

BIRMINGHAM CITY COUNCIL

LICENSING SUB- COMMITTEE A, 01 OCTOBER 2020

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

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

ALSO PRESENT

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

NOTICE OF RECORDING

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

DECLARATIONS OF INTEREST

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

APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS

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

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

The following persons attended the meeting: -

Those making representations: On behalf of West Midlands Police

PC Abdool Rohomon – West Midlands Police (WMP)

On behalf of the Premises Licence Holder

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

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

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

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

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

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

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

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

9. The exit door was eventually opened and officers found 50 to 60 people in the premises. There was no social distancing, loud music was playing and it was just like a normal night club which was not allowed at present.
10. The officers cleared the premises and tried to find the person in charge. A male said that he was the keyholder and that he was the boss. He denied doing anything wrong and that it was a restaurant.
11. Officers were concerned at the number of people in the premises. A meeting was held with Dexter Laswell the sole Director and Kieran Castello. The excuse given for people being in the premises was that staff were undertaking maintenance work. This was not believed to be true there as was no maintenance being carried out and the people were drinking.
12. CCTV footage from the premises had been requested from the premises but had not been received.
13. On 26 September, 2020 at 00.40 hours officers noted cars in the car park. The exit door was ajar and they investigated to find people inside upstairs sitting together with the lights off.
14. There was alcohol on the tables which should not be available after 2200 hours and nitrous oxide canisters on the floor.
15. A female approached officers and said she was a dentist and that they were celebrating her birthday and this was her birthday party.
16. A meeting was arranged between WMP. The Premises Licence holder Antonio Mankulu and Kieran Castello attended. He was not aware of Kieran Castello being the DPS. Kieran Castello said that the premises closed at 2200 hours. He had left staff to close up when he left the premises at 2200 hours. The staff had informed him that while they were clearing up a number of people walked into the premises. The Staff fearing for their safety left the premises.
17. CCTV footage was provided to WMP however there were some missing bits. On the CCTV it can be seen –
 - A female taking nitrous oxide canisters into the building
 - A member of staff opening the exit door and letting 4-5 people in and them walking through the staff corridor.
 - A male inhaling from a balloon.
 - People walking around after 2200 hours.
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18. WMP had tried to engage with the premises but did not have a response from them.
19. WMP had requested that the premises supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance but this had not been forthcoming.
20. The more these types of actions occurred, the longer the pandemic would be. This affected everyone and delayed the reopening of the economy.
21. No risk assessment had yet been received from the premises.
22. Nitrous oxide was a legal high.
23. The numbers of people on the premises was 15 to 20 outside and 50 to 60 inside on 22 August and on 25 September there was 20 to 30 people inside.
24. The premises licence holder was even in breach of an existing condition on the licence, namely that any operating beyond 04.00 hours must be notified to WMP in advance.

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

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

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

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

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

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

In summing up Dexter Laswell made the following points: -

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

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

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

4/011020

RESOLVED:-

That having considered the application made and certificate issued by West Midlands Police under Section 53A of the Licensing Act 2003 for an expedited review of the premises licence held by RP Restaurant Limited in respect of Nakira, Queensgate, 121 Suffolk Street Queensway, Birmingham B1 1LX, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application

and

- that Anton Gasparov be removed as the Designated Premises Supervisor

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

The Sub-Committee was also aware of the special local lockdown measures (specifically for Birmingham) which had been announced by HM Government on Friday 11th September 2020, then introduced on Tuesday 15th September 2020. These measures were an attempt to control the sharp rise in Covid-19 cases in the city.

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

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

Members heard the submissions of West Midlands Police, namely that in August 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, the Police had observed a general failure by the Nakira premises to follow the Government Guidance. Upon visiting the premises at around 05.00 hours on 22nd August 2020, Police found that loud music was playing at a volume which made conversation difficult, and also observed that there was no social distancing or limitation of numbers of patrons to allow for safe operation as per the Covid-19 requirements. 50 to 60 people were estimated to have been inside, with a further 15 to 20 outside. The Police ascribed these failures to unsatisfactory management by the premises licence holder and the designated premises supervisor.

The explanation given by the premises was that the people in the premises on 22nd August had in fact been “staff”, who had been “carrying out maintenance work”. This explanation was not accepted by the Police Officers who attended at 05.00 hours and witnessed that the large numbers of people at the premises were dressed for a night out, and loud music was playing.

It was also observed by Police that the premises licence holder was even in breach of an existing condition on the licence, namely that any operating beyond 04.00 hours must be notified to Police in advance. The Police were therefore concerned that the premises licence holder was being reckless in its style of operating, and was endangering public health by risking the spread of Covid-19.

A further visit on 26th September at 00.40 hours found the premises to be trading, in direct defiance of the order from HM Government that all premises serving food and drink must close by 22.00 hours. Around 20 to 30 people were found inside the premises, and social distancing was not being observed.

The Police explained that the premises' decision to trade in this unsafe manner, which was not compliant with the Government Guidance, was an overt risk to the health of individuals, families and local communities, at a time when the country is experiencing a national emergency. The Covid-19 virus is a pandemic which has required all licensed premises to act responsibly and in accordance with both the law and the Government Guidance when trading, in order to save lives. It was therefore a flagrant risk to public health for any licensed premises to breach the Government Guidance by trading in an unsafe manner.

Attempts by the Police to advise those at the premises had not been accepted. Police had requested that the premises supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; this had not been forthcoming. The recommendation of the Police was therefore that the Sub-Committee should suspend the licence pending the review hearing.

A recently-appointed Director of the company which holds the premises licence then addressed the Sub-Committee. Having heard his submissions, the Sub-Committee agreed with the Police that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises. The Sub-Committee was not impressed with the Director's representations, or his answers to questions. He stated that he was new to the industry and "still learning". Whilst he stated that he did not deny responsibility or make excuses, he asked that the Sub-Committee take into account what he called the "mitigating circumstances".

However the "mitigating circumstances" centred around the suggestion that staff inside the premises on the night of the 22nd August, who had been cleaning, had been taken by surprise by large numbers of people (dressed for a night out) who had invaded the premises late at night; the Director stated that although the correct course would have been for those staff to call the Police, the staff had been reluctant to do so. The Director ascribed the reluctance to involve the Police to the Afro-Caribbean background of the staff and customers. The Sub-Committee found this to be a highly unusual approach for any premises licence holder to take, and not something that inspired confidence in the management arrangements at the premises. All in all, the Sub-Committee considered the licence holder to have failed to take its responsibilities seriously.

The Sub-Committee therefore determined that it was both necessary and reasonable to impose the interim step of suspension to address the

immediate problems with the premises, namely the likelihood of further serious crime.

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

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

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

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

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

OTHER URGENT BUSINESS

5/011020 There was no other urgent business.

The meeting ended at 1115 hours.

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CHAIRMAN