

DATE OF HEARING	Tuesday, 28 June 2011
PANEL MEMBERS	Councillor Dobbs (Chair) Councillor Peach Councillor Saltmarsh
APPLICATION TYPE/REF	Review of Premises Licence MAU 061205
LICENSEE	Mr Aidas Meckauskas
ADDRESS	8 Saffron Court, Park Road, Peterborough, PE1 2US

PREMISES DETAILS	Kaimas Lithuanian Restaurant, 561-563 Lincoln Road, Peterborough, PE1 2PB
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LICENSEE HEARD	Yes	
LICENSEE REPRESENTED	Yes	

Ms Belinda Smith, Belinda Smith & Co. Solicitors

WITNESSES FOR LICENSEE	No
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THE FOUR LICENSING OBJECTIVES

Prevention of crime and disorder	Public safety
Prevention of public nuisance	Protection of children from harm

LICENSING OBJECTIVES UNDER WHICH REPRESENTATIONS WERE MADE

Prevention of public nuisance

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

NAME/DETAILS	ATTENDING	SPEAKING
Ms Iwona Wojszczyk, Pollution Control Officer	Yes	Yes
Ms Dorothy Pocock, Pollution Control	Yes	Yes
PC Petr Torak	Yes	Yes
Mr Nigel Barnes, Planning	Yes	Yes
Councillor Mohammed Jamil	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-Sub-Committee finds the following facts:

1. The Sub-Sub-Committee heard evidence relating to a noise nuisance emanating from the premises over an extended period of time. The dates were from 10th December 2010 to 21st May 2011. There were 17 recorded dates in the review Application.
2. The Sub-Sub-Committee noted that there were two TENs issued during this period and a private party. The Sub-Sub-Committee were of the view that the operation of a TEN and private party did not excuse noise nuisance.
3. Given the nature of the noise, the location of the premises with residential premises and other commercial premises, the Sub-Committee were of the view that a public nuisance was in existence. The Sub-Committee applied the case law on this point to the facts, although only two residents had complained.
4. The Sub-Committee heard recorded levels of noise taken by the pollution control officer and were informed that the noise levels exceeded by some 10dB to 16dB what was generally accepted for the mixed use location as recommended by the World Health Organisation. The Sub-Committee was referred to the Noise Nuisance Report prepared by the Applicant using a monitoring device.
5. The Sub-Committee heard from Dorothy Pocock, a Pollution Control Officer who witnessed noise nuisance from the restaurant on 12th December 2010.
6. A noise Abatement Notice was served on 13th December 2010.
7. PC Torak gave evidence of noise issues following complaints that he had witnessed on 22nd December 2010 and on 25th March 2011.
8. The council's Planning control Officer gave evidence as to the inappropriateness of the building for the current usage and stated that the premises licence holder was in breach of planning regulations.
9. The Sub-Committee read evidence from the tenants who had made complained of noise nuisance and who had kept log sheets detailing the incidents.

IRRELEVANT REPRESENTATIONS

The Sub-Committee considered the following to be irrelevant Representations:

- 1. There were a high a number of signatories to the petition submitted in support of the premises which the Sub-Committee disregarded as they were not in the vicinity of the premises.**
- 2. The Sub-Committee also noted that the petition included a request for an extension of opening hours which was disregarded in the Sub-Committee's determination.**

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, in particular to paragraphs 2.32 to 2.38, 11.1 to 11.9 and 11.6 to 11.21 and to our own Statement of Licensing Policy.

Our decision therefore is:

1. To reduce the opening hours of the premises, to be:
 - Monday to Thursday 12.00 – 23.00
 - Friday and Saturday 12.00 – 00.00
 - Sunday 12.00 – 23.00
2. To remove live music or amplified music from the scope of the licence,
3. To limit recorded music to the downstairs area only,
4. To reduce the hours of recorded music, to be:
 - Monday to Sunday 12.00 – 23.00
5. Sale by retail of alcohol ancillary to a main meal, to be:
 - As per opening hours
6. Provision of late night refreshment
 - Friday and Saturday from 23.00 – 00.00
7. Removal of conditions 11,12,13,14,15, 24 and 26

The decision is suspended for 21 days to allow an appeal to the Magistrates' Court, and thereafter until the determination of that appeal.

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*

No additional conditions imposed.

REASONS FOR DECISION, LINKED TO FINDINGS OF FACT

In view of the Findings of Fact and submissions made, the Sub-Committee is satisfied on a balance of probability and considering all the circumstances that it is appropriate to review the Premises Licence and to reduce the opening hours of the premises, remove live or amplified music from the scope of the licence, to limit recorded music to the downstairs area only and to reduce the hours of recorded music. Sale by retail of alcohol and provision of late night refreshment to be brought into line with the new opening hours of the premises and a number of conditions to be removed from the operating schedule.

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

- 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*

Guidance issued under Section 182 of the Licensing Act 2003

- 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*

LEGAL ADVICE GIVEN DURING DELIBERATION

The Sub-Committee was directed to the following case law relating to public nuisance:

R (Regina) and Rimmington, R and Goldstein 2005

Attorney General and PY Quarries Limited 1957

Crosby Homes Limited and Birmingham City Council and the Nightingale Club 2008

Hope and Glory Public House Limited and City of Westminster Magistrates' Court 1996

CRIME AND DISORDER ACT 1998	Were there any implications under this Act? If so give details
<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>	
Human Rights Act 1998	How were the following articles considered
Article 1 – <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.
Article 6 – <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.
Article 8 – <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.
DATE OF SUB-COMMITTEE HEARING	28 June 2011

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.