

# Licensing Sub Committee

## Review of Premises Licence

7 June 2011

### Report of Head of Safer Communities, Urban and Rural Services

#### PURPOSE OF REPORT

To provide an outline of an application for the review of the Premises Licence in relation to Moko Bar and Kitchen, 16 Broad Street, Banbury for determination by the Licensing Sub Committee.

This report is public

#### Recommendations

---

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.

#### Executive Summary

---

##### Introduction

- 1.1 On 12 April 2011, the Licensing Authority received an application for the review of the premises licence held by Moko Bar and Kitchen, 16 Broad Street, Banbury
- 1.2 The Licensing Act 2003 provides a clear focus on the promotion of four statutory objectives which must be addressed when licensing functions are undertaken:
- 1.3 The licensing objectives are:

- The prevention of crime and disorder.
- Public safety.
- The prevention of public nuisance.
- The protection of children from harm.

Guidance issued under Section 182 of the Licensing Act 2003 states:

*Each objective is of equal importance. It is important to note that there are no other licensing objectives, so that these four objectives are paramount considerations at all times. But the legislation also supports a number of other key aims and purposes. These are vitally important and should be principal aims for everyone involved in licensing work. They include:*

- *the necessary protection of local residents, whose lives can be blighted by disturbance and anti-social behaviour associated with the behaviour of some people visiting licensed premises of entertainment;*
- *the introduction of better and more proportionate regulation to give business greater freedom and flexibility to meet customers' expectations;*
- *greater choice for consumers, including tourists, about where, when and how they spend their leisure time;*
- *the encouragement of more family friendly premises where younger children can be free to go with the family;*
- *the further development within communities of our rich culture of live music, dancing and theatre, both in rural areas and in our towns and cities.*

- 1.4 The application was made by the Barclay Residents Company Limited, an interested party who represents persons living in the vicinity of the premises.
- 1.5 The application regards concerns that the Premises Licence Holders are not promoting the Prevention of Public Nuisance licensing objective.
- 1.6 A copy of the review application is to be found at Appendix 1 of this report.
- 1.7 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 offices.
- 1.8 The consultation period for the review ended on 10 May 2011.
- 1.9 A representation was received from Rob Lowther of the Anti-social Behaviour Unit on 10 May 2011. A copy of the representation is attached as Appendix 2 of this report.
- 1.10 Responses were also received from Thames Valley Police, Oxfordshire Fire and Rescue Service and Oxfordshire County Council Trading Standards. None of these authorities had any further comments to make. Their responses are attached to the report at Appendices 3, 4 and 5 respectively.
- 1.11 On 24 May 2011, Ms Joanne Kirby, representing the applicant, submitted further documentation in support of the review application. The documents are attached to this report as Appendices 6 to 13 respectively.
- 1.12 The application makes reference to potential nuisance being caused by persons smoking

outside of the premises. In July 2007, the introduction of The Health Act 2006 prohibited smoking in certain public areas. The Act made it an offence to smoke or permit others to smoke in smokefree premises as determined in the Act. Smokefree spaces refer to areas with a 50% or higher enclosure and do not cover open air areas. This legislation is enforced by Cherwell District Council's Public Protection Team.

- 1.13 The Public Protection Team were consulted as part of the application process for this review however, have refrained from making comment as should any breaches of the smoking legislation occur, they will deal with these under the appropriate legislation. The Secretary of States Guidance issued under Section 182 of the Licensing Act 2003 states:

***Avoiding duplication of other legal requirements:***

- *The licensing authority should only impose conditions on a premises licence or club premises certificate which are necessary and proportionate for the promotion of the licensing objectives. If other existing law already places certain statutory responsibilities on an employer or operator of premises, it cannot be necessary to impose the same or similar duties on the premises licence holder or club. It is only where additional and supplementary measures are necessary to promote the licensing objectives that necessary, proportionate conditions will need to be attached to a licence.*

- 1.14 Therefore, any nuisance that may occur as a result of the act of smoking at the premises will be dealt with by the correct agency in accordance with the relevant legislation and not as part of this review process

## **Background Information**

---

- 2.1 The existing Premises Licence came into force on 24 November 2005 and was originally held by Roger Herbert and Sonia Ryland of Ryland's, 16 Broad Street, Banbury
- 2.2 On 31 June 2006, an application was received to vary the premises licence. The variation sought to extend the permitted hours for the supply of alcohol and to include licensable activities in the form of live and recorded music, making music and dancing from 10.00 to midnight on Mondays to Thursdays, 10.00 to 02.00 the following morning on Fridays and Saturdays and from 11.00 to midnight on Sundays. A representation was received from Cherwell District Council's Environmental Services Department requesting that a condition be placed upon the licence requiring a noise limiter to be installed at the premises. This condition was duly agreed by the applicant and as no further representations were received, the licence was duly granted.
- 2.3 On the 13 August 2007, an application to transfer the premises licence from Roger Herbert and Sonia Ryland to Snap Inns Limited of 48 Parsons Street, Banbury and to simultaneously vary the Designated Premises Supervisor from Roger Ryland to Shirley Ainsworth. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.4 On the 23 January 2008, an application to transfer the premises licence from Snap Inns Limited to ABC Midlands Limited of 4 Highcliff Court, Weatherby and to simultaneously vary the Designated Premises Supervisor from Shirley Ainsworth to Peter Falgate. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.5 On 12 February 2008, a notification of interest was registered in the property by TLT

Solicitors on behalf of R&L Properties No 6 Limited. The applicants were duly noted of any changes made to the premises licence in accordance with the Licensing Act 2003. The notification has been renewed annually.

- 2.6 On the 13 May 2008, an application to vary the Designated Premises Supervisor from Peter Falgate to Michelle Pearce was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.7 On the 29 September 2008, an application to transfer the premises licence from ABC Midlands Limited to Bekim Hyseni of the Red Lion, Middleton Cheney and to simultaneously vary the Designated Premises Supervisor from Michelle Pearce to Bekim Hyseni. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.8 On the 9 April 2009, an application to transfer the Premises Licence from Bekim Hyseni to Scottish and Newcastle Pub Enterprises (Management) Ltd of 2-4 Broadway Park, Edinburgh was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.9 On the 2 June 2010, an application to transfer the premises licence from Scottish and Newcastle Pub Enterprises (Management) Ltd to Techno bar Pub Company of 161 Warwick Road, Banbury and to simultaneously vary the Designated Premises Supervisor from Bekim Hyseni to Carla Chalkley. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.10 On the 12 July 2010, a letter was received from Carla Chalkley stating she no longer consented to being the Designated Premises Supervisor at the premises. Ms Chalkley's letter accompanied an application to vary the Designated Premises Supervisor from Carla Chalkley to Patrick Broderick was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.11 On the 29 November 2010, an application to transfer the Premises Licence from the Technobar Pub Company back to Scottish and Newcastle Pub Enterprises (Management) Ltd of 2-4 Broadway Park, Edinburgh was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.12 On the 3 February 2011, an application to transfer the premises licence from Scottish and Newcastle Pub Enterprises (Management) Ltd to the Oxford Pub and Leisure Company Limited of Suite 1, 2 Botley Road, Oxford and to simultaneously vary the Designated Premises Supervisor from Patrick Broderick to Harriet Hornblow. No objections were received from Thames Valley Police to either application and they were duly granted.
- 2.13 In February 2011, a letter was received from Harriet Hornblow stating she no longer consented to being the Designated Premises Supervisor at the premises
- 2.14 On the 8 March 2011, an application to vary the Designated Premises Supervisor from Harriet Hornblow to Christopher Proudfoot was received. No objection was received from Thames Valley Police to the application and it was duly granted.
- 2.15 On 28 April 2011, the Licensing Team were contacted by a Mr Robin Barnes who wished to become the Designated Premises Supervisor at the premises. Mr Barnes also advised that the Oxford Pub and Leisure Company Limited had changed their registered advice. Advice was given to Mr Barnes on how to make the relevant applications and how to update the address details of the licence holder. No applications had been received by the Licensing Team at the time of writing this report.

2.16 The Premises Licence allows the following Licensable activities:

**Provision of Regulated Entertainment:**

Indoor Sporting Events – **NB INDOORS ONLY**

Boxing or Wrestling Entertainment

Live Music

Recorded Music

Performances of Dance

Anything of a similar description to that falling within Live Music, Recorded Music or Performance of Dance

**Provision of Entertainment Facilities for:**

Making Music, Dancing and Entertainment of a similar description to that falling within making music or dancing

**Provision of late night refreshment**

**Sale (By Retail) of alcohol**

2.17 The Licensable Activities are permitted for the following times:

LICENSABLE ACTIVITY	DAY		START	FINIS H	
Sale (by retail) of alcohol	Monday		10:00	00:00	
	Tuesday		10:00	00:00	
	Wednesday		10:00	00:00	
	Thursday		10:00	00:00	
	Friday		10:00	02:00	
	Saturday		10:00	02:00	
	Sunday		11:00	00:00	
	Bank Holiday Sundays & Mondays until 01:00				
	Christmas Eve until 02:00				
	New Years Eve from the end of permitted hours on New Years Eve to the start of permitted hours on the following day				
LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
Provision of Regulated	Monday		11:00	00:00	

Dance			
-------	--	--	--

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Regulated Entertainment</b> <ul style="list-style-type: none"><li>Live Music</li></ul>			<b>Up to a maximum of eight times per year within the hours detailed below</b>		
			Monday	10:00	00:00
			Tuesday	10:00	00:00
			Wednesday	10:00	00:00
			Thursday	10:00	00:00
			Friday	10:00	02:00
			Saturday	10:00	02:00
			Sunday	11:00	00:00
			Bank Holiday Sundays & Mondays until 01:00		
			Christmas Eve until 02:00		

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Regulated Entertainment</b> <ul style="list-style-type: none"> <li>Recorded Music</li> </ul> <b>Provision of Entertainment Facilities for</b> <ul style="list-style-type: none"> <li>Making Music</li> <li>Dancing</li> </ul>			Monday	10:00	00:00
			Tuesday	10:00	00:00
			Wednesday	10:00	00:00
			Thursday	10:00	00:00
			Friday	10:00	02:00
			Saturday	10:00	02:00
			Sunday	11:00	00:00
			Bank Holiday Sundays & Mondays until 01:00		
			Christmas Eve until 02:00		
			New Years Eve from the end of permitted hours on New Years Eve to the start of permitted hours on the following day		

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Entertainment Facilities for</b> <ul style="list-style-type: none"> <li>Entertainment of a similar description to that falling within Making Music or Dancing</li> </ul>			Monday	10:00	00:00
			Tuesday	10:00	00:00
			Wednesday	10:00	00:00
			Thursday	10:00	00:00
			Friday	10:00	02:00
			Saturday	10:00	02:00
			Sunday	11:00	00:00

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
<b>Provision of Regulated Entertainment</b> <ul style="list-style-type: none"> <li>Recorded Music - <b>ONLY</b> when pursuant to S182 of The Licensing Act 1964</li> </ul>			Monday	00:00	00:00
			Tuesday	00:00	00:00
			Wednesday	00:00	00:00
			Thursday	00:00	00:00
			Friday	00:00	00:00

	Saturday	00:00	00:00
	Sunday	00:00	00:00

LICENSABLE ACTIVITY	INDOORS	✓	DAY	START	FINISH
	OUTDOORS				
	BOTH				
Provision of late night refreshment			Monday	23:00	00:00
			Tuesday	23:00	00:00
			Wednesday	23:00	00:00
			Thursday	23:00	00:00
			Friday	23:00	01:00
			Saturday	23:00	01:00
			Sunday	23:00	00:00
			Good Friday and Christmas Day as Standard timings		

2.18 The current Premises Licence details the opening hours of the Premises to be:

DAY	START	FINISH
Monday	10:00	00:30
Tuesday	10:00	00:30
Wednesday	10:00	00:30
Thursday	10:00	00:30
Friday	10:00	02:30
Saturday	10:00	02:30
Sunday	11:00	00:30
May open to Public for non-licensable activities		

### **Key Issues for Consideration/Reasons for Decision and Options**

3.1 The Licensing Act 2003 states that all licensing matters must promote the four Licensing Objectives, they are:

- The prevention of crime and disorder;
- Public safety;
- The prevention of public nuisance; and
- The protection of children from harm.

3.2 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:**

Sections	11.1 – 11.11	The Review Process
Sections	11.16 – 11.22	Powers of a Licensing Authority on the determination of a review
Sections	10.7 – 10.18	Proposed Consistency, Consistency with Steps Described in Operating Schedules, Imposed

		Conditions, Proportionality, Duplication with other statutory provisions
Annex D		Core Principles
Sections	2.32 – 2.40	Public Nuisance
Annex D	Part 4.	Conditions relating to the prevention of public nuisance

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

Page 1	Policy GN 1	Section 1.1.1	Objectives
Pages 19 – 20	Policies LA 3 – LA 4	Sections 7.3.1 – 7.3.8	General Prevention of Public Nuisance
Page 20	Policies LA 5	Sections 7.3.9	Addressing Local Concerns
Page 21	Policy LA 6	Section 7.3.10	General Management and Control
Pages 30 – 31	Policy DPS 1	Sections 7.6.1 – 7.6.5	Designated Premises Supervisor
Page 40	Policies RE1 – RE4	Sections 10.1.1 – 10.1.3	Reviews

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.

The following options have been identified. The approach in the recommendations is believed to be the best way forward

<b>Option One</b>	Modify the conditions of the Premises Licence;
<b>Option Two</b>	Exclude a licensable activity from the scope of the Premises Licence;
<b>Option Three</b>	Remove the Designated Premises Supervisor from the Premises Licence;
<b>Option Four</b>	Suspend the Premises Licence for a period not exceeding three months;
<b>Option Five</b>	Revoke the Premises Licence;
<b>Option Six</b>	Any combination of the above; or
<b>Option Seven</b>	None of the above

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.”

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....”

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.

## **Consultations**

---

Full consultation in accordance with the requirements of the Licensing Act 2003 was carried out for a period of 28 days from the date of application for review, ending at midnight on 10 May 2011.

## **Implications**

---

<b>Financial:</b>	There are no financial implications of this report Comments checked by Denise Taylor, Service Accountant, 01295 221982
<b>Legal:</b>	The decision must comply with relevant legislation and Council Policy. All parties have a right of Appeal to the Magistrates Court against the decision Comments checked by Paul Manning, Solicitor, 01295 221691
<b>Risk Management:</b>	There is a risk that if policy and legislation has not been correctly followed, any resulting appeal could be successful. Comments checked by Clare Taylor, Corporate Strategy and Performance Manager, 01295 221566

## **Wards Affected**

---

Banbury Grimsbury & Castle

## **Document Information**

---

<b>Appendix No</b>	<b>Title</b>
Appendix 1	Application for the review of a premises licence: Moko Bar and Kitchen
Appendix 2	Representation form Rob Lowther, Manager of the Anti Social Behaviour Team at Cherwell District Council
Appendix 3	Response form Thames Valley Police
Appendix 4	Response from Oxfordshire Fire and Rescue Service
Appendix 5	Response from Oxfordshire County Council Trading Standards
Appendix 6	Email from Joanne Kirby on behalf of Barclay Residents Company Limited
Appendix 7	Supplementary Information from applicant
Appendix 8	Supplementary Information from applicant

Appendix 9	Supplementary Information from applicant
Appendix 10	Supplementary Information from applicant
Appendix 11	Supplementary Information from applicant
Appendix 12	Supplementary Information from applicant
Appendix 13	Supplementary Information from applicant
<b>Background Papers</b>	
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.	
<b>Report Author</b>	Claire Bold, Licensing Team Leader
<b>Contact Information</b>	01295 753741 claire.bold@cherwell-dc.gov.uk