BIRMINGHAM CITY COUNCIL

LICENSING SUB COMMITTEE A

FRIDAY 23rd OCTOBER 2020

NAKIRA, QUEENSGATE, 121 SUFFOLK STREET QUEENSWAY, BIRMINGHAM, B1 1LX

That having considered a full review of the premises licence under s.53C of The Licensing Act 2003 following an expedited summary review under s.53A of the Act brought by West Midlands Police in respect 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 premises licence shall be revoked
- That the designated premises supervisor Anton Gasparov shall be removed
- Having reviewed the interim steps imposed on 1st October 2020 (and not lifted on 16th October 2020), that it will not withdraw or modify the interim steps of suspension of the licence and the removal of the designated premises supervisor Anton Gasparov under s.53D of The Act. Those steps remain in place pending any appeal.

The Sub-Committee's reasons are as follows:

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.

Mr Leo Charalambides of counsel appeared for the licence holder. Also in attendance were Carl Moore, Dexter Laswell and Antonio Mankulu.

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

The Sub-Committee read all of the evidence contained in the agenda papers, as well as Mr Grant's written submissions which helpfully set out the relevant Covid-19 restrictions and requirements. They shall not be rehearsed in these reasons.

The written submissions also set out the factual background to this review which comes to the Sub-Committee following an expedited review hearing on 1st October 2020, at which the licence was suspended and the DPS (Anton Gasparov) removed pending a full review of the premises licence. Unsuccessful representations were made against those steps on 16th October 2020.

In summary, the factual background is this:

22 August 2020

West Midlands Police relied on evidence where they were told that a party was taking place at 05.00 hours, with 50 or so people crammed into a small upstairs room. Guests were accessing the premises from a side/rear door. The front door was locked. There was no social distancing, and the premises was not Covid-secure. There was a DJ, loud music, and neon lights. The premises was not in breach of the 22.00 hour curfew because this was not yet in place. There was, however, a breach of the condition on the licence which required notification to the Police - 28 days' notice in advance if the premises were to operate beyond 04.00. There was little or no managerial control. A Mr Rasani identified himself as a cleaner. Police later believed that this man was involved in an incident on 24th September 2020 when a guest had his thumb severed. Kieron Costello described himself as "the boss". He appeared to be drunk. He claimed to be the licence holder (although he is not). He admitted to police that the venue had no COVID-safe Risk Assessment. The police found the incident "extremely disturbing", and so did the Sub-Committee.

No-one appeared to be in control of the venue. Mr Hasing Rasani identified himself to police as a "cleaner". (This is believed to be the same man who was later described as a "doorman", and who was involved in the incident on 24 September when a customer's hand was shut in a door, thereby severing the top of his thumb). Mr Rasani indicated that he had opened the venue as key-holder and would close it. Police attempted to educate him about the COVID-risks. He was unaware of any risk assessment the venue had carried out.

26 August 2020

On 26 August a police licensing officer, Mr Mark Swallow, contacted by email an individual on police records believed to be associated with the venue: Mr Catalin Anghei. Mr Anghei responded by stating he had had nothing to do with the club for a long time. He did not know the identity of the DPS but identified the owner as Dexter Laswell and provided his contact details.

The DPS on the Premises Licence is Mr Anton Gasparov. The police have not encountered him in their recent investigations. (He was removed as DPS at the interim steps hearing on 1 October 2020).

28 August 2020

On 28 August the police held a meeting at Nakira with the operators. PC Reader and a colleague met with Mr Dexter Laswell (a Director of the Premises Licence Holder), Mr Kieron Costello ("the Boss") and other staff.

Mr Laswell indicated to police that the venue would not reopen again as a refurbishment was planned. He pledged to "*get it right before it was open*". He complained about other venues holding events.

When asked about the event on 22 August, Mr Costello claimed the people inside were "*staff members carrying out maintenance*". The police did not believe him. The Sub-Committee did not accept this explanation either.

WMP submitted that either the management deliberately lied to police, or else they were wholly ignorant as to what was going on in their venue, and so have no effective control over it. The Sub-Committee accepted this submission.

PC Reader subsequently saw the bodycam footage from the 22 August, which was at odds with the account that he had just been given by Mr Costello. He sent an email to Mr Laswell later on 28 August expressing his "shock" at the version of events presented to him earlier that day in their meeting. The email set out in detail the current Government Guidance on restaurants and bars. The "*steps that would usually be needed*", as set out in the Guidance, were helpfully pasted onto the police email, and included measures to secure social distancing, management of the number of customers in the venue, and queue management. The Sub-Committee viewed this as a "warning shot" over the bows to the operators of the premises.

24 September 2020

The male victim was a regular attendee of Nakira. On 24 September between 03:00 – 04:00hrs he left the venue. This was not a breach of the 22.00 curfew which came into force at 05.00 that day. When he returned, he went through the main door to

reception and attempted to enter via the “small door” to the venue. He was refused entry by the door supervisor. The victim grabbed hold of the door and the doorman forcibly closed the door on his hand. This incident severed the top of the male’s thumb. He was given first aid in the venue’s office and told not to call the police or an ambulance. He was taken out of the venue by a friend via the rear of the premises and taken to hospital. We were told that he has been left with permanent injuries, but that he did not wish to pursue the matter further.

The venue did not report this serious incident to the police or call an ambulance. Rather, they have sought to cover up the incident. The Sub-Committee did not believe that this was the behaviour of a responsible licence holder who was capable of promoting the licensing objectives. The victim himself contacted the Police to report the incident.

The licence holder has still not supplied the Police with the CCTV covering this incident, despite requests.

25 September 2020

A “whistle-blower” complaint was made to the local authority on 25 September and forwarded to the Police. The complainant indicated that he had been told by a friend or relative that Nakira would be open from 23.00 for a “secret event” (despite the 22.00 curfew that had come into force the day before, on 24 September).

The importance of this complaint is that the predicted infringement of the curfew was precisely what occurred on the evening of 25 September and into early hours of 26 September. Contrary to the licence holder’s initial assertions that the events witnessed by Police were due to an unexpected infiltration by aggressive customers, it appears that the event was a pre-planned and deliberate breach of the 22.00 curfew.

26 September 2020

The 22.00 curfew was by now in force.

At around 00:45hrs on 26 September, Police Officers drove past Nakira and noticed a large number of vehicles in the car park. The rear fire exit was ajar. Officers entered the venue. Only low-level lighting was on inside the venue (as would be encountered in a night-club setting). In the main public area of the premises police saw two men sitting on a sofa who appeared to be drunk. There were drinks on the table and silver nitrous oxide canisters strewn all over the place (nitrous oxide, or laughing gas, is a legally prohibited drug for recreational purposes). The smell of cannabis was in the air.

Officers went upstairs to one of the rooms. The lights went on and a further 15-20 people were sitting around close together drinking and chatting. An officer described the room as being “*full of people who were drinking and in close proximity to each other*”. Officers could smell cannabis and saw fresh half-empty bottles of alcohol and half-empty glasses of alcohol on all the tables. Nitrous oxide canisters were all over the tables as well. The people in this room seemed to be nervous about the Police’s arrival.

Officers estimated that about 25-30 persons were in the venue in total. There was no social distancing and the ‘Rule of Six’ was not being complied with since groups of more than six were sitting together. The officers on the ground stated that the event

was "*clearly in breach of COVID-19 regulations*". All attendees were dressed in "*party attire*". No one admitted to being a staff member or management. One individual claimed to be a cleaner.

One female told police she was a dentist, and that this was her birthday celebration. Other guests appeared to confirm this was the reason they were in Nakira.

Officers told the attendees they were breaching COVID guidelines and the guests were asked to leave. The upstairs room cleared in response to the police presence. The people automatically exited through rear corridors and the fire exit as opposed to the main front door to the premises. This suggested to the officer that the – more covert - side exit was the expected means of entry and exit to the premises.

The main bar area was open with all the lights on and was in an untidy state. Additionally, within the kitchen area, there was warm shisha paraphernalia, which indicated to police that someone had been in the kitchen when police arrived but left when they saw them. The Sub-Committee was shown CCTV footage showing shisha pipes being smoked, unlawfully, inside the venue earlier in the night.

CCTV of 26 September 2020

The footage shows that despite some customers leaving and the front door being locked shortly after 22.00, there is effectively a "lock-in" party continuing in Nakira until police arrive at around 00:40hrs. Staff remained at the premises. Some people are deliberately let in (peacefully) at the side door at 22:15hrs. There is no "invasion" of unwelcome aggressive guests, as the licence holder initially claimed - indeed he supplied letters from staff in support of this assertion. It was now said by Mr Charalambides that this infiltration was not the correct explanation for the events, but that trusted staff members and colleagues had held their own private event.

On several of the cameras there is an unexplained gap in the footage supplied between 22:30-23:30. The footage from the upstairs room from 22:00hrs - where most of the party-goers were discovered by police - has still not been disclosed by the licence holder, despite police requests.

The CCTV also showed customers holding balloons which are used to inhale nitrous oxide, as well as customers being let in through the fire door after 22.00 with no staff intervention.

29 September 2020

On 29 September, the Police applied for an expedited review of Nakira's premises licence. The certificate was signed by Superintendent Morris.

30 September 2020

PC Rohomon requested a meeting with Dexter Laswell on 30 September. On that day, at the time indicated, Antonio Mankulu and Kieron Costello turned up at the police station. Mr Mankulu indicated that he was the director of the company that held the premises licence and had bought company from Dexter Laswell earlier in the year. Mr Costello indicated he was the DPS.

Companies House records indicate that Mr Mankulu became a Director of RP Restaurants Ltd on the same day as this meeting, 30 September. Mr Costello was

not recorded to be the DPS on the Premises Licence. Both said they became aware of the police request for the meeting via Dexter Laswell.

Mr Mankulu claimed that Mr Costello had been at the premises on the night of 26 September but had left at around 22:00hrs. He had left as security were still there and staff were clearing up. Staff later indicated to Mr Mankulu that people had walked through the back door and since the staff had felt intimidated, they left at midnight. The Sub-Committee saw no evidence of intimidation and questioned why, in those circumstances, the staff left.

The Sub-Committee found it hard to understand who is, in fact, in charge of these premises. Nor did the Sub-Committee understand why Mr Costello left the premises at 22.00 when things were clearly still in full flow.

The Sub-Committee also heard from Martin Key of the Environmental Health Department, Kyle Scott from Public health and Gary Callaghan from Licensing Enforcement. All supported the Police submission that the licence should be revoked.

On behalf of the licence holder, Mr Charalambides stressed that these were "private" events. The Sub-Committee did not see how that could excuse the very real failings of management exhibited on these occasions. He accepted, however, that the measures put in place were "unsatisfactory". He urged upon the Sub-Committee that the remedy for all of the above was to suspend the licence for two months.

The legality of the certificate

Mr Charalambides made a number of submissions as to the legality of the certificate issued by the Superintendent. In essence it was said that the Superintendent had relied upon the common law penalty for public nuisance (life imprisonment) without applying his mind to the Crown Prosecution Service Guidance for prosecuting breaches of the Covid Regulations which, he pointed out, stated that these were summary only offences and punishable with a fine, and which urges a 'light touch' approach. He pointed out the other remedies available, prohibition notices or directions in respect of gatherings. He categorised the route selected by the Superintendent as "The Victorian Road". He drew the attention of the Sub-Committee to the Guidance issued by the Home Office under s.182 of the Act, to which the Sub-Committee of course had regard.

The Sub-Committee found these arguments academic because it was 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. 53C of the Act:

(2)The relevant licensing authority must—

(b)take such steps mentioned in subsection (3) (if any) as it considers appropriate for the promotion of the licensing objectives;

(3)Those steps are—

(a)the modification of the conditions of the premises licence,

(b)the exclusion of a licensable activity from the scope of the licence,

(c)the removal of the designated premises supervisor from the licence,

(d)the suspension of the licence for a period not exceeding three months, or

(e)the revocation of the licence.

The legality or otherwise of the certificate had no bearing on that. Mr Charalambides then submitted that the Sub-Committee was under a duty to scrutinise the certificate. He said that Members did not have to follow down the path of the Certificate, and that whether they agreed with the Certificate or not was reflected in the steps they should take.

The Sub-Committee disagreed. This is not what The High Court in ***Lalli*** ruled. The Court pointed out that the licensing authority's own view as to whether the premises was "associated with serious crime or serious disorder" (even if different to the opinion of the senior police officer who signed the certificate) is not decisive as to what steps are appropriate to take in order to promote the licensing objectives at the summary review hearing (and by analogy the full review hearing). The Deputy High Court Judge stated [at § 63]:

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

The Sub-Committee applied its mind to the task in hand which was to take such steps as were appropriate and proportionate in order to promote the licensing objectives. It also bore in mind paragraphs **11.1** and **11.26** of the Guidance issued under s182.

Public Sector Equality Duty
Mr Charalambides drew the attention of the Sub-Committee to the provisions of ***The Equality Act 2010*** which is engaged in a case such as this. He correctly pointed out that the City Council's current Statement of Licensing Policy ("SoLP"), which it is required to publish every 5 years, makes no mention of the Equality Act as is required by paragraphs 14.66 and 14.67 of the Guidance.

Two points arise. First, the current Statement of Licensing Policy is out for consultation and that omission will be rectified. Secondly, the absence of any reference to the Equality Act in the SoLP does not prevent the Sub-Committee from applying its mind to the provisions.

In broad terms, Mr Charalambides identified two premises which he said had a white clientele, but which had been treated differently from his clients, who operate a premises for the Afro-Caribbean community. These other premises were The Bricklayers Arms and The Greyhound. He maintained that Black Asian and Minority Ethnic ("BAME") venues were treated more harshly. He made assertions about other unidentified cases that he had been involved with in Birmingham where it had been suggested "off the record", by unidentified police officers, that the operator agree to a condition that no urban or bhangra-style music be played. He drew an analogy with the "stop and search" powers, which he said were exercised more usually against members of the BAME community. He said that it seemed to be the case that if premises in Birmingham were operated by black or Asian operators, then they would be dealt with more harshly. In closing he said that he was **not** accusing WMP of being racist, but that he was just making it clear that he has been pulled aside on numerous occasions on the issue of the style of music being played in venues.

PC Rohomon gave the Sub-Committee some important further information. He explained that the four "Es" (engage; explain; encourage and enforce) were the key principles as to how the Police had been working with premises during Covid. None of the cases where enforcement had taken place (save for The Bricklayers Arms) had been on an "ad hoc" basis.

The Bricklayers Arms was an expedited review which took place before 4th July ("Independence Day") and the introduction of regulations and guidance. That premises should not have been open during national lockdown. They were. The licence was suspended for 3 months.

In respect of The Greyhound, the premises were found to be breach on one instance, and a fine of £1,000 was levied. A meeting took place with the operators where they were asked for a risk assessment; they replied very quickly and have not been in breach since. PC Rohomon said that it was a "two-way street". The Police give advice and when the premises do not respond to the advice, that is when they use enforcement powers. He said that, unfortunately, some premises are not responsive, although the vast majority do engage once they have been found to be in breach. He said that he got annoyed when the police are accused of being racist. He has been a police officer for 19 years. He said that they are not racist in any shape or form, and that they are simply responding to public concern. He said that you can only go so far, and that if someone does not respond or listen, then that is when enforcement powers were used.

The Sub-Committee also had regard to PC Rohomon's statement submitted with the evidence, together with the evidence he gave earlier in the hearing that these premises were not unique, and that there were other premises in the city centre and the wider community which members of the black community visit. Consequently, there would be no adverse impact on any protected category in the event of the revocation of the licence for Nakira.

The Sub-Committee was also aware that the Act and the hearings regulations required these proceedings to be completed within a certain timescale.

The Sub-Committee was advised of the relevant statutory provisions under **s.149** of **the Equality Act 2010**. It had regard to the protected categories under the Act; it was informed of ***'The Brown Principles'*** and accepted the assurances of the officer. It was aware, also, that the PSED is not a duty to achieve results. Rather it is a duty to have regard to the need to achieve the goals identified in paras (a) to (c) of s.149(1)- ***Hotak v Southwark London Borough Council [2015] 2 WLR 1342 at para 73.***

With these matters in mind, the Sub-Committee gave the appropriate weight to the evidence of the Police, and the submissions of Mr Charalambides. It was the view of the Sub-Committee that its duty under ***the Equality Act*** 2010 had been discharged.

The Sub-Committee found that the actions of the Police were focused on these premises not through improper motive or because they served the Afro-Caribbean community, but because the operators failed to heed warnings and advice given to them.

The Sub-Committee's view was that there is an overriding duty to promote the licensing objectives in an appropriate and proportionate manner in this case, having had due regard to the PSED., not least because the increased risks of COVID-19 infection as a result of acts and omissions by Nakira's operators impacts on all communities, including the BAME community itself who frequents Nakira.

All in all, the Sub-Committee considered the licence holder to have failed to take its responsibilities seriously. It found that the activities identified above amounted to a flagrant disregard for the licensing objectives.

It also had in mind the case of ***R (Bassetlaw District Council) v Worksop Magistrates' Court [2008] EWHC 3530 (Admin),*** and the fact that deterrence is a proper consideration in the context of licence reviews.

It looked at the question of imposing a lesser step than revocation. Mr Charalambides urged the Sub-Committee to suspend the licence for 2 months. A suspension of up to 3 months was available. Nevertheless, the Sub-Committee viewed the activities of the premises licence holder as so serious, that the only appropriate and proportionate course for it to take was to revoke the licence. The Sub-Committee had no confidence or trust in the management of the premises. The revocation of the licence and the removal of the DPS removed the threat to the licensing objectives of crime and disorder, public nuisance and public safety which would otherwise prevail if these premises were allowed to continue operating under the current management.

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 the Police, Environmental Health, Licensing Enforcement and Public Health. The Sub-Committee listened carefully to the submissions of the representative of the premises licence holder.

The Sub-Committee is required under s.53D of the Act to review the Interim Steps that have been taken by the Licensing Sub-Committee under s.53B. In conducting a review of the Interim Steps, s.53D(2) sets out how it should approach such a review:

In conducting the review under this section, the relevant licensing authority ***must—***

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

(b)consider any relevant representations; and

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

The Sub-Committee took the view that, given the conduct of the operators of these premises, that it is appropriate and proportionate that these steps remain in place.

All parties are advised that there is a right of appeal to the Magistrates' Court against the Licensing Authority's decision within 21 days of being notified of these reasons.