

LICENSING SUB-COMMITTEE
28th June 2012

LICENSING ACT 2003

RABZ Night Club
305 High Street, Slough, SL1 BD

Review of Premises Licence – **Number PL007381**
Application made by Thames Valley Police

1. CURRENT POSITION

- 1.1 RABZ Night Club operates under a Premises Licence number **PL007381** which is held by a company called M H Property Letting Limited. The sole named director of M H Property Letting Limited is Mr Majad Hussain.
- 1.2 The Designated Premises Supervisor (DPS) at the time of the Review Application being made by Thames Valley Police was also Mr Majad Hussain who holds a Personal Licence number **10/00497/LAPER** with South Bucks District Council. Mr Hussain was also the manager of the premises
- 1.3 The DPS is responsible for the day to day management of the premises.
- 1.4 The Premises Licence authorises the carrying out of the Relevant Licensable Activities as follows:
 - E. Performance of live music (Indoors)
 - F. Playing of recorded music (Indoors)
 - G. Performance of dance (Indoors)
 - J. Provision of facilities for dancing (Indoors)
 - M The sale by retail of alcohol for consumption On the premises only
- 1.5 The licence authorises the Licensable Activities Friday to Sunday - 9.00pm to 02.00 am and a copy of the current Premises Licence is attached at **Appendix A**.

2. BACKGROUND INFORMATION

- 2.1 On 2nd May 2012 Thames Valley Police submitted an application for the Review of the Premises Licence on grounds of the Prevention of Crime and Disorder and Public Safety, the full Review Application is contained at **Appendix B** and the supporting evidence and additional supporting evidence supplied by the Police and, which has been sent to Mr Hussain are contained at **Appendices C, C-1, C-2, D, E, F and G respectively**.
- 2.2 The extensive grounds for the Review Application being made are detailed fully

within the application, however these can be summarised as;

- Serious issues of disorder and fights, inside the venue and outside by the venue's customers
- Complete lack of control by the Management
- Reports of customers leaving the venue at 03.45am
- Complaints of ongoing loud music by local residents
- Noise abatement notice issued by Slough Borough Council Environmental Protection Officer
- Intelligence of drugs at the premise
- Irresponsible drinks promotions being advertised on Face Book
- Premise advertising closing time of premise on Face Book as 4am
- Misleading applications for Temporary Events Notices
- Section 19 issued on the opening night
- Section 160 Order issued by a District Judge.

3. APPLICATION – REVIEW OF PREMISES LICENCE

3.1 The Licensing Authority is satisfied that this application for Review meets the appropriate legislative requirements within the Licensing Act 2003 and is therefore a valid application to be considered by the Licensing Sub-Committee.

3.2 The Review Application states as follows: Police Sergeant Hewitt has stated that this is the worst premise he has ever been in, in over 15 years service. I (*Debie Pearmain*) am of the same view and can report that in over 10 years of working as the Police Licensing Officer and dealing with over 1,000 premises, I have never experienced such issues and lack of control within such a short time of opening. Let us not forget this premise only opened on Friday 3rd February 2012. This cannot continue as the public safety licensing objective and Crime and Disorder licensing objective are being undermined.

3.2 The Review Application further states: Thames Valley Police's view that due to the catalogue of incidents and non-compliance at the premises and by the Designated Premises Supervisor the Premises Licence should be **revoked**.

3.3 If however, the Members are of the opinion that the Premises Licence should not be revoked, Thames Valley Police request the Premises Licence is suspended and the below amendments and extra conditions are placed along side the existing licence:

- All licensable activity to cease at midnight on all days of the week.

- The closing hours of the premises to be 00.30am of all days of the week.
- Designated Premises Supervisor to be on the premises during all licensable activity.
- Thames Valley Police to be informed of all events with a minimum of 14 days notice to be given.
- Last admission time to be 11.00pm.
- Designated Premises Supervisor or Personal Licence Holder to be trained on how to work the CCTV System to the standard where the nominated person can download any potential evidence required by Thames Valley Police employees or relevant Agencies.
- Suitably qualified First Aider with appropriate first aid supplies to be on duty during all licensable activities.
- Polycarbonate glasses to be used.
- Incident Register to be in place and kept up to date and made available upon the request of Thames Valley Police and any Authorised Officer of the Council, and kept for a minimum of one year.
- All Staff members and SIA door staff to fully co-operate with Police Officers and make themselves available immediately upon the request of the Police Officer to give statements and provide CCTV.
- Door staff Signing in and out Register to be in place and made available upon the request of Thames Valley Police and any Authorised officer of the Council, and kept for a minimum of one year.
- Smokers to be limited to 10 persons at all times.

4. REPRESENTATIONS RECEIVED

- 4.1 A written representation has been received from a local resident detailing continued noise from inside and outside the premises as well violent and aggressive behaviour and assaults occurring outside the premises. The full representation is contained at **Appendix H**.
- 4.2 A representation to the Review Application has been received from Ian Blake - Team Leader of the SBC Neighbourhood Enforcement Team.
- 4.3 Mr Blake has submitted a formal Responsible Authority Representation Form which is contained at **Appendix I**, a written witness statement contained at **Appendix J**, a copy of a Section 80 Noise Abatement Notice contained at **Appendix K**, 2 DVD's showing CCTV footage of disorder out side RABZ Night Club which are detailed at **Appendix L** which will be produced and available for viewing at the Licensing Sub Committee hearing.
- 4.4 A summary of the evidence produced by Mr Blake since the premises opening

on 3rd February 2012 is as follows:

- On 20th February noise complaint of loud amplified music as well as disorder outside the RABZ
- On 27th February Officers attended noise complainant premises and witnessed loud base music from RABZ. The DPS could not be contacted.
- On 29th February Section 80 Noise Abatement Notice served
- On 11th March (also see Appendix J) Officer visited the noise complainants premises and witnessed amplified music and thumping base as well as continued crime and disorder issues outside RABZ which is clearly shown on the 2 DVD's (Appendix L)
- On 13th March meeting held with Mr Majad with the Police and Mr Blake and the Senior Licensing Officer
- On 15th March visit to RABZ and spoke with Mr Majad regarding his noise management plan.
- On 16th and 23rd March visits to the area were made witnessing noise in the street by customers from RABZ
- Further noise complaints were received on 27th April and 6th May.

4.5 There were no further responses from any other Responsible Authorities.

5. RELEVANT GUIDANCE AND POLICIES

5.1 The relevant sections of the REVIEW PROCESS from the Section 182 Secretary of States Guidance is appended to the end of this report which the Committee must have regard to.

5.2 Under its statutory powers under the Act the Licensing Sub Committee may take any of the following steps:

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;
- to revoke the licence.

5.2 The Sub-Committee should also consider and make use of the 'Yellow and Red Cards' system as directed and recommended by The Department of Culture, Media and Sport (DCMS).

APPENDICES

- Appendix A - Copy of current Premises Licence PL007381.
- Appendix B - Review Application of Premises Licence by Thames Valley Police
- Appendix C - Supporting evidence for the Review Application
- Appendix C -1 - Additional evidence by Thames Valley Police
- Appendix C -2 - Additional evidence from Thames Valley Police - Statement form Inspector Boomer
- Appendix D - Additional evidence from Thames Valley Police
- Appendix E - Additional evidence from Thames Valley Police
- Appendix F - Additional evidence from Thames Valley Police
- Appendix G - Additional evidence from Thames Valley Police
- Appendix H - Presentation from a local resident
- Appendix I - Responsible Authority Response Form from Ian Blake
- Appendix J - Witness statement from Ian Blake
- Appendix K - Copy of Section 80 Noise Abatement Notice
- Appendix L - Two DVD's of CCTV footage showing disorder outside RABZ

Background papers

- The Licensing Act 2003
- Guidance issued under Section 182 of the Licensing Act 2003 - (Revised April 2012)
- Regulations (cited as the Licensing Act 2003 ([Various]) Orders 2005
- Slough Borough Council Statement of Licensing Policy - December 2010
- DCMS Guidance – Red and Yellow Cards System

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THE REVIEW PROCESS

11.1 The proceedings set out in the 2003 Act for reviewing premises licences and club premises certificates represent a key protection for the community where problems associated with the licensing objectives occur after the grant or variation of a premises licence or club premises certificate.

11.2 At any stage, following the grant of a premises licence or club premises certificate, a responsible authority, or any other person, may ask the licensing authority to review the licence or certificate because of a matter arising at the premises in connection with any of the four licensing objectives.

11.3 An application for review may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written application. The licensing authority may also agree in advance that the application need not be given in writing. However, these applications are outside the formal electronic application process and may not be submitted via Business Link or the licensing authority's electronic facility.

11.4 In addition, the licensing authority must review a licence if the premises to which it relates was made the subject of a closure order by the police based on nuisance or disorder and the magistrates' court has sent the authority the relevant notice of its determination, or if the police have made an application for summary review on the basis that premises are associated with serious crime and/or disorder.

11.5 Any responsible authority under the 2003 Act may apply for a review of a premises licence or club premises certificate. Therefore, the relevant licensing authority may apply for a review if it is concerned about licensed activities at a premises and wants to intervene early without waiting for representations from other parties. However, it is not expected that licensing authorities should normally act as responsible authorities in applying for reviews on behalf of other persons, such as local residents or community groups. These individuals or groups are entitled to apply for a review for a licence or certificate in their own right if they have grounds to do so. It is also reasonable for licensing authorities to expect other responsible authorities to intervene where the basis for the intervention falls within the remit of that other authority. For example, the police should take appropriate steps where the basis for the review is concern about crime and disorder. Likewise, where there are concerns about noise nuisance, it is reasonable to expect the local authority exercising environmental health functions for the area in which the premises are situated to make the application for review.

11.6 Where the relevant licensing authority does act as a responsible authority and applies for a review, it is important that a separation of responsibilities is still achieved in this process to ensure procedural fairness and eliminate conflicts of interest. As outlined previously in Chapter 9 of this Guidance, the distinct functions of acting as licensing authority and responsible authority should be exercised by different officials to ensure a separation of responsibilities. Further information on how licensing authorities should achieve this separation of responsibilities can be found in Chapter 9, paragraphs 9.13 to 9.19 of this Guidance.

11.7 Any application for a review received by the licensing authority from responsible authorities and any other persons should be given due consideration and treated by the authority in precisely the same way, regardless of the body or individual which made it. This includes an application made by the local authority acting in a separate capacity (for example, environmental health or child protection).

11.8 In every case, any application for a review must relate to particular premises in respect of which there is a premises licence or club premises certificate and must be relevant to the promotion of one or more of the licensing objectives. Following the grant or variation of a

licence or certificate, a complaint regarding a general issue in the local area relating to the licensing objectives, such as a general (crime and disorder) situation in a town centre, should generally not be regarded as a relevant representation unless it can be positively tied or linked by a causal connection to particular premises, which would allow for a proper review of the licence or certificate. For instance, a geographic cluster of complaints, including along transport routes related to an individual public house and its closing time, could give grounds for a review of an existing licence as well as direct incidents of crime and disorder around a particular public house.

11.9 Where a licensing authority receives a geographic cluster of complaints, the authority may consider whether these issues are the result of the cumulative impact of licensed premises within the area concerned. In such circumstances, the authority may also consider whether it would be appropriate to include a special policy relating to cumulative impact within its licensing policy statement. Further guidance on cumulative impact policies can be found in Chapter 13 of this Guidance.

11.10 Representations must be made in writing and may be amplified at the subsequent hearing or may stand in their own right. Additional representations which do not amount to an amplification of the original representation may not be made at the hearing. Representations may be made electronically, provided the licensing authority agrees and the applicant submits a subsequent written representation. The licensing authority may also agree in advance that the representation need not be given in writing.

11.11 It is important to recognise that the promotion of the licensing objectives relies heavily on a partnership between licence holders, authorised persons, responsible authorities and any other persons in pursuit of common aims. Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holders early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns. A failure by the holder to respond to such warnings is expected to lead to a decision to apply for a review. Co-operation at a local level in promoting the licensing objectives should be encouraged and reviews should not be used to undermine this co-operation.

11.12 If the application for a review has been made by a person other than a responsible authority (for example, a local resident, residents' association, local business or trade association), before taking action the licensing authority must first consider whether the complaint being made is relevant, frivolous, vexatious or repetitious. Further guidance on determining whether a representation is frivolous or vexatious can be found in Chapter 9 of this Guidance (paragraphs 9.4 to 9.10).

REPETITIOUS GROUNDS OF REVIEW

11.13 A repetitious ground is one that is identical or substantially similar to:

- a ground for review specified in an earlier application for review made in relation to the same premises licence or certificate which has already been determined; or
- representations considered by the licensing authority when the premises licence or certificate was granted; or
- representations which would have been made when the application for the premises licence was first made and which were excluded then by reason of the prior issue of a provisional statement; and, in addition to the above grounds, a reasonable interval has not elapsed since that earlier review or grant.

11.14 Licensing authorities are expected to be aware of the need to prevent attempts to review licences merely as a further means of challenging the grant of the licence following the failure of representations to persuade the licensing authority on an earlier occasion. It is for licensing authorities themselves to judge what should be regarded as a reasonable interval in these circumstances. However, it is recommended that more than one review originating from a person other than a responsible authority in relation to a particular premises should not be permitted within a 12 month period on similar grounds save in compelling circumstances or where it arises following a closure order.

11.15 The exclusion of a complaint on the grounds that it is repetitious does not apply to responsible authorities which may make more than one application for a review of a licence or certificate within a 12 month period.

11.16 When a licensing authority receives an application for a review from a responsible authority or any other person, or in accordance with the closure procedures described in Part 8 of the 2003 Act (for example, closure orders), it must arrange a hearing. The arrangements for the hearing must follow the provisions set out in regulations. These regulations are published on the Government's legislation website (www.legislation.gov.uk). It is particularly important that the premises licence holder is made fully aware of any representations made in respect of the premises, any evidence supporting the representations and that the holder or the holder's legal representative has therefore been able to prepare a response.

POWERS OF A LICENSING AUTHORITY ON THE DETERMINATION OF A REVIEW

11.17 The 2003 Act provides a range of powers for the licensing authority which it may exercise on determining a review where it considers them appropriate for the promotion of the licensing objectives.

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 is 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 is expected that licensing authorities will 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.

11.19 However, where responsible authorities like 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 address concerns, licensing authorities should not merely repeat that approach and should take this into account when considering what further action is appropriate.

11.20 Where the licensing authority considers that action under its statutory powers is appropriate, it may take any of the following steps:

- to modify the conditions of the premises licence (which includes adding new conditions or any alteration or omission of an existing condition), for example, by reducing the hours of opening or by requiring door supervisors at particular times;
- to exclude a licensable activity from the scope of the licence, for example, to exclude the performance of live music or playing of recorded music (where it is not within the incidental live and recorded music exemption);
- to remove the designated premises supervisor, for example, because they consider that the problems are the result of poor management;
- to suspend the licence for a period not exceeding three months;

- to revoke the licence.

11.21 In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response.

11.22 For example, licensing authorities should be alive to the possibility that the removal and replacement of the designated premises supervisor may be sufficient to remedy a problem where the cause of the identified problem directly relates to poor management decisions made by that individual.

11.23 Equally, it may emerge that poor management is a direct reflection of poor company practice or policy and the mere removal of the designated premises supervisor may be an inadequate response to the problems presented. Indeed, where subsequent review hearings are generated by representations, it should be rare merely to remove a succession of designated premises supervisors as this would be a clear indication of deeper problems that impact upon the licensing objectives.

11.24 Licensing authorities should also note that modifications of conditions and exclusions of licensable activities may be imposed either permanently or for a temporary period of up to three months. Temporary changes or suspension of the licence for up to three months could impact on the business holding the licence financially and would only be expected to be pursued as an appropriate means of promoting the licensing objectives. So, for instance, a licence could be suspended for a weekend as a means of deterring the holder from allowing the problems that gave rise to the review to happen again. However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives. But where premises are found to be trading irresponsibly, the licensing authority should not hesitate, where appropriate to do so, to take tough action to tackle the problems at the premises and, where other measures are deemed insufficient, to revoke the licence.