

<b>DATE OF HEARING</b>	Friday, 23 March 2012
<b>PANEL MEMBERS</b>	Councillor Todd (Chairman) Councillor Simons Councillor Saltmarsh
<b>APPLICATION TYPE/REF</b>	Review of Premises Licence MAU 063461
<b>LICENSEE</b>	Mr Bruno Fernando Azeved Silva
<b>ADDRESS</b>	Bora Bora, 417 Lincoln Road, Peterborough, PE1 2PF

<b>PREMISES DETAILS</b>	Bora Bora, 417 Lincoln Road, Peterborough, PE1 2PF	
<b>LICENSEE HEARD</b>	<b>Yes</b>	
<b>LICENSEE REPRESENTED</b>	<b>Yes</b>	
Mr Simon Percival – Architect (Non Legal)		
<b>WITNESSES FOR LICENSEE</b>		<b>No</b>
<b>THE FOUR LICENSING OBJECTIVES</b>		
Prevention of crime and disorder	Public safety	
Prevention of public nuisance	Protection of children from harm	
<b>LICENSING OBJECTIVES UNDER WHICH REPRESENTATIONS WERE MADE</b>		
Prevention of public nuisance		

**REPRESENTATIONS: RESPONSIBLE AUTHORITIES & INTERESTED PARTIES  
ATTENDING AND/OR INTENDING TO SPEAK**

<b>NAME/DETAILS</b>	<b>ATTENDING</b>	<b>SPEAKING</b>
Ms Dorothy Pocock	Yes	Yes
Inspector Iain Clark	Yes	Yes

**The Sub-Committee has read the report and relevant material and listened to all the evidence and submissions. The Sub-Committee has also considered the national guidance and the council's statement of licensing policy.**

#### **FINDINGS OF FACT**

**The Sub-Committee finds the following facts:**

1. There had been a number of changes to the Designated Premises Supervisor during 2011 and on 7<sup>th</sup> February 2012 a Section 19 Closure Notice had been served on Mr Silva by the Police. It was felt that the Designated Premises Supervisor at the time, was not a fit and proper Designated Premises Supervisor;
2. On 28<sup>th</sup> February 2012, Mr Silva was placed upon the licence as the Designated Premises Supervisor;
3. There had been numerous recorded incidents at local residential properties of noise pollution from the premises;
4. There had been recorded incidents of breaches of licence conditions including noise being heard at a nearby residential property, music being played and alcohol being sold after permitted hours.
5. There would need to be at least some remedial work required to the building to abate the nuisance caused by music emanating from the building.

#### **IRRELEVANT REPRESENTATIONS**

1. The premises had been operating as a café without valid planning consent.

DECISION MADE

**Review of Premises  
Licence**

The Sub-Committee has considered the relevant representations made today and previously submitted in line with the licensing objective.

During the Sub-Committee's deliberations we have had regard to the Government Guidance, specifically paragraphs 11.18, 11.19 and 11.22, also paragraphs 12 and 13 of the Hearings Regulations and to our own Statement of Licensing Policy.

**Our decision therefore is:**

To remove the playing of live and recorded music from the scope of the licence.

In line with this decision, condition 44 stating 'the playing of live or recorded music in garden areas of the premises after 21.00hrs shall not be permitted', to be removed from the operating schedule.

ADDITIONAL CONDITIONS ATTACHED *(if any)*

1. *Conditions set out in the operating schedule (as amended or otherwise)*
2. *Additional conditions (if any) proposed by responsible authorities*
3. *Additional conditions proposed by applicant*
4. *Additional conditions arising from issues considered by the Sub-Committee in respect of any relevant representations*
5. *Any further conditions considered necessary for the promotion of the Licensing Objectives*

**1. Conditions set out in the operating schedule**

No additional conditions proposed, but the removal of condition 44 stating 'the playing of live or recorded music in the garden areas of the premises after 21.00hrs shall not be permitted.'

## REASONS FOR DECISION, LINKED TO FINDINGS OF FACT

In view of the Findings of Fact and submissions made, the Sub-Committee was satisfied on a balance of probability and considering all the circumstances that it was appropriate to review the Premises Licence and to amend the licence conditions.

The Sub-Committee commended the Licensee for their proposed recommendations to mitigate against the obvious noise problems experienced by the nearby residential community; however it was regrettable that these recommendations had not been implemented prior to the intervention of the Responsible Authorities. As things stood, the Sub-Committee felt that it had no alternative but to agree with the recommendation made by Pollution Control to remove the playing of live and recorded music from the scope of the licence as it did not believe it was possible to prevent the nuisance by way of imposing additional conditions upon the licence.

The Sub-Committee also took the view that if there were to be any successful remedy to resolve a continuing nuisance problem, this would require a process of consultation by the licence holder with the Noise Pollution team and this would take an indeterminate period of time. Accordingly a time –limited solution would not be appropriate on this occasion.

## SECTIONS OF THE NATIONAL GUIDANCE AND THE COUNCIL'S STATEMENT OF LICENSING POLICY REFERRED TO IN THE SUB-COMMITTEE'S DECISION:

### **Council's Statement of Licensing Policy**

- Objectives: *section 4 on Page 5*
- Other Legislation : *section 7 page 7*
- Reviews: *section 16 on Page 12 and 13*
- Delegation / Decision Making / Administration: *Section 17 page 13 and 14*

### **Guidance issued under Section 182 of the Licensing Act 2003**

- Reviews: *Section 11 pages 98 to 102*
- Determining applications: *Section 9 pages 78 to 81*

**LEGAL ADVICE GIVEN DURING DELIBERATION**

None.

<b>CRIME AND DISORDER ACT 1998</b>	<b>Were there any implications under this Act? If so give details</b>
<i>Section 17 imposes a duty to have due regard to the likely effect of the exercise of its functions and to do all it can to prevent crime and disorder.</i>	
<b>Human Rights Act 1998</b>	<b>How were the following articles considered</b>
<b>Article 1</b> – <i>Every person is entitled to the peaceful enjoyment of his possessions.</i>	The Sub-Committee read the report and relevant material and listened to the evidence and submissions. The national guidance and the Council's statement of Licensing Policy were also considered.
<b>Article 6</b> – <i>Everyone is entitled to a fair trial</i>	The Sub-Committee read the report and relevant material and listened to the evidence and submissions. The national guidance and the Council's statement of Licensing Policy were also considered.
<b>Article 8</b> – <i>Everyone has the right to respect for his private and family life, his home and his correspondence.</i>	The Sub-Committee read the report and relevant material and listened to the evidence and submissions. The national guidance and the Council's statement of Licensing Policy were also considered.
<b>DATE OF SUB-COMMITTEE HEARING</b>	23 March 2012

The applicant, together with relevant authorities and interested parties who made representations, has the right to appeal against this determination. There is a period of 21 days from the notification of this decision to commence an appeal by giving notice to the Justices' Chief Executive for the Magistrates' Court. Details will be sent to the relevant parties with the written notice of this decision forthwith.