

LICENSING ACT 2003 SUB-COMMITTEE		AGENDA ITEM No. 3
23 MARCH 2012		PUBLIC REPORT
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APPLICATION: Review of Premises Licence

PREMISES: Bora Bora, 417 Lincoln Road, Peterborough. PE1 2PF

REFERENCE NUMBER: MAU 063461

GLOSSARY OF TERMS: Attached at **Appendix A – Page 4**

1. PURPOSE OF REPORT

1.1 To consider and determine an application for a review of a Premises Licence under Section 51 of the Licensing Act 2003 for the above premises, taking into account the representation made by the Pollution Control Team, subsequent supporting documents and a letter of support of the review by Cambridgeshire Constabulary, both in their capacity as a Responsible Authorities. The review was bought under the Prevention of Public Nuisance.

2. BACKGROUND INFORMATION

2.1 On the 9th May 2006 an application for a new premises licence was submitted by Mrs Sandra Filipa Pais. This application was for the retail sale of alcohol and other licensable activities. The name of the premises was Doce Mel 2 and the licence was granted on 9th June 2006.

2.2 On the 2nd October 2006 an application was made to vary the licence to include live music and dancing. This application was granted on 31st October 2006 after additional noise conditions were agreed for the licence.

2.3 On 13th October 2006 a premises licence review application was made by Cambridgeshire Fire & Rescue Service under the Public Safety objective. A licensing hearing was subsequently held which resulted in the premises licence being suspended for a period of 3 months and the designated premises supervisor being removed from the licence. On 4th January 2007 Sandra Filipa Pais surrendered the premises licence.

2.4 On 8th February 2007 an application for a new premises licence was submitted by Mr Nawas Ibrahim. This application was for the retail sale of alcohol and other licensable activities between the hours of 6am & 11pm seven days a week. The name of the premises was Millfield Restaurant and the premises licence was granted on 7th March 2007.

- 2.5 Between 4th April 2007 and 6th September 2011 there were seven designated premises supervisor changes on the premises licence.
- 2.6 On 30th August 2011 an application to change the premises licence holder was made to place Mr Bruno Fernando Azeved Silva on the licence. There was no Police objection to this and the licence was subsequently granted. On 6th September 2011 an application to place Mr Robert Norman Mulholland on the licence as the designated premises supervisor was made and granted.
- 2.7 On 23rd September 2011 an application to vary the plan of the licensable area and to extend the times for licensable activities at the premises was submitted by Mr Silva. Objections to this variation were received from the Noise Pollution Team and the Police. The matter was heard by the Licensing Act 2003 Sub-Committee on 9th November 2011. As a result of the hearing the application to extend the licensable area and hours were rejected.
- 2.8 On 17th November 2011 an application to vary the premises licence was made by Mr Silva. This application was to amend the plan of the premises and also to remove a condition pertaining to the seating occupancy of the premises. This application was granted on 16th December 2011.
- 2.9 On 7th February 2012 a Section 19 Closure Notice was served on Mr Silva by the Police as it was felt that the designated premises supervisor, Mr Mulholland, was not a fit and proper designated premises supervisor. Mr Silva was unable to place another suitable person on the licence until Mr Silva applied for and was granted his own personal licence. On 28th February 2012 Mr Silva was placed upon the licence as the designated premises supervisor. A copy of the most current premises licence is at **Appendix B – Page 7**. This is not the licence with Mr Silva's details upon it as this is still in the consultation period.

3. APPLICATION

- 3.1 In accordance with section 51 of the Licensing Act 2003 following the submission of an application to review the premises licence from the Pollution Control Team, a Responsible Authority, the licensing authority must hold a hearing.
- 3.2 A copy of the application to review was received on 17th February 2012, a copy of this application, together with supporting documents and a supporting evidential letter, is attached at **Appendix C – Page 21**.
- 3.3 A copy of the 'Notice' that was displayed on the premises in accordance with Part 5 no. 38 of Statutory Instruments 2005 No. 42 – The Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 is attached at **Appendix D – Page 59**.
- 3.4 No representations have been received from any of the other responsible authorities or from any interested parties.

4. RESPONSIBLE AUTHORITY

4.1 Summary of issues raised by Pollution Control Team

- i. Recorded incidents of noise pollution from the premises at local residential properties.
- ii. Recorded incidents of breaches of licence conditions including noise being heard at nearby residential property, music being played and alcohol being sold after permitted hours.

4.2 Summary of issues raised by Cambridgeshire Constabulary

- i. Premises being used as a 'night club' without the correct planning consents
- ii. Premises being used without a valid designated premises supervisor

iii. Incidents of breaches of the Licensing Act 2003.

5. LICENSING OFFICERS COMMENTS

5.1 No mediation was undertaken.

6. POLICY & GUIDANCE IMPLICATIONS

6.1 The following sections/paragraphs are applicable to this application:

6.2 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*

6.3 Guidance Issued under Section 182 of the Licensing Act 2003 (October 2010)

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

7. LEGAL OFFICER'S COMMENTS

7.1 The Licensing Authority (hereafter referred to as "the Council) is charged with implementing the provisions of the Licensing Act 2003. This is an application for a review of a premises licence following the application by Trading Standards (Responsible Authority) to review the premises licence made under section 51 of the Licensing Act 2003.

7.2 In this case, the application was received at these offices on 17th February 2012.

7.3 The application before this committee will consider –

- (i) The application to review the licence,
- (ii) Any relevant representations

7.4 The committee will take such of the steps as it considers that action is necessary for the promotion of the licensing objectives. The steps are –

- (a) to modify the conditions of the premises licence
- (b) to exclude a licensable activity from the scope of the licence
- (c) to remove the designated premises supervisor from the licence
- (d) to suspend the licence for a period not exceeding three months, or
- (e) to revoke the licence

and for this purpose the conditions of the licence are modified if any of them is altered or omitted or any new condition is added

7.5 In addition the guidance issued under section 182 of the Licensing Act 2003 states:

'The licensing authority may decide that no action is necessary if it finds that the review does not require it to take any steps necessary to promote the licensing objectives. In addition, there is nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular time. It is expected that licensing authorities will regard such warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the holder of the licence. But, where responsible authorities like the police or environmental health officers have already issued warnings requiring improvements – either orally or in writing – that have failed as part of their own stepped approach to concerns, licensing authorities should not merely repeat that approach.

Note: In this document, the following definitions are included to provide an explanation of certain terms included in the Act. In some cases they are an abbreviation of what is stated in the Licensing Act 2003 or an interpretation of those terms. For a full definition of the terms used, the reader must refer to the Licensing Act 2003.

‘Child’

(a) means an individual aged under 16

(b) a child is unaccompanied if he is not in the company of an individual aged 18 years or over

DCMS: Department for Culture Media and Sport

‘Designated Premises Supervisor’ means the person (who must be a Personal Licence Holder), in the case of premises selling alcohol, who will normally have been given the day to day responsibility for running the premises by the holder of the Premises Licence or will be the Premises Licence holder.

‘Interested parties’:

- a person living in the vicinity of the premises in question;
- a body representing persons living in that vicinity, e.g. a residents association;
- a person involved in a business in the vicinity of the premises in question;
- a body representing persons involved in such a business e.g. a trade association
- a member of the relevant licensing authority.

‘Late Night Refreshment’ means the supply of hot food or hot drink to members of the public (whether for consumption on or off the premises) between the hours of 11.00 pm and 5.00 am.

‘Licensable Activities’ means: -

- The sale by retail of alcohol
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club
- The provision of Regulated Entertainment
- The provision of Late Night Refreshment

‘Licensing Authority’: - is the licensing function of Peterborough City Council

‘Licensed Premises’ includes club premises and events unless the context otherwise requires.

‘Licensing Objectives’

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance
- The protection of children from harm

‘Operating Schedule’ means a document containing a statement of the following matters (and any others that may be prescribed): -

- The relevant Licensable Activities
- The times at which the Licensable Activities are to take place and any other times when premises are open to the public
- Information regarding the person who will be specified in the Premises Licence as the Premises Supervisor
- Where the Licensable Activities involve the supply of alcohol, whether it is for the supply on and/or off the premises

- The steps being taken to promote the Licensing Objectives

‘Rateable Value’: as regards a premises, is the value for the time being in force for the premises entered in the local non-domestic rating list for the purposes of Part III of the Local Government Finance Act 1988(b).

‘Regulated Entertainment’ (Schedule 1 of the Act) means: -

- A performance of a play
- An exhibition of a film
- An indoor sporting event
- A boxing or wrestling entertainment
- A performance of live music
- Any playing of recorded music
- A performance of dance

Or entertainment of a similar description falling within the last three of the categories listed above, where the entertainment takes place in the presence of and for the purposes of entertaining that audience or spectators.

Or the provision of entertainment facilities:

Facilities for enabling persons to take part in entertainment of the following description for the purpose or purposes, which include the purpose of being entertained:

- making music
- dancing
- entertainment of a similar description

‘Relevant Licensing Authority’: is the Authority in the area the premises are situated.

‘Responsible Authority’ means any of the following: -

- Cambridgeshire Constabulary (The Chief Officer of Police)
- Cambridgeshire Fire and Rescue (The Fire Authority)
- Health and Safety Team, Peterborough City Council
- Planning authority, Peterborough City Council
- Trading Standards, Peterborough City Council
- Environmental Health – Pollution, Peterborough City Council
- Children’s Services – Child Protection & Review Manager
- Maritime & Coastguard Agency, Walton on Naze. (For vessels carrying more than 12 passengers.)
- Environment Agency, Peterborough (For vessels carrying 12 or less passengers).

‘Supply of alcohol’:

- the sale by retail of alcohol, or
- the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

‘Temporary Event Notice’ means a Permitted Temporary Activity involving one or more Licensable Activities subject to the following various conditions and limitations: -

- Duration – they are limited to events lasting for up to 96 hours;
- Scale – they cannot involve the presence of more than 499 people at any one time;
- Use of the same premises – the same premises cannot be used on more than 12 occasions in a calendar year, but are subject to the overall aggregate of 15 days irrespective of the number of occasions on which they have been used; and

- The number of notices given by an individual within a given period of time – a Personal Licence Holder is limited to 50 notices in one year, and another person to 5 notices in a similar period.

(In any other circumstances, a full Premises Licence or Club Premises Certificate will be required for the period of the event).

‘the Act’: means the Licensing Act 2003

‘Vicinity’: Given the normal everyday meaning of being ‘near to’ when considering the relevance of representations received from individual’s residence or business.

Licensing Act 2003\glossary of terms 13 March 2007