

<b>LICENSING ACT 2003 SUB-COMMITTEE</b>		<b>AGENDA ITEM No. 3</b>
<b>9 NOVEMBER 2011</b>		<b>PUBLIC REPORT</b>
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**APPLICATION:** Variation of a Premises Licence

**LICENCE REFERENCE:** MAU 062034

**APPLICANT:** Mr Bruno Fernando Azevedo Silva

**PREMISES:** Bora Bora, 417 Lincoln Road , Peterborough, PE1 2PF

**GLOSSARY OF TERMS:** Attached at **Appendix A – Page 5**

**1. PURPOSE OF REPORT**

1.1 To consider and determine this application for a variation to the premises licence for Bora Bora, 417 Lincoln Road, Peterborough, PE1 2PF taking into account the representations received from Environmental Pollution & Cambridgeshire Constabulary, both of whom are responsible authorities.

**2. BACKGROUND INFORMATION**

2.1 On the 9<sup>th</sup> May 2006 a new application for a premises licence was submitted by Mrs Sandra Pais no objections were received and the licence was granted. A copy of this original licence can be found at **Appendix B – Page 9**.

2.2 On the 2<sup>nd</sup> October 2006 a variation to the premises licence was applied for. This variation was to place live music and dancing to the licensable activities authorised at the premises. Again as there were no objections the variation to the licence was granted.

2.3 On the 13<sup>th</sup> October 2006 a review of the premises licence was requested by Cambridgeshire Fire & Rescue under the public safety objective. As a result of this review the designated premises supervisor was removed and the premises licence was suspended for a period of 3 months. Mrs Pais subsequently surrendered the premises licence on 4<sup>th</sup> January 2007.

2.4 On the 8<sup>th</sup> February 2007 a new premises licence application was made by Mr Nawaz Ali Ibrahim. After mediation with the Pollution Team the licence was granted. A copy of this premises licence can be found at **Appendix C – Page 21**.

2.5 There were three subsequent variations to the designated premises supervisor whilst Mr Ibrahim held the premises licence.

- 2.6 On the 9<sup>th</sup> July 2010 the premises licence was transferred to Mr Mohammed Attalah. The appointed designated premises supervisor was Mr Andreas Lefteri. A copy of this licence is attached at **Appendix D – Page 33**.
- 2.7 There were two further changes to the premises designated premises supervisor whilst Mr Attalah was the licence holder.
- 2.8 On 30<sup>th</sup> August 2011 the premises licence was transferred to Mr Silva. Mr Robert Mulholland is the nominated designated premises supervisor. A copy of the current premises licence is attached at **Appendix E - Page 45**.

### **3. SUMMARY OF VARIATION APPLIED FOR**

- 3.1
- i) To extend the timings for licensable activities to 11am to Midnight from Sunday to Thursday and from 11am to 4am on Friday and Saturday.
  - ii) To amend the opening hours of the premises to 11am to 12.30am from Sunday to Thursday and from 11am to 4.30am on Friday and Saturday.
  - iii) To remove condition 33 from the licence ('Sufficient seating to accommodate 80% of the maximum capacity of the premises shall be provided.')
  - iv) To change the area of the licensed premises to include outdoor rear area and redesigned internal area.
  - v) To remove condition 11 from the licence (No customers will be admitted, or permitted to leave when carrying open or sealed bottles or glasses.')
  - vi) To remove or reword condition 14 of the licence ('The premises license holder shall be responsible for prevention and disposal of waste on the frontage of the premises and make provision for the emptying of litter bins in the vicinity of the premises.')
  - vii) To remove the provision of plays, films and indoor sporting events from the licence.

### **4. APPLICATION**

- 4.1 Please refer to the application attached at **Appendix F – Page 59**.
- 4.2 Representations have been received from Environmental Pollution Control as a Responsible Authority under the prevention of public nuisance objective. A copy of the representation is attached at **Appendix G – Page 79**.
- 4.3 Representations have also been received from Cambridgeshire Constabulary as a Responsible Authority under the prevention of crime and disorder objective. A copy of the representation is attached at **Appendix H – Page 81**.
- 4.4 A plan indicating the premises and the proposed changes to the licensed area is attached at **Appendix I – Pages 83**.
- 4.6 No representations have been received from any of the other Responsible Authorities i.e. Cambridgeshire Fire and Rescue Service, Peterborough City Council Planning Department, Peterborough City Council Health and Safety Team, Peterborough City Council Child Protection, and Peterborough City Council Trading Standards.
- 4.7 Part P of the application sets out the applicants proposed conditions under the relevant objectives. These are also contained within the body of the report in section 7 and in accordance with paragraph 8.42 of the guidance have been translated into conditions.

## **5. RESPONSIBLE AUTHORITIES**

### **5.1 Summary of issues raised:**

- An increase in hours would lead to a rise in noise issues from music and premises customers.
- An increase in anti social behaviour in and around the premises.
- No current planning permission for the premises to be used as a drinking establishment / night club.
- The use of the rear area of the premises would lead to an increase in noise issues.
- The quality of life for local residents would suffer.
- Allegations of breaches of existing licensing conditions

## **6 MEDIATION**

6.1 No mediation has taken place due to the strong objections to the grant of the licence variations from the responsible authorities.

## **7. APPLICANT'S PROPOSED CONDITIONS**

### **7.1 Crime and disorder**

- Video/CCTV equipment shall be installed inside/outside the premises and maintained in working order
- Video/CCTV equipment will be set to record all licensed areas from the time that the premises open to the public until the premises closes and all members of the public have left
- Digital images shall be retained for at least **one month** and shall be produced to an authorised officer on demand
- Notices advising that CCTV has been installed on the premises shall be posted up so that they are clearly visible to the public within the licensed premises
- An authorised person will be available at all times on the premises to show CCTV images immediately or to an authorised officer on demand
- CCTV images will be clear and comprehensible
- SIA registered door supervisors will be used or employed at all times when considered necessary by the licence holder or Police.
- A refusals / incident log book will be kept and all incidents will be recorded. This book will be available for inspection by an authorised officer.

### **7.2 Public safety**

- A fire risk assessment required under the Regulatory Reform (Fire Safety) Order 2005 (as amended) will be completed and be available for inspection by an authorised officer.
- If it is proposed to play music (other than background music) a suitable cut out device, wired into the fire alarm system, should be installed so that in the event of the fire alarm sounding the music will be automatically shut down. Once installed this cut out relay must be tested on a weekly basis in conjunction with the fire alarm test

### **7.3 Prevention of public nuisance**

- Prominent, clear and legible notices at all exits shall be displayed on the premises requesting patrons to respect the needs of local residents and to leave the premises and the area quietly.
- All areas of the licensed premises where music will be played will be sound-proofed.
- Litter shall be prevented at all times and where identified regularly cleared from the vicinity of the premises

#### 7.4 **Protection of children from harm**

- The 'Challenge 25' initiative to prevent sales of alcohol to persons under 18 years of age will be implemented at the premises.
- Signage will be prominently placed within the premises advertising the fact that the premises operates the 'Challenge 25' initiative.
- No children aged under 16 are permitted to be in the premises after 8pm
- Children under the age of 18 years on the premises must be supervised by an adult.

### **8. POLICY & GUIDANCE IMPLICATIONS**

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

#### 8.2 **Council's Statement of Licensing Policy**

- Objectives, section 4 on Page 8
- Fundamental Principles, section 6 on Page 9
- Licensing Hours, section 8 on Page 12
- Other Legislation, section 10 on Page 14
- Licence Conditions, section 13 on Page 16 and 17
- Delegation / Decision Making / Administration, Section 16 on page 18 and 19

#### 8.3 **Guidance Issued under Section 182 of the Licensing Act 2003 – October 2010**

- The Licensing Objectives, section 2 pages 18 to 25
- Determining applications, section 9 Pages 78 to 81
- Conditions attached to premises licences, section 10 pages 83 to 96
- Pools of conditions, Annex D page 133 to 149

### **9. LEGAL OFFICER'S COMMENTS**

9.1 The Council (hereafter referred to as 'the licensing authority') is charged with implementing the provisions of the Licensing Act 2003. This is an application for the variation of a premises licence made under Section 34 of the Licensing Act.

9.2 In this case, the application was received at these offices on 23<sup>rd</sup> September 2011.

9.3 The application before this committee will be treated on its own merits, and the Licensing committee will make its decision based upon:

- The merits of the application
- The promotion of the four licensing objectives
- The statement of policy of the Licensing Authority
- The Guidance issued by the Secretary of State for Culture, Media and Sport March 2010 under section 182 of the Licensing Act 2003.

9.4 The licensing authority may determine the application, depending upon what is necessary for the promotion of the licensing objectives, in any of the following ways:

- decide to grant or vary the licence in the same terms as it was applied for
- decide to grant or vary the licence, but to modify or add conditions (to promote the licensing objectives);
- exclude from the scope of the licence a licensable activity
- decide to refuse to vary the licence

9.5 Conditions are modified if they are altered, omitted or any new condition added (Section 35(4) Licensing Act 2003.

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 e.g. a Councillor

**‘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

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