

LICENSING ACT 2003 SUB-COMMITTEE		AGENDA ITEM No. 4
5 OCTOBER 2011		PUBLIC REPORT
Contact Officers:	Adrian Day, Licensing Manager Terri Martin, Regulatory Officer Licensing	Tel: 454437 Tel. 453561

APPLICATION: Review of Premises Licence

PREMISES: Yummy Fish and Chips, 106 Dogsthorpe Road, Peterborough, PE1 3AL

REFERENCE NUMBER: MAU 061816

GLOSSARY OF TERMS: Attached at **Appendix A – Page 8**

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 Trading Standards in their capacity as a Responsible Authority, and letter of support of the review and recommendations from Cambridgeshire Constabulary also a Responsible Authority. Thirteen (13) letters of support / character references in support of the premises licence holder have also been received. The review was bought under the Prevention of Crime and Disorder objective.

2. BACKGROUND INFORMATION

2.1 On the 24 February 2010 an application for a new premises licence was submitted by Mr Warren Wong to allow the off sale of alcohol Monday to Sunday 11.00 to 23.00. As no representations were received the licence was granted 24 March 2010. A copy of this current licence is attached at **Appendix B – 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 Trading Standards, a Responsible Authority, the licensing authority must hold a hearing.

3.2 A copy of the application to review was received 10 August 2011, a copy of this application is attached at **Appendix C – Page 19**.

3.3 A further five supplementary witness statements from HMRC have been received, these are attached at **Appendix D – Page 27**.

3.4 A detailed summary of the operation undertaken by Trading Standards in conjunction with Her Majesty's Revenue and Customs (HMRC) is attached at **Appendix E – Page 35**.

- 3.4 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 F – Page 41**.
- 3.5 A representation in support of the review and recommendations was received from Cambridgeshire Constabulary as a Responsible Authority, a copy of this representation is attached at **Appendix G – Page 43**.
- 3.6 No other representations have been received from any of the remaining Responsible Authorities.

4. RESPONSIBLE AUTHORITY

LICENSING OBJECTIVE:	REPRESENTATIVE:
Prevention of Crime and Disorder	<p>Responsible Authority: Trading Standards</p> <p>As per the application for review attached at Appendix C – Page 19.</p> <p>Responsible Authority: Cambridgeshire Constabulary attached at Appendix G – Page 43.</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. HMRC have seized alleged non UK duty paid alcohol and tobacco products from the premises on 20 April 2011
- ii. The premises have failed to provide documentation for the seized products to prove UK duty had been paid.
- iii. The UK Duty evaded for the alcohol products was £1832.43 and £1468.01 for the tobacco products, totalling £3300.44
- iv. Guidance issued under section 182 of the Licensing Act 2003 recommends revocation, even in the first instance.

5. CHARACTER REFERENCES / LETTERS OF SUPPORT FOR THE PREMISES LICENCE HOLDER

- 5.1 Thirteen (13) letters of support / character references have been received containing fifteen (15) signatures from customers, Councillors, a member of staff, and trade bodies. These letters of support are attached at **Appendix H – Page 45**.
- 5.2 Further documents have been received from Councillor Goldspink in the form of a defence submission on behalf of Mr Wong and a number of attached annexes. These documents are attached at **Appendix I – Page 79**.

6. LICENSING OFFICERS COMMENTS

- 6.1 Section 11.23 of Guidance (issued under section 182) states, 'A number of reviews may arise in connection with crime that is not directly connected with licensable activities. For example, reviews may arise because of drugs problems at the premises or money laundering by criminal gangs or the sale of contraband or stolen goods there or the sale of firearms. Licensing authorities do not have the power to judge the criminality or otherwise of any issues. This is a matter for the courts of law. The role of the licensing authority when determining such a review is not therefore to establish the guilt or innocence of any individual, but to ensure that the crime prevention objective is promoted.'

- 6.2 Members should note that the letters attached are in their entirety and that not all matters raised within the representations are relevant matters for consideration under the Licensing Act 2003. It is up to the Committee to decide upon what 'weight' they attach to these areas.
- 6.3 Regulation 19 requires authorities to disregard any information given by a party or person that is "not relevant" to the application.

7. POLICY & GUIDANCE IMPLICATIONS

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

7.2 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*

7.3 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*

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 Trading Standards (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 10 August 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.

Licensing Act 2003\glossary of terms 13 March 2007