

LICENSING ACT 2003 SUB COMMITTEE		AGENDA ITEM No. 3
28 JUNE 2011		PUBLIC REPORT
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APPLICATION: Review of Premises Licence

PREMISES: Kaimas Lithuanian Restaurant, 561-563 Lincoln Road, Peterborough, PE1 2PB

REFERENCE NUMBER: MAU 061205

GLOSSARY OF TERMS: Attached at **Appendix A – Page 6**

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 Pollution Control and Planning in their capacities as a Responsible Authorities, and representations from two interested parties. The review was bought under the Prevention of Public Nuisance objective.

2. BACKGROUND INFORMATION

2.1 On the 4 August 2005 a conversion application was submitted by Mr Ibrahim Hassan to convert a justices restaurant licence to a premises licence, at that time the premises was called Meze Meze, and was a ground floor restaurant only. As no objections were received from the police, the licence was granted on 9 September 2005.

2.2 On the 12 February 2008 an application to transfer the premises licence to Mr Darr was received. As no representations were received the application was granted on the 29 February 2008. At this time the premises was called Al-Aziz.

2.3 On the 15 February 2008 an application to vary the Designated Premises Supervisor (DPS) to Mr Darr was received. As no representations were received the application was granted on the 3 March 2008.

2.4 On the 25 March 2010 an application to transfer the premises licence to Mr Aidas Meckauskas with immediate effect was received. As no representations were received, the application was granted.

2.5 On the 26 March 2010 an application to vary the DPS to Mr Aidas Meckauskas with immediate effect was received. As no representations were received the application was granted.

- 2.6 On the 21 September 2010 an application for a variation of the premises licence was received. This was withdrawn by the applicant's representative.
- 2.7 On 2 November 2010 an application for a variation of the premises licence was received. Representations were received from Cambridgeshire Constabulary and Pollution Control as Responsible Authorities, and three interested parties. The objections had regard to the prevention of crime and disorder, public safety and prevention of public nuisance objectives. A committee hearing to determine the application took place on 15 December 2010 and the application was granted with reduced hours to those applied for and extra conditions to the operating schedule.
- 2.8 On 17 November 2010 Mr Meckauskas applied for several Temporary Event Notices (TEN's), a table of the dates, timings and licensable activities of these TEN's is attached at **Appendix B – Page 9**
- 2.9 On 23 March 2011 a minor variation application was received to update the ground floor plan to reflect the current layout of the premises. As no objections were received the application was granted 14 April 2011. A copy of the current licence is attached at **Appendix C – Page 11**

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 Pollution Control, a Responsible Authority, the licensing authority must hold a hearing.
- 3.2 A copy of the application to review was received 4 May 2011, this application was revised (for clarification purposes) a copy of this revised application was served on the licence holder and is attached at **Appendix D – Page 23**
- 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 E – Page 31**
- 3.4 A representation was received from Planning as a Responsible Authority, a copy of this representation is attached at **Appendix F – Page 33**
- 3.5 No other representations have been received from any of the remaining Responsible Authorities.
- 3.6 Representations have been received from two interested parties, one as a resident in the vicinity and one from a business operating in the vicinity. These representations are attached at **Appendix G – Page 35**
- 3.7 A statement (rebuttal) from the licence holder refuting the basis of the review was received on the 31 May 2011 with a petition in support of the premises licence containing 772 signatures. The statement is attached at **Appendix H – Page 39**
- 3.8 A copy of the petition is attached at **Appendix I – Page 47**

4. RESPONSIBLE AUTHORITY

LICENSING OBJECTIVE:	REPRESENTATIVE:
Prevention of Public Nuisance	<p>Responsible Authority: Pollution Control As per the application for review attached at Appendix D – Page 23</p> <p>Responsible Authority: Planning attached at Appendix F – Page 33</p> <p><i>To comply with the Data Protection Act all letters have been distributed to Committee Members and the applicant, but are not for public circulation</i></p>

4.1 Summary of issues raised by Responsible Authorities

- i) Investigations have provided evidence that a statutory nuisance exists and has the likelihood to reoccur.
- ii) Noise complaints continue to be received
- iv) Requests made by Police to reduce the noise was not complied with
- v) Allegation of breaches of premises licence conditions and unauthorised licensable activities taking place at the premises.
- vi) Prohibitive use of the first floor by Planning legislation

5. INTERESTED PARTIES

LICENSING OBJECTIVE:	REPRESENTATIVE:
Prevention of Public Nuisance	<p>Interested Party: Resident in the vicinity</p> <p>Interested Party: A person involved in a business within the vicinity</p> <p><i>To comply with the Data Protection Act all letters have been distributed to Committee Members and the applicant, but are not for public circulation</i></p>

5.1 Summary of issues raised by Interested parties

- i) Noise from premises causing a sleep deprivation and disturbance
- ii) Noise issues from loud music and noisy patrons
- iii) Anti social behaviour from patrons (shouting, singing etc)
- iv) Potential of property unable to be rented due to noise issues from premises

6. STATEMENT AND PETITION IN SUPPORT OF THE PREMISES LICENCE.

- 6.1 A petition from the patrons of the premises containing 772 signatures in support of the premises licence has been received. Some signatories are within the vicinity and some are from further afield e.g. Spalding, London, Luton, Basildon, Kings Lynn. Therefore, it is up to the committee to decide upon what 'weight' they attach to this petition. This is attached at **Appendix I – Page 47**
- 6.2 A statement from the Licence holder (who is also the Designated Premises Supervisor (DPS)) has been received, refuting the allegations within the review. This is attached at **Appendix H – Page 39**

7 LICENSING OFFICERS COMMENTS

- 7.1 When a premises operates under a Temporary Event Notice (TEN) authorisation, the conditions of the premises licence do not take effect. However, a TEN does not remove the premises users obligations under any other legislation including that of a statutory nuisance.
- 7.2 Entertainment at a 'private event' to which the public are not admitted is not a licensable activity unless it is provided for consideration and with a view to profit. Also, consumption of alcohol is not a licensable activity. Therefore the provision of alcohol completely free of charge is not a licensable activity.
- 7.3 The licensing department received a phone call from Mr Meckauskas on the 24 March 2011, advising that he was having a live music event on the 25 March 2011, this notification is required by condition 26 of the premises licence. However the event on the 25 March is declared as a 'private event' in the statement provided by Mr Meckauskas. If this was the case, notification was not required as the premises licence authorisation was not being utilised.

8. POLICY & GUIDANCE IMPLICATIONS

- 8.1 The following sections/paragraphs are applicable to this application:

8.2 Council's Statement of Licensing Policy

- Fundamental Principles: *section 6 on Page 6*
- Other Regulatory Systems / Policies: *section 8 page 7*
- Reviews: *section 16 on Page 12 and 13*
- Delegation / Decision Making / Administration: *Section 17 page 13 and 14*

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

- Public Nuisance: *Section 2.32 to 2.40 pages 23 to 25*
- Reviews: *Section 11 pages 98 to 102*
- Determining applications: *Section 9 pages 78 to 81*

9. LEGAL OFFICER'S COMMENTS

- 9.1 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 Pollution Control (Responsible Authority) to review the premises licence made under section 51 of the Licensing Act 2003.
- 9.2 In this case, the application was received at these offices on 4 May 2011.
- 9.3 The application before this committee will consider –
- (i) The application to review the licence,
 - (ii) Any relevant representations
- 9.4 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

9.5 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