

# BIRMINGHAM CITY COUNCIL

LICENSING SUB- COMMITTEE A, 15 OCTOBER 2020
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**MINUTES OF A MEETING OF THE  
LICENSING SUB-COMMITTEE A HELD ON  
THURSDAY, 15 OCTOBER AT 1000 HOURS,  
AS AN ON-LINE MEETING.**

**PRESENT:** - Councillor Davis in the Chair;  
Councillors Beauchamp and Locke

**ALSO PRESENT**

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

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**NOTICE OF RECORDING**

1/151020 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](http://www.civico.net/birmingham)) and that members of the press/public would record and take photographs except where there are confidential or exempt items

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**DECLARATIONS OF INTEREST**

2/151020 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.

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## **APOLOGIES AND NOTIFICATION OF NOMINEE MEMBERS**

3/151020 No apologies were submitted.

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### **DAHLAK LOUNGE, HAMPTON STREET, BIRMINGHAM, B19 3LS - 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**

Christopher Jones – West Midlands Police (WMP)  
P C Reader - WMP

#### **On behalf of the Premises Licence Holder**

Mr Biniam Yemane Mebrahtu – Premises Licence Holder and DPS  
Olayinka Soremi – Business Partner  
Victor Joseph – Business Partner

The Chairman welcomed all present and sought clarification regarding those present. Following introductions by the Chairman, the Chairman enquired if there were any preliminary points for the Sub-Committee to consider. Victor Joseph indicated that he would be speaking on behalf of the premises licence holder.

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

Christopher Jones, WMP, made the following points with regards to the certificate issued by WMP under Section 53A of the Licensing Act 2003 for a Review of the Licence held by Dahlak Lounge and in response to questions from Members:-

1. The Sub-Committee was reminded of the seriousness of the Covid 19 pandemic and events in the UK and rest of the world adding that there were more people in hospital than in March 2020.
2. As the infection rates dropped the Government on 4 July, 2020 decided to gradually open up the economy under strict guidelines. 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, no standing or dancing within premises and table services only. Other measures

included the rule of 6, social bubbles, 2 metre distancing, track and trace and background music only.

3. On the 16<sup>th</sup> August 2020, West Midlands Police (including PC Reader) were in the vicinity dealing with an incident nearby in the early hours of the morning, Police found that loud music was emanating from Dahlak Lounge at a volume which could be heard in the street.
4. Upon entering the premises Police observed that there was no social distancing, the music was loud and people were standing. The premises appeared to be “packed” with patrons. The capacity limit was 120 patrons however far more than these numbers were estimated by Police to have been inside.
5. The premises licence holder was emailed by PC Reader making him aware of his responsibilities and detailed information given on how to make the premises covid safe.
6. A meeting was held with WMP and the premises licence holder together with other representatives on 26 August, 2020. A copy of the risk assessment clearly stated that 120 patrons was allowed on the premises - 60 on the ground floor and 60 on the first floor. There had been a lot more on the premises than legally allowed. The premises licence holder was unaware of this capacity.
7. A copy of the risk assessment was sent to WMP by the premises licence holder on 3 September stating that the venue is complying with all fire and risk regulations.
8. On Saturday 10 October a member of the public contacted WMP concerned about the loud music and vehicles parked at the premises. When officers attended the building appeared closed as the shutter was down but loud music could be heard from in the building. Someone looked out from an upstairs window and the music was turned down.
9. When the door was eventually opened from the inside approximately 150 people could be seen downstairs. Seating was bench style or sofa type and there was no social distancing. There was also a DJ booth with 3 men. Officers noted that people were smoking shisha pipes. Voices were heard telling people to move and a person who officers believed to be a member of staff telling the men in the booth area to get out as there were too many.
10. A statement was read out from PC Wheeler who had been on the scene. He noted that loud deafening music could be heard. Every door had been locked. If there had been an emergency this endangered the life of people in the premises.

11. He had spoken to an unknown male at the door, marked as a fire exit who said he was getting the key. He was informed by the male that it was a Shisha Lounge.
12. There were 3 people behind the DJ booth. He observed the 2 people being pulled out of the booth. People were walking around with no face coverings. There were groups of more than 6 people.
13. In his opinion there were approximately 150 people present. PC Wheeler did not walk further into the premises as he viewed it to be unsafe during the pandemic. The premises were not covid secure, there was no social distancing.
14. The door was locked. There was in excess of 6 people in booths.
15. When asked for a copy of the Covid risk assessment the premises licence holder appeared with a few pieces of paper and said that the risk assessment said that up to 200 people were allowed inside.
16. Officers asked for the CCTV footage when they visited the premises but were told there was a problem with the hard drive and they could not download it. The premises had been saving the footage on a mobile phone. The premises undertook to email the footage to WMP however no emails had been received. The CCTV had not been seen to date however there was bodycam footage.
17. It was noted by officers at the meeting that the seating was 1.7 metre apart some with no gaps. The fire exit was blocked. The exit door led into an enclosed smoking area. The front shutter was down and the door was locked. The premises said they had locked the door to stop people getting in. The front fire exit door was also smaller than the standard size and was a fire hazard.
18. The risk assessment had now changed capacity to 160. The premises said this was due to the installation of a new fire exit door at the front of the building. This was still dated July 2020. Officers raised their concerns with West Midlands Fire Service. The risk assessment was not fit for purpose and the premises showed a lack of understanding how to operate safely. The risk assessment sent by them on 3 September, 2020 stated they were trading within the guidelines.
19. Officers have engaged with the premises since the first visit in August and encouraged them to ask questions if they did not understand anything.

20. The premises were not Shisha compliant, all the doors were locked, shutters were down, there was no ventilation. Officers were concerned that the premises were not trading safely even given the amount of engagement by WMP. WMP were not satisfied that the premises could trade Covid safe or meet the regulations.
21. As far as he was aware there was no licence to sell Shisha although it was covered under smoking.
22. None or very few regulations had been followed. There was no social distancing, people were standing and there was loud music.
23. Officers counted the number of people present. The risk assessment had been sent to WMP saying that the premises licence holder complied with all the regulations. WMP had offered advice to the premises.
24. The premises said it was not their fault that the CCTV could not be downloaded.
25. Reference was made to the plan of the premises. David Kennedy confirmed that the plan formed part of the Licence. If changes were made premises were legally obliged to vary the licence. The plan in the documents was the original plan.

Victor Joseph, Business Partner made the following points in support of the premises and in response to questions from Members:-

1. They had listened to WMP and noted the comments. They were in the process of seeking legal advice for someone to represent the premises.
2. In response to the Chair's statement that the Interim steps being taken would allow BCC to take action against the premises if necessary, Victor Joseph replied that at the moment the information heard was only from WMP. They were seeking legal advice.
3. He was speaking on behalf of the premises licence holder and they did not want to make any comments today. Victor Joseph confirmed again that they had decided not to comment at this time.
4. David Kennedy, Licensing confirmed that the premises licence holder was not legally required to participate in this meeting. They are notified

of the decision from the hearing by Licensing. If they are aggrieved they can make representations back to Licensing.

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

- West Midlands Police had engaged with the premises face to face however they had still not traded safely and had put the public at risk.
- There were a lot of fire and safety issues at the premises such as the closed shutters and doors, lack of regard to customer health and safety and shisha was being sold.
- WMP had tried to educate the premises and sent emails, however here was still a lack of Covid safe trading.
- There was no confidence that the premises could trade in a safe manner. The Sub-Committee was urged to suspend the licence held by the premises.
- Victor Joseph said that he understood what was being said and did not wish to comment until they had taken legal advice. He was assured by the Chair that this would not affect the decision made by the Sub-Committee.

At 1111 hours the Chairman requested all present, with the exception of the Members, the Committee Lawyer and the Committee Manager 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 Mr Biniam Yemane Mebrahtu in respect of Dahlak Lounge, Hampton Street, Birmingham B19 3LS, this Sub-Committee determines:

- that the licence be suspended pending a review of the licence, such a review to be held within 28 days of receiving the Chief Officer of Police's application, and
- that Biniam Yemane Mebrahtu be removed as the Designated Premises Supervisor

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

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

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

The pandemic had continued to be the top story in the national news across the Spring, Summer and now into the Autumn of 2020; the Birmingham lockdown, and also the new national measures announced on 22nd September, had been very widely publicised and discussed both in news reports and on social media. The Prime Minister, together with HM Government's Chief Medical Officer and Chief Scientific Officer, had resumed the televised 'Coronavirus Briefing' broadcasts which had been a feature of the first few months of the pandemic. In recent days HM Government had also designated a pyramid-style 'Three Tier' system for the nation, to indicate the level of risk for each area. Birmingham had been designated as 'Tier 2', meaning a 'high' level of risk.

The Dahlak Lounge premises had been granted the premises licence on 12<sup>th</sup> March 2020, less than two weeks before the national lockdown was imposed.

Mr Biniam Yemane Mebrahtu attended the meeting, as the premises licence holder and also as the designated premises supervisor. Two other individuals also notified the Licensing department of their attendance – Mr Olayinka Soremi and Mr Victor Joseph, who described themselves as Mr Mebrahtu's "business partners". Mr Victor Joseph was the person who

addressed the Sub-Committee. It was noted however that the premises licence was in the name of Mr Mebrahtu alone, not a partnership.

Members heard the submissions of West Midlands Police, namely that the background to the certificate issued by the Chief Superintendent under s53A(1)(b) of the Act was that, in Birmingham, it had been observed that the death rate, the rate of infection, and the rate of hospital admissions were all steadily increasing; there were more Covid patients in Birmingham hospitals currently than there had been at the start of the March 2020 lockdown.

From the 4<sup>th</sup> July 2020, when the new arrangements for reopening were being publicised and the lockdown was being eased for licensed premises such as pubs and bars, information on how to trade was readily available to such premises - via the “gov.uk” website, and also the very many news reports, both on television and on general social media. The requirements included no loud music, no dancing, queue management, and 2m social distancing (or 1m with mitigation measures).

On the 16<sup>th</sup> August 2020, West Midlands Police observed a general failure by the Dahlak Lounge premises to follow the Government Guidance. Whilst dealing with an incident nearby in the early hours of the morning, Police found that loud music was emanating from Dahlak Lounge at a volume which could be heard in the street.

Upon entering, Police observed that there was no social distancing or limitation of numbers of patrons as per the Covid-19 requirements, to allow for safe operation. Police described the premises as “packed” with patrons. Under the fire risk assessment, the capacity limit was 120 patrons - 60 on the ground floor and 60 on the first floor. Far more than these numbers were estimated by Police to have been inside. Loud music was playing, making normal conversation impossible, and therefore requiring raised voices – a known risk for Covid transmission. The Police ascribed these failures to unsatisfactory management by the premises licence holder Mr Mebrahtu, who was also the designated premises supervisor.

Police offered advice and help to the licence holder via email, to assist him in understanding what was required to trade in a Covid-safe manner. Police also held a meeting with him on 26<sup>th</sup> August, and spent a lot of time explaining the social distancing requirements. Surprisingly, Mr Mebrahtu was not aware that his premises had any capacity limit for numbers of patrons. Police requested that he supply the Covid-19 risk assessment which is a mandatory requirement under the Government Guidance; Mr Mehbratu stated that the risk assessments had been done for both Covid risk and fire risk.

Then from September 2020, the measures imposed by HM Government became stricter – closure at 22.00 hours, music to be limited to 85 decibels, no standing (table service only), wearing of masks, and participation in the



NHS Test and Trace programme. This information was readily available to licensed premises via the “gov.uk” website, television and on social media.

On 10<sup>th</sup> October 2020 Police received a complaint from a member of the public that loud music was emanating from the Dahlak Lounge and that there were numerous cars in the car park. Police attended at around 21.10 hours, which was within the permitted opening hours (closure required at 22.00). Police found that very loud music was indeed emanating from Dahlak Lounge, at a volume which could be heard in the street – despite the shutters to the premises being pulled down and locked, and the premises appearing to all intents and purposes to be ‘closed’. Around twenty people were in the car park. One individual inside the premises was seen to look out of an upstairs window; moments later, the volume of the music reduced significantly. A person, thought to perhaps be a security guard, then unlocked the door from the inside.

Upon entering, Police were astonished to find the situation inside to be even worse than that which had been observed on the 16<sup>th</sup> August. Around 150 people were found on the ground floor; no social distancing whatsoever was being observed and many patrons were standing or walking about. Others were seated together, either on long benches or in booths, but nobody was keeping a Covid-safe distance from others. The music being played had already been turned down, but the Police found that they still could not hear anything above it. Masks were not being worn by many customers, and even some of the staff, except for the security guards; smoking of shisha by patrons was going on.

Staff hurriedly began pulling patrons out of their seats, exhorting them to “move, move, you’ve got to move”, and ordering those seated in booths to “get out”, on the basis that the premises had exceeded its capacity limit.

Police observed that the door through which they had entered, which had been unlocked for them by somebody inside, was in fact a front fire escape. There was also a rear fire exit, but this was found to lead only to the outdoor smoking area – an entirely enclosed area, with no means of escape beyond that. A second front fire exit was also unsatisfactory to Police, given the small size of the door to it, and the presence of a trip hazard created by the flooring and the irregular-sized door. Emergency lighting and signage was not in place at the front fire exit; indeed sofas and benches had been placed in the path of the main escape route. The shutters had also been pulled down and locked. The premises’ view was that this was to stop people from getting in.

This was all completely unacceptable in terms of fire safety, but was made infinitely more serious by the fact that many patrons inside were smoking shisha, which by its nature increases the risk of fire. Moreover, as the Police explained, ventilation arrangements are key to compliance with the Health Act 2006 when smoking shisha, yet the Dahlak Lounge had the main shutters pulled down and locked. Any outbreak of fire would have

been a disaster even with social distancing and a proper limit of numbers - yet Police had observed around 150 people on the ground floor, which had a capacity limit of 60 persons.

The licence holder claimed to Police that the fire assessment had confirmed that he “could have more than 250 people inside”; upon examining the fire risk assessment document, Police observed that the capacity had changed to “220” in total for both floors (not 120 in total), yet the document was still dated July 2020. Also unsatisfactory was the reliance on what was called the “extra fire exit” to justify the increase in the capacity limit; this turned out to be the irregular sized door with the trip hazard.

The Covid risk assessment produced by the licence holder was also found to be wholly unsatisfactory. It was regarded by Police as having been approached by the licence holder as a mere tick-box exercise, rather than a proper consideration of what was required to trade safely during the pandemic. Police had requested CCTV from the premises, but this had not been forthcoming; the licence holder told Police that he had found that the files downloaded to his telephone were of a file size too big to be emailed to Police.

The Police were therefore concerned that the premises licence holder was being reckless in his style of operating, and was endangering public health by risking the spread of Covid-19. All in all, the scene discovered on the 10<sup>th</sup> October was quite a contrast to his declaration in September that the premises was both fully Covid-compliant and fully fire risk compliant.

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

The Police also remarked that in recent dealings it appeared that the licence holder was perhaps trying to place some of the blame for his failings on the Police. The Sub-Committee looked askance at this. It was quite apparent that the Police had given the Dahlak Lounge a great deal of advice and help, including a meeting, in August 2020. However, attempts by the Police to advise those at the premises had not been accepted. The premises was completely unsatisfactory in terms of Covid, in terms of fire safety, and also in terms of compliance with shisha requirements. The recommendation of the Police was therefore that the Sub-Committee should suspend the licence pending the review hearing.

Mr Victor Joseph then addressed the Sub-Committee to state that the licence holder was in the process of instructing a legal representative, and that no submissions would be made until this had been arranged.

In deliberating, the Sub-Committee agreed with the Police that the causes of the serious crime appeared to originate from unsatisfactory internal management procedures at the premises. The Sub-Committee found the Police observations relating to Covid, fire risk and shisha to be alarming, and not something that inspired the slightest confidence in the management arrangements at the premises. All in all, the Sub-Committee considered the licence holder to have failed to take his responsibilities seriously.

The Sub-Committee therefore determined that it was both necessary and reasonable to impose the interim step of suspension to address the immediate problems with the premises, namely the likelihood of further serious crime.

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

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

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

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

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

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#### **OTHER URGENT BUSINESS**

5/011020      There was no other urgent business.

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The meeting ended at 1118 hours.

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CHAIRMAN