

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.



