

Meeting of the Licensing Act 2003 Sub-Committee
 held at the Town Hall, Peterborough on Tuesday 26 March 2013

RECORD OF DECISION

1. Apologies for Absence	There were no apologies for absence received.
2. Declarations of Interest	There were no declarations of interest.
3. Application	Zaika (previously known as Shalimar Gardens), 34 New Road, Peterborough, PE1 1FH
3.1 Application Reference	MAU 066657
3.2 Sub-Committee Members	Councillor Thacker (Chairman) Councillor Hiller Councillor Saltmarsh
3.3 Officers	Darren Dolby, Regulatory Officer – Licensing Colin Miles, Lawyer – Legal Advisor to the Sub-Committee Karen S Dunleavy, Governance Officer – Clerk to the Sub-Committee
3.4 Applicant	Cambridgeshire Constabulary
3.5 Nature of Application	<p><u>Application Type</u></p> <p>Review of existing premises licence.</p> <p><u>Summary of Review Application</u></p> <p>In accordance with section 51 of the Licensing Act 2003 following the submission of an application to review the premises licence from Cambridgeshire Constabulary, a Responsible Authority must hold a hearing.</p> <p>A representation in support of the review and recommendations had been received from Cambridgeshire Constabulary, Licensing Authority and the Pollution Team, as Responsible Authorities. No other representations had been received from any of the remaining Responsible Authorities.</p> <p>A summary of the issues raised within the representations included:</p> <ul style="list-style-type: none"> • The premises was located beneath the Travelodge Hotel in New Road; • Responsibility of the premises licence holder and designated premises supervisor (DPS) had changed on numerous occasions; • Continued breaches of all four of the licensing objectives; • Continued breaches of premises licence conditions; • Poor management of the premises; • Continued issues with loud music from the premises; • There had been an application received from the Cambridgeshire Police for a licence review, which in essence revealed poor

	<p>management and a lack of regard for the licensing laws by the premises license holder;</p> <ul style="list-style-type: none"> • The police representative provided clarification over the number of Section 19 Closure Notices that had been issued at the premises. The total number had resulted in four instead of three issued; • The premises had recently been repossessed by the landlord due to arrears that had accrued by the license holder; and • A mediation session had been held with the license holder, which had recommended restrictions on the sale of alcohol; removal of live music, recorded music or performance of dance and the introduction of improvements to the overall management of the security and safety at the premises.
3.6 Licensing Objective(s) under which representations were made	<ol style="list-style-type: none"> 1. The Prevention of Crime and Disorder; 2. The Protection of Children from Harm; 3. Public Safety; and 4. The Prevention of Public Nuisance.
3.7 Parties/Representatives and witnesses present	<p><u>Applicant / Responsible Authority</u></p> <p>PC Grahame Robinson, who presented the case on behalf of Cambridgeshire Constabulary.</p> <p><u>Responsible Authorities</u></p> <p>Adrian Day, who was present on behalf of Licensing Authority.</p> <p>Steven Blake, who was present on behalf of Pollution Control Team.</p> <p><u>Licensee / Representative</u></p> <p>Mr Muhammed Khubaib the Licensee was in attendance. The Licensee did have a representative (not a legal representative).</p>
3.8 Oral representations	<p>The Police representative addressed the Sub-Committee and outlined the main points with regards to the application, which in summary included:</p> <ul style="list-style-type: none"> • An inspection on the premises had concluded that the license holder had repeatedly chosen to ignore and failed to meet numerous conditions attached to the premises license and the Licensing Act; • Examination of seized CCTV equipment revealed that the hard drive had been removed. Consequently footage of a public disorder incident, which occurred at the premises on New Year's Day was irretrievable; • Enquiries with the landlord over the repossession of the premises had revealed that the license holder was in arrears; • Although all four licensing objectives had been breached, the application for a review was mainly intended for the Committee to consider whether the revised conditions agreed at the mediated session held on 14 March would deter further breaches of public nuisance by the license holder; and • One of the Section 19 Closure Notice that was issued by the Cambridgeshire Police on 1 March 2013, was due to the lack of a DPS.

Responsible Authority – Licensing Authority

Adrian Day, the Licensing Authority addressed the Sub-Committee. The key points raised in his address, were as follows:

- The premises was not intended as a live music establishment due to its location beneath a hotel;
- A recent Fire Authority inspection had revealed that the premises had incorrectly installed liquid propane gas canisters in the kitchen, which was situated beneath the hotel;
- A recent inspection by the Food Safety Officer, PCC had revealed that there was a lack of cleaning products in place in the kitchen and that the chef was wearing the same apron for the preparation of cooked and raw foods; and
- The Food Safety Officers inspection also revealed that no food hygiene training had taken place on the premises and that there was no obvious signs of any food hygiene standards.

Responsible Authority – Pollution Control

Stephen Blake, Pollution Control addressed the Sub-Committee. The key points raised in his address, was as follows:

- Concerns over the premises operation had been raised with the Pollution Control Team in the summer and November of 2012, due to loud noises;
- The team visited the premises following complaints raised by the hotel. The team discovered that the sound levels were set at a higher level than background volume;
- The team discovered that the speakers were mounted too close to the ceiling, which was unsuitable for the premises due to its location beneath the hotel;
- During the team's visit to the premises, the Pollution Control Officer demonstrated the noise level that would be acceptable in order to avoid disturbance;
- Recent Facebook footage had revealed that the premises had facilitated a party, which had included a performance from a belly dancer. This type of activity was deemed by the team to be unsuitable for the premises, due to its location beneath the hotel; and
- Extensive acoustic works would need to be undertaken by the premises to avoid future disturbance caused by raised noise levels.

Licensee Representative

Mr Khubaib's representative addressed the Sub-Committee. The key points raised during his address, and following questions from the Sub-Committee, were as follows:

- Issues raised regarding the debt accrued with the landlord were being addressed through Mr Khubaib's Solicitor and a meeting was awaited with the landlord;
- Mr Khabaib's brother was responsible for the premises when he was on holiday in Pakistan;

	<ul style="list-style-type: none"> • The CCTV equipment had not been working due to the previous owner’s electrical supply being cut off. The present owner did not think to check whether the CCTV equipment was fully operational when he became the license holder and DPS; • All amendments to the premises license had been agreed at the mediation meeting held on 14 March 2013; and • Mr Ackraham of 62 Russell Street was due to sign the DPS agreement. <p><u>Summing Up</u></p> <p>All parties were given the opportunity to summarise their submissions.</p> <p>PC Robinson, Responsible Authority and Applicant summarised the main points of the application review:</p> <ul style="list-style-type: none"> • Mr Khubaib had chosen to ignore guidance provided by the police in relation to the licensing conditions of the premises; • There was a risk to members of the public and children if Mr Khubaib was to retain the premises license; • Residents of the Travelodge had, on numerous occasions, been the victim of noise nuisance created by the premises; and • The Committee was urged to consider other options available to them under the Licensing Act. <p>Adrian Day, Licensing Authority summarised the main points of the application review:</p> <ul style="list-style-type: none"> • The license holder had only improved on some the issues that had been highlighted to him, when prompted by Police and PCC Officers; and • Mr Khubaib appeared to show lack of experience in operating the business and a disregard for the Licensing Act; and • Mr Khubaib was only concerned with producing a profit. <p>Mr Khubaib’s, representative summarised the main points of the application review:</p> <ul style="list-style-type: none"> • The license holder had agreed to uphold all the terms that had been reached through mediation on 14 March 2013.
<p>3.10 Written representations and supplementary material taken into consideration</p>	<p><u>Applicant / Responsible Authority – Cambridgeshire Constabulary</u></p> <p>Consideration was given to the application and additional representation, from the Licensing Authority and the Pollution Team was attached to the Sub-Committee report.</p> <p><u>Responsible Authorities</u></p> <p>Consideration was given to the written submissions attached to the Sub-Committee report from the Licensing Authority and the Pollution Team.</p>

<p>3.11 Facts/Issues in dispute</p>	<p><u>Issue 1</u></p> <p>Whether the review application would further support the ‘Prevention of Crime and Disorder’ Licensing Objective.</p> <p><u>Issue 2</u></p> <p>Whether the review application would further support the ‘Protection of Children from Harm’ Licensing Objective.</p> <p><u>Issue 3</u></p> <p>Whether the review application would further support the ‘Public Safety’ Licensing Objective.</p> <p><u>Issue 4</u></p> <p>Whether the review application would further support the ‘Prevention of Public Nuisance’ Licensing Objective.</p>
<p>4. Decision</p>	<p>The Sub-Committee listened to all the evidence put before it and also took into account the contents of the application and all representations and submissions made in relation to it. The Sub-Committee found as follows:-</p> <ul style="list-style-type: none"> • Four Section 19 Notices had been served between August 2012 and March 2013; • Public disorder on New Year’s Day; • Breaches of the operating conditions. For example, conducting a licensable activity: <ul style="list-style-type: none"> – Without a Designated Premises Supervisor (DPS); – Having no fully functioning CCTV; – Operating without a personal licence holder being present; and – Having no SIA registered door staff contrary to the licence conditions; • Concerns raised by the Polluting Control Team over noise nuisance emanating from the premises; and • The Licensing Authority’s concerns raised over the running of the business. <p>During its deliberations, the Sub-Committee considered the various options available, including:</p> <ul style="list-style-type: none"> • Suspension of the licence; • Revocation of the licence; and • Further amended conditions. <p>The Sub-Committee found that these premises was not being managed properly and responsibly; therefore the Sub-Committee did not consider that the mediated conditions were appropriate in the promotion of the Licensing Objectives or additional conditions attached to the licence would promote the Licensing Objectives of:</p>

- Crime & Disorder
- Public Safety;
- Public Nuisance; and
- Protection of Children from Harm

The Government Guidance stated at paragraph 11.17 and 11.18:

‘The licensing authority may decide that the review does not require it to take any further steps appropriate to promote the licensing objectives. In addition, there was nothing to prevent a licensing authority issuing an informal warning to the licence holder and/or to recommend improvement within a particular period of time. It was expected that licensing authorities would regard such informal warnings as an important mechanism for ensuring that the licensing objectives are effectively promoted and that warnings should be issued in writing to the licence holder.

However, where responsible authorities such as the police or environmental health officers have already issued warnings requiring improvement – 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 and should take this into account when considering what further action was appropriate.’

The Sub-Committee agreed that the community needed protecting from the operation for the reasons outlined.

The decision of the Licensing Act 2003 Sub-Committee was therefore to revoke the premises licence in its entirety.

Any person party to the proceedings, who was dissatisfied with the decision, could appeal to the Peterborough Magistrates’ Court within 21 days of the decision.

Chairman
13.30pm –15.10pm