

**CHERWELL DISTRICT COUNCIL**

**LICENSING SUB COMMITTEE**

**6 FEBRUARY 2009**

**REPORT OF THE HEAD OF URBAN & RURAL SERVICES**

**PREMISES LICENCE APPEAL HEARINGS – REVIEW OF PREMISES LICENCE**

**1 Introduction and Purpose of Report**

- 1.1 The purpose of this report is to provide an outline of an application to review that has resulted in the necessity for a hearing.

**2 Wards Affected**

- 2.1 Grimsbury and Castle

**3 Effect on Policy**

- 3.1 None.

**4 Contact Officers**

- 4.1 Natasha Barnes (ext. 3738)  
Claire Bold (ext. 3741)

**5 Background**

- 5.1 This report contains details of an application for review from the Safer Communities and Community Development Team at Cherwell District Council in respect of Que Pasa, 64-65 High Street, Banbury that is to be considered by the Committee.
- 5.2 The Premises Licence is held by Marston's PLC of Marston's House, Brewery Road, Wolverhampton, WV1 4JT. The current Designated Premises Supervisor in respect of this premises licence is Darren Mark Primrose.
- 5.3 The application is to seek to review the Premises Licence issued under the Licensing Act 2003. Details are provided in respect of the existing licence and grounds for review.

**6 Application for review of the premises licence in respect of Que Pasa, 64-65 High Street, Banbury.**

- 6.1 The application for the review of the premises licence was first received on 17 December 2008, from Rob Lowther on behalf of the Safer Communities and Community Development Team at Cherwell District Council.

## 6.2 Description of the grounds for review:

That the licensing objective of the prevention of public nuisance is not being achieved in that the noise from amplified music and the noise produced by customers using the rear garden of the premises is causing disturbance to the occupants of nearby dwellings.

## 7 Details of the existing Premises Licence issued under the Licensing Act 2003

### 7.1 The **Current** Premises Licence, which came into force on 24 November 2005, permits:

1. Sale (by retail) of alcohol, For consumption **On and Off** the premises:
  - Sunday to Monday from 10.00 to 04:00 hours the following morning
  - From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.
2. Provision of Regulated Entertainment to include live and recorded music, the performance of dance and anything of a similar description to that falling within live music, recorded music or performance of dance, **Indoors and Outdoors**:
  - Sunday to Monday from 10.00 to 04:00 hours the following morning
  - From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.
3. Provision of Entertainment facilities to include making music, dancing and entertainment of a similar description to that falling within live music, recorded music or performance of dance, **Indoors and Outdoors**:
  - Sunday to Monday from 10.00 to 04:00 hours the following morning
  - From the commencement of permitted hours on New Years Eve to the end of permitted hours on New Years Day.
4. The premises is permitted to remain open for half an hour following the cessation of the permitted times for the sale of alcohol

7.2 The Premises Licence in respect of this establishment came into force on 24 November 2005 and was originally held by the Eldridge Pope and Company LTD.

7.3 On the 25 November 2005, an application to vary the designated premises supervisor from Gavin Hall to Gail Lorraine Pritchard was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.

7.4 On the 6 December 2005, an application to vary the designated premises supervisor from Gail Lorraine Pritchard to Ian Lee Robinson was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.

7.5 On 25 July 2006, an application was received to vary the premises licence. The variation sought to extend the permitted hours for licensable activities from 10.00 to 04.00 the following morning, seven days a week.

7.6 Objections were received to the variation from Environmental Health, Thames Valley Police and members of the public due to the impact of the variation on the licensing objectives, namely the prevention of crime and disorder and the prevention of public nuisance.

- 7.7 Following receipt of the objections, a hearing was convened in front of the Licensing Sub-Committee on 14 September 2006. The following conditions were attached to the licence as a result of this hearing:
1. No admission/readmission in the last hour of sale of alcohol;
  2. Door Staff – one per 100 patrons or part thereof subject to a minimum of two door supervisors at any one time from 21:00 on every night until at least 30 minutes after the last licensable activity has ended when any licensable activity ends after 00:00
  3. The licence holder shall implement a written responsible drinking policy to be agreed in writing with Thames Valley Police;
  4. All members of staff at the premises shall seek “credible photographic proof of age evidence” from any person who appears to be under the age of 21 years and who is seeking access to the premises or who is seeking to purchase or consume alcohol on the premises. Such credible evidence, which shall include a photograph of the customer, will either be a passport, photographic driving licence, or Proof of Age Card carrying a “PASS” logo;
  5. Prominent clear notices shall be displayed at the point of entry to the premises and in a suitable location at any points of sale, advising customers that they may be asked to produce evidence of their age;
  6. All occasions when persons have been refused service shall be recorded in writing and kept at the premises for six months.
- 7.8 On the 16 October 2007, an application to vary the designated premises supervisor from Ian Robinson to Terry Lee Ambrose was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.9 On the 31 October 2007, an application to vary the designated premises supervisor from Terry Lee Ambrose to Jack Parsons was received from Bond Pearce Solicitors on behalf of Marstons PLC. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.10 On the 12 December 2007, an application to transfer the premises licence from Eldridge Pope and Company LTD to Marstons PLC was received from Bond Pearce Solicitors on behalf of Eldridge Pope and Company LTD. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.11 On the 10 June 2008, an application to vary the designated premises supervisor from Jack Parsons to Daren Mark Primrose was received from Bond Pearce Solicitors on behalf of Marstons PLC. No objection was received from Thames Valley Police to the application and it was duly granted.
- 7.12 A plan of the premises showing the locations of the licensable activities is included in the premises licence within **Annex 1** of this report.

## **8 Objections/Representations received**

- 8.1 The review application was served upon the Licensing Authority by Safer Communities and Community Development at Cherwell District Council on 17 December 2008.
- 8.2 A copy of the review application is to be found within **Annex 2** of this report.
- 8.3 In accordance with the regulations of the Licensing Act 2003, the Licensing Authority duly displayed the Notice of Review for a period of 28 days starting from the day after the date on which the application was served. The notice was displayed at the premises in question and at Cherwell District Council, Bodicote House.
- 8.4 The consultation period for the review ended on 11 January 2009; no further representations have been received as a result of 8.3 above.

## **9 Supporting Evidence Submitted**

- 9.1 The Safer Communities and Community Development Team produced a number of documents as supporting evidence and these all accompanied the Review application. These items of evidence have also been served by The Safer Communities and Community Development Team upon the Premises Licence Holder and notification of them has been served upon the Responsible Authorities. The contents of the evidence bundle is briefly described as;

1. Schedule 1
2. Abatement Notice (RL1)
3. Letter from Marstons (RL2)

Copies of this evidence can be found with **Annex 3** of this report.

- 9.2 In addition to the above evidence, The Safer Communities and Community Development Team have included a copy of sound monitoring recordings for the period of 17 October 2008 to 28 October 2008. A copy of this recording has been served on the premises licence holder and will be made available for the Licensing Sub-Committee to hear at the hearing.
- 9.3 At the time of compiling this report (27 January 2009) no evidence has been submitted on behalf of the Premises Licence Holder or any further evidence from the Safer Communities and Community Development Team. Any such evidence produced prior to the Hearing will be forwarded to Members of the Sub-Committee and all other parties upon receipt.

## **10 Relevant sections of the Guidance and Licensing Authority Policy issued under the Licensing Act 2003**

- 10.1 The relevant sections of the Guidance and Licensing Authority Policy issued under the Licensing Act 2003, which are applicable to the representations for this case are as follows:

### **Guidance:**

Pages 82 – 83	Sections 11.1 – 11.10	The Review Process
Pages 83 – 84	Sections 11.15 – 11.21	Powers of a Licensing Authority on the Determination of a Review
Pages 21 – 23	Sections 2.32 – 2.40	Public Nuisance

Pages 128 - 133	Annex D	Part 4. Conditions relating to the prevention of public nuisance
Pages 72 - 73	Sections 10.11 – 10.18	Imposed Conditions, Proportionality, Duplication with other statutory provisions

**Cherwell District Council Statement of Licensing Policy:**

Page 21	Policies LA3 – LA5	Section 7.3	General prevention of Public Nuisance
Page 23	Policy LA6	Section 7.3.10	Management and Control
Page 32	Policy DPS1	Section 7.6	Designated Premises Supervisors
Page 35	Policy OS2	Section 8.2.2	Log Book
Page 43	Policies RE1 – RE4	Section 10.1	Reviews

10.2 Members have been issued with copies of the Guidance, the Statement of Licensing Policy and the Council's pool of conditions and are asked to bring them with them to the meeting.

**11 Options**

11.1 There is no recommendation. In considering the application received and what is appropriate for the promotion of the licensing objectives, the options open to the Sub-Committee are, in broad terms:

1. Modify the conditions of the Premises Licence;
2. Exclude a licensable activity from the scope of the Premises Licence;
3. Remove the Designated Premises Supervisor from the Premises Licence;
4. Suspend the Premises Licence for a period not exceeding three months;
5. Revoke the Licence;
6. Any combination of or none of the above.

11.2 The Licensing Act 2003 at Section 52, Paragraph 11 states:

“A determination under this section does not have effect-  
 (a) until the end of the period given for appealing against the decision, or  
 (b) if the decision is appealed against, until the appeal is disposed of.”

11.3 Schedule 5 of the Act, Section 9 Paragraph 2 states

“An appeal under this Part must be commenced by notice of appeal given by the appellant to the justices' chief executive for the magistrates' court within the period of 21 days....”

11.4 Therefore any decisions taken at the Review Hearing by the Licensing Sub-Committee will not take effect until the period within which an appeal can be brought has passed, and then following which until the determination of any such appeal.