

LICENSING ACT 2003 SUB-COMMITTEE		AGENDA ITEM No. 3
18 AUGUST 2011		PUBLIC REPORT
Contact Officers:	Adrian Day, Licensing Manager Darren Dolby, Licensing Regulatory Officer	Tel: 454437 Tel. 453561

APPLICATION:	Review of Premises Licence
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PREMISES:	Marisqueira, 62 Cromwell Road, Peterborough, PE1 2EG
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REFERENCE NUMBER:	MAU 061530
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GLOSSARY OF TERMS:	Attached at Appendix A – Page 5
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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 a letter of support from Cambridgeshire Constabulary in their capacities as a Responsible Authorities. A further representation was also made by a local resident. The review was bought by the South Central East Residents Association in their role as a group representing local residents. The review was bought under the prevention of crime and disorder and the prevention of public nuisance objectives. A copy of the review application is attached at **Appendix B – Page 9**

2. BACKGROUND INFORMATION

- 2.1 On the 25th July 2005 a conversion application was submitted by Mr Giovanni Tomeo to convert a Justices restaurant licence to a premises licence. At that time of conversion the premises was called Marisqueira. As there were no objections from the police, the licence was granted on 22nd August 2005. Mr Tomeo was named on the licence as the Designated Premises Supervisor. A copy of this original premises licence is attached at **Appendix C – Page 19**
- 2.2 On the 18th December 2007 an application to change the name of the premises to 'Sopranos' was received and subsequently was granted.
- 2.3 On the 3rd March 2008 an application to vary the premises licence was received. This application was to remove the majority of the embedded restrictions, add dancing to the licence and to increase the hours for live music and the sale of alcohol until 3am. A representation from the Noise Pollution team was successfully mediated out. As there were no other representations received the application was granted on the 1st April 2008. This premises licence is attached at **Appendix D – Page 29** with all of the changes to the licence highlighted for easy reference.

- 2.4 On the 24th February 2009 an application to vary the Designated Premises Supervisor on the premises licence was received. The application was to place Mrs N Cascalheira on the licence and remove Mr Tomeo with immediate effect. As no representations were received, the application was granted.
- 2.5 On the 24th June 2009 an application to vary the Designated Premises Supervisor back to Mr Tomeo with immediate effect was received. As no representations were received the application was granted.
- 2.6 On the 25th August 2009 a minor variation to the premises licence was applied for by Mr Tomeo. This application was to change the layout plan of the premises and to increase the conditions on the licence. As no representations were received, the application was granted. A copy of this licence is attached at **Appendix E – Page 41** with all of the changes to the licence highlighted for easy reference.
- 2.7 On the 10th December 2009 an application to transfer the premises licence to Mr Joaquim Mendes was applied further. An additional application was also received to place Mr Mendes on the licence as the Designated Premises Supervisor. As no representations were received both applications were granted. A copy of this current premises licence is attached at **Appendix F – Page 53**

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 South Central East Residents Association, a body representing local residents, the licensing authority must hold a hearing.
- 3.2 A copy of the application to review was received on the 5th July 2011 and is attached at **Appendix B – Page 9**
- 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 G – Page 65**
- 3.4 A representation was received from the Pollution Control team as a Responsible Authority, a copy of this representation is attached at **Appendix H – Page 67**. This representation includes noise logs that were completed by a local resident. A letter supporting the applicant's recommendation to curtail licensable activities at the premises to 11pm was received from Cambridgeshire Constabulary and is attached at **Appendix I – Page 71**
- 3.5 No other representations have been received from any of the remaining Responsible Authorities.
- 3.6 A representation has been received from an interested party who is a resident in the vicinity of the premises. This representation is attached at **Appendix J – Page 73**

4. APPLICANT

4.1 Summary of issues raised by the applicant

- i) Loud noise emanating from the premises
- ii) Anti social behaviour and violence emanating from within and surrounding areas of the premises.
- iii) Allegation of breaches of premises licence conditions and unauthorised licensable activities taking place at the premises.
- iv) Allegation of criminal damage to local property and vehicles
- v) Obstruction of the footway by customers

5. RESPONSIBLE AUTHORITY & INTERESTED PARTY

5.1 Summary of issues raised by Responsible Authority & Interested party

- i) Noise from premises causing sleep deprivation and disturbance
- ii) Noise issues from loud music and noisy patrons
- iii) Anti social behaviour from patrons (shouting, singing etc)
- iv) The impact of late opening hours on the well being of local residents.

6 LICENSING OFFICERS COMMENTS

- 6.1 Due to the contentious nature of this review application it was felt by the Licensing Authority that mediation would not be successful and therefore no mediation took place.

7. POLICY & GUIDANCE IMPLICATIONS

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

7.2 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*

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

- Public Nuisance: *Section 2.32 to 2.40 pages 23 to 25*
- Crime & Disorder : *Pages 18 to 21*
- Reviews: *Section 11 pages 98 to 102*
- Determining applications: *Section 9 pages 78 to 81*

8. LEGAL OFFICER'S COMMENTS

- 8.1 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.

- 8.2 In this case, the application was received at these offices on 5th July 2011.

- 8.3 The application before this committee will consider –

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

- 8.4 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

- 8.5 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.

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