following the latest government guidance is undertaken.
- ☐ Colleague uniforms are to be laundered daily either professionally or at the highest temperature possible, above 60C, as not to impact the uniform.
- ☒ Employees avoid wearing their uniform on public transport.
- ☒ Personal belongings brought to work must be minimal and stored away in a locker.
- ☐ Other practices please state below:

Personal Protective Equipment (PPE)

What procedures will you put in place to ensure existing (standard issue) PPE worn by staff, such as overalls and gloves, are changed and cleaned regularly in accordance with government advice on COVID-19 control?

- ☒ If employees choose to wear a face covering, they must wash hands thoroughly before putting on and removing, avoid touching the face, change the covering if it becomes damp, change face covering at least daily, continue to observe enhanced hand washing, cleaning regimes and social distancing.
- ☐ Review current procedures for laundering PPE to prevent the potential spread of COVID-19.
- ☐ Laundering services or facilities installed within the premises to ensure PPE does not need to be taken home by employee.
- ☐ Other practices please state below:

Deliveries

What changes will you make to your delivery procedures to ensure they are minimising the potential spread of COVID-19?

- ☒ The number of deliveries to site have been reduced, for example by increasing the size of order and reducing frequency.
- ☐ Stop personal deliveries to the workplace.
- ☐ Have a clear area for deliveries to be marked in the workplace and maintain social distancing when delivery is being made.
- ☒ Hands are washed thoroughly after handling the delivered items.
- ☐ Signage is displayed to indicate the delivery area and informing delivery personal of the control on site.
- ☐ Other practices please state below:

Entering and Leaving Work

What procedures will you put in place to ensure appropriate social distancing is maintained between customers and or visitors?

- ☐ If there is a receptionist, then they must be socially distanced or a screen placed as a barrier.
- ☒ To facilitate social distancing, stagger times that employees arrive and leave work, reducing congestion at entrances & exits.
- ☒ Mark the floor at entrances to show social distance gap.
- ☐ If keypads are used to access building, consider deactivating if security can still be maintained. If key pads are used, ensure they are part of the enhanced cleaning regime.
- ☐ Markings placed at the entrance of the building to ensure social distancing is maintained before entering the building and queuing.
- ☒ Signage is displayed to inform the guest of social distancing measures and requesting they are observed.
- ☐ Other practices please state below:

Movement Within Work

What procedures will you put in place to minimise contact between employees, visitors and customers within the business?

- ☐ Reduce movement around building by discouraging non-essential movements.
- ☐ Restrict colleague movements to only essential areas.
- ☐ If lifts are used, restrict number of occupants to increase social distancing.
- ☐ Occupants of lifts to face away from one another and mark floor to indicate this.
- ☐ Lift to be included in the enhanced cleaning regime.
- ☒ If meetings must absolutely be held in person, maintain the social distancing and avoid sharing appliances, such as pens and whiteboards. Space meeting room layout to be changed to ensure distancing can be maintained.
- ☐ Meeting rooms are to have enhanced cleaning, with area being disinfected before and after meetings.
- ☐ Customers/visitors are to be clearly instructed on flow around the building, either through floor markings or signage.
- ☐ Other practices please state below:

Communal Areas

What procedures will you put in place to ensure appropriate social distancing is maintained between employees and visitors in your business?

- ☒ Stagger breaks to reduce occupancy of communal areas. If possible, take breaks outside in well ventilated areas.
- ☒ Seating to be rearranged to aid maintenance of social distancing and reduce face to face interactions.
- ☐ Ensure that the communal areas are included in the enhanced cleaning regime. If there are showers and changing facilities, ensure that they are kept clear of personal items.
- ☒ Reduce the likelihood of congregating in communal areas by altering service, for example providing table service, moving till points apart or use of floor markings.
- ☐ Review occupancy limit of toilets to ensure that social distancing can be maintained. Inform guest of revised occupancy of toilets and wait until facilities are available. Facilities to be taped off to ensure social distancing is maintained.
- ☐ Other practices please state below:

Travelling to work

What procedures will you put in place to ensure employees reduce the spread of COVID-19 travelling to and from work?

- ☐ If corporate vehicles are used to transport team, reduce number of people being carried to achieve social distance.
- ☐ If above cannot be achieved, then passengers to sit back to back or side by side and should wear a face covering.
- ☐ Work vehicles to be included on the enhanced cleaning regime.
- ☐ Other practices please state below:

Managing visitors

What additional procedures will you put in place to ensure any essential visitors do not present a risk of spreading COVID-19 to staff?

- ☐ Discourage visitors to the workplace. Where visitors are necessary, then inform them of the controls on site before arriving.
- ☐ Host of visitor to inform visitor of the site specific controls when arriving at site.
- ☒ Limit the number of visitors at any one time and consider organising visits when occupancy is low, for example if maintenance is required then undertake early in morning or late afternoon.
- ☐ If visitors have to sign in, ask them to use their own pen or have a means of disinfecting pen after each use.
- ☐ Other practices please state below:

Reduced capacity 50%

Home Working

How will you assess which employees work from home or return to work?

Employees will only return to the workplace if:

- ☒ They cannot do their job remotely.
- ☒ Where home circumstances mean working from home is not possible.
- ☐ Equipment required to do the job safely is unavailable at home.
- ☐ Employees have been identified as vulnerable or extremely vulnerable individuals.
- ☐ Other practices please state below:

Working Outside the Office and Home Office

How will you establish procedures for those employees who work remotely?

- ☐ Face to face meetings to be avoid where possible.
- ☐ Employees are encourage not to travel on public transport.
- ☒ Employees who cannot avoid travelling on public transport must wear appropriate face coverings when using travelling.
- ☒ All employees must observe social distancing at all times and wash or sanitise their hands when they arrive at their destination.
- ☒ Prior to a site visit, the employee must ensure that they are not exposed to unnecessary risks at the destination and a copy of the destinations risk assessment should be reviewed.
- ☒ All employees are trained to follow the sickness policy and inform their manager is they display any of the COVID-19 symptoms.
- ☐ Other practices please state below:

Managing the Workforce

Are there any specific tasks where maintaining social distance between employees presents a challenge, and are additional measures possible which will prevent the spread of COVID-19?

- ☐ Fix teams into work groups or shift patterns, reducing the number of individual contacts of an employee.
- ☐ If materials are passed between employees, for example office supplies or documentation, organise drop off zones where items can be left and then collected.
- ☒ All shared cutlery, crockery, cups and drinking glasses must be effectively cleaned and disinfected before use by others
- ☒ Ensure employees are not incentivised to work if they are feeling unwell.
- ☒ Ensure employees are not incentivised to work if they have had contact with a symptomatic individual.
- ☒ Content of the Fire Risk Assessment has been updated in this risk assessment to reflect any changes in layout.
- ☐ Other practices please state below:

Communication and training

How will you ensure all of your employees understand the measures needed to prevent the spread of COVID-19 whilst at work?

- ☒ All employees have read and understand the control measures detailed in this risk assessment.
- ☒ All employees receive COVID-19 training.
- ☒ All employees receive regular update training and are informed of the new control measures. If control measures are not followed, the employee is immediately retrained in them.
- ☒ All employees complete a COVID-19 Return to Work questionnaire to ensure they are fit to work.
- ☒ All employees understand the symptoms of COVID-19 and the action they must take if they are in contact with anyone that has the symptoms.
- ☐ Other practices please state below:

E Learning Covid course introduced by National Hospitality Academy.

Manual Handling

How will you review manual handling practices to take into account COVID-19 controls?

- ☒ All manual handling risk assessment have been reviewed to take into account social distancing measures.
- ☒ All employees have been consulted in the manual handling review and retrained in the new practices.
- ☐ Other practices please state below:

First Aid

How will you review first aid procedures to take into account COVID-19 controls?

- ☐ The first aid risk assessment has been reviewed to take into account COVID-19 controls.
- ☐ All employees have been consulted in the first aid review and retrained in the new practices.
- ☒ Other practices please state below:

All management and staff are enroled on the e learning courses

Ventilation within the Business

How do you ventilate your business to minimise the potential spread of COVID-19?

- ☒ Windows and doors should be left open to encourage ventilation of the space. This action must not impact other safety considerations, for example reduced security as the entrances are not secure or fire doors being propped open.
- ☒ Ventilation systems should be adjusted to achieve the max number of air changes possible whilst maintaining comfort. If there is a complex ventilation system, then guidance is to be sought from the company's ventilation and air conditioning advisors.
- ☐ Other practices please state below:

Common Hand Contact Surfaces

What procedures will you put in place for reusable hand contact surfaces?

- ☐ Reusable hand contact surfaces are replaced with alternative non-contact methods, for example menus.
- ☒ All reusable hand contact surfaces are cleaned and disinfected between use, for example PDQ machines.
- ☐ Other practices please state below:

All menus are sanitised after use

Review and Monitoring

What procedures have you put in place to review & monitor the control measures of this risk assessment?

- ☒ The risk assessment is updated at least yearly or sooner when the Government guidance changes or work practices change.
- ☒ Monitoring of control measures are undertaken throughout the day and recorded daily.
- ☐ Other practices please state below:

Risk assessment is carried out weekly

Dealing with COVID-19 in the Workplace

What procedures will you implement if an employee or visitor becomes unwell and displays symptoms?

- ☒ All employees that have been exposed to a symptomatic person must self-isolate as per Government guidelines.
- ☒ All employees who test positive must self-isolate and follow the sickness procedure.
- ☒ All employees must complete a return to work form after self-isolation or completion of a negative COVID-19 test.
- ☐ Other practices please state below:

Additional Information and Control Measures

Please state any further relevant information

Safe To open

Provided By



NATIONAL
HOSPITALITY
ACADEMY

**For further information, interactive E-Learning Courses,
Personal Licenses and more, please visit:**

www.nha.training

Alternatively, please contact:

**support@nha.training
0203 544 2211**

Find us on Facebook and LinkedIn for the latest news and blogs.



/NationalHospitalityAcademy

The National Hospitality Academy



company/the-national-hospitality-academy

(t)02035442211

(e)www.nha.training

BEFORE BIRMINGHAM CITY COUNCIL’S
LICENSING SUB-COMMITTEE

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

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

Applicant

- v -

RODRIQUE KOUAMO TANKEU
(t/a “PETITE AFRIQUE BAR & RESTAURANT”
previously “ LA REFERENCE”)
160 Hockley Hill, Birmingham B1 19 1DG)

Premises Licence Holder

WMP WRITTEN SUBMISSIONS
ON FACTS & LAW
For Review Hearing on 26 October 2020

[Page references in square brackets are to the Agenda Papers p.1 - 106]

INTRODUCTION

1. “Petite Afrique” (formerly known as “La Reference”) is a bar and restaurant in Hockley Hill, Birmingham. Since a transfer of the licence in May 2020, Mr Rodrique Tankeu has been both the Premises Licence Holder and Designated Premises Supervisor (“DPS”). He opened his newly-branded premises after the national lockdown on hospitality premises was lifted on 4 July 2020.

2. 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 Sgt Nick Giess.
3. 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.
4. At the very best Mr Tankeu takes a criminally lax approach to compliance. It is more likely that he really does not care about it, save as a "tick-box" exercise to placate the authorities when they scrutinise his operation.
5. Mr Tankeu is either unwilling or incapable of abiding by the law and implementing COVID-secure measures in Petite Afrique. Either way, WMP have no confidence that - were this sub-committee to permit him to re-open the venue as a licensed premises - he would operate it in a manner that promotes the licensing objectives and is compliant with the new 3-Tier COVID related regulations now in force.
6. The COVID measures, both in regulations and guidance, are intended to secure the health and safety of Petite Afrique's staff, customers and the wider community by reducing the opportunities for a potentially fatal respiratory infection to spread during a national pandemic that has already resulted in over 43,000 deaths in the UK.
7. This is not a case involving a one-off inadvertent or unavoidable minor breach of technical requirements due to the COVID-19 pandemic. Nor is the behaviour exhibited the result of an innocent misunderstanding of complex legislation or changing rules by a well-meaning operator doing his very best in difficult circumstances. Indeed, these breaches have occurred despite engagement, advice and warnings from the authorities.
8. Rather, the breaches here are the result of deliberate, reckless or, at the very least, grossly negligent actions by the operator in order to further his commercial interests. He has operated without paying any serious regard to the wider consequences to the community of his actions during a national pandemic. Therefore, West Midlands Police ("WMP") consider this as a serious matter that undermines the licensing objectives.

9. Mr Tankeu appears to be exert little effective managerial control over this premises and his customers.
10. It is significant that WMP's application for review has received support from Birmingham's Licensing Enforcement, Director of Public Health, and Environmental Health teams acting as responsible authorities.
11. The sub-committee is entitled to take robust, appropriate and proportionate steps, warranted in the public interest, that achieve the twin aims of:
 - a. Preventing this operator from further undermining the licensing objectives, and
 - b. Deterring similar behaviour by this operator or others.¹
12. As a consequence, WMP invite the sub-committee to revoke the premises licence².
13. Should the sub-committee take that step, then WMP would ask that, additionally, the sub-committee suspends the premises licence as an interim step pending any appeal.³

FACTUAL TIMELINE & SUPPORTING WMP DOCUMENTS

8 August 2020

14. In the early hours of 8 August, Sgt 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.
15. 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.

¹ In relation to licence review decisions also serving the purposes of deterrence, see *East Lindsey District Council v Abu Hanif* [2016] EWHC 1265 (Admin) (per Jay J at §16 and 18) and *R (Bassetlaw District Council) v Worksop Magistrates' Court* [2008] EWHC 3530 (Admin) (per Slade J at §32)

² Pursuant to s.53C(3)(e) of Licensing Act 2003 (LA2003)

³ S.53D(3)(d) LA2003

16. Sgt Giess spent about 15-20 minutes speaking with Mr Tankeu who had the music turned down. Mr Tankeu asked anyone who was stood 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 as this reduced the risk of COVID infection spreading.
17. The high sound levels of the music was of particular concern to WMP as the Government guidance had issued in July, designed to assist bar and restaurant operators to operate in a COVID-19 secure manner, which stated:⁴

“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.”

18. An extract from the relevant COVID Guidance (dated 3.7.20) is attached.
19. Sgt Giess asked about a Risk Assessment, which operators are required by law to undertake. However, Mr Tankeu had not conducted one at that point.
20. There were about 50-60 people inside. Sgt Giess advised Mr Tankeu about the need to ensure social distancing. At that time there was no social distancing measures in place. There was a discussion about the use of the pool table (for the purposes of this review hearing WMP do not rely on issues relating to use of the pool table, save in so far as it impacts on social distancing measures and the effectiveness of the overall COVID-secure measures taken).
21. Sgt Giess explained that the licensing team were there to assist and to contact them if he needed support.
22. 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.

⁴ “Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services”, 3 July 2020, § 4.5, p.26 (HMG). This Guidance has since been updated (most recently on 15 October 2020), but in all versions operators are advised to reduce loud music levels to avoid people having to shout in order to have a conversation.

23. This visit is evidenced in the witness statement of Sgt Giess at [p.85-87].

15/16 August 2020

24. Over the weekend of 15/16 August, Sgt 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.

25. 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.

26. Once again, the music was so loud that Sgt 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.

27. This visit is evidenced in the witness statement of Sgt Giess at [p.86-87].

28 August 2020

28. As part of Operation Reliant, Sgt 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.

29. Sgt 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.

30. 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.

31. 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*”.
32. This visit is evidenced in the witness statement of Sgt Giess at [p.87-89]. The (generic) Risk Assessment Mr Tankeu emailed through is at [p.91-106].

4 September 2020

33. 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.
34. The music inside was, once again, being played very loudly.
35. 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 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.
36. WMP invite the sub-committee to consider why would Mr Tankeu be playing music so loudly, as a “test” whilst customers were inside - at 22:55hrs - rather than carrying out the test when the premises was closed to the public in the normal way? WMP suggest Mr Tankeu was not giving a straight answer about the music system being “tested” at this late hour.
37. The installation and use of a noise limiting device, set at a pre-set volume level, is a condition on the Premises Licence, see [p.40]. 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*”.

38. This exchange was recorded on the officer's bodycam [see statement of PC Reader at p.82-83]⁵. There was no mention during this conversation of an engineer being on site sorting out the noise limiter or music equipment, as one would expect Mr Tankeu to have mentioned to the officer at the time when the issue of the noise limiter was raised.

39. In contrast, at the interim steps hearing on 16 October 2020, Mr Tankeu told the licensing sub-committee (through his Counsel and as recorded in the Decision Notice⁶) that on this date:

*“PC Reader did not enter the premises, but he voiced the opinion that the music was too loud. **Mr Tankeu explained that an engineer was on site putting a new noise limiter back on the wall.** It was denied that he said that he had no noise limiter”.*

40. Mr Tankeu repeats this claim in his own witness statement dated 26 September at [p.69, §3]:

“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.”

41. However, as indicated, the recording of that exchange suggests otherwise. Although Mr Tankeu gave an (implausible) excuse to officers for the high sound levels (the music was being “tested”), he did *not* indicate that an engineer was on site installing a new noise limiter.

42. The bodycam footage also shows that PC Reader *did* fully enter the premises. He went up to the bar area to call on Mr Tankeu. In contrast in Mr Tankeu's witness statement placed before this sub-committee he states that the officers “*did not go round the premises, they stood right at the entrance and then went back out*”.⁷

43. Regrettably, it appears that Mr Tankeu has tried to mislead this sub-committee and has been caught out by the bodycam recording. The sub-committee may wish to take this into account when assessing the credibility of Mr Tankeu when he makes claims about other relevant matters in these review proceedings. WMP suggest that if Mr Tankeu is prepared to lie about relatively small matters, then he is also prepared to lie about the larger ones.

⁵ And the bodycam footage has been served on all parties if the sub-committee wish to view it.

⁶ At p.17. Emphasis added.

⁷ See §3 of Mr Tankeu's witness statement at [p.71]

44. This visit is evidenced in the statements of PC Reader at [p.76] and [p.82-83] as well as in the bodycam footage from this police visit.

26 September 2020

45. (The nationwide 10pm curfew on venues “carrying on” as bars or restaurants had come into force on 24 September).
46. 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 half way down covering the main doors.
47. PC Reader entered the premises a few minutes later (around 22:23-22:24hrs)⁸. 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.
48. When police attended someone shouted inside the venue. When customers saw the police they quickly began to leave (suggesting 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.
49. 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.
50. Even if the sub-committee were to take Mr Tankeu’s account at face value, the following points are apparent, and they suggest that he is not an operator who can be trusted to promote the licensing objectives and operate in a COVID-secure fashion in the future:
- a. He has little or no control over the operation of his premises or his customers;
 - b. If his customers do not “listen to him”, then how is it supposed they would listen to him in the future if he was permitted to re-open?

⁸ See CCTV footage for timings.

- c. Why would Mr Tankeu release 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 and were not listening to his (claimed) entreaties to leave so he could comply with the law? (It is a condition of the premises licence that SIA requirements need to be risk assessed before 11pm).⁹

- 51. WMP suggest 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. This displays a troubling disregard, and contempt, for the COVID regulations during a national pandemic.
- 52. It is unknown whether Mr Tankeu was collecting track and trace details from his customers as he was obliged to do.

CCTV from 26 September 2020

- 53. CCTV from this night has now been viewed by officers. A timeline is provided in PC Reader's detailed witness statement at [p.77-80]. These general conclusions can be drawn:
 - a. There appears to be little or no efforts made by staff to ensure groups abide by social distancing or the Rule of 6.
 - b. Individuals regularly mix with other groups – despite the demarcation strips on the floor and are unchallenged by staff when they do so.
 - c. 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 ought to be).
 - d. The bar area is congested with people standing up, some with drinks in their hand and others ordering from the bar whilst standing (they ought to order and be served whilst seated under the regulations).
 - e. Even after 22:00hrs customers drinking at the bar are left unchallenged and customers are served further drinks or takeaway food.

⁹ Condition 2c on [p.39]. After 11pm there is a requirement for at least 2 SIA door supervisors.

54. Specific observations suggesting the 10pm curfew was, at best, regarded with laxity by Mr Tankeu include:

- a. 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.
- b. 21:49hrs – Mr Tankeu sells bottles of beer to two men who stand by the bar as they drink the beer.
- c. 21:52hrs - the disco lights go off and most the customers remain as before.
- d. 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 not wearing masks whilst this takes place (they should have been).
- e. 22:01hrs – Mr Tankeu is at the till. Three men remain at the bar with drinks right in front of him.
- f. 22:05hrs - most the customers remain in the venue drinking and chatting. There is no obvious sign staff are challenging them. A waitress brings what is thought to be a take-away 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.
- g. 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.
- h. 22:08hrs – female staff member hands over a take-away food bag to a customer, takes cash from the customer and places it in the till.
- i. 22:10hrs – female staff member hands over a bottle of beer to male across the bar.
- j. 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 (cash) notes. Mr Tankeu walks away and the male returns to talk to his friends with a drink in hand.

- k. 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.
 - l. 22:15 – 22:23hrs – Mr Tankeu stands by the bar. He remains there for over 6 minutes making no attempt to get customers to leave. Several customers remain at the bar with drinks during this period.
 - m. 22:17-22:18hrs – two males, in two transactions, approach the bar and are supplied with drinks by the bar man. Credit card payment is taken from the second male (possibly by using mobile phone payment).
 - n. 22:19hrs – Mr Tankeu chats to a customer who is standing next to him. He takes a credit card payment from this customer.
 - o. 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.
55. The licence holder has also supplied a timeline of CCTV, including a view from outside the front door at [p.67-70]. It does not assist the licence holder's case very much as it records a considerable number of occasions when (unspecified) people are noted as *entering* into 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 on p.67).

30 September 2020

56. Chief Superintendent Green, on behalf of WMP, applies for a summary review and certifies that, in his opinion, the premises is associated with serious crime.
57. The application is at [p.6-7]. The accompanying certificate is at [p.10]

1 October 2020

58. The licensing sub-committee determined to suspend the premises licence and remove the DPS as interim steps pending the full review hearing. The operator did not attend that hearing.
59. The Decision Notice is at [p.11-13].

16 October 2020

60. The licensing sub-committee considered a challenge to the interim steps by the premises licence holder. The operator attended the remote hearing represented by Counsel. The sub-committee determined that the suspension of the premises licence and removal of the DPS should continue pending the full review hearing. It was the view of the sub-committee that the operator “*was unable to run these premises according to the law*”.
61. The detailed Decision Notice is at [p.15-22].

COVID-19 RESTRICTIONS, REGULATIONS & GUIDANCE

62. Since March 2020, Government restrictions on the hospitality trade imposed by Regulations, and measures recommended in guidance, have been altered on several occasions in response to the dynamic health challenges facing the UK during the COVID-19 pandemic.
63. A breach of the Regulations is a criminal offence and so engages the prevention of crime and disorder licensing objective.¹⁰
64. Regardless of the specific terms of COVID-related regulations (and whether or not there is a criminal breach), all licensed operators are subject to a more general legal duty under the Health and Safety at Work Act 1974 to protect the health, safety and welfare of their employees and other people who might be affected by their business¹¹. This includes staff,

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

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

customers and the wider community. Operators must do whatever is reasonably practicable to achieve this aim.

65. On 3 July 2020, in time for the re-opening of most hospitality premises, the Government published important updated COVID-secure guidance for restaurants, pubs, bars and takeaways: “*Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services*”.¹²
66. Operators are expected to have *regard* to this guidance when complying with their legal duty to ensure that they provide a safe environment for staff and customers. There is no legal duty on an operator to comply with every word or, necessarily, every measure mentioned in such guidance. But the July guidance advises businesses on how to open safely and gives practical considerations of how this can be applied in the premises. In the words of the COVID guidance: ¹³

“Each business will need to translate this into the specific actions it needs to take, depending on the nature of their business, including the size and type of business, how it is organised, operated, managed and regulated. They will also need to monitor these measures to make sure they continue to protect customers and workers.... to help you decide which actions to take, you must carry out an appropriate COVID-19 risk assessment, just as you would for other health and safety related hazards.”

67. In relation to restaurants, bars and pubs that provide entertainment, including recorded music, the July guidance sets out, at §4.5, a number of “Steps that will usually be needed”, namely:
- a. Determining the viability of entertainment and maximum audience numbers consistent with social distancing outside and within venues and other safety considerations.
 - b. Preventing entertainment, such as broadcasts, that is likely to encourage audience behaviours increasing transmission risk. For example, loud background music, communal dancing, group singing or chanting.
 - c. Reconfiguring indoor entertainment spaces to ensure customers are seated rather than standing. For example repurposing dance floors for customer seating.
 - d. Encouraging use of online ticketing and online contactless payments for entertainment where possible.

¹² The July document has since been revised, most recently on 15 October 2020

¹³ P.5 of 3 July 2020 guidance.

- e. Communicating clearly to customers the arrangements for entertainment and clearly supervising with additional staff if appropriate.
68. Responsible operators should pay serious attention to this guidance and take it into account when ensuring that their operation is run in a COVID-safe and secure manner overall.
69. As part of this process, operators are legally obliged to carry out a Risk Assessment.¹⁴ Moreover, operators are expected to effectively *implement* the measures set out in their risk assessment.
70. The main point in this case is that when an objective observer looks at the overall steps taken (and not taken) by this operator in order to achieve a COVID-secure premises, they were wholly inadequate.
71. The following timeline sets out, in summary form, the most relevant restrictions applicable to licensed premises introduced from March 2020 and introduced by way of Regulations:
- a. **21 March**¹⁵ – certain businesses including nightclubs, pubs, bars and restaurants were ordered by regulations to close (with some exceptions for takeaway/delivery of food and drink). (The lockdown relating to movement of persons began five days later on 26 March).
- b. **4 July**¹⁶ – (“**Independence Day**”) save for nightclubs, discos, dance halls and similar venues (which open at night, have a dance floor or other space for dancing by members of the public and provide music for dancing), the hospitality industry was permitted to re-open. This included the re-opening of pubs, bars and restaurants. Extensive industry specific guidance was issued by the Government to assist licensed premises in drawing up their risk assessments. A number of measures were proposed to assist operators to provide a COVID-secure environment. These measures included social-distancing (2m or 1m with risk mitigation), reconfiguring seating and tables to maintain social distancing, reducing and managing queues, managing capacity levels in a venue to avoid over-crowding, hygiene and sanitation measures.

¹⁴ See regs 3-5 of the Management of Health and Safety at Work Regulations 1999

¹⁵ The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020, replaced from 26.3.20 with The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 which also introduced the original “lockdown”.

¹⁶ By way of amendment to the No.2 Regs.

- c. **14 September**¹⁷ – the **Rule of 6** was introduced by regulations. Subject to a number of exceptions (including larger households), gatherings in pubs, bars and restaurants were limited to groups of 6 persons who could not mix with other groups.
- d. **15 September**¹⁸ – special regulations relating to **Birmingham** were introduced in response to an increasing COVID-19 infection rate. These regulations placed restrictions on households mixing in private dwellings.
- e. **18 September**¹⁹ – restaurants, pubs and bars were required to collect the contact details of their customers for **track and trace** purposes (with QR codes mandatory from 24 September). Further obligations²⁰ were placed on hospitality operators requiring them to take reasonable measures to ensure (subject to certain exceptions) that: (a) table bookings for a group of more than 6 persons are not accepted; (b) groups of more than 6 are not admitted to the premises; (c) mingling between groups is avoided; and (d) an appropriate distance is maintained between tables (i.e. 2m or 1 m if barriers, back to back seating, or other mitigation measures).
- f. **24 September**²¹ – amended regulations placed further restrictions on restaurants, pubs and bars (among other venues) from 5am on 24 September. A **curfew** of 10pm-5am was introduced, during which hours businesses “*must not carry on*” that business or “*provide that service*”. (The curfew provisions are headed “*Restrictions on opening hours of businesses and services*”²²). After 10pm a premises could still provide a delivery/drive-thru service for food or drink in response to orders but not a take-away service. In addition, for restaurant, pubs and bars that serve alcohol for consumption on the premises, they may only do so if the food or drink is ordered by, and served to, **seated customers** and the operator must take all reasonable steps to ensure the customers remain seated whilst consuming the food or drink²³. From 24 September both customers and staff (likely to come into close contact with the public) in restaurants and bars were required to wear **face coverings** whilst indoors

¹⁷ The Health Protection (Coronavirus, Restrictions) (No.2)(England) Regulations 2020 (“the No.2 Regs”)

¹⁸ The Health Protection (Coronavirus, Restrictions) (Birmingham, Sandwell and Solihull) Regulations 2020

¹⁹ The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020

²⁰ The Health Protection (Coronavirus, Restrictions) (Obligations of Hospitality Undertakings) (England) Regulations 2020.

²¹ By way of amendment to the No.2 Regs.

²² Reg.4A of No.2 Regs

²³ Reg.4B of No.2 Regs

unless they had a “reasonable excuse”, e.g. to remove a mask where it is reasonably necessary to eat or drink. (Some persons are specifically exempted from the face-covering provisions including police officers, PCSO’s and local authority officers).²⁴

- g. **28 September**²⁵ – further obligations were imposed on operators to take all reasonable measures to prohibit customers **singing in groups** of more than 6, or **dancing** on the premises, or playing recorded music at **sound levels** above 85db(A) at source.²⁶ (These measures were later revoked on 14 October 2020). With effect from this day the requirement on hospitality undertakings to take all reasonable measures to ensure “mingling” between groups did not take place was replaced with a requirement to take such measures to ensure no person in one group “joined” another.
- h. **14 October** – the new 3-Tier Regulations (Medium, High and Very High Alert Levels) were introduced.

LEGAL FRAMEWORK

Full summary review hearing

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

73. The licensing authority must:²⁷

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

²⁴ The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place)(England) Regulations 2020 (as amended)

²⁵ The Health Protection (Coronavirus, Restrictions) Obligations

²⁶ The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations (as amended)

²⁷ S.53C(2)

74. The steps available to the licensing authority are: ²⁸
- a. to modify the conditions of the licence (which includes changes to permitted hours);
 - b. to exclude a licensable activity from the scope of the licence;
 - c. to remove the designated premises supervisor;
 - d. to suspend the licence for a period not exceeding three months;
 - e. to revoke the licence;
75. Licensing authorities must carry out their functions under the Licensing Act 2003 with a view to the promotion of the licensing objectives.²⁹
76. The licensing objectives, all of which may be considered at this full summary review hearing, are:
- a. The prevention of crime and disorder
 - b. The prevention of public nuisance
 - c. Public safety
 - d. The protection of children from harm.
77. Each is of equal importance and the promotion of the four objectives is a paramount consideration at all times.³⁰
78. In the case of Petite Afrique, the police submit that all the objectives, whether directly or indirectly, are engaged.
79. Steps taken to achieve the promotion of the licensing objectives should be evidence-based, justified as being appropriate for the promotion of the licensing objectives and proportionate to what it is intended to achieve.³¹
80. In carrying out their licensing functions a licensing authority must have regard to the licensing authority's Statement of Licensing Policy and the Secretary of State's Guidance issued under Section 182 of the Licensing Act 2003 ("s.182 Guidance")³².

²⁸ Section 53C(3)

²⁹ Section 4 LA03

³⁰ S.182 Guidance at paragraph 1.4

³¹ S.182 Guidance at 9.43

³² Section 4, Licensing Act 2003

81. In relation to “Reviews”, the s.182 Guidance recognises that:³³

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

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

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

83. Hearsay evidence is admissible³⁴ although the High Court has observed that:³⁵

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

84. Given these are administrative/civil proceedings, where a factual issue falls to be decided the standard of proof is the balance of probabilities.

³³ Chapter 11 “Reviews”. Emphasis added.

³⁴ *Westminster v. Zestfair*, [1989] 88 LGR 288

³⁵ *Leeds City Council v. Hussain* [2002] EWHC 1145 (Admin)

85. The promotion of the licensing objectives is ultimately a forward looking exercise. Deterrence is also a proper consideration. In East Lindsey District Council v Abu Hanif (Admin), a licensing case involving the employment of illegal workers, the High Court (Jay J) made important observations of more general application to licence review decisions:³⁶

“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.”

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

The Superintendent’s Certificate

87. The Superintendent’s certificate that accompanied this application for summary review is at [p.10]. The application itself is at [p.6-9].
88. In Lalli v Commissioner of Police for the Metropolis [2015] EWHC 14, the High Court indicated that it is not for the licensing authority to go behind the Superintendent’s Certificate stating that, in his opinion, the premises is associated with serious crime or serious disorder or both.
89. In the course of his judgment, Mr John Howell QC, sitting as a Deputy High Court Judge, stated [at §62]:

³⁶ [2016] EWHC 1265. See also R (Bassetlaw District Council) v Worksop Magistrates’ Court [2008] EWHC 3530 (Admin), when the High Court considered a case where a licence review followed sales of alcohol to underage test-purchasers. Slade J stated at §32: “... Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State.”

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

And to similar effect [at §75]:

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

90. The Court pointed out that the licensing authority’s own view as to whether the premises was “associated with serious crime or serious disorder” (even if different to the opinion of the senior police officer who signed the certificate) is not decisive on what steps are appropriate to take in order to the promote the licensing objectives as the summary review hearing. The Deputy High Court Judge stated [at § 63]:

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

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

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

Public Sector Equality Duty

92. At the interim steps hearing on 16 October 2020, Counsel for the licence holder invited the sub-committee to consider their obligations under the Equality Act 2010 and, in particular, the Public Sector Equality Duty (“PSED”) as contained in s.149.
93. WMP agrees that the PSED *is* engaged in these proceedings, as it is with every licensing determination by a local authority. WMP positively invites the sub-committee to consider their PSED when reaching their determination.
94. The PSED requires a public authority (which includes this licensing sub-committee), in the exercise of its functions, to have **due regard** to the need to:
- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
95. The “protected characteristics” are: age, disability, gender reassignment, pregnancy and maternity, **race**, religion or belief, sex, sexual orientation.³⁷
96. As in the interim hearing on 16 October, the sub-committee will wish to have regard to the “Brown Principles”.³⁸ In summary this means:
- a. Decision-makers must be made aware of their duty to have 'due regard' and to the aims of the duty.
 - b. Due regard is fulfilled before and at the time a particular policy that will or might affect people with protected characteristics is under consideration, as well as at the time a decision is taken.

³⁷ S.149(7) of the Equality Act 2010

³⁸ Set out in *R(Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158

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

- 97. In this case there is, at the time of writing, no evidence before the sub-committee suggesting that a decision to revoke the premises licence of the premises would have an adverse impact on any group of people with protected characteristics (e.g. the BAME community).
- 98. But, even if such evidence were to be produced, WMP submits that there is an overriding duty to promote the licensing objectives in an appropriate and proportionate manner in this case, having had due regard to the PSED. (Not least because the increased risks of COVID-19 infection as a result of acts and omissions by the operator impacts on all communities, including the BAME community who frequent the venue itself).
- 99. At the interim steps hearing on 16 October, there appeared to be an insinuation from the licence holder that WMP were unfairly and unjustifiably focusing their enforcement action on venues popular with the BAME community in Birmingham. That is denied. The statement of PC Abdool Rohomon (dated 20.10.20) deals with this issue at Agenda Papers [105-106].

CONCLUSION

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

GARY GRANT

Counsel for West Midlands Police

Francis Taylor Building
Inner Temple, London
www.ftbchambers.co.uk

23 October 2020

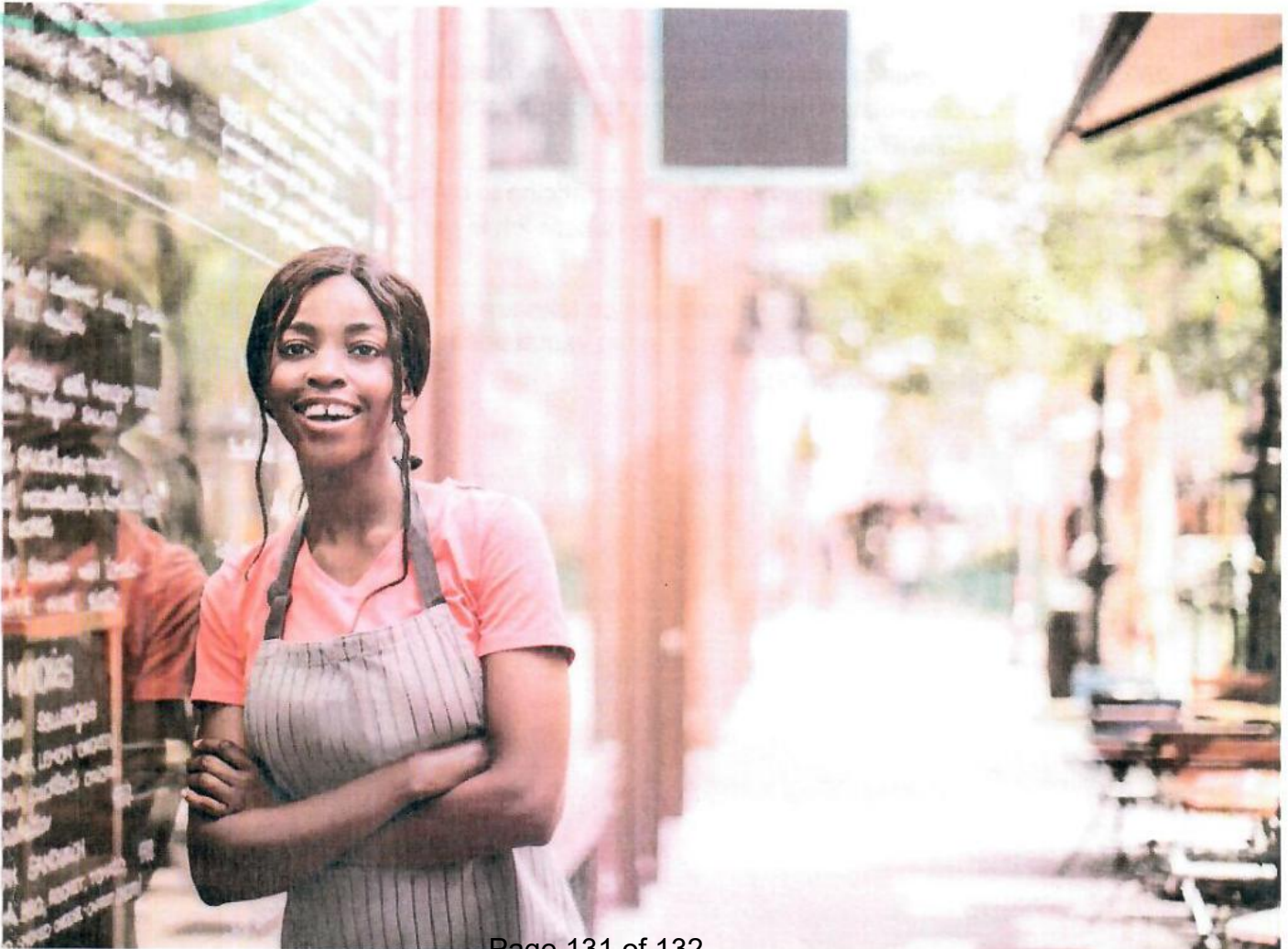


HM Government

Keeping workers and customers safe during COVID-19 in restaurants, pubs, bars and takeaway services

COVID-19 secure guidance for employers, employees and the self-employed

3 July 2020





4.5 Entertainment

Objective: To maintain social distancing when providing entertainment within or outside restaurants, pubs, bars and similar venues that serve food or drink.

- For many restaurants, pubs and bars, providing entertainment such as recorded music, live sports broadcasts, quizzes, live musicians or comedians are an important part of their business.
- At this time, venues should not permit live performances, including drama, comedy and music, to take place in front of a live audience. This is important to mitigate the risks of aerosol transmission - from either the performer(s) or their audience. There will be further guidance setting out how performing arts activity can be managed safely in other settings, for instance rehearsing or broadcast without an audience.
- 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. We will develop further guidance, based on scientific evidence, to enable these activities as soon as possible. You should take similar steps to prevent other close contact activities, such as communal dancing.

Steps that will usually be needed:

- Determining the viability of entertainment and maximum audience numbers consistent with social distancing outside and within venues and other safety considerations.
- Preventing entertainment, such as broadcasts, that is likely to encourage audience behaviours increasing transmission risk. For example, loud background music, communal dancing, group singing or chanting.
- Reconfiguring indoor entertainment spaces to ensure customers are seated rather than standing. For example, repurposing dance floors for customer seating.
- Encouraging use of online ticketing and online or contactless payments for entertainment where possible.
- Communicating clearly to customers the arrangements for entertainment and clearly supervising with additional staff if appropriate.